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Copyright

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Correspondence

Letter from China

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On September 7, 1990, the Copyright Law of the People's Republic of China, a law of historical significance, was adopted at the 15th Session of the Standing Committee of the Seventh National People's Congress, and will enter into force on June 1, 1991.** China has turned a new and historically important page in the process of completing copyright legislation and establishing a copyright protection system.

I. The History of Copyright Legislation in China

1. The three copyright laws in history

Before the promulgation of the Copyright Law of the People's Republic of China, three copyright laws had existed in the history of China, namely, the Copyright Law of the Great Qing adopted by the Government of the Qing Dynasty in 1910, the Copyright Law adopted by the Northern Warlord Government in 1915, and the Copyright Law of the Republic of China adopted by the Guomindang Government in 1928.

The Copyright Law of the Great Qing was a good law in its time. It has 55 articles in five chapters covering General Provisions, Registration, Term of Protection, Limitations on Rights and Supplementary Provisions. The works protected by this Law, as prescribed in Article 1, include works of literature and art, pamphlets, calligraphy, photographs, sculptures and models. The works that are not protected by this Law are laws, orders, official documents, speeches delivered at various religious ceremonies, news on politics and current events published in newspapers, as well as public speeches.

The following rights are protected by this Law:

(1) protecting registered copyrighted works against unauthorized reprinting or counterfeiting by any other means;

(2) protecting a work of the author, when accepted for publication or production by any other means, against mutilation and distortion. When a work is distributed, the name of the author shall be mentioned and the title of the work shall not be altered;

(3) protecting a work in the public domain against mutilation and distortion. When a work in the public domain is published and distributed, the name of the author shall be mentioned and the title of the work shall not be altered;

(4) prohibiting the publication and distribution of a work created by another in one's name;

(5) prohibiting any unauthorized compilation of exercise books for textbooks published by another;

(6) without the permission of the copyright owner, no one may force payment of a debt by means of an unpublished work.

According to the stipulation in the Copyright Law of the Great Qing, copyright in a work cannot be obtained automatically. There are three preconditions for copyright, namely, registration in the Ministry of Civil Affairs, deposit of sample publications, as well as payment of registration fees. Furthermore, copyright owners are required, by this Law, to file the documents of the transfer and inheritance of their copyright at the Ministry of Civil Affairs.

In regard to the term of protection, the Law states that:

(1) the term of protection of a work of a citizen is the lifetime of the author and 30 years after his death;

(2) the term of protection of a posthumous work is 30 years;

(3) the term of protection of a work published in the name of a school, company, office or other institution is 30 years;

(4) the term of protection of a photographic work is 30 years.

All the above-mentioned terms shall be calculated from the date of issuance of the registration certificate by the Ministry of Civil Affairs.

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* Director General, National Copyright Administration of China.

** Published in *Copyright*, February 1991, insert *Laws and Treaties*, text 2-01.

The Law also stipulates that the following categories of works can be deemed public property, and thus can be used freely: works of which the term of protection has expired; works created by authors who have no heirs; works that have been distributed for a very long time already; and works of which the authors have given up their copyright voluntarily.

Free use is an important component of the Law. A copyrighted work can be used freely for the following purposes:

(1) extracting a work created by another for use in a textbook or its reference material;

(2) making quotations from a work created by another for one's own research and annotation;

(3) imitating a painting created by another in one's own sculpture model, or vice versa.

In regard to copyright infringement and remedies, the Law states that legal proceedings can be instituted if the copyright in a work is infringed. Anyone who commits the act of counterfeiting a work created by another, or selling counterfeited works willfully, is liable to a fine, compensation for damages, and confiscation of the plate and other instruments used for the counterfeiting. Anyone who distorts or mutilates a work created by another, or distributes a work without mentioning the name of the author or the title of the work shall be punished with a fine.

The Law contains provisions concerning the ownership of copyright, the inheritance of copyright, works of joint authorship, commissioned works, oral works and translations.

The Qing Government was overthrown in the second year after the adoption of the Copyright Law. Therefore it was hardly implemented. However, this Law had a very significant influence on the succeeding Copyright Laws of the Northern Warlord in 1915 and of the Guomindang Government in 1928, which are nothing more than slightly revised versions of the Copyright Law of the Great Qing.

2. Regulations relating to copyright protection issued between 1949 and 1979

The Copyright Law of the Republic of China, adopted by the Guomindang Government in 1928, was in force on the mainland of China until the founding of the People's Republic of China in October 1949. Starting in the 1950s, the Chinese Government stipulated, in a number of laws and regulations, that copyright should be protected. The Constitution of China had always stipulated that the State supported and encouraged all citizens to create works which were beneficial to the interests of the country and of society, and were conducive to the development of culture and science. Citizens were entitled to receive remuneration for their creativity.

The first decree concerning copyright protection was enacted by the new Government in 1950, in the Resolution on the Development and Improvement of Publishing, adopted at the First National Conference on Publishing. The Resolution stipulated that the publishing industry was to respect the right of publication and other copyright. The acts of unauthorized reprinting, plagiarism and mutilation were not permitted. It went on to stipulate that the date of publication or republication, the number of printed copies, the name of the author or translator, and the title of the original work should be accurately stated on the copyright page. Before a new edition of a work was published, the publisher was to ask the author for any necessary revision. In regard to the protection of the economic rights of authors, the Resolution stipulated that, when the amount of remuneration and the method of its payment were decided, the interests of the authors, the readers and the publishers should, in principle, all be taken into account. The legitimate rights and interests of authors were to be respected. Copyright was not, in principle, to be transferred totally. Some time later, the Resolution on the Correction of Unauthorized Reprinting of Books was issued by the National Publishing Administration Organization; it prohibits all bodies or institutions from unauthorized reprinting of books and pictures, so as to respect copyright. Publishers were required to sign contracts with authors. In order to provide better protection for the economic rights of authors, the relevant government departments also issued provisional regulations governing remuneration for books on literature and social sciences, and remuneration standards for performance, broadcasting, audiovisual recording and cinematographic production, which all contain specific provisions. One thing that is worth special mention is that the Government, in order to provide a better creative climate for writers and other artists, offered them appropriate jobs and fixed salaries, which became their basic guarantee of life, and remuneration, a kind of reward and extra income. It also provided writers and other artists with facilities, including transport and accommodation, to allow them to plunge into real life and gather material for creation. Unfortunately, the above-mentioned regulations and remuneration standards were suspended for 10 years during the so-called Cultural Revolution.

3. Preparation for the drafting of the Copyright Law from 1979 to 1989

China turned a historical page in 1979, when the work on the country's modernization began. It be-

came necessary to bring the initiative of the millions of creators of literary, artistic and scientific works into full play, in order to make China into a modern country. As a specific measure of encouragement to creators, the National Copyright Administration of China and the Ministry of Culture issued, from 1977 onwards, three Regulations on remuneration for books. The Regulation issued in 1984 provided in great detail for the protection of some of the economic rights of authors. Article 1 stated expressly that the Regulation was made for the purposes of implementing the principle of "to each according to his labor," protecting the legitimate rights of authors and translators, fostering intellectual creation and academic research, encouraging authors and translators, and improving the quality of publications. Article 2 laid down the principle of remuneration and the standard governing its payment. Some very important elements of copyright were included in the Regulation, such as the right of publication, the right of translation, the right of adaptation, the right of compilation, the ownership of copyright, the term of protection, and even the protection of the economic rights of foreigners. The Regulation was regarded as one of the most important administrative regulations the Government issued before the promulgation of the Copyright Law of the People's Republic of China for the protection of authors' rights. In addition to the remuneration standard for book publishing, other governmental departments also issued, after 1977, a succession of remuneration standards for authors in the areas of dramatic performance, cinematographic creation and audiovisual production, as well as radio and television broadcasting.

However, as the open-door process evolved in China, the above-mentioned administrative regulations and policies became quite insufficient for the effective protection of the rights and interests of authors, and at the same time the significance and necessity of establishing a complete legal system of copyright protection became increasingly obvious and urgent.

In order to make preparations for the establishment of the system, a Copyright Study Group was set up within the Publishers Association of China in 1979, at the suggestion of and with support from the Chinese Government. As a first step, the Group made a very serious study and a comparative analysis of the major international copyright conventions, and also of the copyright laws of a number of countries with different social systems and different levels of economic development. A few years later the Group produced an initial draft of the copyright law, based on the results of the study and research and also taking into account the specific conditions and needs of China. In July 1985 the State Council, the highest administration in China, approved the establishment of the National Copyright Administration of China (NCAC), in order to speed up the process of copyright legislation and to strengthen the administration of copyright throughout the country. As prescribed by the State Council, the main responsibilities of the NCAC include the drafting of the copyright law, the overall administration of copyright, the collection and dissemination of copyright knowledge, and the handling of external copyright relations on behalf of the Government. Proof that the founding of the NCAC did, to a certain extent, promote the progress of copyright legislation was provided by the fact that, by mid-1986, the first draft of the copyright law was completed and submitted to the Bureau of Legislative Affairs of the State Council for review.

The draft law, like the copyright laws of most countries, extended protection to a very broad range of works, even though it was a specific law only. The Bureau of Legislative Affairs of the State Council solicited comments and suggestions from many creators of copyrighted works and sectors related to copyright, including culture and art, press and publishing, the film-making industry, television and radio broadcasting, educational institutions, scientific research institutions, applied art, light industry, architecture, etc., as well as judicial and administrative departments. Based on the comments and suggestions solicited, the Bureau made some very important revisions and readjustments to some provisions of the draft law prepared by the National Copyright Administration of China. Finally, on December 1, 1989, the Director General of the NCAC was called to give an explanation of the draft law at the Standing Meeting of the State Council, at which the draft was approved. Two weeks later, on December 14, the approved draft, signed by the Premier, was officially submitted to the 11th Session of the Standing Committee of the Seventh National People's Congress for final review and adoption.

It should be pointed out that while the law was being drafted, the NCAC established long-term cooperative relations with the World Intellectual Property Organization and other international organizations concerned with copyright, as well as the copyright institutions of a number of countries. This friendly relationship developed in line with the progress of the copyright legislation. When talking about the evolution and development of the copyright protection system in China, we are bound to mention the invaluable support and help we received from the above-mentioned organizations in the preparation of the draft law and the training of copyright officials and professionals. Most of the trainees are now the heads of copyright administration departments at all levels throughout China.

II. The First Copyright Law of the People's Republic of China

1. The legal basis for copyright legislation

The Constitution, promulgated in 1982, provides the basis for copyright legislation in a number of its articles. Articles 19 through 24 of the General Principles of the Constitution prescribe that the State develops educational, scientific and cultural undertakings, including education, science, medicine and health, physical culture, literature and art, press and publication, radio and television broadcasting, libraries, museums, cultural centers, etc. Article 47, in Chapter 2 of the Constitution, stipulates that citizens are free to conduct scientific research, literary and artistic creation, and other cultural activities. The State encourages and assists those citizens whose creativity is beneficial to the people. Another very important step was taken toward the establishment and completion of copyright legislation and a system of copyright protection when, in 1986, the General Principles of the Civil Code were adopted at the Fourth Session of the Standing Committee of the Sixth National People's Congress. The copyright enjoyed by the authors of literary, artistic and scientific works is considered in the General Principles to be a special kind of civil right and is included in the section on intellectual property. Articles 94 and 118 of the General Principles stipulate respectively that citizens and legal entities enjoy copyright, which includes the right of authorship, the right to make a work available to the public, the right of publication and the right to receive remuneration therefor. When their copyright is infringed by acts such as plagiarism, mutilation or counterfeiting, those citizens or legal entities have the right to require the cessation of the infringing act, the elimination of the effects of the act, and compensation for damages.

The above-mentioned articles of the Constitution and the General Principles of the Civil Code provide the legal basis for copyright legislation.

2. The purpose of the promulgation of the Copyright Law

The purpose of the Copyright Law of China is to protect the legitimate rights of authors and to encourage the creation and dissemination of works, so as to promote the development and flourishing of socialist culture and science. This purpose is further illustrated by the following:

(1) To promote the achievement of socialist modernization through copyright protection

China is now at the primary stage of socialism and striving for socialist modernization, for which the intellectual creation of millions of authors of copyrighted works is of particular significance. The promulgation of an appropriate copyright law will provide a legal measure to protect, and thus encourage, creation by citizens in the sectors of culture, education, science, literature, art, etc.

(2) To coordinate the different interests of authors, distributors and society

In China, the interests of authors and of society are fundamentally identical. Thus, when copyright is protected, not only the legitimate rights of authors should be taken into account, but also the function and effect of a work within society, as well as society's demand for works. In a developing country like China, it is only when the relationship between copyright protection and the development of culture, the economy, education and science is balanced that copyright protection can become a factor of social development.

(3) To promote cultural, scientific and technological exchanges between China and other countries

The purpose of the enactment of the Copyright Law is, primarily, to protect Chinese authors so as to promote the development and flourishing of our national culture, science and technology, and to have Chinese copyright works protected as well as possible internationally. In the meantime, the Chinese Government also attaches importance to the protection of foreign works in China. Wide-ranging exchanges and cooperation between China and foreign countries in the fields of science, technology, education and culture are necessary for the achievement of modernization in China, and the lack of appropriate protection will, to a certain extent, restrict such exchanges and cooperation.

3. The main content of the Copyright Law

(1) Protection of the legitimate rights of authors

The fundamental principle of the Copyright Law of the People's Republic of China is to protect the legitimate rights and interests of authors deriving from the works they create. An author, basically, is the person who has created the work. The creative enthusiasm of authors can be inspired only if, in the first place, their legal status and legitimate rights are recognized. The authors of literary, artistic and scientific works are the inheritors of national culture and the creators of social and cultural wealth. Therefore their creativity should be respected by

society in the same way as workers in other professions, and their rights and interests deriving from their creation should be protected according to the same principles as the rights and interests of workers in other professions. The legal status of authors, as intellectual workers, is recognized in the Constitution and other laws, and the protection of the specific rights of authors becomes the main responsibility of the Copyright Law. Article 11 of the Law stipulates, for this purpose, that "the author of a work is the citizen who has created the work," and that "the copyright in a work shall belong to its author." However, because of the social system in China, the subject matter of copyright has to include, apart from natural persons, legal entities and entities without legal personality. The creations of some authors are within their customary and professional activities in the entities they work for; their creations depend entirely on the economic and material resources of the entities. Furthermore, the works thus created represent the will of the entities. This is the reason why Article 9 states that "copyright owners shall include [apart from authors] other citizens, legal entities and entities without legal personality enjoying copyright in accordance with this Law," and Article 11 adds that, "where a work is created according to the intention and under the supervision and responsibility of a legal entity or entity without legal personality, such...entity...shall be deemed to be the author of the work."

According to Article 10 of the Law, copyright includes the following personal rights and property rights:

(1) the right of publication, that is, the right to decide whether to make a work available to the public;

(2) the right of authorship, that is, the right to claim authorship and to have the author's name mentioned in connection with the work;

(3) the right of alteration, that is, the right to alter or authorize others to alter one's work;

(4) the right of integrity, that is, the right to protect one's work against distortion and mutilation;

(5) the right of exploitation and the right to remuneration, that is, the right of exploiting one's work by reproduction, live performance, broadcasting, exhibition, distribution, making cinematographic, television or video production, adaptation, translation, annotation, compilation and the like, and the right of authorizing others to exploit one's work by the above-mentioned means and of receiving remuneration therefor.

The personal rights and property rights specified in the Copyright Law of China are, in principle, in line with the copyright laws of many countries, as well as with the two major international conventions in the field of copyright.

In order to safeguard the legitimate rights of authors when licensing contracts are negotiated with users, the Law expressly prescribes the basic clauses that must be included in the contract.

(2) The subject matter and object of copyright protection

The Copyright Law of China protects, in the first place, works of literature, the arts and science as well as the authors of such works. The applicability of the Law, which follows the principles of nationality, territory and reciprocity, is also basically identical to the applicability of the copyright laws of other countries in the world. Article 2 stipulates that the works of Chinese citizens, legal entities and entities without legal personality, whether published or not, enjoy copyright in accordance with the Law. The protection of the works of foreigners depends on the place of first publication of the work. If it is first published within the territory of the People's Republic of China it is protected by the Law; otherwise it can only be protected under an agreement concluded between the country of the author and China, or under international copyright conventions to which both the country of the author and China are party.

In view of the specific needs and capabilities of China at this moment, and also taking into account the relevant articles of the international copyright conventions and of the copyright laws of other countries, the works protected by the Copyright Law of China are classified in nine categories according to the traditional method of classification, which are the following:

(a) written works;

(b) oral works;

(c) musical, dramatic, *quyi* and choreographic works (the term "*quyi*" refers to various traditional art forms that have existed for years in China, such as ballad singing, story telling, comic dialogues, etc.);

(d) works of fine art and photographic works;

(e) cinematographic, television and videographic works;

(f) drawings of engineering designs and product designs;

(g) maps, sketches and other graphic works;

(h) computer software;

(i) other works as provided for in laws and administrative regulations.

A special remark should be made here concerning the copyright protection of computer software and of expressions of folklore. Because of the special nature of these two categories of works, the Law stipulates that regulations for the protection of these works will be formulated separately by the State Council.

(3) The ownership of copyright, with special emphasis on works created in the course of employment

The author's act of creation is the source of copyright in a work. Therefore the Copyright Law stipulates that the copyright in a work belongs to its author, and the citizen, legal entity or entity without legal personality whose name is mentioned in connection with a work is deemed to be the author of the work, in the absence of proof to the contrary. If a work is created by the adaptation, translation, annotation or arrangement of a preexisting work, the copyright in the work thus created is enjoyed by the adapter, translator, annotator or arranger.

The copyright in a work created jointly by two or more coauthors is enjoyed jointly by those coauthors. However, in order to avoid a practice whereby some people, for reasons of personal interest, contrive to have their names mentioned in connection with a work they have not created, the Law states expressly that coauthorship may not be claimed by anyone who has not participated in the creation of the work.

According to the Law, the copyright in a work created by compilation is enjoyed by the compiler. However, if the works included in the compilation can be exploited separately, their authors are entitled to exercise the copyright in their works independently. The ownership of copyright in a commissioned work is agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or an explicit clause in the contract concerning the ownership of copyright, the copyright in the commissioned work belongs to the commissioned party.

The ownership of copyright in a cinematographic work or a television or videographic work is a little more complicated. The right of authorship in such a work belongs to the director, screenwriter, composer and cameraman, while the other rights belong to the producer. However, the authors of works included in such a work, such as the music and the screenplay, can exercise their copyright independently if their works can be exploited separately.

Paintings and other kinds of artistic work are very important components of the wealth of the cultural heritage in China. In order to protect the legitimate rights and interests of artists, and to encourage the holders of the original copies of artistic works to make the works they have collected available to the public, Article 18 of the Law, taking into account the special characteristics of artistic works, which differ from other copyrighted works, stipulates that the transfer of ownership of the original copy of a work of fine art, or other works, is not deemed to include the transfer of the copyright in such a work. The owner of the original copy of a work of fine art does however enjoy the right to exhibit the work.

The ownership of copyright in a work created in the course of employment is another complicated issue. In China, many authors are employees of legal entities or entities without legal personality with a fixed salary income. Some of the works they create have a very close link with the entities they work for. These kinds of work are deemed to be works created in the course of employment. The appropriate settlement of the matter of the ownership and exercise of the copyright in these works is critical to the mobilization of both the enthusiasm of authors for creation, and the enthusiasm of entities for supporting creations by authors. The Copyright Law stipulates, on the basis of this theory, that a work created by a citizen in the fulfillment of tasks assigned to him by a legal entity or entity without legal personality is deemed to be a work created in the course of employment. The ownership of copyright in such works, including drawings of engineering designs and product designs and their descriptions, computer software, maps, etc., made mainly with the material and technical resources and under the responsibility of the entity, belongs to the entity, while the right of authorship remains with the person who has created the work. However, the copyright in other works created in the course of employment belongs to the author who has created the work, provided that laws, administrative regulations or contracts have not stipulated or agreed otherwise. According to the Copyright Law, the entity has the priority right to exploit the work within the scope of its professional activities. During the two years immediately after the work is completed, the author may not authorize a third party to exploit the work in the same way as the entity, without the latter's prior consent. This Article of the Law on the one hand guarantees the status of authors as copyright owners, and on the other hand meets the entity's need to exploite the work within its customary professional activities.

(4) The term of protection

The term of protection stipulated in the Copyright Law of China is entirely identical to the terms specified in the Berne Convention and the copyright laws of a number of countries. Authors are entitled to control the exploitation of their works by others and to receive remuneration during a limited period of time. This principle affords reasonable compensation for authors' intellectual creation, as well as an incentive for authors to create more works of greater vitality. Another legal basis lies in the Inheritance Law of China, which permits the heirs of an author to inherit and exercise the exclusive right of exploitation, after the author's death. Article 21 of the Law stipulates that the term

of the property rights in a work of a citizen is the lifetime of the author and 50 years after his death. The term of protection of a work of joint authorship is 50 years after the death of the last surviving author. The term of protection of a work of a legal entity or entity without legal personality or a work created in the course of employment whose copyright belongs to an entity, except the right of authorship, is 50 years after first publication. The term of protection of a cinematographic, television or videographic work is 50 years after first publication. Personal rights are unlimited in time.

(5) The limitations on rights

The purpose of protecting the legitimate rights and interests of authors and of encouraging creation is to disseminate the knowledge of literature, art and science, and to enhance the quality of the education and culture of the population thereby ultimately promoting the development of the economy and the progress of society. This is the main reason why, in conformity with the level of social and economic development of China and the specific need for cultural and educational development, the Copyright Law has put certain limitations on the rights of authors at the same time as recognizing and protecting their rights and interests. Article 22 of the Law is the so-called "free use" article, according to which some uses of copyrighted works are exempt from authorization from and remuneration payment to the copyright owners, on the condition that their personal rights are respected.

For the following purposes, free use is permitted:

(a) use of a published work for the user's own private study, research or self-entertainment;

(b) appropriate quotation from a published work in one's own work for the purposes of introduction to or comment on a work, or demonstration of a point;

(c) use of a published work in newspapers, periodicals, radio programs, television programs or newsreels for the purpose of reporting current events;

(d) reprinting by newspapers or periodicals, or rebroadcasting by radio or television stations, of published editorials or commentators' articles published by other newspapers, periodicals, radio stations or television stations. Commentators' articles as referred to in this paragraph include only those written by a newspaper or a broadcaster on an important issue, and represent the views of the newspaper or broadcaster;

(e) publication in newspapers or periodicals or broadcasting by radio stations or television stations of a speech delivered at a public gathering, except where the author has declared that publication or broadcasting is not permitted;

(f) translation, or reproduction of a small quantity of copies, of a published work for use by teachers or scientific researchers in classroom teaching or scientific research, provided that the translation or reproduction is not published or distributed;

(g) use of a published work by a State organ for the purpose of fulfilling its official duties. "State organs" are those of a legislative, administrative and judicial nature only. The free use is permitted only when a work is used for the fulfillment of the customary duties of the organ;

(h) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or similar institution, for the purpose of display or reservation of a copy of the work;

(i) free-of-charge live performance of a published work;

(j) copying, drawing, photographing or video recording of an artistic work located or on display in an outdoor public place;

(k) translation of a published work from the Han language into minority nationality languages for publication and distribution within the country; China is a country with many minority nationalities, the majority of which inhabit remote and backward regions. In order to encourage and assist the development of the education, culture, science and economy of these regions, the Central Government has adopted various preferential policies, and this paragraph in the Copyright Law is a reflection of those policies;

(l) transliteration of a published work into braille and publication of the work so transliterated.

The above-mentioned limitations are also applicable to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

We are aware that, because of these limitations, the standards of protection may not be quite as high as those prevailing in many countries. However, I am confident that this gap will be narrowed, gradually, in line with the development of China's economy, education, culture and science. The protection provided for in our Law will surely be enhanced and, by then, the balance between the rights of authors and of the overall interests of society will be more equitable.

(6) The protection of the rights related to copyright

The rights related to copyright include, primarily, the rights of book publishers, performers, producers of sound recordings and video recordings, and broadcasters, who are the main distribu-

tors of literary, artistic and scientific works. Thanks to their creative work, copyrighted works are expressed in more and more diversified forms and enjoyed by more and more people in a variety of media through which the knowledge of culture, science and art is propagated. Therefore the Copyright Law specifies not only the obligations of publishers, performers, producers and broadcasters in protecting the rights of authors, but also the legitimate rights they enjoy in their creative products, namely, books, performances, phonograms, cassettes, radio programs, television programs, etc. According to the Law, publishers enjoy the exclusive right of publication in relation to the books they publish during the term of the contract. Performers enjoy the following rights in relation to their performances: *(a)* to claim performership; *(b)* to protect the image inherent in their performance from distortion; *(c)* to authorize others to make sound recordings or video recordings for commercial purposes, and to receive remuneration therefor; *(d)* to authorize others to make live broadcasts. The rights of producers of sound recordings and video recordings include the right to authorize others to reproduce and distribute their recordings and to receive remuneration therefor. Broadcasters have the following rights in relation to the programs they produce: *(a)* to broadcast the program; *(b)* to authorize others to broadcast the program, and to receive remuneration therefor; *(c)* to authorize others to reproduce and distribute the program, and to receive remuneration therefor. The rights of publishers, performers, producers and broadcasters mentioned above are protected for 50 years.

(7) Copyright infringement and remedies

One of the differences between the Copyright Law of China and the copyright laws of other countries is that our Law has listed the acts that constitute copyright infringement and the remedies. This is due to the present situation in China. The lack of a copyright law in the country since the founding of the new China 40 years ago resulted in a lack of copyright knowledge among the people. Therefore, it becomes necessary to lay down, in the Law itself, some acts of infringement which are typical and commonly committed, and also to provide a hard-and-fast standard of judgment for judicial bodies, which still lack experience of this kind.

The following acts are considered copyright infringements:

(a) publishing a work without the consent of the copyright owner;

(b) publishing a work of joint authorship as a work created solely by oneself, without the consent of the other coauthors;

(c) having one's name mentioned in connection with a work created by another;

(d) distorting or mutilating a work created by another;

(e) exploiting a work without the consent of the copyright owner as prescribed by regulations.

According to the Law, anyone who commits any of the above-mentioned acts bears civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or paying compensation for damages. If the act of infringement is more serious, the remedies will also include, apart from the above-mentioned civil remedies, administrative penalties such as confiscation of unlawful income from the act and imposition of a fine. These acts refer to the following:

(a) plagiarizing a work created by another;

(b) reproducing and distributing a work for commercial purposes without the consent of the copyright owner;

(c) publishing a book where the exclusive right of publication belongs to another;

(d) infringing the legitimate rights, as prescribed by the Law, of publishers, performers, producers of sound recordings or video recordings and broadcasters;

(e) producing or selling a work of fine art where the signature of an artist is counterfeited.

Since China is a big country with millions of authors and users of literary, artistic and scientific works, as well as various kinds of copyright disputes, it seems unrealistic to expect all of the disputes to be settled in court. Therefore Article 48 of the Law says that a dispute over copyright infringement may be settled by mediation. It may also be submitted for arbitration to a copyright arbitration body under the arbitration clause in the contract, or under a written arbitration agreement concluded after the contract has been signed. The parties concerned are also free to institute proceedings directly in a people's court. The copyright dispute may, with these measures prescribed in the Law, be settled within a comparatively short period of time, which would be beneficial to both the copyright owners and the users. Furthermore, it is in line with the means and measures for the settlement of civil cases within the legal framework of China. While drafting these provisions, the legislators also took into account the custom and tradition in China whereby some people are quite reluctant to go to court for dispute settlement.

(8) The retroactivity of the Law

For the purposes of both the effective protection of the rights of authors, and the guarantee of its effective implementation, the Law stipulates that the rights of copyright owners, publishers, perform-

ers, producers of sound recordings and video recordings, radio stations, television stations, as provided for in it and of which the term of protection specified in it has not yet expired on the date of its entry into force, are to be protected. Any acts of copyright infringement or breaches of contract committed prior to the Law's entry into force are to be dealt with only under the relevant regulations or policies in force at the time the act was committed.

III. The Prospect of the Development of Copyright Protection in China

On the occasion of the adoption of the Copyright Law, a well-known Chinese composer said that the absence of a copyright law, in his opinion, as a composer, was like driving a car in a modern city without any traffic regulations. With the adoption of the Law, both the authors and the disseminators of works feel safer.

However, we realize that the adoption of the Law itself is only the first important step we have taken in the long march toward the establishment of a system of copyright protection. China is a big and populous country with a comparatively low level of economic, scientific, cultural and educational development, and also with an imbalance between regions and between industries. The socialist legal system is still being completed, and copyright sense among the general public is quite weak. Therefore some of the provisions in the Law that are not very satisfactory will have to be perfected, gradually, in line with the improvement of economic conditions and the development of culture, education and science, as well as a better popular understanding of the significance of copyright protection. So I think that the construction of a comparatively complete system of copyright protection will be developed and perfected step by step.

After the promulgation of the Law, the following new development can be expected in the near future:

(1) The formulation of the necessary implementing regulations

Some of the provisions of the Copyright Law of China are expressed in general terms. The specific methods of protection will, according to the Law, be formulated by the State Council, or by the copyright administration department under it. Therefore, the most important and urgent tasks of the National Copyright Administration of China, as the copyright department under the State Council referred to in Articles 8 and 54, are to speed up the process of drafting the administrative regulations for the implementation of the Law, which include, primarily, the actual implementing regulations of the Law, the regulations for the copyright protection of computer software and folklore, the remuneration tariffs, model contracts for authors and users, the rules on arbitration, and statutes concerning collective administration.

(2) The enhancement of the training of copyright personnel

For a big and developing country like China, it is very difficult and yet important to have the principles and details of the Copyright Law known to the general public. Since the adoption of the Law, various efforts have been made and methods tried to this end, including a National Copyright Law Introductory Course which the National Copyright Administration of China organized jointly with the Ministry of Justice and the China University of Politics and Law, and which was attended by 250 participants from copyright administrative departments, judicial bodies, educational institutions and authors' societies throughout the country. The National Copyright Administration of China also recently held the First National Conference on Copyright, which was attended by all the directors of local copyright bureaux and also the relevant authorities of all ministries and organizations concerned with copyright.

In the past decade we have organized various kinds of training program and trained about 6,000 copyright administrators at all levels with the assistance of the World Intellectual Property Organization, other international organizations and the copyright institutions of several countries. The emphasis of the training will shift, after the promulgation of the Law, to the training of professionals within judicial bodies, such as judges and lawyers, and the staff of the collective administration organization, as well as officials of the copyright administration departments at all levels, so as to guarantee the quality of the personnel and thus the effective implementation of the Law. The National Copyright Administration of China looks forward to continued support from and cooperation with the international community in this respect.

(3) The building up of the necessary infrastructure

Since the establishment of the National Copyright Administration of China at the central level in 1985, local copyright departments at provincial level have been also set up in almost all of the provinces, autonomous regions and municipalities throughout the country. The functions of these departments include the implementation of the

Copyright Law in their own regions. Therefore the departments need to be further strengthened and the professional proficiency of the staff needs to be improved, in order to have the Law implemented effectively.

Furthermore, we will have to speed up the establishment of collective administration organizations in China. Though various kinds of authors' society do exist in China, such as the Musicians' Association of China, the Artists' Association of China, the Photographers' Association of China, the Writers' Association of China, etc., their functions do not include the administration and protection of the copyright of authors in the form of collective administration. Therefore the National Copyright Administration of China has been engaged in discussions with the relevant governmental and non-governmental institutions, including the Ministry of Culture, the All-China Confederation of Literary and Art Circles, the Musicians' Association of China, concerning the collective administration of the rights prescribed in the Law. Apart from the setting up of the infrastructure of collective administration, the National Copyright Administration is also entrusted by the Law with taking care of the establishment of an arbitration body, the necessary licensing agencies, etc.

(4) Taking active measures for an early normalization of external copyright relations

Copyright has been playing an increasingly important role in cultural, economic and scientific life nowadays. The Chinese Government is paying more and more attention to the significance of copyright protection and also to copyright relations between China and other countries. The promulgation of the Copyright Law of China is, obviously, the first and already an important step taken by China toward the normalization of external copyright relations. China has undertaken the responsibility of protecting the works of foreigners published in the territory of the People's Republic in accordance with the Law, and those first published outside that territory, by agreements concluded between China and the country of the author, or under international copyright conventions to which both China and the country of the author are party.

The Chinese Government has stated time and again that it will unflinchingly carry out its policy of opening up to the outside world and continuously develop cultural, economic, educational, scientific and trade cooperation and exchanges, which are all closely linked with copyright, with other countries in pursuance of the five principles of peaceful coexistence. China will take active measures to overcome the difficulties we have and create economic, structural and technical conditions that will favor China's adherence to the international copyright conventions at an earlier date. China would by then be in a position to make more and greater contributions to international copyright.

On the occasion of the promulgation of the Copyright Law of China, it is my great pleasure to express our sincere thanks to the World Intellectual Property Organization, headed by Dr. Arpad Bogsch, and to the other friends who have contributed so much to the establishment and development of a copyright protection system in China.

Letter from Yugoslavia

The New Provisions of the Copyright Law

Ivan HENNEBERG*

The Copyright Law of March 30, 1978[1] (see my "Letter" published in this review in April 1980) has been amended and completed twice to date, the first time by the Law of April 24, 1986, and the second time by the Law of April 11, 1990.[2]

The first rearrangement of the Law was strictly confined to the provisions governing the setting of the scales of remuneration applicable to the right of public performance and communication to the public of non-scenic musical and literary works (*petits droits* or lesser rights).

The purpose of the second operation on the Law of March 30, 1978, was to introduce the protection of computer programs and the protection of performers in copyright legislation.

The Law of April 24, 1986

Setting of royalty scales for performance rights

This Law was published in the Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 24 of May 2, 1986, and came into force on May 10, 1986. The Law of March 30, 1978, provided as follows in the third paragraph of its Article 57:

> With regard to public performance and the communication to the public of non-scenic musical and literary works, including the transmitting and broadcasting thereof by radio and television, the amount of remuneration for each particular type of performance or communication of the works, or transmission or broadcasting thereof by radio and television, shall be fixed by self-management agreement between the organizations of authors of such works, the associated work organizations for radio and television, the Economic Chamber of Yugoslavia, the Federation of Trade Unions of Yugoslavia and the Socialist Alliance of Working People of Yugoslavia.

In conjunction with this provision, the Law contained a transitional provision (Article 106) according to which, until such time as the self-management agreement referred to in the third paragraph of Article 57 had been concluded, the provisions of the general acts of the organizations of authors concerning the fixing of the amounts of remuneration would be applied.

Nevertheless, in spite of a number of attempts made by organizations of authors, the self-management agreement provided for in the Article mentioned had still not been concluded after more than seven years, and the legislator deleted the provision (Article 1 of the Law of April 24, 1986). At the same time Article 91 of the Law of March 30, 1978, was completed with the following Article 91a:

> If an author's contract on the public performance of non-scenic literary and musical works has not been concluded, or if the amount of remuneration has not been specified by contract, organizations of authors may set the remuneration of the authors of such works according to the amounts specified by their general acts of self-management.

As a result, the transitional provision in Article 106 of the Law of March 30, 1978, was deleted.

Pursuant to the new Article 91a, the Union of Organizations of Composers of Yugoslavia adopted a regulation on remuneration for the public performance and communication to the public of musical works on June 27, 1986. It should be pointed out that, even though the regulation originated with an organization of authors, the actual text was published in the Official Gazette of the Socialist Federal Republic of Yugoslavia, in view of the fact that it regulated, by virtue of a provision of the Federal Law, the rights and obligations of citizens and organizations.

The original text of the regulation of June 27, 1986, was amended by the regulation of May 18, 1987; it was thereafter superseded by the regulation of December 18, 1987, and then by the regulation of October 28, 1988, itself subsequently amended by the regulation of June 11, 1989, and finally by the regulation of November 10, 1989.

The effect of this is that, with regard to the setting of the scales of remuneration for public performance and communication to the public of non-scenic literary and musical works, the Law of April 24, 1986, marks a return to the system of the Law of July 20, 1968, under which organizations of authors were given a free hand for the setting of the amounts of remuneration.

The Law of April 11, 1990

1. Protection of computer programs

This legislative enactment was published in the Official Gazette of the Socialist Federal Republic of

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[1] Published in *Copyright*, 1980, pp. 157–170.

[2] *Ibid.*, February 1991, insert *Laws and Treaties*, texts 1–01 and 1–02, respectively.

Yugoslavia, No. 21 of April 20, 1990, and came into force on April 28, 1990. While introducing one or two drafting and terminological changes, the new Law also completed the original text of the Law of March 30, 1978, mainly with provisions on the protection of computer programs.

The present situation, with computer programs being created in great abundance and used with great frequency, has raised the question of the type of legal protection that programs can be given against unlawful uses. It certainly is not patent protection, as such protection is expressly ruled out by a provision in the Law of June 9, 1981, on the Protection of Inventions, Technical Improvements and Distinctive Signs (section 20, second paragraph).

Under the Copyright Law, on the other hand, the protection that the Law provides is accorded to any creation in the literary, scientific or artistic field "or in any other field of creation, whatever may be the kind, method or form of expression thereof," unless otherwise provided in the same Law (Article 3, first paragraph).

In view of the range and flexibility of this provision, the Law also gives a list of examples of protected works. Computer programs did not appear in the original text, but, as the list of protected works was not limitative, the fact of computer programs not being mentioned in the Law did not deprive them of its protection.

A number of copyright theoreticians and specialists have expressed the view that computer programs are eligible for the protection provided by the Copyright Law.

In order to avoid all uncertainty regarding the legal protection of computer programs, the legislator completed the Copyright Law with the insertion of a provision expressly stating that such programs were included among the works protected. It should be mentioned that, under this provision, computer programs are not assimilated to literary works, as they are for instance in the legislation of the United States of America, the United Kingdom or Japan, or to written works, as in the legislation of Germany, but rather constitute a specific category of works protected by the Copyright Law, as software does in French legislation.

Bearing in mind the specific circumstances of the creation of computer programs and their use, the legislator also completed the Copyright Law with special provisions concerning the holders and the duration of copyright in cases where the creation of the program occurs in pursuance of a commission contract, and with provisions on the use of programs.

In the case of the creation of the programs under a work contract, in other words where the program is created by a worker "in the fulfillment of his work obligations" toward an enterprise or other legal entity or, as appropriate, toward an employer (Article 21, first paragraph), the owner of the economic copyright is that legal entity or that employer (Article 21, sixth paragraph).

In conjunction with this provision, the provision on the term of the economic rights whose owner is the legal entity has now been completed. The general provision provides that, where the owner of the author's economic rights is a legal entity, the copyright expires 50 years after publication of the work (Article 82, second paragraph). A new special provision on computer programs provides that the term begins to run on the making of the program (Article 82, second paragraph).

In the case of the creation of a commissioned work, the general provision provides that all the economic rights vest in the author who created the work, unless otherwise agreed (Article 24, first paragraph). A new provision on computer programs provides that, in that case, the owner of the economic rights is the person who ordered the program, unless otherwise specified in the agreement (Article 24, second paragraph). From now on, if the economic rights are not accorded by contract to the writer of the program, they are transferred *ex lege* to the person who ordered it. This approach is comparable to the one already used in the Copyright Law for works in the creation of which two or more contributors not bound by a work contract to the person who commissioned the work have participated (collective work), in which case the owner of the economic rights is the person who commissioned the work, unless otherwise specified in the contract (Article 25, first paragraph).

As for the exploitation rights in computer programs, the Copyright Law is completed with a provision according to which the reproduction or adaptation, by the user, of copies of a computer program with a view to its use for the purposes for which it has been acquired, for the purposes of archiving and for the purposes of replacement of a lost, damaged or worn-out copy (Article 49, first paragraph, item 7) are permitted without the authorization of the author and without payment of remuneration for such use. It should be noted that this limitation on copyright benefits the user who has acquired the program lawfully.

In view of this provision, it was essential to complete the general rule according to which the person to whom the right of exploitation of an intellectual work has been transferred is not authorized to introduce modifications of any kind in a work at the time of use, unless otherwise agreed. So, after the words "unless otherwise agreed," the new Law has added the words "or provided in this Law" (Article 53).

The terminological alterations to the original text of the Copyright Law have to do with the har-

monization of certain expressions appearing in the new laws in the economic field, notably the Law on Enterprises and the Law on Fundamental Rights in Work Contracts. Consequently the expressions "enterprises and other legal entities" are substituted for "associated work organization, work community and other organization and community," the word "employer" is substituted for the expression "the working person who, by his or her personal work, exercises an independent activity using resources belonging to citizens" and, for instance, either "common consent" or "general act" is substituted for "self-management agreement."

2. *Rights of performers*

Even when the draft of the 1978 Copyright Law was being written, it had been proposed that the Law should include provisions on the rights of performers, phonogram producers and broadcasting organizations. This proposal was not accepted, however, on the ground that such rights were not author's rights in the strict sense, that in legal theory they were known as rights neighboring on or related to copyright and that consequently the Federation did not have the necessary competence to legislate on that subject matter.

In the opinion of the majority of theoreticians in Yugoslavia the rights of performers and copyright are indeed separate rights. Professor Vojislav Spaic on the other hand considered that the rights of performers were a specific category of copyright, different from the other neighboring rights.

In his work *Théorie du droit d'auteur et le droit d'auteur en République socialiste fédérative de Yougoslavie*,[3] he wrote that the rights of performing artists, in other words the right of performers to the protection of their artistic performances, were a new form of authors' rights which had appeared recently in modern legal systems[4]; he added that the rights of performers were by nature author's rights; in the achievement of the performer one found not only the ideas of the author of the literary or musical work, but also the ideas of the performer himself; it had thus become a new type of copyright subject matter, a new form in which an idea was made manifest.[5]

Following repeated initiatives on the part of the associations and the union of performers, pressing for the introduction in Yugoslavia's system of legal provisions on the rights of performers, federal legislation changed its attitude to the legal nature of those rights. The Federal Council of the Federal Assembly of the Socialist Federal Republic of Yugoslavia decreed during its session on April 23 and 24, 1986, that

> ...subject to the performance constituting a new creation or a new idea, the rights of performers are a form of copyright with certain specific characteristics, and therefore, by virtue of item 4 of the first paragraph of Article 281 of the Constitution of the Socialist Federal Republic of Yugoslavia, the Federation is competent to regulate those rights.

This conception of the rights of performers made it possible for the Copyright Law to be completed with provisions on those rights. However, the overall structure of the provisions of the new Law rests on the distinction that is made between the rights of authors and the rights of performers.

Taking into account the specific features of the rights of authors on the one hand and the rights of performers on the other, especially with regard to the owners of the rights, the subject matter protected, the content and duration of the rights, and also their transfer, management and protection, the legislator divides the provisions of the Copyright Law into two parts, the first devoted to the rights of authors and the second to the rights of performers.

The specific features of the rights of authors and those of the rights of performers are emphasized in the second part of the Law by the safeguard clause on the rights of authors (Article 99a, second paragraph), which corresponds to the one in Article 1 of the Rome Convention.

The original owners of the rights of performers are of course the performers themselves. In terms of the Law, they are

> ...individuals and groups that in an artistic manner present, recite, declaim, sing, play, dance or in any other way perform literary or musical and other artistic works.

One essential element in this definition is the artistic manner in which the literary, musical and other works are performed. It is not a question of persons who merely perform the works concerned, but of persons who perform them artistically. These two components are combined in the term "performing artist." The definition in the new Law is of course narrower than that of the Rome Convention, in which the criterion of artistic performance does not appear. Consequently, the performers of literary and musical works and other artistic works who do not render those works artistically do not qualify for the protection provided by the Law. The question that then arises is what performance would be considered an artistic performance. The Law leaves the reply to doctrine and case law, as, according to the preamble to the new Law, the question depends on the facts of each case. It will be noted in this connection that the criterion of the artistic value of the performance is used for instance in Italian legislation (Article 82, item 3, of the Law of April 22,

[3] Translated from Serbo-Croatian into French by Ružica Gavrilović and published in Belgrade in 1987.

[4] *Op. cit.*, pp. 299–300.

[5] *Ibid.*, p. 302.

1941, for the Protection of Copyright and Other Rights Related to the Exercise Thereof). Finally, the definition in the new Law does not cover performers who do not perform literary or musical works or other artistic works.

In connection with the provisions on the owners of the rights of performers, the new Law also defines its area of application (Article 99c). For performers who are nationals of Yugoslavia the sole criterion determining entitlement to the protection accorded by the Law is nationality, without regard to the place where their performances take place or are used. On the other hand, performers who are foreign nationals or stateless enjoy protection for their performances given or used in Yugoslavia (place of performance criterion), but only within the limits of the obligations accepted by Yugoslavia under international treaties. No treaty on the rights in question has been ratified by Yugoslavia to date.

The new Law has matched the provisions on the rights of authors, which constitute the first part of the Copyright Law, with a second part on the rights of performers, consisting of a series of provisions on the content, transfer, duration, administration and protection of the rights of performers.

Like the rights of authors, the rights of performers comprise economic rights, in other words rights in relation to the exploitation of their performances, and moral rights, notably the right to have the performer's name or pseudonym mentioned whenever his performance is communicated to the public, the right to respect for his performance and the right to respect for his honor and reputation (Article 99d).

Except where otherwise provided in the Law, the economic rights include the right of performers to authorize the broadcasting, including by television, and the recording of their performances, the right to authorize the reproduction of those recordings and the distribution in the form of copies of such recordings and finally the right to authorize direct communication to the public by loudspeaker or other technical systems outside the room or place in which the performance is given (Article 99e).

The effect of this is that a performer's performance is protected by the Law against exploitation by any technical means; cable distribution is covered, for instance, even though it is not expressly mentioned in the Law. Thus a performer enjoys a right in relation to the exploitation of his performance that is binding on all third parties.

This performance is not however protected against imitation on stage by another performer. On this point a difference emerges between the performance of the performer and the intellectual work, and consequently between the rights of performers and the rights of authors.

Nevertheless, the analogy between the two categories of rights is apparent in a number of provisions of the Law, notably with regard to remuneration and the limitations on economic rights. Except where otherwise agreed or provided in the Law, the performer is entitled to remuneration for the exploitation of his performance, as the author is for any exploitation of his work. It is a special provision, however, that specifies that a member of a group of performers who leaves the group is entitled to a share in the remuneration for the performance in which he has participated.

The new Law has taken into consideration the safeguard clause for author's rights and also the provisions of the Rome Convention regarding the exceptions to the protection afforded by the Convention, and introduced limitations on economic rights for uses in teaching and scientific research and for information purposes, in the form of short fragments, and also for ephemeral recordings made by a broadcasting organization if it has been authorized to broadcast the performance concerned (Article 99g). Instead of introducing a legal license for broadcasting comparable to the one provided for author's rights (Article 36), the new Law has provided that the broadcasting organization may, by virtue of a contract, broadcast a performance without the authorization of a salaried performer (Article 99f). Finally, a limitation on economic rights, analogous to the one regarding authors' rights (Article 21, first paragraph) refers to the salaried performer. The employer may use the performance of the salaried performer without his authorization if the performance forms part of his work obligations (Article 99i, third paragraph). If however the performance goes beyond his work obligations, or if it is assigned to another organization, the performer is entitled to remuneration (Article 99j, first paragraph). The new Law provides that in addition the rights of the salaried performer within an organization will be regulated by that organization's general act, in accordance with the Law (Article 99i).

The moral rights, which are recognized by the Law, may not be limited by the organizations's general act (Article 99i, second paragraph).

There is one very special provision of the new Law that has to do with the secondary use of the recorded performance (Article 99h), in other words the use—of a recorded performance that has been placed on sale—for the purposes of communication to the public in a form other than radio or television broadcasting. What is involved here is the communication of phonograms, published for commercial purposes, in a public place by means of a phonograph, tape recorder or comparable instrument. The new Law provides that, for such a use, the Republics or Autonomous Provinces may place the phonogram user under the obligation to pay a

contribution to organizations of performers. This contribution does not of course have the character of the remuneration provided for in Article 12 of the Rome Convention in favor of performers. On the contrary, if the secondary use of a phonogram in a radio broadcast is involved, the broadcasting organization is obliged to pay the performer remuneration for the use of his performance.

The economic rights of performers are transferable *inter vivos*, as are those of authors, by a contract known as a performer's contract. As in the case of the transfer of the economic rights of authors (Article 52), the rights may be transferred either wholly or in part, for a consideration or free of charge, and, except where the contract provides otherwise, the person to whom they have been transferred may not himself transfer them to a third party without the performer's consent (Article 99k).

The new Law has laid down the form and the content of this category of contracts.

As with authors' contracts (Article 56), these contracts have legal effect if they are concluded in writing (Article 99l). The medium and the manner of use of the performance, the name of the author and the title of the work performed, the amount of remuneration and the mode of payment and time limits for payment constitute the main components of the contract (Article 99m, first paragraph). In addition, the contract for the recording of the performance and the broadcasting of the recording contains two special elements, namely a mention of the number of broadcasts and of the period during which the broadcast may take place. As for the contract for the reproduction of the recording, it specifies the number of copies that may be made (Article 99m, second paragraph). It is not essential to state the exact number of copies; only a maximum need be given.

While on the subject of the component parts of the performer's contract, it should be noted that, according to the Law, the contract is not devoid of legal effect in the absence of one of the elements mentioned.

With regard to the duration of the performer's economic rights, the new Law has adopted the 20-year minimum provided for in Article 14 of the Rome Convention (Article 99n), but the moral rights subsist even after the economic rights have ceased to exist (Article 99o).

Regarding the administration of the rights of performers, the new Law maintains the parallels with the administration of authors' rights. Administration may be individual, handled direct by the performer or through an agent (Article 99p), or it may be collective, involving an organization of performers or a registered body empowered to engage in such activity (Article 99r). The Law favors collective administration by providing that these broadcasting organizations and other users must provide the organization representing a performer with full particulars on the use of his performance, and submit a copy of the performance contract to it (Article 99s). There is a special provision providing that groups of performers administer the rights of their members through the agency of persons whom they have mandated. However, when a conductor, soloists or actors who are not members of the group take part in the performance of a musical work or in the presentation of another artistic work, the right of authorization provided for in the Law belongs also to those performers, unless otherwise agreed between them and the group (Article 99t).

For infringements of the rights of performers the new Law has introduced sanctions almost equivalent to those provided for infringements of the rights of authors.

The civil sanctions, applicable in all cases of violation of economic or moral rights, are the following: prohibition of the continued infringement of the right, destruction or alteration of the materials by means of which the infringement has been committed, publication of the decision at the defendant's expense, subsequent publication of the name or pseudonym of the performer, and the award of damages (Article 99u).

The criminal and administrative sanctions—reserved for the violations expressly mentioned in the Law, notably fraudulent imitation, use without authorization, without mentioning the performer's name, without provision of particulars on use—are imprisonment and fines. The new Law has grouped the provisions on the criminal and administrative sanctions for infringements of both the rights of authors and the rights of performers in a separate third part of the Law (Articles 100 to 105a).

By way of conclusion, we can say that the new Law has modernized the original text of the Copyright Law with respect to the protection and use of computer programs; at the same time it has introduced a set of provisions on the rights of performers, making for the purpose a distinction within copyright between the rights of authors and those of performers. This set of provisions is on the whole consistent with the provisions of the original text of the Copyright Law and also with those of the Rome Convention. However, in the absence of any legislation on broadcasting organizations, there is for the moment no prospect of ratification of the Rome Convention by Yugoslavia, which has signed the Convention, although the principles and the criteria for the regulation of these two categories of neighboring rights have already been drawn up for the purposes of legislation in the Republics and Autonomous Provinces.

(WIPO translation)

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1991

March 11 to 15 (Geneva)

PCT Committee for Administrative and Legal Matters (Fourth Session, Second Part)

The Committee will continue to examine proposals for amending the Regulations under the Patent Cooperation Treaty (PCT), in particular in connection with the procedure under Chapter II of the PCT.
Invitations: Members of the Committee (States party to the PCT and the European Patent Office) and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

March 25 to 27 (Stanford University, Stanford (California))

WIPO Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence

The Symposium will examine the various categories of artificial intelligence ("artificial intelligence" is an expression commonly used to designate those kinds of computer systems that display certain capabilities associated with human intelligence, such as perception, understanding, learning, reasoning and problem-solving) and their main fields of application from the viewpoint of their possible intellectual property implications.
Invitations: The Symposium will be open to all. A registration fee of 150 US dollars will be payable. No registration fee will be required for participants designated by governments and invited organizations, or for faculty members and students designated by Stanford University.

April 8 to 11 (Geneva)

Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs

The Committee will study possibilities of improving the system of international deposit of industrial designs under the Hague Agreement.
Invitations: States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

April 15 to 18 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Ninth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1989) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 21 to 27 (Madrid)

Working Group on the Application of the Madrid Protocol of 1989 (Third Session)

The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.
Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.

June 3 to 28 (The Hague)

Diplomatic Conference for the Conclusion of a Treaty Supplemeoting the Paris Convention as far as Patents are Concerned

The Diplomatic Conference will negotiate and adopt a Treaty Supplementing the Paris Convention as far as Patents are Concerned (Patent Law Treaty).
Invitations: States members of the Paris Union, the European Patent Organisation and the Organisation africaine de la propriété intellectuelle and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

June 19 to 21 (Paris)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)

The Committee will review the status of the international protection of neighboring rights under the Rome Convention.
Invitations: States members of the Intergovernmental Committee and, as observers, other States members of the United Nations and certain organizations.

July 1 to 4 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fourteenth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May/June 1989) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

July 8 to 12 (Geneva)

PCT Assembly (Extraordinary Session)

The Assembly will hold an extraordinary session to adopt amendments to the Regulations under the Patent Cooperation Treaty.
Invitations: States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

September 2 to 6 (Geneva)

Committee of Experts on the Settlement of Intellectual Property Disputes Between States (Third Session)

The Committee will continue the preparations for a possible multilateral treaty.
Invitations: States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty and, as observers, certain organizations.

September 23 to October 2 (Geneva)

Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second Series of Meetings)

All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary session every two years in odd-numbered years. In the 1991 sessions, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium.
Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.

November 11 to 18 (Geneva)

Working Group on the Application of the Madrid Protocol of 1989 (Fourth Session)

The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.
Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.

December 2 to 5 (Geneva)

Committee of Experts on the International Protection of Indications of Source and Appellations of Origin (Second Session)

The Committee will examine a preliminary draft of a treaty on the international protection of indications of source and appellations of origin.
Invitations: States members of the Paris Union and, as observers, certain organizations.

UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1991

March 4 to 19 (Geneva)

Diplomatic Conference for the Revision of the UPOV Convention

Invitations: Member States of UPOV and, without the right to vote, States members of the United Nations not members of UPOV as well as, as observers, certain organizations.

March 18 (Geneva)	**Consultative Committee (Forty-Third Session)** The Committee will consider in particular the policy of UPOV in its relations with developing countries. *Invitations:* Member States of UPOV.
October 21 and 22 (Geneva)	**Administrative and Legal Committee** *Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
October 23 (Geneva)	**Consultative Committee (Forty-Fourth Session)** The Committee will prepare the twenty-fifth ordinary session of the Council. *Invitations:* Member States of UPOV.
October 24 and 25 (Geneva)	**Council (Twenty-Fifth Ordinary Session)** The Council will examine the reports on the activities of UPOV in 1990 and the first part of 1991 and approve the program and budget for the 1992-93 biennium. *Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

Other Meetings in the Field of Copyright and/or Neighboring Rights

Non-Governmental Organizations

1991

April 19 to 26 (Aegean Sea)	International Literary and Artistic Association (ALAI): Congress
May 12 to 16 (Dunkeld, United Kingdom)	International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislation Committee