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## Correspondence

### Letter from Denmark

Mogens KOKTVEDGAARD\*

In my previous "Letter" which was published in this review in 1982,<sup>1</sup> I referred to the reform work in the field of copyright law which was initiated in the Nordic countries around 1970. In this "Letter" I shall review first the development and conclusion of the reform work and then the amendments to Danish copyright law which have resulted from this work, among other things; the amendments are indeed quite significant. Finally, I shall review some of the most important judicial decisions during this period.

#### 1. Development and Conclusion of the Reform Work

The Danish Copyright Law Committee was created by the Minister for Cultural Affairs in 1976, with the task of undertaking a general review of copyright legislation and submitting proposals for such amendments to the legislation as were found necessary or desirable, in the light of the technological development in particular and social development in general. The work of the Committee, which has gone on continuously since then, was concluded in the spring of 1990. It proceeded in constant cooperation with corresponding committees in the other Nordic countries, so that the deliberations regarding reforms took place on a joint Nordic basis at all times.

During the period from 1981 to 1990 the Danish Committee submitted eight reports totalling 1,197 pages. Each of the first seven reports dealt with various specified subtopics, whereas the eighth and final report dealt with a number of topics and also contained a comprehensive draft of a new Danish Copyright Act. As for the substance of the reforms, the Committee was not always in complete agreement, either on the draft as a whole or on a number of its specific proposals. Consequently, any refer-

ences below to the proposals of the Committee are always to be taken as references to the majority of the Committee.

I mentioned the first report (No. 912 of 1981) in my previous "Letter" already. It dealt above all with the issue of *photocopying*, and especially the very practical problem of how it is to be regulated in view of the very extensive use of photocopies in connection with education in schools and other institutes of learning. On this point the Committee proposed a special license scheme which was adopted in a 1985 legislative amendment (see under 2a below).

The second report (No. 944 of 1982), which I also mentioned in my previous "Letter," dealt with the proposed introduction of a *levy on blank tapes* (sound tapes and videotapes) and with the *sanctions* for violations of copyright. The Committee proposed that a levy be charged for such tapes so that composers, authors and other creators, as well as performing artists and producers of records, might have a joint right to a remuneration where sound tapes or videotapes were produced in or imported into Denmark. The right of remuneration was attached to works that had been broadcast by radio or television, or published as sound recordings or video recordings. The amount of tax was to be fixed by the Minister for Cultural Affairs after negotiation with the organizations involved. By way of example, the Committee suggested a levy of approximately five Danish Krone (5 DKr) on a one-hour sound tape, and 12 DKr on a videotape of the same duration. As for sanctions, the Committee proposed a major increase, in particular with a view to countering organized crime, for instance in the field of video. The Committee's proposals for the blank tape levy have not yet been adopted, but are currently the subject of political negotiations. The proposals regarding increased sanctions were however adopted in 1985 (see under 2d below).

The third report (No. 962 of 1982) dealt with the legal protection of *artistic performances*. On this point the Committee proposed that the legal protec-

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<sup>1</sup> See *Copyright*, 1982, pp. 314-317.

tion of performing artists should be restructured, among other things so that the subject of protection might be the artistic performance as such, not the artist's "presentation of a literary or artistic work".<sup>2</sup> At the same time it was proposed that the period of protection be extended from 25 to 50 years counted from the end of the year in which the presentation took place. The same period was to apply in relation to the protection of phonogram producers and radio and television broadcasts. The proposals for the extension of the period of protection were adopted in 1985 (see under 2c below), but so far no steps have been taken toward a general reform of the rights under discussion.

The fourth report (No. 1000 of 1984) dealt with the problems of *films* and *videograms*, particularly the matter of the possible exhaustion of the rights in connection with the marketing of copies of videograms. On this point the Committee proposed that leasing as well as lending should be part of the rights of the copyright holder, and therefore not permissible without his consent. Consequently only the sale of copies should be free. This proposal was adopted in 1989 (see under 2f below).

The fifth report (No. 1038 of 1985) dealt with the question of the remuneration of authors and others where their works were *borrowed from public libraries*. For many years—actually since as long ago as 1946—the Danish State has paid a remuneration to Danish authors when their books have been lent by libraries but, in spite of several reforms, this arrangement has given rise to constant criticism. In Denmark the arrangement has always been perceived as a special type of cultural support for Danish authors and not as a right under copyright law, which is why the current rules are contained not in the Copyright Act but in a special Act regarding library licenses. The Committee was of the opinion that the entire system should be changed, so that the lending undertaken by public libraries could be regulated on the basis of considerations of copyright law and under the Copyright Act. That would make it possible to establish a general arrangement including all types of works that enjoyed copyright protection, and the arrangement might be administered by the authors themselves through a system of licenses. The system proposed would also mean that foreign authors would participate in the remuneration arrangement insofar as Danish authors had a claim to a corresponding remuneration in the countries in question. The proposals of the Committee have not been adopted, and the entire issue has given rise to considerable

controversy, partly between the copyright holders involved (the authors, etc.) and partly between political parties.

The sixth report (No. 1063 of 1986) dealt with the protection of *artistic works* and *photographs*. As for the artistic works the Committee proposed an extension of legal protection particularly by the introduction of a *droit de suite* in Denmark. It was further proposed that rules be also introduced regarding remuneration for artists where their works were *exhibited* in public museums and other such establishments, in an arrangement akin to the right of authors to receive remuneration for public lending. Finally, it was proposed that a statutory "right of access" be introduced so that artists might be assured of a certain access to originals of their works that were owned by other persons. As for photographs, the Committee proposed that the special Act on Rights in Photographic Pictures be repealed, and that the legal protection of photographs thereafter be incorporated in the Copyright Act. Under the current Danish Act on Rights in Photographic Pictures photographs enjoy a much weaker protection than works protected under the Copyright Act, and the period of protection is also much shorter (25 years from the end of the year in which the photograph was produced). Of these many proposals the only one that has been adopted is the one on the introduction of a *droit de suite*, which was adopted in 1989 (see under 2g below), but Nordic negotiations seem to give cause for some optimism regarding reforms in the area of photography legislation.

The seventh report (No. 1064 of 1986) dealt with the copyright protection of *computer programs*. On this point the Committee proposed that computer programs should be incorporated in the Copyright Act as a special category of works, and that the protection should in all its essentials follow the rules on literary works. This was fully in line with trends at the international level. The Committee did however propose a number of special rules on computer programs, among other things regarding the private production of copies and lending and leasing. With a few amendments the Committee's proposals were adopted in 1989 (see under 2e below).

The eighth and concluding report (No. 1197 of 1990) contains on the one hand a *summary* of the reform considerations, together with a corresponding comprehensive bill, and on the other hand *proposals* regarding amendments to a number of individual statutory provisions, among them the provisions on copyright contractual relations. Finally, the Committee has proposed that statutory provisions be now introduced on the transfer of copyright in employment situations. Until now this question has been governed not by legislation, but

<sup>2</sup> Cf. on this point my article in *Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil* (GRUR Int.), 1983, pp. 422 *et seq.*

merely by fundamental legal principles and customs in the area concerned. The Committee's proposals on the subject are based on the principles so far applied in Nordic law and on the prevailing trend in continental European law, according to which the copyright in a work that has been produced in employment vests in the author employed, unless otherwise agreed. In the case of permanent employment, however, the copyright is deemed to have been transferred to the employer to the extent necessary for his usual activity as exercised at the time of the production of the work.

No political position has been taken on the many proposals contained in the concluding report, and so no final bills have been submitted to the Danish Parliament. In the light of the joint Nordic nature of the considerations underlying the reform, one must assume that the ministers involved, namely in Denmark the Minister for Cultural Affairs, will try to achieve an appropriate Nordic agreement prior to submitting the final bills to the Parliaments of the respective countries. In this connection it should be borne in mind that Denmark is the only country that is a member of the EEC, which puts it in the difficult position of having to provide statutory harmony with both its Nordic sister nations and the other EEC members. At the time of writing the Minister is of the opinion that it should be possible to submit bills during the 1991/92 parliamentary year.

## 2. Legislative Amendments

The text of the Danish Copyright Act as amended is now available in a consolidated version (No. 453 of June 23, 1989). The consolidation includes the original 1961 Act, which to a considerable extent is still in force, and also the numerous amendments that have been adopted since 1961. In the current "Letter" I shall refer only to the more significant changes which were adopted by statutory amendments in 1985 and 1989 (Act No. 274 of June 6, 1985, and Act No. 378 of June 7, 1989, respectively). Some of these amendments have already been mentioned in the preceding section.

a. In 1985 an extended collective license was introduced which gave schools and other educational institutions the possibility of producing copies of published works by *photocopying*. The extended collective license presupposes an agreement with an organization (Copy-Dan) which encompasses the majority of Danish authors responsible for the works in question, and such an agreement also becomes effective in relation to authors who are not members of the organization. The provisions are now contained in Article 15a of the Act

and on that basis the necessary agreements have been entered into. As far as schools are concerned the arrangement seems to operate smoothly and satisfactorily, and it has at any rate put an end to the chaotic lawlessness of earlier times.

b. After extensive deliberation a system of *compulsory licenses* was introduced in 1985 regarding the *distribution* of radio and television broadcasts by *cable*. The provisions are now contained in Article 22a of the Act. Under this provision, works (foreign as well as Danish) that are broadcast on radio or television may be distributed by cable systems and be retransmitted to the general public, provided that the distribution or retransmission takes place without any change and at the same time as the broadcast. The authors have a claim to remuneration. This does not apply, however, where radio or television broadcasts are received by means of the receiver's own common antennas and distributed by cable systems consisting of no more than 25 connections in one building, or in a group of adjacent buildings. Incidentally, the remuneration claim must always be made by a joint organization approved by the Minister for Cultural Affairs (Copy-Dan).

The details of the operation of this system, as far as the amount and the distribution of the remuneration are concerned, have been worked out by way of a number of difficult decisions of principle (see under 3a below). Needless to say, the system thus established has been vigorously criticized by the authors' organizations and by program-exporting countries. The system cannot be accused of violating our international obligations (the Berne Convention), but it does admittedly deviate decisively from the traditional, international principles of governing contractual solutions.<sup>3</sup> It should be noted, however, that the system is in full conformity with the original intentions of the EEC Commission regarding "Television Without Frontiers." As we know, the final current directive (Council Directive 89/552 of October 3, 1989) did not contain any copyright provisions. To console the many who may find that the Danish rules on compulsory licenses infringe their rights, it can be said that the remuneration system is a reality that is working well, and that the amount to be paid compares favorably with the amounts which may be achieved under the systems based on agreements.

c. The 1985 Act prolonged the period of protection for *performing artists, phonograms, and radio and television productions* from 25 years to 50 years as from the end of the year in which the performance, the recording or the broadcast took place.

<sup>3</sup> Cf. on this Jan Corbet, in *Copyright*, 1988, pp. 532-544.

The provisions are now found in Articles 45(2), 46 and 48 of the Act. Under Article 47 of the Act public performances for commercial purposes give rise to claims of remuneration during an identical period. The former rules had become entirely unsatisfactory, particularly after phonograms had reached such a quality that they held their value for very extensive periods.

d. The 1985 Act also increased the *sanctions* for violations of the rights protected, so that imprisonment may now be imposed in the case of deliberate transgressions committed under particularly aggravating circumstances. Particularly aggravating circumstances are deemed to obtain especially where the offense concerns a substantial number of copies, or where the object of the offense is to realize a considerable profit. The provisions on this are now to be found in Article 55 of the Act. In such circumstances it is also possible to seek particularly severe police measures, such as *search* and *seizure* (see Article 55f(2) of the Act).

e. The 1989 Act established statutory copyright protection for *computer programs*. The main provision is now to be found in Article 1(2) of the Act under which computer programs are considered literary works. Furthermore, a number of specific provisions have been given on the protection of computer programs. In this connection special reference is made to Article 11(2), item 3, of the Act, which prohibits any private production of copies of computer programs in machine-readable form. Article 11a provides however that the owner is entitled to produce such copies of computer programs, including reserve and back-up copies, as are necessary for his use. Copies of computer programs that have been published in machine-readable form may be sold, but they may not be lent or leased to the general public without the author's consent (Article 23(2), item 2, of the Act). Computer programs are also subject to the special rule that the copyright in a computer program created in the course of employment is transferred to the employer unless otherwise agreed (Article 42b of the Act). This rule is not in conformity with the general rule of Danish law on the transfer of rights in employment relations, but it is justified by the program industry's great need for free access to the programs produced, and also by the fact that in this situation programs are normally created through wide-ranging teamwork, which may be carried on over long periods of time. The transfer of copyright to the employer is final and complete, and also includes moral rights. No special provisions have been made on the duration of the protection of computer programs, which means that they are protected in the same way as other literary works, namely until 50 years have elapsed after the year of the author's death.

f. The 1989 Act also codified the numerous amendments regarding copyright *exhaustion*. The provisions are now contained in Articles 23 and 25 of the Act, and they express with reasonable clarity the fundamental view that has long prevailed in Danish copyright thinking, according to which the issue of exhaustion has to be decided using an individualized method that takes into account the category of the work on the one hand and the nature of the use on the other. Although the main principle is that the redistribution of works in the public domain, typically by selling, leasing or lending copies, is free, there are several exceptions regarding distribution to the general public. Thus copies of *musical works* may not be leased to the general public without the author's consent, neither may copies of *computer programs* published in machine-readable form, as mentioned above, be lent or leased to the general public without consent. *Cinematographic works* published by sale to the general public, which in practice occurs mainly in the form of videograms, may not be lent or leased to the general public without consent. Copies of *artistic works* may be resold, lent or leased and exhibited publicly, except on television or by the showing of films unless the reproduction is of minor importance (or a natural part of the reporting of a current event) (see Article 21). The provisions outlined, which are of major practical significance, aim to create a proper balance between the owner of the copy and the owner of rights, including the possibility of providing the owners of rights with a reasonable return on their productions. Unfortunately there is no international legal conformity on this point, as is revealed by the judgment of May 17, 1988, of the EEC Court regarding the import into Denmark of some British videograms. It is not permissible to lease them in this country.

g. Finally, after many years of debate and frustrated hopes, the 1989 Act introduced a *droit de suite* in Denmark. The provisions are now contained in Article 25a. According to this rule the author is entitled to remuneration of 5% of the sales price (excluding value-added tax or VAT), in any commercial resale of copies of artistic works. This right to remuneration does not apply to buildings, or to works of applied art, if they have been produced in several identical copies. The right to remuneration exists until the expiration of the copyright. It is personal and inalienable, but even so it devolves on the author's spouse and descendants. The right to remuneration is always enforced by an organization approved by the Minister for Cultural Affairs (Copy-Dan), which is in charge of the collection and carries out the distribution.

More detailed rules on the calculation of *droit de suite* payments and other matters have been laid

down by the Minister for Cultural Affairs in Order No. 440 of June 8, 1990. It appears from this Order, among other things, that no remuneration is payable in the case of a sale of copies of artistic works if the sales price, including a possible auction fee but excluding VAT, does not exceed 2,000 DKr. Incidentally, the basic calculation includes the value of frames, hangers, pedestals and other equipment included in the transaction. However, in the case of copies of works in gold or silver the seller is entitled to deduct the value of precious metals and stones.

The right to a *droit de suite* payment applies to copies of works by authors who at the time of sale are Danish citizens or residents of Denmark, and to foreign citizens or residents of a country that has acceded to the Berne Convention and has adopted a *droit de suite* system as outlined in Article 14<sup>ter</sup> of the Convention.

h. In connection with the amendments to Danish copyright legislation, outlined above, necessary consequential amendments to the Act on Rights in Photographic Pictures have also been adopted (consolidated Act No. 454 of June 23, 1989). As mentioned under item 1 above, this Act, as a separate Act, may possibly be repealed before long, since the protection of photographic pictures may be included in the Copyright Act, but this reform has not yet been adopted.

i. The international scope of the Copyright Act and the Act on Rights in Photographic Pictures derives partly from the Acts themselves and partly from provisions in a Royal Decree, which has been brought up to date in line with the statutory amendments mentioned above and which now appears as Royal Decree No. 452 of June 18, 1990. The Decree does not, however, contain any major amendments in relation to the previous 1979 Decree. The new text, like the old one, relates to the Berne Convention (Paris Act, 1971), the Universal Copyright Convention (Paris text, 1971), the European Agreement on the Protection of Television Broadcasts (1960) and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

### 3. Judicial Decisions

a. The most far-reaching decisions handed down during the 1982–1990 period deal with the amount and the distribution of the cable remuneration payable to the owners of rights under the system of compulsory licenses mentioned under 2b above. These decisions have been rendered not by the ordinary courts but by special organs. Thus the issue of the *amount* of remuneration was decided

by the Compulsory License Board (see Article 54 of the Copyright Act), whereas that of the *distribution* of remuneration was decided by arbitration on the basis of an arbitration agreement entered into between the parties.

The size of remuneration was decided by an order of the Compulsory License Board on June 27, 1986. The parties were on the one hand the owners of rights (Copy-Dan and the association of Danish and foreign radio companies regarding cable distribution in Denmark, called UBOD), and on the other hand the major distributors (the television companies). The order which, among other things, is based on information on voluntary agreements at the European level says in effect that the following amounts are to be paid yearly per connected household:

- up to 3 TV channels and all radio channels: 45 DKr
- every TV channel from 4 to 6: 10 DKr per channel
- every TV channel from 7 to 12: 5 DKr per channel
- every additional channel: 3 DKr per channel

This order was subsequently supplemented by a corresponding order of July 6, 1987, relating to the owners of cable systems.

The orders on the amount of remuneration were originally valid until the end of June 1988. Under an agreement entered into by the parties the arrangement was continued unchanged for the rest of 1988. As for 1989 and 1990, a 10% increase in all rates was agreed upon.

The issue of distributing the remuneration among the owners of rights was decided by an *arbitration award* of February 8, 1989. It is a very comprehensive one, as there are very many partners in this area. The distribution was as follows:

- UBOD: 36%
- AGICOA DANMARK, etc. (the group of producers): 26%
- Danish Association of Actors: 8%
- KODA and KODA-DRAMATIK: 18%

The remaining 12% was distributed in minor amounts among the following groups: Association of Danish journalists, photographers, UBVA, performing musicians, authors/playwrights, producers, stage directors, artists (ring), pictorial artists, film designers, feature film cutting, conductors and theater technicians.

b. The case law of the ordinary courts has covered the following:

The borderline between the copyright protection of applied art and the protection that may be obtained under the rules on unfair competition often gives rise to doubt. This is illustrated by a judgment

of June 30, 1982, rendered by the Admiralty and Commercial Court<sup>4</sup> on a drinking-glass design. The plaintiff was a well-known Danish production business, which marketed a range of drinking glasses designed by a recognized artist. The glasses might be characterized as a working-up of an older type of glass, but nonetheless they were found to be sufficiently original to enjoy protection under the copyright provisions. Yet an importer of some similar glasses was sentenced not for any infringement of copyright but under the provisions of the law of competition, since the glasses imported, in all their essential features, were so much like the Danish glasses that there was an immediate risk of their being confused by the buying public.

Whereas there is no doubt that drinking glasses can enjoy copyright protection, a Supreme Court judgment of April 19, 1983<sup>5</sup> deals with a type of product that normally could not be classified as a work under copyright law. The case dealt with arrangements of food made for the purpose of the writing of a cookbook. The food arrangements, which were beautiful and appetizing, were photographed as illustrations for the book, and later on a conflict arose between the parties involved regarding the rights. The judgment concluded that the food arrangements did not enjoy copyright: it was found that no independent artistic works had been produced, and that the work involved merely the production of photographic pictures. Had the decision been different, it would probably have become legal history, providing a pertinent example of the luxuries and the artistic conceptions of our times, and it would have delighted a cartoonist, who could have depicted the repast as a "food sculpture." Incidentally, this might put the historically initiated in mind of ancient Sybaris where, according to Athenaeus, a one-year "monopoly" was granted in respect of delectable repasts.

It should be said in passing that the demands on works enjoying copyright protection in Denmark are normally very modest. This tradition has continued during the period under review, as witness the judgments reported in UFR 1984, p. 201, and 1985, p. 1087, on standard houses and minor mobiles (paper clippings) respectively.

c. Copyright law does not provide any protection against literary works being *reported*, whereas there are limits on the right of *quotation*. This distinction may occasionally be a difficult one, but in practice it is rarely of major importance. In a case decided by the Danish Supreme Court on October 5, 1987,<sup>6</sup> however, there was quite a deal at stake,

at any rate in principle. A newly-started publication, called the *Online journal*, offered a daily review of the most important political, financial and business news by means of a computer link. All the material used was taken from the major dailies. Those dailies brought a court action under the Copyright Act and the Competition Act, as the activity described was clearly liable to have a detrimental effect on the circulation of the dailies. The *Online journal* was exonerated, however, as there was no infringement of copyright or unfair competition in the opinion of the Supreme Court. News as such does not enjoy any copyright protection; quotations had been used only to a very limited extent, and there are no limits on the right to report. Incidentally, the dailies did actually have the satisfaction of the *Online journal* ceasing to exist shortly afterwards, on account of financial difficulties.

d. The following case likewise deals with the daily press, and has given rise to extensive debate. The matter at issue was whether it is legal to make "quotations" from a television broadcast by photographing the screen and reproducing the picture so produced—in the case under discussion a portrait of the Danish Queen—in the daily press. The judgment rendered on April 26, 1984<sup>7</sup> concluded that the quotation was a legal one and that the procedure used thereafter was not illegal.

The reason why this decision has given rise to extensive debate is that in recent years there has been a technical evolution in this area which makes the problem particularly interesting: whereas the reproduction in the papers of single pictures from the television screen used to be of very poor quality, new apparatus has since been marketed which makes it possible to print single pictures directly from the actual television signal. In this way single pictures are obtained for reproduction which are of a quality far superior to what was previously achieved by photographing the television screen in the conventional manner, and consequently the use of such pictures by the daily press has mushroomed. The pictures are used not only in connection with reviews of television programs, but also in connection with the more independent reporting of problems and events.

The previously-mentioned final report of the Copyright Committee<sup>8</sup> comes to the conclusion that the procedure described is illegal. In the opinion of the Committee it should not be permissible to apply the general rule on quotations when reproducing single pictures from films or television broadcasts. This position is based on a twofold view: On the one hand the use of such single pic-

<sup>4</sup> UFR 1982, p. 987.

<sup>5</sup> UFR 1983, p. 515.

<sup>6</sup> UFR 1987, p. 882.

<sup>7</sup> UFR 1984, p. 881.

<sup>8</sup> 1197/1990, pp. 168 *et seq.*

tures, for instance in newspapers and journals, is an entirely different use from what was originally envisaged, and on the other hand it would not normally be consistent with the Act's general require-

ment of "proper practice" for a single picture to be detached from its context, in which it is part of a sequence of topical pictures, and to be used merely as a still picture.

## Letter from Israel

Victor HAZAN\*

In this "Letter" I propose to bring to the reader's attention several laws that have been enacted since my last "Letter."<sup>1</sup> The first piece of legislation with a bearing on copyright was adopted by the Knesset and came into force on February 18, 1990. That was the Law introducing a second television channel in Israel, which will also open up possibilities for local radio stations. The main provisions of the Law are very much in line with those on the British ITV, and so I shall report only on some of its copyright aspects.

One of the important feats achieved by authors in Israel was that of persuading the legislators not to include a provision similar to section 38 of the Israeli Broadcasting Authority Act, which makes the Broadcasting Authority the first owner of the copyright in any work commissioned by it, except where the contract between author and broadcaster states otherwise.<sup>2</sup> A similar provision occurring in the Bill was deleted from the final text of the Law.

There are, however, two provisions in this new Law pertaining to copyright that are worth mentioning. The system that the second channel is going to use for its broadcasts is that of concessions granted to various operators, who will obtain broadcasting hours supervised by a Public Council. Section 107 of the Law states that the Council will not be liable for any infringement of intellectual property, including copyright, which may be committed by any of the licensed operators or their representatives. This is a necessary provision, because the Copyright Law says that not only an infringer of copyright, but also whoever authorizes the infringement is liable.

Obviously it is impossible to have television without copyright owners. The actual operators will be granted authorization to broadcast by the Council, and if the broadcasts turn out to infringe rights it could probably be argued that the Council was a joint infringer with the operator. To avoid all possible confusion, the legislator inserted section 107 in the Law.

In order to ensure that infringements of copyright are avoided, section 46(1) of the Law states that the licensed operator will not broadcast any program that would constitute a criminal offense (defamation, obscene material, etc.) "or any tort forbidden by law." Copyright infringements have been defined as torts, and are therefore included in this provision. So again the same question arises: Is this not superfluous, since laws have to be obeyed in any case? The answer is that any infringer of this provision may be further punished by having his concession revoked.

Three more pieces of legislation are worthy of note. In 1981, an amendment of the Copyright Law was introduced which gave courts the power to adjudge statutory damages.<sup>3</sup> This is a system similar to section 504(c) of the US Copyright Act, although in some aspects different. By virtue of a decree, the minimum and maximum amounts of damages a court can award for any one infringement of copyright, where a plaintiff cannot prove actual damage, are 10,000 Israeli shekels (roughly \$5,000) and 20,000 Israeli shekels (\$10,000).

This decree has made the infringement of copyright a very costly affair, since the courts tend to regard every infringing item as an infringement in itself. Thus every infringing record, book or public performance of a song can be awarded a minimum of \$5,000 on its own. The courts have not so far had to deal with infringing books or records, which

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<sup>1</sup> *Copyright*, 1987, pp. 250-257.

<sup>2</sup> *Ibid.*, 1965, p. 244; and 1966, pp. 70 and 260.

<sup>3</sup> *Ibid.*, 1981, p. 335.

could run into thousands. But in one case they have considered each performance of an infringing play to be an infringement, and the court in question awarded the minimum damages for each performance.

A second important amendment of the Law made in 1988 added "computer programs" to the definition of literary works, thus following in the footsteps of other legislators. Some judgments had been handed down before this legislation making computer programs into literary works, but there were others in which doubts had been expressed. The legislator has now put all doubts to rest, and of course by defining them as "literary works," has made the Berne Convention apply and so foreign authors will be given national treatment.

The third and last important amendment, also made in 1988, increased the penalties for infringements of copyright that are also defined as criminal offenses (piracy, distribution of infringing copies, etc.). Before the amendment the penalty was only six months in prison, but now it is three years imprisonment and also some \$7,500 in fines. The increase has two purposes. The first of course is to prevent potential criminal offenses, but it is no less important to make both the police and the courts understand that a criminal infringement of copyright is a serious affair. Before the amendment both the police and the courts looked on such an infringement as a mere misdemeanor, and convicted infringers got away with small fines. Apart from that the police, having enough trouble on their hands, would not deal with complaints of infringed copyright. Since the amendment, however, there has been action taken by the police, especially against the pirating of audio and video tapes.

So much for legislation. I shall now report on some of the case law, choosing those cases that are of general interest.

The first concerned a Dutch company which is in the business of producing documentary films for television broadcasters. The film in question was *I captured Eichmann*, produced on videotape. The film included an extensive interview with one of the people who took part in the capture of Eichmann in Argentina and brought him to Israel to stand trial. Just one month before the film was due to be broadcast on Israeli television, which had acquired the rights from the Dutch company, an Israeli magazine, *Monitin*, published a transcript of almost the entire interview as appearing in the film. The film had been previewed to journalists for promotional purposes.

The decision of the court was important because it upheld the Dutch company's contention that there was copyright in a videotape under Israeli law (this is important as the law is still the British Copyright Act of 1911, a year when even conven-

tional films were in the embryonic stage, let alone videotapes). The defense contended that the interview dealt with historical facts in the public domain. The court rejected this contention, stating that although historical facts were not protected *per se*, their expression in an interview was a work in which the interviewer had copyright. Another defense argument was that, since the interview dealt with the feelings and experiences of a government officer, they should be available to all and not be protected by copyright, both because the public had an interest in the publication of the interview and because it was given by a government official (the person interviewed having been a member of the Israeli Secret Service). The court rejected both arguments saying that at the time of the interview the agent was no longer in the government service, and that the public's interest in the contents of the interview did not give any member of the public the right to use another's property. Another defense tried was that the Dutch company's representative in Israel had given a copy of the tape to the journalist, and that the company had therefore consented to the journalist's use of the interview in the magazine. This in turn was rejected, as the tape had only been lent to the journalist for the purpose of reviewing the film, and no consent to the reproduction of the interview was implied.

The court awarded statutory damages of \$7,250, somewhat more than the statutory minimum of \$2,890. The decision was handed down in 1986, and there was no appeal.<sup>4</sup>

Another case decided in 1986 is equally interesting. It concerned various commercial halls which are used for weddings, bar mitzvahs and other festivities. On those occasions the hall was rented for the evening, and the owner of the building was the caterer. One evening an inspector from the plaintiff (ACUM, the local collecting society) was present and noted that musical works were being played during a wedding. The question for the court to decide was whether the playing of copyrighted works in such a hall was a public performance of the author's works, and whether it constituted an infringement as no license had been granted by the owners of the rights in the works. The owners of the hall contended that they had nothing to do with the music being played, as the orchestra had not been commissioned by them but by the parents of the bridal couple.

The court rejected their defense. As the hall was a "place of public entertainment," it was in the interest of its owner to allow the playing of music. If he did not he would lose a lot of money, as people

<sup>4</sup> Civil File 1143/83, Magistrates' Court of Tel Aviv, District Court Reports, 1987, Part 2, p. 391, date of ruling, November 4, 1986.

would not rent a hall in which the playing of music was not allowed. It was therefore for the owner of the hall to see to it that no infringing music was played, and he should have applied for a license.

Another defense claim, namely that the hall was not a public place because it was used for "private" parties, was also rejected. The judge said the hall was available to all members of the public wanting to have festive gatherings in it, in which case any music played there was a public performance, the rights in which belonged to the copyright owners. The owner of the hall was seen to be authorizing the infringement and therefore liable.

The judge also stated that the hall in question was there entirely for the purpose of festive occasions. It was not a hall whose main purpose was the giving of lectures, for instance. So the owner knew, or should have known, that music was played in such halls because of their very nature. Music is part and parcel of any celebration, and so the owner of the hall was liable, even though it was not he who had actually commissioned the music and paid for it.

Once again the court awarded statutory damages under section 3A of the 1981 amendment.<sup>5</sup>

Another case worth mentioning concerns the series of actions that the Lego company has been carrying on in various countries where imitations of the famous bricks used for the construction of various toys were produced. The Danish company Inter Lego sued two Israeli companies that were producing somewhat similar bricks with which a child could build houses and other objects. The case involved a very extensive trial: 37 days of trial, 23 witnesses, including experts, 399 exhibits, 370 pages of memoranda and summings-up that ran into 770 pages for the defense and 312 pages for the plaintiff. The judge, in giving these statistics, said that they proved that "an immense effort was made by the parties" to clarify and illustrate the importance of the case to them both.

The Lego company, which over the years has had a tremendous international success with the production of three successive editions of the original bricks, even had a design patent registered in England, but it expired in 1975. The defendant was a Spanish company that had been producing bricks similar to the Lego ones since 1968, and started distribution in Israel through a local representative company.

The claim was based, as a main contention, on the fact that the Lego toy bricks and their design plans were protected by copyright law. The protec-

tion was claimed for all the editions of the bricks, which the defendants had reproduced by imitating the original. It was further contended that the plaintiffs had also registered the designs of three puppets which could be built with Lego bricks.

The defendants argued that their bricks were not imitations of the Lego bricks, that they were original works produced by the Spanish defendants' manufacturer and that they had not infringed any copyright.

The claim was based mainly on the drawings that were made prior to the production of the Lego bricks. These drawings were protected by copyright, and therefore the three-dimensional objects made from them were also copyrighted. The court examined the question of models and drawings, and because of some procedural matters in which the plaintiffs were in the wrong, it rejected the argument that the Lego bricks were three-dimensional reproductions of certain models and drawings.

The court proceeded to examine whether the bricks themselves were protected by copyright. The defense contended that because of section 22 of the Copyright Act there was no copyright in the bricks. I quote section 22 below:

This Act shall not apply to designs capable of being registered under the Patent and Design Act of 1907 except designs which though capable of being so registered are not used or intended to be used as models or patterns to be multiplied by any industrial process.

The judge then examined the essence of the above section, because obviously if it were applicable, then copyright would not apply, owing to the fact that this section of the Copyright Act would not recognize as copyrightable anything that was "capable of being registered." The court considered itself lucky since the Privy Council in the United Kingdom had dealt with that very question the previous May, in a case initiated by the same company (*Interlego A.C. v. Tyce Industries, Inc.*) in Hong Kong, and the judgment was given on appeal to the highest British court. Hong Kong has the same law as Israel, and the Privy Council examined the meaning of section 22.

The plaintiff sought to attack the British decision (which in any case would not be binding on an Israeli court, but could be regarded as an outline for the court trying a similar case), claiming that Lord Oliver was wrong in his decision. The plaintiff's contention was that one should not adopt the interpretation of the British judge, who had decided that the words "capable of being registered" were meant in a theoretical sense, and not in the practical sense as applied to one particular object. The plaintiff argued further that intellectual property was an inherent right given to creators, so that it was the legislator's intention to give a creator maximum protection as far as possible.

<sup>5</sup> Civil File 1496/86, Magistrates' Court of Jerusalem, judgment given on February 11, 1987.

The Israeli judge rejected this view, thus agreeing with the United Kingdom Privy Council, and said the following:

This way of thinking is in my opinion incorrect. I think that legislators, in connection with all the intellectual property rights, have expressed their intention to limit to a large extent the rights of creators in general. Legislation grants those rights unwillingly, because the basic legislative trend is that what a creator has created or invented should be in the public domain and not his monopoly. Yet the legislator did understand that incentives should be given to creators, to induce them to invent and produce works of intellectual character. These are given in the form of limited monopolies, so that at the end of the term of protection the works, the patents and the designs become public property, whereupon the public can use them freely. Therefore I am not impressed by the plaintiff's argument that a work could well fail to qualify for protection either under copyright or under designs law.

So, following the British precedent, he was also of the opinion that the words "capable of being registered" meant that there was a type of work capable of being registered, regardless of whether the particular object was capable of being registered.

The judge then continued to examine whether a Lego brick in general was a "design" as defined by law, and therefore "capable of being registered," and after a rather long and complex assessment came to the conclusion that such bricks could indeed have been registered as designs, which placed them outside the subject matter of copyright.

In view of the general propensity throughout the world for extending copyright to various objects, this decision is important, as it limits coverage to the works that copyright originally proposed to protect. The judge had this to add:

In my opinion an object that is multiplied by an industrial process should be protected as a design and not as a work to which copyright applies. If it is not registrable as a design, it does not obtain automatic protection under the Copyright Act, either directly or indirectly. The idea that every object made out of designs becomes copyrightable will lead to absurdities. A registrable object that is not at all functional can be registered as a design and receive a 15-year term of protection, whereas if it is functional and cannot be registered as a design, it then qualifies for a term of protection of 50 years *post mortem*. This absurd consequence proves, beyond any doubt, that such objects made out of designs should not be given indirect protection by copyright.<sup>6</sup>

Another interesting case, which was brought to court by ACUM, concerns broadcasts made from a ship, labelled "the Peace Ship," owned by a person whose main intention in making the broadcasts was to propagate peace among nations in the Middle East. The ship broadcast from outside the territorial waters of the State of Israel (lately the legislator has increased those limits from six nautical miles to 12, perhaps making such broadcasts more difficult if the ship were to move beyond them). Naturally

the broadcasts were aimed at Israel, but even so they did not have sufficient power to reach most of Israel, covering mainly its central coastal area.

The action claimed infringement of copyright, because the transmitter on the ship broadcast some 20 hours of protected music a day. The other four hours of the day were devoted to talks, news, commercials, etc. The ship's owners contended that since the ship was outside the limits of the territorial waters of Israel they were not infringing any law.

An important question of private international law arose here and the judge decided, on this point, in favor of the plaintiffs. He came to the conclusion that a broadcast received in Israel from "a ship at sea" was actionable in Israel. His reasons were as follows:

1. The defendant, whose company resides in Israel, had been properly served with a claim under the Procedure Rules of Israel.

2. Although obviously the Copyright Act of Israel did not apply abroad, it did not mean that the Israeli court had no jurisdiction over the case.

3. An example could be taken from the Law of Torts, which specifically states that the law applies only to a "tort that has been committed in Israel" (a provision that the Copyright Act does not have). However, it has been decided that a defendant can be brought to an Israeli court for a tort committed in another country, provided that the law of the other country is enforced. This is the rule of international law regarding the provisions of which law are to be applied.

4. The rule therefore is that a court in Israel is competent to hear a case *in personam*, like a tort, in which the defendant resides in Israel, even if the tort was committed entirely abroad. The plaintiff has to prove of course that the tort is against the law of the country in which it was committed.

5. It seemed to the judge that because the tort was committed on the high seas and therefore no other law applied, Israeli law should apply. Logic directs that when a tort is committed where no foreign law applies, then the rule on which law is to be preferred does not apply. And if the infringer resides in Israel, that is enough.

6. The judge also accepted the plaintiff's contention that, since a broadcast is a public performance and since this one was in effect made in Israel, being intended for and received in Israel, the place in which the broadcast was received should be the criterion determining jurisdiction.

7. The judge gave an interesting example: If a person shoots from outside the territorial limits of Israel, wounding a person in Israel, and is then apprehended in Israel, will he not be judged only because he pulled the trigger on the other side of

<sup>6</sup> Civil File 331/85, Tel Aviv District Court, date of ruling, June 13, 1989.

the Israeli border? What then is the difference between firing a bullet and "firing" a song by electromagnetic waves into Israel?

The defendant was therefore found liable, even though his broadcasting ship was outside territorial waters. This is therefore an interesting case for would-be pirates to consider before seeking the "protection" of the high seas.<sup>7</sup>

Section 3A, which was added to the Law by an amendment passed in 1981,<sup>8</sup> is very simply worded, but the courts have had difficulty in interpreting its provisions. One such case was decided in 1987. The infringement was quite clear: the production of pirated videotapes from an original tape of a show by a well-known Israeli performer. The producer of the tape was able to purchase one such videotape at half the selling price of his own tapes. Having obtained a search and seizure order from the court, no more pirate tapes were to be found. The plaintiff claimed statutory damages under section 3A. This section has a provision empowering the Minister of Justice to increase the statutory damages mentioned in the Law, and the Minister exercised this power in order to keep them in line with inflation which in Israel then was very high, and even now runs at some 20% a year.

The change was made by the Minister between the date of the claim being lodged in court and the date of the judgment (some two and a half years later). The plaintiff maintained that the sums to be awarded were the sums increased by order of the Minister. The defendant argued that the sums applicable were those of the time at which the claim was lodged. The judge decided in favor of the defendant, stating that the change was not a procedural one and therefore could not be retroactive, consequently applying the principle of legislation not being retroactive.

Then another difficulty arose: since only one pirated copy was found, the defendant claimed that the judge should award the minimum statutory damages under the Law. The claim was not accepted, however, even though during the search no pirated tapes had been found. The judge said that there was evidence of more tapes having been sold to the public, and because of that evidence the plaintiff had sent someone to buy a pirated tape. The statutory damages had been added to the Law because of the difficulty of proving prejudice, and specifically how many pirated copies had been made. The judge decided that it was enough to prove the sale of one such tape to award almost the maximum statutory damages under the Law,

among other things to make sure that no more infringements were committed and to deter other potential infringers.<sup>9</sup>

Another case concerned an action by Apple, Inc., and some subsidiaries against an importer of personal computers (PCs); the case in question concerned a PC known as Apple II. This PC had exclusive computer programs written specifically for it and known as Apple Soft and Autostart Prom, the copyright belonging to the plaintiffs, which were registered with the Register of Copyrights in Washington. The defendants imported a different type of PC in which the two computer programs had been incorporated, making the imported PC a cheap imitation of the Apple II computer, which without the Apple programming could not function at all.

The plaintiff further contended that it had also produced a closed-circuit chip called a "Mother Board," which is the base for other components within their computer. The plaintiff added that it owned the copyright in the Mother Board which was the result of extensive research and creative work. In the infringing PC a similar chip had been fitted causing an infringement of the plaintiff's copyright. The plaintiff contended that the defendants knew they were importing and distributing infringing computers.

The plaintiff also said that the PC had a special form unique to Apple computers, which moreover have a very special keyboard, that the defendant's PC was only an imitation of the Apple computer, and that therefore it was clearly the defendant's intention to make prospective Apple customers believe that they were purchasing one of the plaintiff's computers. The plaintiff further claimed that the infringing material was being sold together with written booklets including operating instructions that were also copyrighted by the plaintiff.

The first point that the court decided was that the old Copyright Law of 1911 obviously could not have foreseen the tremendous technical developments in the arts, science and industry, but it was already an established principle of the copyright law that it did not have a closed list of works, and therefore any work to which the various definitions in the Law could apply was a protected work. The judge stated that that was the recognized principle in various British cases (from which the Law was derived), in local cases and in all the legal literature on this point. Many other objects had already been interpreted by other precedents in Israel as being included in the law of copyright, like videotapes, audiotapes, broadcasts and other such works which

<sup>7</sup> Civil File 19705/86, Magistrates' Court of Tel Aviv, judgment given on January 1, 1989.

<sup>8</sup> *Copyright*, 1981, p. 335.

<sup>9</sup> Civil File 11595/85, Magistrates' Court of Tel Aviv, judgment given on January 15, 1987.

derive from the technological developments which occurred long after the passing of the Act in 1911.

Therefore the judge arrived at the conclusion that there was no doubt that the computer programs in question were protected as literary works (one has to remember that this judgment was given before the amendment in the Law that specifically included computer programs as protected works). The judge recognized that the plaintiff was the owner of the copyright, because the programs had been developed by the workers of the plaintiff's company.

It is interesting to note that this judgment was also given before the United States of America had acceded to the Berne Convention, and that, as far as the chips were concerned, the judge would not apply copyright law to them because it was not proved that those chips had been registered with the US Register of Copyrights.

In any case the judge stated that it was likewise not proved that the chips had been first issued in the United States, or that the makers of the chips were either US citizens or residents. He also mentioned that he could not see how this particular chip could be considered a literary work; it might well be that the design was registrable under the Design Act, or patentable. Finally the judge decided that the PC itself had nothing unique or original in it, and could certainly not be protected by copyright, so the passing-off claim was also rejected.<sup>10</sup>

The last case that I would like to report on was one decided by the Supreme Court, which is the highest court of appeal in Israel and whose judgments are binding on lower courts. The plaintiffs were graphic designers who had prepared an advertising placard displayed in many streets in various towns. The lower court had decided that the drawing on the placard was eligible for copyright, but considered the work to be an engraving as defined by the Law, in which case the copyright belonged to the defendants who had ordered the making of the placard. Copyright in "engravings" under section 5(1)(a) of the Law belongs not to their author, but to those who order them to be made. The designers appealed to the Supreme Court. The defendant had asked the plaintiffs to make an advertising placard which was to include the name of the defendants and a flower which the defendants had previously used in other advertising.

The plaintiffs made the drawing for the placard including the elements mentioned above, which were part of the specifications given to them. The agreement between the parties was that the defend-

dants were to be paid for every placard that they prepared. Everything went smoothly until the ownership of the defendant company changed, whereupon the company decided to stop working with the plaintiffs and started working with another advertising agency, which became a joint defendant in the case. The latter advertising company made new placards very similar to the ones made by the plaintiffs.

A number of questions arose in the appeal:

- (a) Is the placard an original work worthy of protection under the Copyright Act?
- (b) If so, is it a literary work or an artistic work?
- (c) If it is an artistic work, is it an engraving subject to the provisions of section 5(1)(a) of the Act?
- (d) Did the parties agree, either specifically or by implication, that the copyright would belong to the plaintiffs?
- (e) Is the placard a design capable of registration under the Patent and Design Act, in which case copyright would not apply?
- (f) If the placard is an artistic work and not an engraving, did the defendants infringe the plaintiffs' copyright?

The Court had no trouble deciding that the work was an original one, and in so doing adapted the Anglo-Saxon conception of originality. It said a work did not have to be novel in the sense of having an inventive, novel subject in it. It interpreted the word "original" in the Law as meaning that its origin lay with the author and it was not copied from someone else. In this it quoted many English and American precedents. This is the first time that the Israeli Supreme Court has decided this point in a clear and binding manner in a matter where it has been asked for a ruling, and not subsidiarily or in the form of an *obiter dictum*.

The Court then considered whether the advertising placard was a work worthy of protection by copyright. It said that the same provision had been interpreted in the United Kingdom and the United States, and that it was willing to accept those interpretations. It said that "literary work" as defined by the Law did not need to be interpreted as a work of literature, but that it was enough for a work to be expressed in print or writing, irrespective of the quality of its style. As for "artistic works," the definition in the Law itself included the words "irrespective of artistic quality." The Court therefore approved the lower court's decision that the advertising work was a protected work, stating that the plaintiffs had used enough ingenuity and done extensive work on its preparation, making use of their professional knowledge and skills. The Court quoted a famous saying made in an American

<sup>10</sup> Civil File 3021/84, District Court of Tel Aviv, District Court Reports, 1987, Part I, p. 397.

case<sup>11</sup>: "If it was worthy of imitation and reproduction, it was worthy of protection."

The Court added an interesting view, saying that, when dealing with an advertising work, even if the imitation was not due to the work being worthy of imitation, but rather to ulterior motives like unfair competition or a company's desire to go on using the work because of its success on the market, such ulterior motives qualified an imitation for protection by copyright.

As for whether the placard was a "literary work" or an "artistic work," the Court chose the latter, because there was no writing on it other than the name of the company advertised.

The Court then dealt with the question that had caused the lower court to reject the plaintiffs' claim. The first-instance court had found that the placard was an "engraving" and under section 5(1)(a) of the Copyright Act the rights in an "engraving," if commissioned by someone else, belong to the company that ordered it.

The word "engraving" is defined as follows in section 35(1) of the Act: "Engravings include etchings, lithographs, woodcuts, prints and other similar works not being photographs."

It seems that the lower court had examined the case on the basis of a wrong Hebrew translation of the word "engravings." On consulting the original text of the British Act, which had been adopted in Palestine in 1924 and had subsequently become law in the State of Israel, it concluded that the Hebrew translation of the text of the original British Act was erroneous with respect to that section, and decided that the English text should be binding and not the Hebrew mistranslation.

The Supreme Court then examined carefully whether the placards were engravings, and came to the conclusion that the lower court had been mistaken, as each placard was a drawing in its own right and they had not been produced by the process that was used in the making of engravings. It followed therefore that the fact of the defendant having commissioned the placards did not alter the plaintiffs' copyright, as section 5(1)(a) of the Law did not apply. The Supreme Court also decided that the drawing on the placard was not capable of registration under the Design Law because each one had been made individually and not by an industrial process that multiplied the original drawing.

The last point to be decided was whether the defendants had infringed the plaintiffs' copyright. The court had no trouble answering in the affirmative. The defendants had made a few changes in their imitation, but those changes were so insignificant that they could be likened to those pairs of identical drawings in which children are asked to spot the differences. The Court ruled that perhaps there was a reverse equation in that the less effort and novelty there was in a work, the more exact the copy had to be in order to constitute an infringement. The Court held that the work and the ingenuity involved in it in this case were very limited, but that the copy was almost exactly the same.<sup>12</sup>

This "Letter" has been rather long, but it does cover a period of more than three years. It shows moreover that people are becoming more and more copyright-conscious, and that the courts are consequently dealing with more cases than they used to, considering how small our country is.

<sup>11</sup> *Drop Dead Co. v. S.C. Johnson & Son, Inc.*, 326 F. 2 87 (1963).

<sup>12</sup> Civil Appeal 360/83, Supreme Court of Israel, Jerusalem. Supreme Court Reports M(40), Part III, p. 340, judgment given on September 8, 1990.

## Calendar of Meetings

### WIPO Meetings

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

1991

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 Supplementing 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

- 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



