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Contents

NOTIFICATIONS CONCERNING TREATIES

Berne Convention. New Member of the Berne Union: Guinea-Bissau 103

WIPO MEETINGS

Sixth International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers) (Mexico City, February 25 to 27, 1991) 104

WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights. Permanent Committee. Ninth Session (Geneva, April 15 to 18, 1991) 105

CORRESPONDENCE

Letter from the United States of America, by *Ralph Oman* 117

CALENDAR OF MEETINGS 121

COPYRIGHT AND NEIGHBORING RIGHTS LAWS AND TREATIES

(INSERT)

Editor's Note

UNITED STATES OF AMERICA

Public Law 101-318 (of July 3, 1990) Text 3-01

Public Law 101-319 (of July 3, 1990) Text 4-01

Public Law 101-553 (of November 15, 1990) Text 5-01

Visual Artists Rights Act of 1990 (Title VI of Public Law 101-650 of December 1, 1990) Text 6-01

Architectural Works Copyright Protection Act (Title VII of Public Law 101-650 of December 1, 1990) Text 7-01

Computer Software Rental Amendments Act of 1990 (Title VIII of Public Law 101-650 of December 1, 1990) Text 8-01

WIPO 1991

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Notifications Concerning Treaties

Berne Convention

New Member of the Berne Union

GUINEA-BISSAU

The Government of Guinea-Bissau deposited, on April 18, 1991, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

The Berne Convention, as revised at Paris on July 24, 1971, and amended on October 2, 1979, will enter into force, with respect to Guinea-

Bissau, on July 22, 1991. On that date, Guinea-Bissau will become the 85th member of the International Union for the Protection of Literary and Artistic Works ("Berne Union").

Guinea-Bissau will belong to Class S for the purpose of establishing its contribution towards the budget of the Berne Union.

Berne Notification No. 132, of April 22, 1991.

WIPO Meetings

Sixth International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers)

(Mexico City, February 25 to 27, 1991)

The World Intellectual Property Organization (WIPO), in conjunction with the Ministry of Public Education of Mexico and the Mexican Federation of Authors' Societies (FEMESAC), organized the Sixth International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers).

This Congress, which was held in the National Museum of Anthropology of Mexico City, was officially opened by the Director General of WIPO, Dr. Arpad Bogsch, and by the Minister for Public Education of Mexico, Manuel Bartlett Díaz. Previous Congresses had taken place in Caracas (1986), Bogotá (1987), Lima (1988), Guatemala City (1989) and Buenos Aires (1990). The present Congress was attended by 1,200 participants who qualified for the award of the corresponding diploma and the book of the Congress proceedings.

In his inaugural address, the Director General of WIPO said among other things that one could declare, without fear of error, that "we are witnessing the most important event anywhere in the world, in terms of quality and scale, that WIPO organizes annually in the copyright field."

The subjects covered by the Congress ranged from the emergence and development of copyright in the world and in Latin America, the scope of protection, authors' societies, the protection of neighboring rights, the protection of audiovisual works, satellite and cable transmissions and other new technology, the protection of computer programs, piracy and the protection of copyright in Mexico to the copyright system prevailing in the United States of America and the implications of that country's accession to the Berne Convention.

The International Bureau of WIPO presented three lectures on "The Work of WIPO on Model Copyright Legislation," "The Treaty on the International Registration of Audiovisual Works" (this

Treaty entered into force on February 27, 1991, the last day of the Congress) and "Direct Broadcasting by Satellite and the Theory of Communication." More than 40 speakers from France, Latin America, Spain, Switzerland, the United Kingdom and the United States of America gave lectures or served on panels during the Congress, conducting lively debates in which participation was active and learned.

Like earlier congresses, this one enjoyed the support of permanent joint sponsors, including in particular the Inter-American Copyright Institute (IIDA), the International Confederation of Societies of Authors and Composers (CISAC), the Motion Picture Export Association of America (MPEAA), the General Society of Authors in Spain (SGAE), the Swiss Society for Authors' Rights in Musical Works, the Performing Right Society Limited (PRS) and the Institute of Legal Studies of the State of Lara, Venezuela.

The Organizing Committee was presided over by Mr. José María Morfín Patraca, Director General of Copyright of Mexico. Professor Ricardo Antequera Parilli, the promoter of these events, acted as coordinator in the capacity of special consultant to WIPO for the organization of such congresses.

In addition to its Director General, the International Bureau of WIPO was represented by Mr. François Curchod, Director, Office of the Director General, and by Mr. Carlos Fernández Ballesteros, Director, Developing Countries (Copyright) Division.

On closing the Congress, the Director General of WIPO announced that an official communication had been received from the Government of Chile, announcing its particular interest in organizing in that country, together with WIPO, the Seventh International Congress on the Protection of Intellectual Rights in 1992.

WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights

Permanent Committee

Ninth Session

(Geneva, April 15 to 18, 1991)

REPORT

adopted by the Permanent Committee

1. The WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (hereinafter referred to as "the Permanent Committee") held its ninth session in Geneva from April 15 to 18, 1991.

2. Sixty-one States, members of the Permanent Committee were represented at the session: Algeria, Angola, Argentina, Australia, Bangladesh, Benin, Brazil, Burkina Faso, Cameroon, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cuba, Czechoslovakia, Egypt, France, Gambia, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Italy, Jamaica, Japan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mexico, Morocco, Nicaragua, Niger, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Senegal, Spain, Sri Lanka, Switzerland, Togo, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, Zaire.

3. The following six States were represented by observers: Bahrain, Liberia, Namibia, Republic of Korea, Venezuela, Yugoslavia.

4. Observers from three intergovernmental organizations, namely: the International Labour Organisation (ILO), the General Agreement on Tariffs and Trade (GATT) and the Organization of African Unity (OAU), and 15 international and national non-governmental organizations, namely: Association for the International Collective Management of Audiovisual Works (AGICOA), International Advertising Association (IAA), International Association of Audio-Visual Writers and Directors (AIDAA), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confed-

eration of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Dance Council (IDC), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), Argentinian Association of Interpreters (AADI), Association of Composers and Musical Authors of Costa Rica (ACAM), also participated in the meeting.

5. The list of participants follows this report.

Opening of the Session

6. The meeting was opened by Mr. Shahid Alikhan, Deputy Director General, and by Mr. Henry Olsson, Director, Copyright and Public Information Department. They welcomed the representatives of States and of intergovernmental organizations as well as of international and national non-governmental organizations and mentioned that since the last session of the Permanent Committee in April 1989, five States (Cuba, Indonesia, Jamaica, Malaysia, Uganda) had become members of the Permanent Committee, thus bringing the total membership of the said Committee to 90. It was recalled that since the first meeting of the Permanent Committee in 1977 about 60 developing countries had enacted new copyright legislation; four of those laws were adopted since the last session of the said Committee in April 1989. Also, as from the time of that session, draft copyright laws and comments on drafts of such laws were sent by the International Bureau, upon request, to the concerned government authorities in 23 countries.

During the same period about 125 courses, congresses, seminars and workshops on copyright and neighboring rights were organized for nearly 7,800 participants from more than 100 developing countries.

Election of Officers

7. On the proposal of the delegation of the United Republic of Tanzania, supported by the delegations of Benin, Cuba, France, Guatemala, Guinea, Hungary, Italy, Malaysia, Peru and Spain, the Permanent Committee unanimously elected the following officers: Mr. José María Morfin Patraca (Mexico), Chairman; Messrs. Eric Schwartz (United States of America) and Abderraouf Kandil (Morocco), Vice-Chairmen; Mr. Carlos Fernández Ballesteros, Director, Developing Countries Division (Copyright), acted as Secretary.

Adoption of the Agenda

8. The provisional agenda contained in document CP/DA/IX/1 was adopted by the Permanent Committee.

Review and Evaluation of the Activities Under the Permanent Program in 1989 and 1990

9. Discussions were based on Part I of document CP/DA/IX/2. All the delegations that took the floor praised the high quality of the document prepared by the International Bureau and the complete and concise information that it contained.

10. Delegations of 41 States and three intergovernmental and international non-governmental organizations made statements under this item.

11. The delegations which took the floor expressed their appreciation of, and indicated their full support for, WIPO's cooperation activities concerning development of human resources in the field of copyright and neighboring rights in developing countries which had been doubled since the last session.

12. Several delegations offered to continue their cooperation in the program of development of human resources and to receive trainees in copyright and neighboring rights and thus to contribute to WIPO's training program which they felt had made an important contribution in the dissemination of information concerning, and proper understanding of, copyright and neighboring rights, and their role

in development. The Permanent Committee expressed its appreciation of these offers.

13. The Permanent Committee thanked the countries and organizations that had received trainees in the field of copyright and neighboring rights during 1989 and 1990, as well as those that had helped in the organization of training courses, as also in providing lecturers for such courses.

14. Several delegations expressed great satisfaction with the considerable work being done by WIPO in providing advice and assistance to developing countries in the preparation and updating of their copyright legislation, as well as in the setting-up and/or strengthening of existing institutions and national administrative infrastructures.

15. In noting the activities envisaged in the future in this context, a number of delegations emphasized the need for WIPO to continue and strengthen its cooperation with developing countries in the establishment of an efficiently working infrastructure for implementation of laws on copyright and neighboring rights.

16. The Permanent Committee also noted with considerable appreciation the national, regional and subregional workshops, seminars and meetings organized or supported by WIPO during 1989 and 1990 as well as those planned for 1991, as described in document CP/DA/IX/2.

17. A number of delegations spoke appreciatively of WIPO's publications in the field of copyright and neighboring rights, particularly congratulating the International Bureau on its policy of arranging for a wide distribution of those publications.

18. Several delegations stressed the importance of the international congresses on copyright and neighboring rights sponsored by WIPO, which were being held in Latin America, in order to create awareness of the significance of copyright as an instrument for social and economic development.

19. Certain delegations emphasized the necessity, in view of the prevalence of commercial piracy of works protected by copyright, of continuing and strengthening WIPO's activities, at international and national levels, in order to combat such piracy especially as regards musical works.

20. Several delegations drew attention to the need for strengthening collective administration organizations where these exist in developing countries, with assistance in the provision of computer

equipment and on-the-spot training of the staff concerned in the optimal utilization of such modern methods.

21. A number of delegations made certain specific suggestions for further activities in the field concerned, as well as committed their assistance to the implementation of such activities and gave certain other relevant information as follows.

22. The delegation of Uruguay stressed the importance of the work undertaken by the International Bureau in respect of development of human resources, of legislation and assistance in establishing the necessary institutions in developing countries. The congresses, seminars and courses organized by WIPO made possible an exchange of information and views which was very important for developing countries in the present international context particularly with respect to the transfer of technology. The constant development of new technologies necessitated a constant updating of the norms at national and international levels. In this respect, the delegation praised WIPO for the organization of the Regional Forums on the Impact of Emerging Technologies on the Law of Intellectual Property. The delegation also expressed its support for WIPO's development cooperation program in the field of copyright and neighboring rights and encouraged the International Bureau to continue and strengthen its activities under this program.

23. The delegation of Chile mentioned the First National Seminar on Copyright and Neighboring Rights, held in Santiago in December 1990 and thanked the International Bureau for the assistance given in the organization of this event. It expressed that its country would host, in 1992, the Seventh International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers), as well as the 10th WIPO/SUISA Course on Copyright and Neighboring Rights. Concerning legislation, a draft law designed to improve the collective administration system in Chile had been introduced in the National Congress. The delegation also mentioned the recent accession of Chile to the Paris Convention for the Protection of Industrial Property.

24. The delegation of Sri Lanka underlined the professionalism and the dedication of the International Bureau in responding to the requests of developing countries in the field of copyright and neighboring rights for the promotion of their economic and cultural development. Dissemination of knowledge about copyright and neighboring rights was, in the view of that delegation, particularly

important; in the drafting of programs for activities in this field attention should be given to the need to deal both with the public and the private sectors and to invite speakers also from the private sector, so as to increase the understanding of the benefits of protection of copyright and neighboring rights among all those concerned. An increased dissemination of knowledge about the doctrine, legislation and administrative measures for the implementation of the law could contribute to the formulation of a national policy and to the transfer of technology on appropriate terms. It was important to continue and to increase cooperation between developing countries at the regional, subregional and interregional levels and to make use of the increasing experience of developing countries. The delegation mentioned that each year since 1984 (with one exception) its country had hosted and helped to organize WIPO's regional training courses on intellectual property and that it would be glad to continue to host such courses also in the future.

25. The delegation of Italy particularly stressed the need to give adequate protection to expressions of local culture and local identity, and said that means to ensure such protection have to be found. It stressed that a proper balance between different interests had to be achieved, and particular attention should be given to training in this field. Its country would be prepared to continue cooperating with the International Bureau in the implementation of its valuable development cooperation program.

26. The delegation of Mali, in addition to thanking the International Bureau for the quality of its activities in the field of development cooperation, stressed the contribution these made towards the cultural development of developing countries.

27. The delegation of Morocco referred to the hosting by its country of the meeting of a Working Group on the Protection of Literary and Artistic Works in Member States of ISESCO (Islamic Educational, Scientific and Cultural Organization) in Rabat in 1989 and to the accession of its country to the 1971 Paris Act of the Berne Convention and also expressed its appreciation of the various activities of WIPO in the field of development cooperation related to copyright and neighboring rights.

28. The delegation of Peru thanked the International Bureau for its support for the organization of the First and the Second National Congresses on Copyright held in Lima in 1989 and in Cuzco in 1990. The delegation mentioned that the Third Congress will be held in August 1991 in Arequipa and expressed the hope that WIPO would cooper-

ate in the organization of that Congress. The delegation also expressed its appreciation for the assistance given by WIPO in the drafting of the law on the rights of performing artists and in the improvement of the activities of the Peruvian Authors' Society. With regard to the tasks of the Permanent Committee, it considered that work should continue on promoting the interchange of experience in the field of intellectual property among countries members of WIPO and on affording technical assistance to developing countries that so requested such as Peru, in connection with computer technology applications in the field of copyright and neighboring rights. The delegation supported the holding of specialized courses, organized by WIPO at the regional level, at which the valuable experience of individual countries was pooled and which facilitated intraregional cooperation. Technological developments and their impact on the law of intellectual property required constant and increasing attention to the training of staff in order to cope with the preparation or revision of the laws in that context, with a view to affording adequate protection to copyright and neighboring rights. It also mentioned that the conclusion of the Treaty on the International Registration of Audiovisual Works was an important step towards an appropriate protection of the rights in this field. The delegation expressed the hope that an increasing number of countries would accede to the said Treaty.

29. The delegation of Algeria stressed the need to give, as in fact the International Bureau had done in the past, particular attention to the creation of awareness of intellectual property law as well as to legislation and collective administration in that field and to the development of human resources. The delegation supported the need for adoption of medium-term plans to improve the effectiveness of the training program. Its Government had already in the past cooperated with WIPO both in providing training opportunities as well as in the establishment of norms and would continue and strengthen that cooperation in the future. The delegation stressed the need of harmonizing legislation at the regional level. The establishment of collective administration organizations should continue to be given special attention by the International Bureau, particularly as regards standards for the management of such organizations. The delegation also expressed its appreciation to the International Bureau for the preparation of the Model Law on Copyright in spite of the difficulties in accommodating different schools of thought; the Model Law would facilitate a common attitude to the problem caused by the use of new technologies. Its country had contributed to the preparation of that Model Law, both by hosting a meeting of an informal

group of experts on the subject and by participating in the sessions of the Committee of Experts.

30. The delegation of Senegal expressed the wish that WIPO should assist authors' societies in developing countries in Africa, particularly in the Sub-Saharan region. It also stressed the need to increase efforts to find radical solutions to the problem of piracy of musical works and to provide efficient means to stop it. Its country was considering hosting a meeting, if possible with the cooperation of WIPO, to study measures against piracy in Africa.

31. The delegation of Guinea thanked in particular the International Bureau for its fruitful cooperation in organizing the First National Seminar on Copyright for delegates of the prefectural branches of the Copyright Office of Guinea in Conakry in December 1990 which also marked the 10th anniversary of the Copyright Office of Guinea. The delegation underlined the necessity to take steps, under the aegis of WIPO, against piracy, which, it said, is a plague in Africa.

32. The delegation of France, in particular, highlighted the need to structure the training programs so as to ensure an appropriate follow-up to training courses. Training and provision of information was an important factor also for persons in the legal profession, including officials working in ministries and judges. The delegation also underlined the need for constantly adapting training programs to the advances in new technologies, particularly in the field of dissemination and of reproduction of works. The Model Law on Copyright which is presently being drawn up by the International Bureau would be of particular importance for a more efficient protection of copyright. Also, the delegation expressed its appreciation for the work undertaken by WIPO in the field of collective administration and said that it hoped to repeat the experience of the Specialized Training Course on Copyright and Neighboring Rights organized with the financial support of its Government, in Algeria, also in other continents and dealing with other subject matters.

33. The delegation of Congo underlined, in particular, the importance of training and of development of human resources and stressed the necessity of providing collective administration organizations in developing countries.

34. The delegation of Burkina Faso also mentioned the need for strengthening of collective administration organizations. It was important not only to have a good legislation but also to ensure its proper implementation, *inter alia*, through efficiently working collecting societies. The delegation

said that the publications and guides prepared by the International Bureau were particularly important in order to properly understand the usefulness of treaties to which accession was being considered.

35. The delegation of the United States of America expressed its great satisfaction with the activities of WIPO in training and in the preparation or updating of copyright laws and also in the establishment of institutions for their implementation, and pledged the support of its country for the continuation of these activities. The delegation said that there had been a dramatic increase of those activities in recent years. The delegation informed the Permanent Committee that in 1989 an International Copyright Institute had been set up within the Copyright Office of the United States, with the financial support of Congress, for the purpose of providing, on a regular basis, training of officials of developing countries in copyright matters. That training took, in particular, the form of inviting participants from such countries to the United States to study the functioning of the copyright system. The delegation specially mentioned the close cooperation between WIPO and the Copyright Office; within the framework of that cooperation three training courses for developing countries from different regions of the world had been or were being organized: two in 1990, in English and in French, respectively, and one which will take place in April/May 1991 in Spanish. In September 1991 a course for Chinese officials was envisaged. The delegation pledged to support the activities of WIPO in the copyright field on a regular basis.

36. The delegation of Benin expressed its great satisfaction with the assistance which its country had received since the last session of the Permanent Committee. In its view, it was important to provide information about copyright law and its implications to legislators and judges, and it was desirable that WIPO should organize, together with the International Confederation of Societies of Authors and Composers (CISAC), regional activities for the creation of awareness about this branch of law.

37. The delegation of Spain mentioned the forthcoming Ibero-American Copyright Congress and the First Meeting of Heads of Copyright Offices and Authors' Societies of Latin America to be held in Madrid in cooperation with WIPO, in October 1991. Also, the Ministry of Culture will organize seminars for the legal profession in Spain, especially designed at providing training in special fields of intellectual property, so that, for instance, judges and magistrates be fully informed about the scope and importance of copyright law. The Minis-

try of Culture would, in addition, arrange seminars on the subject at Spanish universities, specifically those of Madrid, Barcelona and Santiago de Compostela.

38. The delegation of Hungary said that the enhancement of creativity in a given country depended largely on two factors: adequate human resources and political will; the activities of WIPO helped to support those factors. More and more former participants in training activities under the Permanent Program were showing up as representatives of their governments in, for instance, WIPO meetings. Its country had for several years contributed to the development cooperation program through the organization, together with WIPO, of general introductory training courses, whose bilingual character was useful in that it contributed to a fruitful discussion between different approaches to copyright protection. It should be underlined that one practical result of the training program was that it led to personal contacts which facilitated, for instance, the conclusion of reciprocal agreements between collecting societies; one example of this was the bilateral agreement recently concluded between the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS) and the collecting society in Madagascar.

39. The delegation of Tanzania said that the authorities in its country were in the process of revising the copyright law so as to take into account new media and information technologies and also to provide for protection of neighboring rights; performers were not well protected which was unfortunate because the cultural heritage of a country was to a large extent linked to its folklore. The delegation expressed the hope that WIPO would provide assistance in the modernization of the law and in the setting-up of an appropriate infrastructure.

40. The delegation of Cuba expressed its great appreciation of the efforts that the International Bureau had undertaken, starting with the official visit of the Director General in December 1989, to assist its country both in the updating of the copyright legislation and in the establishment of the infrastructure and also in respect of training. The subsequent mission of a WIPO official together with a consultant on collective administration of copyright has played a decisive role in the development of copyright in Cuba. The assistance received from WIPO covered all the three aspects mentioned in the document under discussion: training of Cuban officials, improvement of copyright legislation and assistance in the reinforcement of the collective administration system. The delegation also mentioned that WIPO's action had stimulated

bilateral cooperation between the Cuban Authors' Society (CENDA) and other copyright organizations and also thanked those governments and organizations which had provided assistance to its country in the past.

41. The delegation of Colombia spoke about the impact that the activities of WIPO in the field of copyright had in Latin America and particularly in its country. The experience of the Copyright Congresses organized in Latin America might be used for the organization of similar programs in other continents. In 1989, the first course on neighboring rights had been held in Colombia which was of particular practical value in that the protection of copyright and of neighboring rights was now provided for in a single law. Also, a course on collective administration, in 1989, had yielded practical results in that several of the participants had now become involved in the management of such administration. The provision of information about copyright was important; now staff members of the Copyright Office in Colombia were giving lectures on copyright law and its implementation in the law faculties in the universities in the country and in training centers. In its view, it was important to provide information not only to judges but also to legal practitioners; since 1990, 77 hours of teaching had been provided in 17 different centers of higher education for 805 students. It was important to create an appropriate computer software for use in authors' societies in order to make it possible to provide prompt and reliable information. Also, the delegation drew the attention to the need of distributing appropriate publications in the field of copyright and neighboring rights to university libraries and other institutions.

42. The delegation of Guatemala referred to the organization, together with WIPO, of the Fourth International Congress on the Protection of Intellectual Rights in Guatemala City in 1989 and the seventh WIPO/SUISA Course also organized the same year in that city. The delegation stressed the importance of the recent visit of a WIPO official to meet the new government authorities responsible for intellectual property as a consequence of which WIPO's assistance was being provided for the elaboration of a new copyright law.

43. The delegation of Turkey said that both the development of human resources and the preparation of an appropriate legislation as well as the building-up of institutions were of crucial importance for developing countries but that the development of human resources should be seen as the first priority.

44. The delegation of India said that its country had been a member of the Permanent Committee since its first session and that it had regularly provided funding for training and facilities for cooperation with WIPO's training activities in this field and stated that this would be continued in the future; it had also benefited from WIPO's training programs for its own officials.

45. The delegation of Argentina mentioned the organization, together with WIPO, in its country of the Fifth International Congress on the Protection of Intellectual Rights and of the WIPO/SUISA Course in Buenos Aires in 1990. It also mentioned that the Argentine Society of Composers and Musicians regularly received trainees from other Latin American countries and expressed its appreciation for the holding, in Madrid, in October 1991, of the First Ibero-American Copyright Congress and of the Meeting of Heads of Copyright Offices and Authors' Societies in Latin America. The delegation suggested that WIPO consider organizing training courses for representatives of developing countries in connection with negotiations on intellectual property. It also proposed that consideration should be given to the question of revising and harmonizing the copyright laws in countries belonging to regional groupings such as the recently created regional market comprising Argentina, Brazil, Paraguay and Uruguay.

46. The delegation of Mexico especially referred to the organization, together with WIPO and the Mexican Federation of Authors' Societies (FEME-SAC), of the Sixth International Congress on the Protection of Intellectual Rights in Mexico City in February 1991 which had an impact far beyond what was anticipated; in particular, judges and magistrates were becoming increasingly concerned about copyright matters. The delegation said that the lack of implementation of a copyright law was particularly harmful and that, therefore, a proper development of human resources was necessary.

47. The delegation of the Republic of Korea mentioned that the new premises of the International Intellectual Property Training Institute would be inaugurated in May 1991 by the Director General of WIPO and expressed the hope that the facilities at the said Institute would be utilized in the WIPO program for development of human resources.

48. The delegation of Nicaragua stressed the value which the WIPO training program had for its country; it also stated that the Parliament of its country was presently discussing a new law on copyright and that the information provided by the

International Bureau had been of particular importance in that context.

49. The delegation of Malawi said that a new copyright law had been established in its country and that a copyright society had also been set up, with the cooperation of WIPO and would be headed by a newly appointed Copyright Administrator; the Government had provided funds for the establishment of the society and also appointed a Copyright Management Board with the special task of advising on the management of the society. The delegation hoped that the International Bureau would assist in the training of personnel and in publicizing the new law through seminars and workshops. Also, the delegation said that consideration should be given to the organization of a regional workshop for Eastern and Southern African countries to discuss copyright matters of interest for the region.

50. The delegation of Germany referred to the unification of the former German Democratic Republic with the Federal Republic of Germany with effect from October 3, 1990. One of the implications of that unification was that the copyright legislation of the Federal Republic of Germany now also applied to the former German Democratic Republic with some transitional provisions as to the effects of the laws in the latter. It stated that the Government of Germany was aware of the need to reinforce its contribution to copyright cooperation activities with WIPO. It also referred to the proposed organization of a two-week Workshop on Collective Administration in June 1991, for participants from Asian countries by the Carl Duisberg Gesellschaft (CDG), an institution supported by its Government.

51. The delegation of Bangladesh referred to the fact that particular attention should be given to the needs of the least developed countries like its own country, particularly for assistance in the setting-up of authors' societies. The delegation also thanked WIPO for the assistance given to its country.

52. The delegation of Indonesia mentioned various activities carried out in its country in cooperation with WIPO, particularly the organization of national seminars aiming at increasing the awareness of copyright. It thanked the International Bureau as well as the United Nations Development Programme (UNDP) and donor countries and organizations for their assistance.

53. The delegation of the Philippines referred to a Subregional Copyright Course held in Manila in

1984, which had greatly contributed to a growing awareness of copyright in the country and a resultant increase in creative activities, particularly as regards certain textbook programs. It mentioned that a draft bill for the setting-up of a special body for the administration of copyright was being considered. As far as future activities are concerned, the delegation particularly stressed the importance of the training program, including training in the enforcement of the law, the management of rights of local authors, and the teaching of the law on copyright and neighboring rights. It also referred to the necessity of an adequate follow-up of various activities, including training programs, and pledged the willingness of its country to continue its cooperation with WIPO.

54. The delegation of Malaysia expressed its appreciation of the various activities undertaken in its country by WIPO in 1989 and 1990, including advice given concerning amendments to the Copyright Act and in connection with the country's accession to the Berne Convention which took effect from October 1, 1990. It also thanked WIPO for assistance in the setting-up of a collective administration organization in the country, for training of Malaysian officials inside and outside the country and for the assistance received from WIPO in organizing the Seminar on the Impact of Emerging Technologies on the Law of Intellectual Property and the Meeting to Generate Awareness of the Importance of Copyright in the Member States of ISESCO, both of which took place in Kuala Lumpur in 1990. The delegation further referred to, and expressed its appreciation of, certain activities proposed to be undertaken with the assistance of WIPO, in particular in connection with the establishment of a collective administration organization for reprographic reproduction rights and the proposed organization of a national course on copyright trials.

55. The delegation of Niger mentioned, in particular, the need for creating awareness about copyright, including the benefits of collective administration, through the organization of seminars and courses in the countries concerned. The delegation also said that steps were being taken in its country to set up a copyright administration which will be responsible not only for copyright matters, but also for neighboring rights. The delegation hoped that its country would be able to benefit from the support of WIPO as regards future activities in the field of copyright and neighboring rights, particularly in the development of human resources.

56. The delegation of Lesotho thanked WIPO for the assistance given to its country, particularly ad-

vice in respect of the new copyright law which was passed in 1989 and asked for further assistance in the establishment of a collective administration organization and in the organization of a national workshop to increase the awareness about copyright and neighboring rights. It also hoped that the training of officials from developing countries would increase and supported the idea that more lecturers and consultants from developing countries be used in WIPO's activities.

57. The delegation of Romania also thanked WIPO for the assistance given to its country and said that a service had been set up within the Ministry of Culture with responsibility for copyright at the national level, and for the preparation of a new copyright law as well as the establishment of a well-functioning organization for collective administration. The delegation also referred to the holding of a national symposium on intellectual property in May 1991, organized by the Ministry of Culture and the State Office for Inventions and Trademarks.

58. The delegation of the United Kingdom stated that it was pleased to cooperate with WIPO in the training activities in this field. It had cooperated with WIPO in the organization and funding of periodical Copyright Training Courses for developing country officials, in London, since 1981, and hoped to be able to do so also in the future. It also referred to the revision of the copyright law of its country which had enabled it to accede to the 1971 Paris Act of the Berne Convention.

59. The delegation of Haiti referred to the importance for its country of training and of receiving documentation and sharing experience with other countries, for the purpose of strengthening of the copyright system of its country. In 1990, the first Association of Authors, Composers and Musicians had been established and contact had been taken with the Government in order to set up a copyright society. The delegation asked for WIPO's assistance in this respect and also for assistance in the organization of a national seminar for the purpose of increasing awareness about the need to protect copyright in order to stimulate creativity.

60. The delegation of the Central African Republic stressed the need for appropriate training in the field of copyright and neighboring rights and asked for WIPO's assistance in strengthening of its copyright infrastructure.

61. The delegation of Uganda said that its country would be pleased to host, in November 1991, in Kampala, an African regional seminar, to be orga-

nized by WIPO in cooperation with the OAU, and expressed the hope that the Seminar would contribute to the strengthening of the copyright system in the region.

62. The delegation of Jamaica thanked for the assistance given to its country by WIPO. It said that a new copyright law was being prepared, that steps were being taken to set up an organization for collective administration of copyright and that it looks to WIPO's assistance in this context.

63. The observer from the General Agreement on Tariffs and Trade (GATT) thanked WIPO for the invitation to attend the meeting of the Permanent Committee and stated that he had followed the discussions with particular interest.

64. The observer from the International Confederation of Societies of Authors and Composers (CISAC) stressed, in particular, the imaginative programs and activities undertaken by WIPO in respect of developing countries, through special attention and dedication of resources for the setting-up of collective administrations in developing countries as well as organizing seminars in French and Spanish in cooperation with the Copyright Office of the United States of America. He also commended WIPO's initiative in organizing a symposium on collective administration during the current session of the Permanent Committee. The observer also expressed his great appreciation of the continued cooperation of WIPO with his organization as well as participation by WIPO officials in the various meetings of CISAC, and hoped that this cooperation would, in the future, be strengthened.

65. The observer from the International Federation of Library Associations and Institutions (IFLA) referred, in particular, to the need of striking a proper balance in copyright laws between the interests of the authors and those of the users so as to make possible and facilitate access to information through libraries in developing countries.

66. The International Bureau expressed its thanks to the delegations and observers for their observations and suggestions, and said that all these had been duly noted and would be taken into account in the planning and organization of future activities.

67. As far as the issue of computerization of the operations of collective administration organizations was concerned, it said that the importance of making available the necessary software was recognized and that the International Bureau would continue to examine the possibility of preparing a suit-

able software package to be used by developing countries, subject to budgetary availability.

68. The Permanent Committee noted with considerable satisfaction the contents of Part One of the document CP/DA/IX/2 as also the statements made by various delegations and approved the activities of the International Bureau as indicated in the said document.

State of Accessions to or Ratifications of Treaties

69. Discussions were based on Part Three of document CP/DA/IX/2.

70. In introducing this part of the document the International Bureau urged States to give consideration to adhering to the various treaties administered by it in the field of copyright and neighboring rights, such as for instance also the recent Treaty on the International Registration of Audiovisual Works (the Film Register Treaty), in particular by those States which had signed that Treaty.

71. The delegation of Chile stated that steps were being taken in its country to enable its ratification of the Film Register Treaty.

72. The delegation of Spain stated that in February 1991 the Rome Convention had been submitted to Parliament with a view to accession, and that it could be approved by the end of the spring of 1991. It added that its Government was also actively considering accession to the Film Register Treaty.

73. The delegation of India said that its Government was giving active consideration to the accession to the Film Register Treaty.

74. The delegation of Ghana mentioned that its Government had taken a decision to accede to the Berne Convention, which accession would probably be notified towards the middle of 1991.

75. The delegation of Colombia stated that steps were being taken for its country to adhere to the Phonograms Convention and to the Film Register Treaty.

76. The delegation of Malawi said that serious consideration was being given to adhere to the Berne Convention.

77. The Permanent Committee noted the information contained in Part Three of document CP/DA/IX/2 and in the statements made by the

various delegations. It also invited the governments of States not yet party to one or the other of the Conventions mentioned in this document, to consider the possibility of adherence to those Conventions.

The Permanent Program in 1992 and 1993

78. Discussions were based on Part Two of document CP/DA/IX/2.

79. All the delegations that spoke supported the aims and objectives of WIPO's Permanent Program Related to Copyright and Neighboring Rights envisaged under that Program for 1991-93, in particular those reflected in paragraphs 156 to 158 of the above-mentioned document.

80. The delegation of Guinea reiterated the importance of providing an increasing number of lecturers from developing countries in various seminars and workshops; it also mentioned that radio and television organizations were large users of works protected by copyright and it was desirable, through specific awareness campaigns, to give them a better understanding of the importance of copyright as an effective instrument of cultural and economic promotion; it suggested that WIPO should help in organizing a seminar on copyright for journalists to increase their awareness in this field.

81. The delegation of Italy drew the attention of the Permanent Committee to the need for encouraging local creativity; it explained that one means of doing so was to give adequate protection also to foreign works. The delegation furthermore stressed the need for developing teaching of copyright law in universities and other institutions of higher education. As regards the need for computerization of the operations of collecting societies, the delegation especially underlined the desirability of developing computer programs which were compatible with each other, and for collecting societies and authors' organizations that really needed them.

82. The delegation of Uruguay urged the International Bureau to continue and strengthen its invaluable assistance to developing countries in the field of copyright; it also asked for assistance, if needed, in harmonization of legislation and human resource development in the countries which had recently grouped into a common market (MERCOSUR), namely Argentina, Brazil, Paraguay and Uruguay, and for assistance in development of infrastructures best suited for the newly established Community.

83. The delegation of Congo particularly stressed the need for training in copyright matters to be continued so that developing countries could have competent staff for implementation of copyright protection; it also underlined the need for computerization of services, particularly for carrying out the distribution of fees by collecting societies. Journalists concerned with broadcasting organizations and the legal profession should also be made aware of the need and importance of copyright in the context of development.

84. The delegation of Benin in particular referred to the need to progressively facilitate computerization in the new authors' societies in Africa. The delegation stressed the need for special training of officials of broadcasting organizations in some African countries and also suggested that WIPO should organize a workshop for judges on copyright matters.

85. The delegation of Colombia proposed the organization of two regional forums in Latin America, one to deal with the Model Law on Copyright and another to promote the Film Register Treaty; it also suggested that the WIPO/United States Copyright Seminar in Spanish in April/May 1991 should be followed up in other countries, if possible on a regular basis. The delegation underlined the importance of computerizing the operations of collecting societies, stressed the importance of teaching of copyright law in universities and suggested the convening of mock trials in copyright cases which it considered would be useful for the judiciary. The delegation also asked for WIPO's support for a study on the economic impact of copyright in Colombia as such a study would be important, for instance, in international negotiations on intellectual property matters.

86. The delegation of Spain proposed to include in the activities in 1993 an introductory course on copyright in the Spanish language to be organized by the Government of its country in cooperation with WIPO. Also, the delegation stated that the General Society of Authors in Spain (SGAE), which has strong links with the Government, would be prepared to have a regular program of cooperation with WIPO for organizing, thereafter, annual courses from one to four weeks duration on legal issues, computerization and other matters relating to the management of collecting societies. The participants would be selected jointly by WIPO and SGAE and the latter offered to cover also local costs including subsistence allowance for the selected participants.

87. The delegation of Burkina Faso supported proposals made by Benin, Congo, Guinea and Mali

concerning computerization and training for the purpose; it also stressed the need for training of officials concerned with broadcasting in respect of copyright questions. It also stressed the desirability of organizing mock trials on copyright cases for African judges.

88. The delegation of Hungary stated that the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS) was prepared to organize, as in the past, general introductory courses on copyright; it also reiterated its offer to receive one or two trainees each year for two weeks for practical training.

89. The delegation of Mexico offered to continue its program of cooperation with WIPO and announced that it would be prepared to receive three trainees each year instead of two in the past, for a practical and theoretical training of two weeks.

90. The delegation of Ghana stressed the need of developing the teaching of intellectual property law relating to copyright and neighboring rights at the university level and informed that the University of Ghana would introduce a course on intellectual property with effect from the next academic year. The delegation underlined the need of providing standard software for collective administration of copyright as soon as the authors' societies were themselves able to acquire the necessary hardware. It also highlighted the desirability of holding regional seminars and symposiums on collective administration of copyright and neighboring rights.

91. The delegation of the United States of America, supporting the delegation of Italy, stated that the protection of foreign works could best encourage local creativity. It also stressed that its Government will continue and, if possible, increase its cooperation activities to meet the needs of developing countries.

92. The delegation of Mali underlined the necessity of computerization of the authors' societies; it also stressed the need to organize a seminar on information and sensibilization for officials of broadcasting organizations, judges and other legal officials.

93. The delegation of Indonesia informed that the WIPO Permanent Program for 1991-93 was in line with its Government's own aims in the field of copyright. It also mentioned that its Government had arranged through university lecturers to help build up copyright awareness.

94. The delegation of Guinea-Bissau informed the Permanent Committee of its country's adher-

ence to the Berne Convention for the Protection of Literary and Artistic Works, and delivered the instrument of accession addressed to the Director General of WIPO. The delegation requested WIPO to consider a program of assistance to its country in regard to the legal and practical application of the Berne Convention as well as concerning a new legislation on copyright. It also asked for assistance in training the staff responsible for implementation of the legislation, and in establishing the system of collective administration according to the needs of its country. It informed the Permanent Committee that once these objectives were reached, its Government would ask WIPO to organize a subregional seminar for Portuguese-speaking African countries to mutually consider questions of copyright and neighboring rights and their administration.

95. The representative of the Association of Composers and Musical Authors of Costa Rica (ACAM) underlined the need of a proper standard software for collecting societies since a basic software for beginners would enable the young societies to create the necessary links between them. He also mentioned that in August 1991, the ACAM will start collecting fees on the use of musical works and thanked WIPO for its help, in cooperation with the Government of Costa Rica, in the creation of this Society.

96. The International Bureau expressed its sincere thanks to the delegations which had offered the hosting of training courses or accepting WIPO trainees as well as to those which had offered to host meetings and seminars and stated that all the suggestions made during the discussions had been duly noted and would be taken into account in the planning and organization of future programs.

97. The Permanent Committee noted the contents of document CP/DA/IX/2, Part Two, and the statements made, as also the statement of the International Bureau.

Symposium on Collective Administration of Copyright and Neighboring Rights

98. As decided by the Permanent Committee at its eighth session (April 1989), the Permanent Committee devoted half a day of its ninth session (the morning and part of the afternoon of the second day of the session) to the examination of collective administration of copyright and neighboring rights. A presentation was made by Dr. Ulrich Uchtenhagen, former Director General, Swiss Society for Authors' Rights in Musical Works (SUISA). It was followed by discussions led by a panel consist-

ing of Mr. Halimi Hussain, Director, Intellectual Property Division, Ministry of Domestic Trade and Consumer Affairs, Malaysia, Mr. José María Morfin Patraca, Director General of Copyright, Secretariat of Public Education, Mexico, Mr. Ndéné Ndiaye, Counsellor for African Affairs, International Confederation of Societies of Authors and Composers (CISAC), Mr. Mihály Ficsor, Director, Copyright Law Division, WIPO, acting as moderator.

99. In the discussions delegations of nine States and five non-governmental organizations made statements.

100. Based on the discussions that took place in the Symposium, the Permanent Committee recommended that WIPO should continue to give particular attention to the setting-up of collective administration organizations in developing countries.

Topic for the Symposium to Take Place During the Tenth Session of the Permanent Committee

101. Discussions were based on document CP/DA/IX/4.

102. The Permanent Committee unanimously recommended that it should devote one day of its next session to the examination of the subject of effective enforcement of copyright and neighboring rights.

Adoption of the Report and Closing of the Session

103. The Permanent Committee unanimously adopted this report after which the Chairman declared the session closed.

LIST OF PARTICIPANTS

I. Member States

Algeria: S. Abada. Angola: L.F.F.S. Pizarro. Argentina: A. Trombetta. Australia: J. Hannoush. Bangladesh: M. Maniruddin. Benin: B.-Y. Saibou. Brazil: P. Tarrago. Burkina Faso: S. Ouedraogo. Cameroon: G. Towo-Alangana. Central African Republic: M.-G. Kanago. Chile: D. Herrera Sierpe; P. Romero. Colombia: F. Zapata Lopez. Congo: D. Ganga Bidié. Costa Rica: J. Rhenan Segura; J. Rodriguez Airizar. Cuba: F. Martinez Hinojosa. Czechoslovakia: J. Karhanova; V. Popelkova; P. Harsanyi. Egypt: N. Gabr. France: N. Renaudin. Gambia: M.A. Ceesay. Germany: K. Kemper. Ghana: B. Mould-Iddrisu. Guatemala: F. Urruela Prado; M. Juarez Martini. Guinea: O. Kaba. Guinea-Bissau: R. Nene. Haiti: S. Theard Mevs. Honduras: M. Turcios Diaz. Hungary: P. Gyertyánfy. India: R.N. Tewari. Indonesia: H.S. Suradimadja; R. Siahaan; K.P.

Handriyo; E. Husin. Italy: G. Aversa. Jamaica: P. Anderson. Japan: M. Kitani. Kenya: N. Cheluget. Lesotho: N. Pii. Malawi: S.W.D. Chavula. Malaysia: H. Hussain. Mali: M. Coulibaly. Mexico: J.M. Morfin Patraca; I. Otero Muñoz; V. Blanco Labra. Morocco: A. Kandil; F. Baroudi. Nicaragua: J. Saborio; M. Moncada. Niger: M. Djibo. Pakistan: I. Baloch. Peru: R. Saif de Preperier. Philippines: N. Muñasque; D. Menez-Rosal. Poland: T. Drozdowska. Portugal: P.J.F. Cordeiro; A. Queiros Ferreira. Romania: E. Vasiliu; C. Stan. Senegal: A.A. Dabo. Spain: E. Calvo Cabello. Sri Lanka: W. Rasaputram; R.N. Abeyssekera. Switzerland: A. Stabler. Togo: S. Gbodui. Turkey: T. Bayer. Uganda: R.C. Masika. United Kingdom: H. Griffiths. United Republic of Tanzania: T.L. Mkude. United States of America: E. Schwartz. Uruguay: D. Bervejillo; R. Gonzalez Arenas. Viet Nam: Nong Quoc Chan; Nguyen Luong; Thuong Thuan; Nguyen Thanh Long; Nguyen Thi Nha. Yemen: M. Al-Qutaish. Zaire: N. Mutambula.

II. Observer States

Bahrein: A. Sater. Liberia: H.D. Williamson. Namibia: T. Shivanene. Republic of Korea: J.K. Kim. Venezuela: L. Molinos Abreu. Yugoslavia: O. Spasić.

III. Intergovernmental Organizations

International Labour Organisation (ILO): R.A. Beattie. General Agreement on Tariffs and Trade (GATT): D. Gervais. Organization of African Unity (OAU): M.H. Tunis.

IV. International and National Non-Governmental Organizations

Association for the International Collective Management of Audiovisual Works (AGICOA): R. Egli; M.P. Costis; R.-M.

Wasmer. International Advertising Association (IAA): M. Ludwig. International Association of Audio-Visual Writers and Directors (AIDAA): P.-H. Dumont. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): N. Ndiaye. International Confederation of Societies of Authors and Composers (CISAC): N. Ndiaye; J. Moscoso del Prado. International Copyright Society (INTERGU): G. Halla. International Dance Council (IDC): C. Sayegh. International Federation of Film Producers Associations (FIAPF): A. Chaubeau. International Federation of Library Associations and Institutions (IFLA): S. Norman. International Federation of Musicians (FIM): Y. Åkerberg. International Federation of the Phonographic Industry (IFPI): I.D. Thomas; B. N. Garnett; E. Thompson. International Literary and Artistic Association (ALAI): P.-H. Dumont. International Publishers Association (IPA): C. Clark; J.-A. Koutchoumow. Argentinian Association of Interpreters (AADI): J. Votti; E.R. Costa; L.T. Gentil. Association of Composers and Musical Authors of Costa Rica (ACAM): A. Saenz.

V. Officers

Chairman: J.M. Morfin Patraca (Mexico). *Vice-Chairmen:* E. Schwartz (United States of America); A. Kandil (Morocco). *Secretary:* C. Fernández Ballesteros (WIPO).

VI. International Bureau of the World Intellectual Property Organization (WIPO)

S. Alikhan (*Deputy Director General*); H. Olsson (*Director, Copyright and Public Information Department*); C. Fernández Ballesteros (*Director, Developing Countries Division (Copyright)*); G. Peiretti (*Program Officer, Developing Countries Division (Copyright)*).

Correspondence

Letter from the United States of America

Ralph OMAN*

PART I

THE UNITED STATES AND THE BERNE CONVENTION: AN EVOLVING RELATIONSHIP

When the United States adhered to the Berne Convention on March 1, 1989, it did so under the so-called "minimalist" approach: only those changes to U.S. domestic copyright law absolutely necessary to place the United States in compliance with its obligations under Berne would be made. Minimalism was adopted not out of a desire to squeak into Berne, but out of political reality: if we sought to amend U.S. law on a level comporting with the most expansive domestic laws of some other Berne Union members, adherence would have been impossible.

Congress, the Copyright Office, and domestic industries agreed, however, that certain issues raised by Berne adherence warranted further study, after the United States was safely with the Union. We have kept our promise, and last year we amended our copyright statute in two areas directly raised by adherence: moral rights and works of architecture.

Moral Rights for Visual Artists

Article 6^{bis}(1) of the Berne Convention requires that, independently of economic rights:

...the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

This provision was the single most contentious issue surrounding Berne adherence. Ultimately, the United States, backed by the Director General of WIPO, Dr. Arpad Bogsch, concluded that the full panoply of rights available under U.S. law—state and federal—comported with the minimum obligations under the Convention.

The moral rights debate was fought out against a backdrop of fury raging over the computer colorization of black-and-white motion pictures. That fury has now subsided, as barely over 100 films have been "colorized" and few of the computer coloring companies remain in business. The free market seems to have decided the issue rather than the courts¹ or the legislature.

An appealing case had been made, however, for enacting a uniform, federal system of moral rights for works of the fine arts. In 1987 and 1988, Congress heard testimony from artists whose works had been mutilated or destroyed. No opposition in principle surfaced. After adherence to Berne became an accomplished fact, Congress set about drafting legislation to accord visual artists express federal moral rights, prompted by Senator Kennedy's long-standing support for artists. That effort culminated successfully on December 1, 1990, with President Bush signing into law the Visual Artists Rights Act of 1990.² The law will become effective on June 1, 1991.

Provisions of the Visual Artists Rights Act

Covered Subject Matter

The Act protects "works of visual arts," defined as paintings, drawings, prints, and sculpture in their original embodiment and in limited editions of 200 or fewer (if signed and consecutively numbered). Reproductions are excluded, as are the following:

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication:

¹ But cf. *Huston v. La Cinq*, Paris Court of Appeals, 14th Chamber (June 25, 1988).

² Act of December 1, 1990, Public Law 101-650, title VI, 104 STAT. 5128; see *Copyright*, May 1991, insert *Laws and Treaties*, text 5-01.

* U.S. Register of Copyrights, Washington.

- (ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
- (iii) any portion or part of any item described in clause (i) or (ii);
- (B) any work made for hire; or
- (C) any work not subject to copyright protection under this title.

Rights Covered

Three rights are provided in a new section 106A: (1) a right of attribution; (2) a right of integrity; and (3) a right to prevent destruction of copies of the work. The right of attribution encompasses the right to claim authorship of a work the artist has created, the right to prevent the use of the artist's name on a work the artist has not created, and the right to prevent the use of the artist's name on a work the artist created but which has been subsequently distorted, mutilated, or modified in a way that would be prejudicial to the artist's honor or reputation. The right of integrity is limited to intentional acts or omissions that distort, mutilate, or modify the work in a way that would be prejudicial to the artist's honor or reputation. The right to prevent destruction of copies is limited to works of recognized stature and appears to be an absolute right, since the legislation states that "any intentional or grossly negligent destruction of th[e] work is a violation..." Exceptions are provided for modification of works that is the result of the passage of time or the inherent nature of the materials (§ 106A(c)), and complicated rules apply to works embodied in buildings. Fortunately, the legislation provides for a system of record-keeping in the Copyright Office, under which information regarding identification of the author of such a work will be available.

The rights vest in the author "whether or not the author is the copyright owner" (§ 106A(b)) and expire at the author's death (§ 106A(d)); however, state laws granting equivalent rights that extend beyond the author's death are not preempted (§ 301(f)(2)(C)). It is not clear whether such laws are preempted during the author's life.

The Act is partly retroactive, applying to works created before the date of enactment where title to the copy has not been transferred as of the effective date of the legislation, June 1, 1991.

Architectural Works

A second issue raised by Berne Convention adherence was protection for "architectural works": the built design of a work of architecture. After studying the Copyright Office report on works of architecture,³ Chairman Robert W. Kastenmeier of

the state of Wisconsin, in order to place U.S. law unequivocally in compliance with our Berne obligations, introduced two bills: H.R. 3990 and H.R. 3991. No companion bills were ever introduced in the Senate nor did the Senate hold a hearing on the issue. H.R. 3991, which would have extended protection only to unique architectural works was widely opposed. After a hearing developed some suggestions for change, Chairman Kastenmeier introduced a revised version of the legislation. No amendments were made to this revised version after introduction, and it was passed by Congress and signed by the President on December 1, 1990.⁴

The most striking aspect of the legislation is the way it integrates architectural works into the existing copyright law. The legislation is quite brief, containing very few provisions that treat architectural works differently from other works of authorship. For example, the general standards of originality and infringement apply, as do the general statutory provisions on exclusive rights and remedies.

Covered Subject Matter

An "architectural work" is defined as

...the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

The definition differs in three significant ways from the definition found in H.R. 3990. First, only the design of "buildings" rather than the design of "buildings and other three-dimensional structures" is protected. Congress deleted "and other three-dimensional structures" to exclude bridges, highway overpasses, pedestrian walkways, canals, dams, and the like.⁵ The deletion has the effect, however, of raising more sharply the question "what is a 'building'?" The legislative report states that the term encompasses not only structures inhabited by humans, such as housing, office buildings, and religious institutions, but also some structures used by humans, including gazebos, pergolas, and garden pavilions.⁶

Second, "architectural works" can be embodied (fixed) not only in buildings, but also in plans, drawings, or computers, a fact that affects duration, and, in some cases, may lead to confusion, since

⁴ See *Copyright*, May 1991, insert *Laws and Treaties*, text 6-01.

⁵ See H.R. Rep. No. 101-735, 101st Cong., 2d Sess., 19-20 (1990).

⁶ *Ibid.*, at 10-20.

³ Copyright in Works of Architecture: A Report of the Register of Copyrights (June 1989).

architectural plans and drawings remain separately protected as pictorial or graphic works, while architectural works are given their own subject matter category in new § 102(a)(8). This new subject matter category was deliberately provided in order to avoid application of the separability test applicable to pictorial, graphic, and sculptural works embodied in useful articles. In lieu of this test, a two-step analysis will be used:

First, an architectural work should be examined to determine whether there are original design elements present, including overall shape and interior architecture. If such design elements are present, a second step is reached to examine whether the design elements are functionally required. If the design elements are not functionally required, the work is protectible without regard to physical or conceptual separability.⁷

The third difference in the definition of "architectural work" from that contained in H.R. 3990 is found in the final sentence of the definition, which provides some guidance on the nature of authorship in architectural works, including clarification that interior architecture is protected.⁸

Exclusive Rights in Architectural Works

Copyright owners of protected architectural works are granted the same exclusive rights as other copyright owners with two exceptions. First, an exemption is provided for two-dimensional representations of works located in or ordinarily visible from public places (§ 120(a)). Second, notwithstanding the architectural work copyright owner's general right to prepare derivative works, the owner of a building embodying a protected architectural work may make alterations to the building, and may even destroy the building (§ 120(b)). State and local landmark, historic preservation, zoning, or building codes are not preempted (§ 301(b)(4)).

Effective Date

The Act is partly retroactive. It covers architectural works that are both unconstructed on the date of enactment (December 1, 1990) and that are embodied in plans or drawings that are also unpublished on that date. As an incentive to construct these works, the legislation terminates protection on December 31, 2002 if the architectural work has not been constructed by that date. Guidance on the rather complicated durational rules for these works is given in the legislative report.⁹

PART II

OTHER LEGISLATIVE DEVELOPMENTS

Computer Software Rental

In 1988, Senator Hatch of Utah introduced a bill to ban the rental of computer software for purposes of direct or indirect commercial advantage. A hearing was held but no further action was taken.

In 1989, Senator Hatch reintroduced his bill, and a companion bill was introduced in the House by Representative Synar. Both bills were patterned after the Record Rental Act of 1984 (extended in 1988 with a scheduled expiration date of October 1, 1997). As enacted, the computer software rental ban is also scheduled to expire on that date.

A number of amendments were made in the bills as they proceeded through Congress, including: (1) an exemption for lending by nonprofit educational institutions and libraries; (2) an exemption for the rental of Nintendo video games (though not by name); (3) a provision ensuring that equipment that contained computer programs—like cars, microwave ovens and other machines or products—could be rented without liability; (4) a grandfather, nonretroactivity provision that permits individuals who purchased copies of computer software before the date of enactment to dispose of those copies in any manner allowed under the law before enactment of this amendment; and (5) a controversial provision reversing the Fourth Circuit's decision in *Red-Baron Franklin Park, Inc. v. Taito Corp.*¹⁰ *Red-Baron* upheld a claim by the copyright owner of an electronic audiovisual game intended for use in coin-operated arcade machines that section 109 of title 17 (embodying the first-sale doctrine) does not act as a limitation on copyright owners' section 106(4) public performance right. As a result of a last minute compromise, the effective date of this section of the legislation is delayed until one year after the date of enactment (December 1, 1991), with an expiration date of October 1, 1995.

Sovereign Immunity

While the United States is a sovereign and therefore immune from suit, it, like many other sovereigns, has waived its immunity in copyright infringement actions. Under our dual system of federal and state government, the ability of the federal government to waive a state government's immunity is a touchy matter. Because of this sensitivity, the Supreme Court always construes very

⁷ *Ibid.*, at 20-21.

⁸ *Ibid.*, at 18.

⁹ *Ibid.*, at 24-25.

¹⁰ 883 F. 2d 275 (4th Cir. 1989), *cert. denied*, 110 S. Ct. 869 (1990).

narrowly the Eleventh Amendment to the Constitution, which provides that no suits against states may be brought by citizens of another state or a foreign country in federal court. The court has erected substantial hurdles in the way of Congress' attempt to expose the states to suits for money damages in federal court. This poses particular problems for copyright owners, since copyright is a purely federal right. If an action for copyright infringement cannot be brought against states in federal court, no action for copyright infringement may be brought at all, calling to mind the old adage "a right without a remedy is no right."

After a series of lower court cases in copyright actions barring awards of monetary damages against states, identical bills to reverse these decisions were introduced by the Chairman of the copyright Subcommittee in the House, Mr. Kastenmeier, and by the Chairman of the Senate Subcommittee, Senator DeConcini. On November 14, 1990, President Bush signed into law an amended version of these bills.

The legislation simply declares that states, instrumentalities of states like prisons and universities, as well as employees of states acting in their official capacity, are "subject to the provisions of [the copyright law] title [17] in the same manner and to the same extent as any nongovernmental entity." In the light of the fact that copyright is a strict liability tort, individual state employees should now have a strong incentive not to infringe copyrights. The bill is entirely prospective, governing "violations that occur on or after the date of the enactment."

Copyright Office Fee Increase

Finally, let me mention legislation that directly affects the Copyright Office. Copyright Office fees have remained static since January 1, 1978, despite a substantial increase in the number of applications received, and a substantial decrease in personnel. In order to aid the Copyright Office in coping with this mounting pressure, on July 3, 1990, President Bush signed a bill doubling Copyright Office fees. This increase effectively restores the fees to the level Congress set back in 1976, before inflation eroded their value by half. Effective January 3, 1991, the new fees are as follows: *registration of claims to copyright*: \$20; *renewal applications*: \$12; *recordation of documents*: for a document of six pages or less consisting of no more than one title, \$20; for additional titles, \$10 for each group of 10 titles; *additional certificates*: \$8; *searches*: \$20 per hour; *filing notice of intention to make and distribute phonorecords* (under section 115(b)): \$12; *receipt for deposits*: \$4; *special handling*: for both registrations and recordation, \$200

(in addition to regular fee). For each additional claim the fee is \$50; full-term retention of copyright deposits: \$135.

Beginning in 1995, and every five years thereafter, 1, as the Register of Copyrights, am authorized to increase the fees by the percent change in the annual average for the preceding calendar year of the Consumer Price Index.

CONCLUSION: THE FUTURE

As the United States feels its way in the brave new world of Berne, additional reassessments of our domestic copyright law can be anticipated. Already, my office is conducting a study of the feasibility of *droit de suite*,¹¹ with a report due for presentation to Congress on June 1, 1992.

And positive experiences under the Visual Artists Rights Act of 1990 may lead to renewed calls for a uniform, federal system of moral rights for all artists. It is also expected that bills to provide for automatic renewal of old copyrights will be introduced, thereby eliminating one of the last vestiges of formalities in U.S. law, due to expire in any case in the year 2005.

The most immediate impact on U.S. domestic law, however, is the result of domestic politics, due to the election defeat of Congressman Robert W. Kastenmeier, Chairman of the Subcommittee in the House of Representatives on copyright for the last 30 years. Mr. Kastenmeier was well-known for his fine hand in balancing the interests of authors and the public and for his diligence in searching out the facts necessary to achieve that balance. His interest in the Stockholm Conference was an early indication of this diligence. Later, during the Berne adherence process, his convening of special sessions of his Subcommittee in Geneva and Paris to confer with foreign experts demonstrated that his energy remained unflagging.

The new Chairman, William Hughes of New Jersey, is a respected member, but his views on copyright are not as well-known. One area where there may be a difference as a result of Mr. Kastenmeier's departure is in design legislation. After years of study, Mr. Kastenmeier remained skeptical as to the wisdom of such an endeavor. Renewed efforts are now under way to enact a *sui generis* design statute. In the years ahead, the copyright portfolio promises to be as full and as exciting as it has been in the past. The World Intellectual Property Organization, under the leadership of Dr. Bogsch, will continue to exert a strong influence on the course the United States takes in shaping its copyright laws to accommodate the new technologies.

¹¹ 56 Fed. Reg. 4110 (February 1, 1990).

Calendar of Meetings

WIPO Meetings

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

1991

June 3 to 21 (The Hague)

Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (First Part)

The Diplomatic Conference will discuss 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 4 to 8 (Geneva)

Committee of Experts on a Possible Protocol to the Berne Convention (First Session)

The Committee will examine whether the preparation of a protocol to the Berne Convention for the Protection of Literary and Artistic Works should start, and—if so—with what content.

Invitations: States members of the Berne Union and, as observers, States members of WIPO not members of the Berne Union 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 Geographical Indications (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

- September 30 to October 4 (Prague)** **International Copyright Society (INTERGU): Congress**
- October 1 to 4 (Berlin)** **International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting**
- October 5 and 6 (Madrid)** **International Literary and Artistic Association (ALAI): Executive Committee**
- October 7 to 9 (Salamanca)** **International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting**

1992

- January 27 to February 1 (New Delhi)** **International Publishers Association (IPA): Congress**
- October 18 to 24 (Maastricht/Liège)** **International Confederation of Societies of Authors and Composers (CISAC): Congress**

