Published monthly
Annual subscription:
160 Swiss francs
Each monthly issue:
20 Swiss francs

Copyright

27th year – No. 6
June 1991

Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

ISSN 0010-8626

Studies

The Setting-Up of New Copyright Societies Experience and Reflections

Ulrich UCHTENHAGEN*

Contents

* Former Director General, Swiss Society for Authors' Rights in Musical Works (SUISA), Zurich.

Introduction

1. When a country decides to begin with the setting-up of its own radio or television institution, or to establish a national airline company, or to enter any other field that is technically or administratively unfamiliar to it, it makes use of the experience already gained in other countries and arranges for its specialists to receive their initial training in those other countries. Radio technician, cameraman, pilot or aircraft mechanic are professions in which the necessary qualifications can only be obtained by thorough and painstaking training.

2. The same applies to the setting-up of a copyright society. The collective administration of authors' rights is a profession that demands basic legal training, administrative capabilities and a well-founded knowledge of tariffs, collection of remuneration, documentation, distribution and settlement, data processing and social welfare. Anyone who sets about establishing a copyright society without having the necessary professional training runs the risk of rapidly going aground as an amateur. And since such problems arise not infrequently, I would like to point out, at the very beginning of this study, that the successful establishment of a copyright society depends essentially on the professional training of its head and of its staff.

3. Quite often, authors feel themselves capable of administering their own rights and the rights of their fellows, since they of course know what is wanted. However, without professional training an author is just as much an amateur in matters of collective administration as is a complete outsider. Therefore, authors who wish to act as the heads of copyright societies will find no way round the need to acquire thoroughly the trade of collective administration.

1. The Prerequisites for Setting Up a Copyright Society

4. A tree can only flourish when its roots are anchored in good soil, when it enjoys enough light, when it is sufficiently watered and is spared the attacks of parasites. Likewise, copyright societies are also dependent on specific "environmental conditions" if they are to develop. These prerequisites should be thoroughly examined by specialists before a decision is taken to set up a society. The most important of these conditions are set out briefly below.

(a) Legislation

5. Authors' rights can only be administered collectively if they are properly guaranteed by law. For instance, there is not much point in setting about administering broadcasting rights if there is no certainty, as a result of statutory exemptions, that the radio and television stations are indeed obliged to pay compensation to the authors of the works that are broadcast. Likewise, it is hardly advisable to try to administer copyright in the manufacture of copies of works in a situation where the country is flooded with pirate products and the authorities accept that state of affairs.

6. Furthermore, collective administration of authors' rights will only be successful if domestic and foreign works are protected in the same manner, that is to say if the country undertakes to treat works by national authors and works by authors of other States on an equal footing by acceding to the international conventions. Where foreign works are not treated in the same way and therefore remain without protection, they will constitute a kind of "dumping"—since no royalties have to be paid for them—and will thereby undermine any reasonable utilization of domestic works. On the other hand, if it is protection for domestic works that is lacking, then a copyright society will degenerate into the representative of foreign interests and will never achieve full recognition in the country in which it operates.

(b) Bundled Rights

7. Decades of experience have shown that the collective administration of copyright will never get anywhere unless the copyright society succeeds in uniting under its control all rights in a given legal area in respect of a given category of works, for instance all rights concerning the public performance of non-theatrical music. This unified control in one hand can be achieved either by affording a legal monopoly to the copyright society or by the voluntary reunion of all domestic and foreign owners of rights, thereby leading to a *de facto* monopoly.

8. The monopoly situation of copyright societies is often contested with the argument that it is incompatible with the constitutional freedom of forming associations. However, this objection is based on an error. Authors are free to set up as many associations as they may wish—although these associations are not permitted to concern themselves with the collective administration of authors' rights. This restriction in favor of a monopoly thus affects the freedom to trade, but not the freedom to constitute associations. Practically every country has constitutional exceptions to the freedom of trade which may be classified together under the term of "useful concentrations" such as transport, electricity, telephone or water utilities. Copyright societies are also to be included amongst these useful concentrations, and that should open for them the possibility of a monopoly.

9. Why is it not possible to set up a satisfactory collective administration without a statutory or a *de facto* monopoly? The reason is that where a number of societies exist it is not possible to make any precise demarcation. Where are the rights to be found in a work that has been created by coauthorship if one author belongs to society A and the other to society B? Or in the case where the writer of the music for a song is a member of A and the writer of the words a member of B? Or again if an author belonging to A has his work published by a publisher belonging to B? But how do we inform the user of copyright of the scope of the powers of representation when he wishes to know what is represented by A, what is represented by B, particularly in those cases where authors daily change from A to B and from B to A? It is these dubious areas between the multiplicity of copyright societies that lead to uncertainty and to disputes which, as experience has shown, are a chronic source of infection from which the administration of copyright can never altogether recover.

10. Experience shows that numerous rights, belonging to the field of administration, are transferred by the authors to their publishers under their publishing contracts. As a result, the monopoly position of the copyright society can only be achieved if the publishers are also accepted as members and the authors' rights they have acquired are thereby transferred to the copyright society. Recognition of the publishers as full members is now an accepted fact in all European copyright societies, although authors in other parts of the world—particularly in Latin America—still hesitate to open up the doors of collective administration of authors' rights to the publishers. Without the publishers as members, a

copyright society forgoes the most important rights; the publishers themselves exercise the rights assigned to them by the authors and thus impair collective administration. Moreover, the exercise of copyright by the publishers on behalf of the authors mostly means that the latter are left with empty hands. I must therefore urgently recommend that when new copyright societies are set up the basis should be a partnership between authors and publishers.

11. Finally, the matter of cohabitation of authors and performers has to be clarified in the field of music before any action is taken. It is conceivable in this field that the categories may exist in parallel, or also in cooperation. Cooperation is to be preferred if the copyright and performers society wishes to obtain the remuneration for the authors and performers' rights from the same users. Experience again shows that it is hardly possible to persuade those users to pay two remunerations and that they usually demand tbat the administration of botb types of rights be coordinated. That demand is quite reasonable and meets with the approval of the authorities in most cases.

(c) Economic Sufficiency

12. Even where the administrative outlay is as low as possible, the copyright society must nevertheless have a mioimum of revenue at its disposal in order to carry out its work to good purpose. This applies in particular in those cases where the administered rights cover a large international repertoire implying extensive distribution and settlement, and the resultant cost, for their administration. A copyright society would not be capable of achieving its task if, for reasoos of cost, it was not able to carry out objective distribution.

13. How cao economic sufficiency be calculated? The estimated revenue of the copyright society is forecast either by determining the order of magnitude of the expected remuneration on the basis of average tariffs or the per capita revenue in countries with comparable circumstances is assumed. Then, the staff required for collection, constitution of documentation, distribution and settlement must be determined, their salaries estimated, and the overheads forecast on tbat basis. If the cost remains within some 30% of receipts from the administration of performance and broadcasting rights or within 20% of the revenue from the administration of rights in the manufacturing of copies, then the administration can be deemed economically sufficient.

14. Over recent decades, the limits of what was considered economically sufficient have moved downwards. For instance, it was deemed reasonable for Mauritius, with its population of 1.2 million, to begin establishing a national copyright society. A decisive reason was the extremely active musical life of the island, in conjunction with its continuing economic progress.

(d) Supervision by Government

15. The stance taken by the government is of extreme importance when setting up a new copyright society. Without its cooperation or at least without the goodwill of the government, the setting–up of a copyright society should be forgotten. The grounds for this need for official support are easily understandable: the activities of a copyright society extend to duties that also fall within the responsibility of the State. Both must guarantee the exercise of individual rights guaranteed by statute. Thus, tbe activities of the copyright societies affect all kinds of State areas, such as national radio and television companies, State cultural programs, State registers, State monopoly laws, State currency regulations, State criminal prosecution, and many others. In all these areas, the copyright society can be paralyzed if the State is indisposed. To prevent that from happening, it must be ensured, from the very beginning, that the State agrees with the collective administration of authors' rights and that it takes the copyright society under its wing.

16. The approach adopted by the State radio and television companies is of quite particular importance. If they refuse to accept a rapid and reasonable arrangemeot, this gives negative signals that are almost impossible to counter. How can one convince tbe owner of a hotel that he must pay remuneration to the authors and publishers if everyone is aware that the large State corporations avoid complying with the obligations placed on them by tbeir own State? It is therefore to be recommended that no start be made on setting up the costly sections of copyright administration until the agreements with the State radio and television companies have been signed and sealed.

17. Supervision by the government has its price: the goodwill of the State can only be obtained if the authors' rights are administered correctly, impartially and economically. This means that the State must be afforded the possibility of inspecting and supervising operations. Authors and publishers should be advised not to try to avoid such supervision, at least for as long as no political intervention is attempted. A statement by the authorities that the operations of the copyright society have been correctly conducted and its finances are in order is of considerable value in any State. In those cases where State supervision contributes to holding back the special interests of individual

groups of authors or publishers in favor of the general interest, there is all the more reason to seek and to accept such supervision.

(e) Competent Staff

18. It was already mentioned in the introduction that the collective administration of authors' rights is a profession and, like any other demanding occupation, has to be learnt. To achieve success, it is indispensable that candidates for executive positions in copyright societies satisfy the same requirements that are also to be met in any other responsible position. It is particularly important that legal thinking be combined with a sense of practical solutions and with a cultural flair. The "artist" will have to get used to spending a considerable part of his time with calculations and planning and the "lawyer" will realize that authors and publishers do not always follow his legal deductions and may prefer "irrational" approaches. Either of them will discover on occasion that he must rely on himself in his activities and will sometimes be indeed quite alone. It is therefore necessary to seek—and to find—courageous people who find satisfaction in assuming ever-changing tasks, who also possess the necessary patience and tenacity to successfully conclude what they have begun despite many difficulties and who, although they have clear objectives, maintain an open mind for others' opinions.

2. The Objectives

19. In all those countries in which authors and publishers are to share in the revenue obtained from their works, the copyright society constitutes an important element of cultural life. This is, however, no reason for it to become an object of national prestige or repute, but must always remain appropriate to its activities and services. As a service society, it must take its place in the market conditions of its country and repeatedly examine whether and how its work can be further improved.

(a) Profitable Administration

20. The most important task for a copyright society is to pay commensurate amounts to authors and publishers for the use of their works. This task is not satisfied if the society, instead of making payments, constitutes funds and reserves, and pursues other objectives with those financial means.

21. Whether or not the amounts paid are commensurate depends essentially on the tariffs according to which the remuneration to be paid by the copyright users is calculated. Guidance is given by international standards, particularly

- the 10% rule according to which authors and publishers are entitled to 1/10th of all income obtained by copyright users from the exploitation of their rights;
- the *pro rata temporis* rule according to which the 10% share of authors and publishers is proportionally reduced where protected and free works are exploited together;
- the ballet rule according to which the 10% share of authors and publishers is also proportionally reduced where a number of associated protected works are exploited at the same time.

A copyright society is hardly likely to succeed in applying the tariffs that correspond to full recognition of these standards in each and every case. It should nevertheless direct its entire effort to approaching the appropriate tariffs step by step. These tariffs also then constitute the most reliable basis for replying to the question whether the copyright society has produced a commensurate yield for the authors and publishers.

22. Profitable administration can only be spoken of if the costs of that administration remain within a reasonable framework. Here again, international standards apply as already mentioned in paragraph 13. Deduction of costs of up to 30% for the administration of performance and broadcasting rights and of up to 20% for the administration of rights in the manufacture of copies can be held justified on condition that the calculations result from objective distribution work. These percentages can be provisionally exceeded in times of high inflation if salaries grow faster than the remuneration to be paid by the copyright users. It may also happen that large-scale investment in facilities—for instance the procurement of a data processing system—may lead to a higher rate of costs. However, copyright societies whose deductions continually exceed the above-mentioned standards are ripe for a review of their administrative structures.

(b) Solidarity in Cultural Life

23. The utilization of works by copyright users is not to be looked on as a piece of luck for the authors and publishers, but as the result of planned endeavors. The copyright societies must also satisfy these endeavors by advising authors and publishers as accurately as possible of the public acceptance of their works. Such information makes it possible, particularly for publishers, to assess their risk when publishing new works. Settlements to authors and publishers should therefore not simply state overall sums, but must give information on the amount obtained for each individual work. It is further to

be recommended that the accounts for each work should show the area of use in which it was particularly successful. For that purpose, it is absolutely essential that societies be most effective in obtaining and processing performance and broadcasting programs.

24. A copyright society is the only institution in a position to obtain an overall view of the habits, moods and trends of the market in its area of activity and to determine, for instance in the musical world, that each year more than one-third of new works are performed for the first time. It thus conducts market research in its own area and it does well to demonstrate cultural solidarity by advising authors and publishers rapidly and comprehensively of its findings.

25. In today's worldwide communication society, with its satellite broadcasts whose programs are received over whole continents, the cultural presence of a country depends on its being able to appear with the best works of its authors in a high quality, ready-to-use form. In this global competition, the copyright society has an important part to play since its activity can contribute to early identification of those works that could be suitable for international distribution and provide authors and publishers with the means of launching into the adventure of worldwide exploitation.

(c) Autonomy

26. On occasion, the stepwise establishment of a copyright society is recommended meaning that, to begin with, only collection in the country itself is carried out and the technically more demanding work of distribution and settlement is undertaken by an associated foreign society—or parent society. Even where such conditions hold over numerous years, one cannot consider this to be a proven solution. As long as a society collects remuneration within the country and then transfers it abroad as a whole instead of itself conducting the distribution and settlement, it cannot be considered a national institution, but is regarded by the public as the agency for foreign interests. The solidarity of cultural life is lacking and resistance amongst copyright user circles is mostly so big that the agency never achieves successful administration. That is also why there are no examples of flourishing agencies.

27. An agency will never make the effort of obtaining the performance and broadcasting programs from which the life of the national repertoire can be ascertained. The inertia shown in obtaining programs is indeed a typical characteristic of any agency and the parent society has no reason to take steps since that inertia saves it a considerable amount of distribution work. Only a national, autonomous copyright society can therefore satisfy the needs of national authors and publishers.

3. The Stages in Setting Up a Society

28. Once the prerequisites for setting up a copyright society—as explained in paragraphs 4 to 18 of this study—have been clarified and the prospects for a successful operation have been favorably assessed, the courageous decision to jump in at the deep end—that is to say to start with the society—has to be taken. Whether this decision is taken by the government or concerned authors and publishers join together to put the work in hand, will depend on the situation in the country involved. Whoever it may be that takes the initiative, they are well advised to ensure the cooperation of their most important partners with speed. Any government that intends to set up a national copyright society or a State copyright administration is urgently recommended to involve the authors in the project from the very beginning to avoid the interests of the owners of the rights being left out of account. Likewise, any association of authors and publishers that sets out on the stony path of collective administration of their rights is encouraged to act in agreement with their authorities so as not to forego State recognition for their endeavors.

29. The setting-up of a society begins with the appointment of a manager responsible for that phase. It is sometimes attempted, for reasons of cost or on other grounds, to postpone an appointment for the time being and to work initially in the style of a "do-it-yourself group." Experience with such a procedure is not encouraging. Considerable time is lost and in most cases it becomes necessary to subsequently correct the results of such amateur endeavors in order to satisfy the professional requirements.

(a) Basic Training for Management Staff

30. The practical setting-up of a society begins when the manager takes up his appointment. However, he can only act with responsibility if he is in possession of the essential specialized knowledge. Therefore, he must rapidly be given basic training. In many professions, as for instance aviation, specialized schools have been set up; future directors or operational heads of airline companies acquire their knowledge in special courses tailored to their needs. Unfortunately, there are as yet no such specialized schools for copyright societies. In order to repair this gap, the World Intellectual Property Organization (WIPO) and the Swiss copyright society SUISA have since 1976 organized two-week

courses in which at least the basics of the collective administration of those rights have been taught. Over the years, some 300 trainees from all over the world have acquired in that way a modest initial background.

31. When WIPO began in 1989, in Mauritius, with the establishment of the first national copyright society under its direct responsibility, it improved the basic training of the manager by organizing for him a personal, intensive two-week introductory course. The training program was put together as follows:

- basic legal concepts, introduction to the national copyright law, comparative law and introduction to the international copyright conventions;
- the major functions of the copyright society in their contexts, structure and organigram of the administration;
- relations between the copyright society and its authors and publishers, with respect to members contracts, assignment of rights, description of repertoires, registration of rights, pseudonyms, settlements, payment operations, transfer to associated societies, and so on;
- relations of the copyright society with users of copyright and their associations, with respect to tariffs, contracts, provision of programs, collective agreements, joint measures, action against piracy, and so on;
- relations of the copyright society with the State, with respect to general supervision, tariff supervision, monopoly situation, relations with State radio and television, participation of State authorities in the administration of authors' rights;
- documentation, such as a database on authors and publishers, CAE index, database on works, *fiche internationale*, cue sheet, WWL list, inquiry lists, and so on;
- distribution and settlement with distribution rules, distribution classes, distribution breakdown, distribution procedure, form and frequency of settlements, delayed settlements, and so on;
- data processing: basic concepts; applications, database structures, standard software, development steps, and so on;
- welfare protection for authors and publishers and cultural endeavors of the copyright society;
- accounting, including bookkeeping, cost calculations, treatment of ancillary revenue, use of non-distributed revenue, layout of balance sheets and operating accounts, and so on;
- relations with other societies such as reciprocal agreements, exchange of documentation, settlements, payments, and so on;
- CISAC: structures; technical and legal commission, possible participation in an international framework, and so on.

This basic training proved most purposeful. It enabled the head of MASA, the Mauritius Society of Authors, on returning from the course, to work independently to a great extent, to take initiatives, to conduct tariff negotiations, to conclude contracts and to advance rapidly with the setting-up of the administrative structures. These results are an encouragement to continue with the approach that has been adopted.

32. It was often the case in past years that the future heads of copyright societies received training in the form of periods spent with other societies. There is no objection to such training where it constitutes a thorough introduction to the areas of work of collective administration of authors' rights and further involves explanation of the essential, related problems at the level of management. Unfortunately, it has to be admitted that the specialized exchanges with the colleagues of the future manager were frequently neglected and the training limited to initial contact with the most frequent everyday tasks. Although the importance of such familiarization should not be underestimated, it cannot be compared with true specialized training.

(b) Work Plan

33. During or subsequent to the basic training, the head of the society should draw up a work plan. This should cover the period up to the first settlement with the members and lay down the times at which the major steps in setting up the society are to be taken. Priorities and the dependency of individual measures on the results of preceding steps must be clearly shown. The step-by-step recruitment of staff also assists in keeping the cost of salaries at a modest level during the starting up phase. The work plan therefore constitutes one of the bases for establishing the cost estimates.

34. Experience gained in recent years has led to a model work plan that is reproduced on the following pages. This model must nevertheless be carefully adjusted in each case to the actual conditions, meaning that in some cases considerable changes and adaptations will be involved.

MODEL WORK PLAN (SEE PARAGRAPH 34)

Month	Head	Administrative Council	General Assembly	Authors and Publishers	Copyright Users	Administration	Staff
1	Appointment basic training	Appointment of head					
2	Draft Statutes draft membership contract						
3	First provisional list of authors and publishers, installation of the Secretariat	Adoption of statutes and membership contract, convening of general assembly					One secretary
4	Draft tariff, radio and television		Approval of statutes, election of administrative council, invitation to sign the membership contracts	Participation at general assembly			
5	Work registration form, start tariff negotiations with radio and television, contact with CISAC and other societies	Adoption of the draft radio and television tariff		Start signing membership contracts	Start tariff negotiations with radio and television	Establishment of a data base with data on authors and publishers	One employee for documentation
6	Tariff negotiations with radio and television, initial agreements with other socities			Signing of membership contracts, first registration of works	Tariff negotiations with radio and television	Establishment of a database with data on works	

MODEL WORK PLAN (SEE PARAGRAPH 34)

Month	Head	Administrative Council	General Assembly	Authors and Publishers	Copyright Users	Administration	Staff
7	Tariff negotiations with radio and television draft tariffs for phonograms producers			Signing of membership contracts, registration of works, first circular on radio and television tariff	Tariff negotiations with radio and television	Continued establishment of database	
8	Conclusion of tariff negotiations with radio and television, further agreements with other societies, apply for membership of CISAC	Adoption of radio and television tariff, adoption of draft tariff for phonogram producers		Signing of membership contracts, registration of works	Conclusion of tariff negotiations with radio and television	Continued establishment of database, communication of data for CAE and WWL	
9	Start tariff negotiations with phonogram producers, contacts with radio and television			Signature of membership contracts, registration of works	Start tariff negotiations with phonogram producers contracts with radio and television	Continued establishment of database, establishment of database of copyright users	One employee for collection
10	Tariff negotiations with phonogram producers, draft for further tariffs, further agreements with other societies, staff training			Signature of membership contracts, registration of works	Tariff negotiations with phonogram producers, start of collection for radio and television	Establishment of a database for bookkeping, staff training	One employee for bookkeeping

MODEL WORK PLAN (SEE PARAGRAPH 34)

Month	Head	Adminiatrative Council	General Assembly	Authora and Publishers	Copyright Users	Adminiatrstion	Staff
11	Conclusion of tsr-iff negotistions with phonogrsm producera, drsft for distribution rules			Signature of membership con-tracts, regis-tration of worka	Conclusion of tar-iff negotistions with phonogrsm producera, aupply of first brosdcss-ting programs	Continued ests-blishment of ds-tsbsse, stsrt of distribution work	Three employees for distribution
12	Agreements with phonogrsm produc-ers, tsriff nego-tistions for fur-ther tariffs, drsft for model settlement, staff training	Adoption of tar-iff for phono-grsm producers, sdoption of fur-ther draft tar-iffs, sdoption of distribution of rules and settlement model		Signsture of membership con-trscts, regis-trstion of works	Agreement with phonogram produc-ers	Continued ests-blishment of dats-bsse, distribu-tion work, data communicstion for CAE and WWL, stsff training	
13	Tariff negotiations for further tar-iffs, proposal for combsting pirscy, staff trsining			Registrstion of works, second circulsr on tsr-iffs for phono-gram producers, communication of distribution rules	Stsrt collection for phonogrsm producera, tariff negotiations for further tariffs	distribution soft-ware, distribution work, stsff trsining	Two employees for collection
14	Conclusion of tsr-iff negotiationa for further tar-iffs, drsft for aocisl welfsre of authors snd publishers, stsff trsining			Registrstion of works	Conclusion of tsr-iffs negotiations on further tsriffs	Distribution softwsre, distri-bution work, staff training	

MODEL WORK PLAN (SEE PARAGRAPH 34)

Month	Head	Administrative Council	General Assembly	Authors and Publishers	Copyright Users	Administration	Stsff
15	First annual report, first annual accounts	Adoption of further tariffs, adoption of measures against piracy, adoption of social welfsre for authors and publishers, adoption of the first annual report and the first annual accounts		Registration of works	Completion of first semester collection for radio and television	Distribution work, first lists of phonogram producers, data transmission for CAE and WWL	Two employees for distribution
16	Agreement on further tariffs, stsrt the fight sgainst piracy establishment of legal service		Approval of the first annual report, first annual accounts, welfare protection for authors and publishers	Participation at general assembly	Agreements on further tariffs, beginning of fight against piracy, delivery of final broadcasting programs for the first semester, radio and television	Distribution work, start of fight against piracy, establishment of legal service	Two employees for collection One lawyer
17	Monitoring of settlement work, staff training			Third circulsr on further tariffs, welfare, piracy	Start of collection for further tariffs	Distribution work, staff training	
18				First settlement for rsdio and tslevision	Conclusion of first semestsr collection from phonogram producers	First settlement for radio and television, data transmission for CAE and WWL	

35. When establishing a number of copyright societies it transpired that a period of some 16 to 18 months went by between making a start on the setting–up and the initial settlement. Thus, the claim that the establishment of a copyright society takes a number of years is extensively disproved. However, a period of 16 or 18 months can only be complied with if the work advances at a good pace. It must also be pointed out that the fact of sending the first settlements to the authors and publishers does not mean that the starting–up period can be deemed completed.

(c) Cost Estimates and Coverage

36. As already mentioned in paragraph 33, planned establishment implies cost estimates and therefore clear ideas on the coverage of costs.

37. The coverage of costs is settled in the simplest manner in those cases where the government agrees to bear the costs or to advance the necessary sums to cover them. This kind of assistance considerably facilitates the setting–up of a copyright society and it is therefore strongly recommended that this type of help be sought. The necessary amounts appear quite modest in the budgets of education or culture ministries and therefore even those States whose finances are not a bed of roses can assist with the initial funding. Where money is short, it can be agreed that the costs paid by the State will constitute advances and be subsequently refunded. Of course, it should be ensured in such cases that the advances are granted free of interest.

38. Where State funds are not available as an initial aid, there remains the possibility of subventions or advances from associated societies. It may be noted, with acknowledgments, that this approach has been frequently adopted. It can be extended by setting up a solidarity fund for the furtherance of new copyright societies. This type of solidarity fund could be fed by a few percent from those funds that are left over in the accounts of every copyright society once the moneys have been distributed. These undistributable amounts derive from the works of authors in those countries that do not as yet have a collective administration of authors' rights; such a solidarity fund would therefore mean that they received some of the funds that had been lost hitherto for lack of a copyright society.

(d) Legal Form, Statutes, Authors and Publishers Contracts

39. It is the rights of authors that are assumed by collective administration and therefore the authors, and also the publishers who have acquired such rights, must be given a large degree of participation in their administration. Experience has shown that the legal form of a cooperative best suits that type of participation and therefore the setting–up of a society should follow such a model as closely as possible. This implies that the most important decisions must be the preserve of the general assembly of authors and publishers and that such body should also appoint the executive organs of the cooperative.

40. Special reference must be made to the question of which authors and which publishers are to be entitled to vote in the general assembly. A general right to vote is not be be advocated since only those authors and publishers that are truly concerned by the results of the administration should be able to take decisions on the fate of the collective administration of their rights. This factor therefore suggests that only those authors and publishers whose settlements exceed a certain minimum value should have the right to vote. The statutes of some societies contain a clause, in lieu of such a solution, under which the administrative council decides on the granting of voting rights. This is not advisable since it is likely to lead to the formation of cliques and to discrimination which, as experience has shown, can lead to serious dissension.

41. The statutes of the copyright society should be submitted to the first general assembly of the authors and publishers and be adopted by them. Once that is done, the assembly can then appoint all the organs of the society in compliance with the statutes. This avoids provisional solutions that may last too long and are not always felicitous. The authors and publishers that participate in the first general assembly are to be accepted as voting members at once and unconditionally and it is therefore recommendable that the membership contract also be submitted at the same time as the statutes.

(e) Setting–Up of Documentation

42. In all its activities, the copyright society will need to know the authors and publishers in its country and also their works. One of its first and most urgent tasks is therefore to collect data on national authors and publishers and on their works and to record these in databases or card indexes. It is essential for this purpose that the authors and publishers be required to notify their personal and professional particulars and to register the works that they have created, jointly created or published.

43. A young copyright society has no problems in acquiring documentation on foreign authors, publishers and works, since CISAC (International Confederation of Societies of Authors and Compos-

ers) has succeeded, over decades of development work, in putting together international documentation containing all the details that a young society needs for its work. This documentation contains, above all:

- the CAE index (of composers, authors and publishers) containing the names and society membership of all authors and publishers in the fields of music, literature and theater who have joined a copyright society or are known in some other way;
- the World Works List (WWL) giving basic particulars of some 650,000 works that are most used in the international musical repertoire.

44. A new copyright society must attach priority to supplying the particulars of its own national authors, puhlishers and works as rapidly as possible to the CAE index and to the WWL. Revenue from abroad can only be expected for their own national authors and puhlishers if such data are supplied.

(f) Contracts with Radio and Television Organizations

45. No copyright society will be in a position to contact, conclude contracts and collect remuneration from all categories of copyright users at the same time. It is therefore recommended to proceed by steps, whereby to make a start with collecting activities from the radio and television organizations has proved to offer certain advantages. These are important customers who pay considerable remuneration without having to set up an expensive collecting organization. On the other hand, extensive distrihution and settlement work has to be put in hand and this can constitute a kind of "running in" for the machinery that will then unceasingly turn over on hehalf of the authors and publishers. The effects of the good example given by contracts with State radio and television organizations has already been referred to in paragraph 16.

(g) Agreements with Foreign Copyright Societies

46. The first contact with associations of copyright users practically always leads to the question: "Which authors and publishers do you represent?" It is important with a view to suhsequent negotiations on tariffs and agreements that the answer to this question be able to refer to the society's own membership and to agreements already concluded with foreign societies, to make it obvious that the young copyright society is in the process of representing the entire world repertoire for its area of administration. Unfortunately, as recent experience has shown in particular, numerous societies are not prepared to give "advance confidence" hy the speedy signing of reciprocal agreements. They tend more to adopt the approach of entering into contractual relationships only after the young copyright society has been accepted as a memher of CISAC. However, CISAC makes acceptance conditional—understandably—on a degree of proven efficiency, which again, however, is very difficult to provide without competence for the foreign repertoire. It would therefore he most desirahle for ways and means to he found within CISAC for assigning to new copyright societies the representation of foreign authors and publishers without delay.

(h) Distribution Rules and Procedure

47. Experience shows that a lack of clarity in the distrihution activity will lead to considerahle disputes between authors or between publishers. Such unfortunate circumstances must he avoided hy means of clear rules on distribution that descrihe the procedure in detail. The rules should he approved by the administrative council of the society and by all members before the first settlement is made. Matters of distribution should not be dealt with in the general assemhly of authors and puhlishers—despite any love of democracy—since the subject of technical provisions is not suited to discussion in large meetings with diverging interests.

48. It is recommended that the distribution structures be kept as simple as possible, that there be no evaluation of works, but that distribution classes be provided to correspond with the major types of use of works. Distribution classes will certainly have to be set up for radio, television, restaurants and hotels, concerts as also for the production of audio and audiovisual mediums; further distrihution classes will depend on the special features of national cultural life. All provisions on distribution should correspond as far as possible with the principle of *suum cuique*, that is to say that they should provide the author and the publisher wherever possible with exactly the revenue that the copyright society has obtained for them.

49. When discussing the distribution provisions, one concern that is repeatedly expressed is that all the money or at least the major part of it is going to disappear abroad. Ways and means are therefore sought to prevent such an outflow and it is proposed, for instance, that national works be valued at a higher rate than works of foreign origin. It must therefore be emphasized here that any copyright society is obliged hy law and by its agreements with other societies to apply strict equality of treatment to all national and foreign works. Indeed, the fears that only a little of the money will stay within the country are based to a great extent on

ignorance of the payment procedures. These may be demonstrated by means of the following example in which it is assumed that national and foreign music is used half and half.

Revenue of the copyright society	1,000,000
Deduction for costs (30%)	– 300,000
	700,000
Deduction for social and cultural endeavors	– 70,000
	630,000
Distribution	
– national works (fully identified)	315,000
– foreign works (60% identified)	189,000
– distribution residue	126,000
Subsequent distribution of the residual amount in the form of an equal percentage supplement on all settlements	
– supplement for domestic works	78,750
– supplement for foreign works	47,250

Thus, in the example—with strictly equal treatment of domestic and foreign works—and assuming a 50% share of foreign music, only 23.6% of revenue goes abroad. It should also not be forgotten that authors and publishers will receive amounts from foreign societies and these will frequently exceed the amounts paid out.

(i) Data Processing

The view that a young copyright society should begin with manual operations and then convert to data processing once it has completed an "apprenticeship" must also be contested. Up–to–date and appropriate working aids should already be made use of from the very beginning. This means that data processing should already be used for setting up the first databases, and then for the distribution and settlement work, for transactions with copyright users and for the bookkeeping.

51. Today's data technology makes it possible to start at a low level and with a correspondingly modest outlay, that is to say with a personal computer (PC). Such hardware is mostly sufficient to set up a database of the particulars of domestic authors and publishers and also a database of particulars of the works in the national repertoire. Extension should only be envisaged when the distribution work begins since it will then depend on the probable volume of work whether a second, or possibly even a third, PC will continue to suffice or the acquisition of an installation with more screens has to be considered. In such case, the PCs can be connected to the larger installation as screens.

52. The data processing programs, that is to say the software, are of great importance. It would be altogether nonsense for every new copyright society to undertake the full outlay for programming. WIPO therefore has assisted in standard programs for the setting–up of a database of the particulars of domestic authors, publishers and works; these standard programs will probably be utilizable towards the end of summer 1991. This first step is to be followed by standard programs for distribution work and the production of the settlements, correspondence with copyright users and for the accounting, with the aim of placing data programs for the most important tasks in the "cradle" of each new copyright society.

53. The use of standard programs will only be a success if their introduction is combined with careful training. Reliable use of a PC and of standard programs can be acquired in courses lasting some 10 to 14 days.

(k) Welfare Protection for Authors and Publishers

54. The reciprocal agreements between copyright societies in accordance with the CISAC model provide for the possiblity of using 10% of the net yield from administration of performance and broadcasting rights—i.e. after deduction of the administrative costs—for welfare and cultural projects within the country. It is recommended that this possibility be made use of from the very beginning and that priority be afforded to the welfare aspects. Although it may appear premature to develop the whole welfare plan already in the initial years, it is in fact never too early to set up a fund to alleviate difficult circumstances, for urgent medical treatment and for other welfare benefits.

(l) The Fight Against Piracy

55. It is very frequently demanded with great precipitation that the new copyright societies should immediately launch, with "highest priority," into the fight against piracy. A warning must be given. To survey the market, an activity that is unavoidable if pirate copies are to be identified, represents an expensive undertaking which can very rapidly exhaust the financial means of a young society. It is therefore recommended that the fight against piracy should not be put in hand, at the very earliest, before the collecting organization has been established and only in combination with general surveillance and monitoring of conditions of use. It is further recommended that any participation in the defense against piracy should be made dependent on the new copyright society administering the rights in the manufacture of audio and

audiovisual mediums and that the branches of industry involved cooperate unreservedly with the society.

(m) Training of Staff

56. The training of the staff of a new copyright society is one of the primary responsibilities of the head. It should nevertheless go further and take on a regional dimension that would improve the relationship between neighboring copyright societies. It is customary in some societies to take on foreign colleagues from time to time for short training periods. Tbese possibilities should be extended; the level of training can also be further increased if the heads of copyright societies within a region are prepared to cooperate in courses for tbe staff of other societies.

4. Long-Term Support

57. The statement in paragraph 35 that intensive initial work can lead to a first settlement in 16 to 18 months does not mean, however, that after that period no further support is necessary. The very opposite is true. The best type of cooperation is that which is not aimed at a specific point in time, but which has as its objective to be present with assistance wbenever such help is called for. The maintenance of long–term relationships can further be upheld by a number of measures that are briefly described.

(a) Exchange of Experience

58. By exchanging experience, essential knowledge can be gained and, above all, the repetition of negative developments can be prevented. Unfortunately, all is not for the best as far as the exchange of experience between copyright societies is concerned, and that concerns both relationships between long–established societies as also between new societies. Societies are keen to highlight their achievements, but naturally do not talk of unfortunate occurrences despite the fact that knowledge of these could be useful to otbers. In addition to tbe flow of information through personal contacts, for instance on the fringe of conferences and courses, there should also be further forms of exchange.

(b) Further Training

59. Even the head of a copyright society never finishes learning. He should therefore be given the opportunity, from time to time—perhaps every two or three years—of brushing up his knowledge and acquiring new competences. This also provides an oportunity for familiarization with recent developments in the fields of law, culture and administrative techniques and thus assists him in setting out the course to be followed for the future years.

(c) Development of New Procedures

60. Tbe establishment of initial standard EDP programs for copyright societies is not an end in itself. Once the initial experience has been evaluated, the search for improvements must begin and working procedures perfected in time. This is only possible if a research unit is designated and given the task of continually working towards improvements.

5. The Idea of a Specialized Unit or Specialized School

61. There are still many countries that have not yet come around to setting up collective administration of authors' rights and to establishing national copyright societies or copyright administrations for that purpose. Since tbe protection of numerous authors and publishers, in tbe age of communication, depends on the possibilities afforded for the collective administration of authors' rights, and it is to be expected that the communication stream will continue to swell, further requests are to be expected from governments for expert assistance in the establishment of copyright administrations. Likewise, there are likely to be not a few cases of copyright administration tbat, although they have already been established, do not yet satisfy the expectations placed in them and will have to be brought up to scratch by means of further training and equipment. Tbe amount of training and advice that is to be expected leads to the conclusion that not just individual experts should be called upon for these tasks, but that a specialized unit or specialized school should be created.

62. Tbis idea is not a new one. It was already discussed in Latin America in 1988 and 1989, received fairly lukewarm treatment at the CISAC Congress in autumn 1988 and led on January 28, 1989, to a first description of a Latin American specialized school from tbe pen of Professor Ricardo Antequera Parilli. Things bave since become rather quiet, but that should not be taken to mean that the project has lost its importance.

63. In discussions on the Latin American project, the matter of the location of the specialized school played an important part. We should try to detach ourselves from tbat question and also from the idea that the training activities have to be linked to a central location. Instead of that, we could adopt the approach of holding courses any-

where in the world, wherever the participants are to be found. This not only leads to considerable savings in travel costs, but also removes the image of special Latin American treatment and replaces it with a worldwide context.

Epilogue

64. Experience shows without exception that authors and publishers are dependent in many fields of literature and art on the collective administration of their rights. It is not enough to simply encourage them to associate and then leave it up to them to set up an administration. The collective administration of authors' rights can only provide the required protection for authors and publishers if it satisfies professional standards. The task of contributing to effective copyright administration by means of training and advice is one which no State and no international organization can refuse if they value the welfare of creators.

(WIPO translation)

Correspondence

Letter from Belgium

Jan CORBET*

Legislation

1. During the period under review, for the first time in a long time, the legislature concerned itself with copyright, although its intervention was not of a fundamental nature. The Copyright Law dates back to March 22, 1886, and is therefore older than the Law of April 18, 1898 (under which laws were to be promulgated in both French and Dutch, the two national languages), which means that no authentic Dutch text has ever existed. Things have now changed with the Law of June 26, 1981, "Establishing the Dutch Text of the Copyright Law of March 22, 1886" (*Moniteur Belge*, July 14).

In fact it was not only the Dutch text of the Law of March 22, 1886, that was established, but also that of the provisions that had completed and amended it since the Law of April 18, 1898 (Laws of March 5, 1921, amending Article 38, and of March 11, 1958, introducing a Section IV*bis*). Nothing was done however to the two Laws of June 25, 1921 (prolongation of the term of protection, and collection of a *droit de suite* or resale levy at public salerooms where works of art are auctioned).

The very brief explanatory memorandum mentions in passing that

> In the writing of the draft, due account was taken of international treaties and foreign legislation, including the Berne Convention of June 26, 1948, as approved by the Law of June 26, 1951, and the Netherlands Copyright Law of September 23, 1912.

As the only Dutch translation of the Berne Convention was intended for administrative purposes, it is probable that the Dutch Law was mainly used as a model.

This was not received with unmitigated delight by all.[1]

2. One of the reasons why legislative work on copyright has been marking time for so long in Belgium is undoubtedly the State reform, which did not very accurately demarcate areas of competence in this connection. While copyright is essentially a civil right that has remained within the purview of national legislation, it does have cultural implications that cannot be circumvented, in which case it is the Regional Communities that are competent.

Now it was actually during the period under review that the State Council had occasion to express some opinions on the subject, and in our view they demarcate precisely the areas of competence of the various legislative authorities.

The earliest opinions related to two decree proposals presented by Mr. Defosset and Mrs. Boniface to the Executive Council of the French Community. The purpose of the first proposal (CCF 1981–82, document No. 12/1) was "the adaptation of the rights of authors and composers to the democratization of access to cultural activities," and of the second (CCF 1981–82, document No. 13/1) "the creation of a Community support fund for performers." The first proposal owed its origin to the fact that the remuneration of authors and composers was always calculated according to proceeds. Yet what the democratization of cultural activities has done is create a situation where they are extensively subsidized by the authorities, so that the actual proceeds generated by payments on the part of the public have become a marginal issue in relation to the overall financial resources of an organizer. That means then that the author is no longer receiving what he actually is entitled to. The proponents wanted to correct that anomaly by having authors' remuneration calculated according to public attendance, regardless of the proceeds. The method of calculation would be determined by the member of the French Community Executive responsible for culture. The second proposal amounted to the introduction of a charge for public domain material, in other words a sort of *domaine public payant*. The State Council eventually issued its opinion on the second proposal one week before pronouncing on the first. It is very interesting to compare the two opinions, which were given by the two chambers sitting together.

* Professor, Free University of Brussels (V.U.B.).

[1] Cf. Van Isacker, *Kritische synthese van het Belgische auteursrecht*, Kluwer, Antwerp, 1985, p. 21.

In the first, dated July 6, 1983 (CCF 1981–82, document No. 13/2), the State Council first thoroughly analyzes the aim of the fund to be created, and then its resources, and comes to the conclusion that in effect it involves a charge for public domain material. It rightly points out that the charge is nothing more than a tax, and then considers the competence of the Regional Communities in that area. On the basis of an in-depth study of the parliamentary preparation of the ordinary Law on the Reform of Institutions of August 9, 1980, the State Council expresses the view that the Communities can introduce taxes insofar as the object thereof is not already taxed by the national authorities.

To that extent then the proposal remained within the competence of the Executive of the French Community. It should however be made clear that the funds thus collected cannot be used to grant performers advantages of the same nature as those afforded by social security (as this is also a national concern).

The advantages can however be of another nature, for instance prizes, fellowships, subsidies, etc. If one is to respect Article 110 of the Constitution, the text should be amended so that the calculation base and the amount of the tax are determined by the Council itself; the Executive cannot take charge of that. In fact the first opinion does no more than touch on copyright, as its finding is that the *domaine public payant* is not strictly speaking an element of copyright.

In the second opinion, given on July 13, 1983 (CCF 1981–82, document No. 12/2), the State Council goes into the substance of the problem. It notes the "grey area" indicated above, which is due to the vague wording of the special Law on the Reform of Institutions of August 8, 1980. The provisions in question were taken from the Law of July 21, 1971, on the competence of the Cultural Boards of the French and Flemish Communities. The Council first devotes a long study on the parliamentary preparation of the earlier Law and the commentaries on it, and then does the same for the Law of August 8, 1980. Finally it checks the proposal against its findings. After having observed that copyright bears some resemblance to the social security system (which has also remained a national concern), the Council points out that copyright affords even more fundamental security, moral as well as material, to performers. It protects the author in the strictest fashion, making the public performance of the work subject to his authorization. He can make that authorization dependent on monetary compensation, the amount of which he has to accept. Copyright gives the author a competence which he may exercise freely. The authorization to perform a work in public and the setting of the monetary compensation that constitutes its price are written into a contract freely concluded between the author or his agent and the person to whom the authorization is given. The legislator has intervened, through the Copyright Law, in order to settle relations on certain very precise points of private law, namely the relations arising between the author and the persons who wish to perform his work in public.

For that reason the Law of March 22, 1886, should be regarded as civil legislation. Even though the private right accruing to the author under this Law cannot perhaps be classified in one of the categories of rights traditionally accorded hitherto, that does not alter the fact of it being a civil right.

Consequently, if due account is taken of their direct object, the copyright provisions should, in spite of their connections with the fine arts, be regarded mainly as provisions that determine the status of the performer in the field of civil law by providing him with fundamental safeguards in that area. While giving the Regional Communities jurisdiction over the fine arts, legislation has not gone so far as to give them the power to amend the provisions on copyright, and in particular has not authorized them to put restrictions on the contractual freedom that guarantees the provisions for authors. Consequently the decree proposal is outside the jurisdiction of the Community.

Later the State Council once again confirmed this view in an opinion dated April 1, 1985, on a draft law tabled by Mr. Wyninckx, for

> ...the amendment of the Copyright Law of March 22, 1886 introducing authorization for the distribution of radio broadcasts by wire or by cable (Senate, 1984–85, document No. 147/2).

At present the Council puts it more briefly:

> Copyright legislation is not written into the Civil Code but is unquestionably connected with it, and the intellectual property that it organizes, inasmuch as it relates to pecuniary rights of the author, is in more than one respect related to the ownership of material goods as governed by the Civil Code. The principles constituting the rights pertaining to respect for the private person are equally valid in relation to the moral rights of the author. Seen as a whole, copyright belongs to civil law in the broad sense. This matter is not a matter of Community jurisdiction; it has always been a national concern.

As a result of these three opinions, it seems to us that a contentious question has been finally settled.

3. The Copyright Law of March 22, 1886, celebrated its 100th anniversary during the period under review.

Ever since Spain adapted its 1879 Law in 1987, Belgium has been the country with the oldest copyright law in the world. On the occasion of the centenary, a number of symposia were organized, from

which it emerged clearly that the modernization of the Law had become a necessity.[2]

A small-scale revision of the Copyright Law, with special reference to sanctions, was undertaken for a time at the Secretariat of State for Justice during the time of the previous government (*L'Ingénieur-Conseil*, 1988, p. 1). Senators R. Lallemand, L. Herman-Michielsens, R. Henrion, R. Gijs, R. Langendries and W. Seeuws then took an important step when on June 10, 1988, they tabled a draft law with a view to a general revision of the Law of March 22, 1886. As their legislative proposal was signed by representatives of all the traditional parties, there is reason to expect that it will not present serious political problems.

However, owing to the over-full program of the Justice Commission, the proposal could not at first be accepted for discussion. That is why, at the beginning of 1990, a working group composed of some 10 senators was set up and they began to consider the proposal, in order that at least some progress could be made.

This working group seems to have amended the proposal on a number of important points. At the beginning of 1991 a new text was to be published before the proposal was transferred to the Justice Commission. Other legislative proposals were also tabled in the Senate by Mr. De Serrano on March 10, 1988, and in the Chamber by Mrs. Spaak on January 24, 1989. The first proposal has to do with the problem of reprography, and is being dealt with by the above working group at the same time as the Lallemand proposal. The second takes further the results of the work done at the Secretariat of State for Justice, mentioned earlier.

Finally, a mention should also be made of a legislative proposal tabled on February 16, 1989, by Senator Blanpain. It concerns the intellectual rights of workers in general, and therefore also concerns copyright.

Case Law

A number of noteworthy decisions were handed down during the period under review. First there were the substantive decisions that followed the rulings of the Court of Justice of the European Communities which we have considered in previous "Letters"[3] ("Fonior" and "Coditel" cases), and also other decisions with an international dimension concerning the free circulation of phonograms and videograms. Apart from that, a number of interesting decisions go into questions of Belgian law, including the concept of originality, photographic works, works of joint authorship and the *droit de suite*. Finally, there have been a number of decisions that have brought neighboring rights into the purview of Belgian case law.

1. The Status of Authors' Societies (Brussels Court, October 5, 1983, RW 1984-85, 1499; Brussels Court of Appeal, June 8, 1988; RIDA, 139, p. 169)

In reply to interlocutory questions raised by the Brussels Court of First Instance in a decision of April 4, 1973 (JT 1974, 263), the Court of Justice of the European Communities had made a ruling on March 27, 1974 (*Casebook*, 1974, p. 313). The Court had accepted that

> The fact that an undertaking entrusted with the exploitation of copyrights and occupying a dominant position within the meaning of Article 86 [of the EEC Treaty] imposes on its members obligations which are not absolutely necessary for the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright can constitute an abuse...

and consequently ruled that,

> If abusive practices are exposed, it is for the national court to decide whether and to what extent they affect the interests of authors or third parties concerned, with a view to deciding the consequences with regard to the validity and effect of contracts in dispute or certain of their provisions.

The judgment to which the question related was handed down after the case has been referred back to the Brussels Court, which found that

> ...an examination should be made only of whether the contracts are based on an unlawful cause, and more especially of whether they were concluded by an undertaking in a dominant economic position which abuses that position, with the result that the conventions originate in that abuse;

and then that,

> ...specifically, abuse of a dominant position in the case of SABAM [Belgian Society of Authors, Composers and Publishers] must be considered in the light of two aspects governing the relations between authors and SABAM, namely the mandatory assignment of all existing and future copyright, irrespective of the generally accepted types of exploitation, and the requirement of assignment for a period of long duration after the resignation of an associate.

The Brussels Court observed that SABAM had amended its statutes since the beginning of the dispute, and now allowed its members to split the assignment of their rights by mode of economic exploitation and by territory, but that the assignment should always relate to all existing and future works, and that rights not assigned to SABAM had compulsorily to be assigned to another authors' society. Subject to the effect of contracts entered into during their membership, members can now moreover leave SABAM every year.

---

[2] Cf. J. Corbet (editor), *Honderd jaar auteurswet*, Antwerp, 1986.

[3] See *Copyright*, 1973, p. 251, and 1982, p. 193.

These amendments corresponded to decisions of June 2, 1971, and July 6, 1972, imposed on GEMA, the German authors' society, by the Commission of the European Communities, which explains why the case had lost much of its interest.

The Brussels Court further pointed out that the Commission of the European Communities had intervened suddenly to broaden the freedom of movement of authors and also to stimulate mutual competition between authors' societies, but that it had never intended to lower the level of protection against users. In that respect it recalled one of the grounds of the Court of Justice ruling, namely No. 9, which reads as follows:

> Account must, however, be taken of the fact that an undertaking of the type envisaged is an association whose object is to protect the rights and interests of its individual members against, in particular, major exploiters of musical material, such as radio broadcasting bodies and record manufacturers.

As the authors had succeeded in assigning all their rights validly to SABAM or to another authors' society without coming into conflict with European law, and as the assignment related in any event to all existing and future works, it was impossible for BRT (Belgian broadcasting organization) to secure rights in relation to a very specific work. To that extent BRT could not accuse SABAM of abusing a dominant economic position.

The validity of authors' assignments to SABAM and their precedence over commission contracts concluded with BRT have been recognized. The Brussels Court of Appeal confirmed this decision.

To do so the Court based itself among other things on remarks made in the course of proceedings by the Commission of the European Communities, from which it emerges that, in view of the economic context, which featured economically powerful users (radio and television organizations, record manufacturers), the Commission did not consider the face that third parties were unable to secure rights in individual works indicative of abuse of a dominant position.

However, the Court also dealt with questions of Belgian law. For instance, BRT further contended that in fact it should itself be considered the author of the work produced on its instructions. The Court rejected that contention and pointed out moreover that it was inconsistent with the conclusion of short-term contracts with authors.

BRT likewise claimed the invalidity of the contracts of affiliation to SABAM, alleging that they were not precise, in either subject matter or price, regarding the future works of affiliated authors.

The Court rejected this argument too, because both subject matter and price were in any event definable on the basis of the statutes and rules of SABAM, of which authors were cooperating members.

2. Cable Television (Cass., September 3, 1981, Pas. 1982, I, June 9 and 30, 1983, JT 1984, 349)

In earlier "Letters" we have already commented on the ruling of the Brussels Civil Court of June 19, 1975, the ruling of the Brussels Court of Appeal of March 30, 1979, and the ruling of the Court of Justice of the European Communities of March 18, 1980, in which answers were given to the interlocutory questions raised by the Court of Appeal.

However, the parties had in the meantime gone to the *Cour de cassation*. Whereas the Court of Appeal saw only a possible conflict with Article 59 of the EEC Treaty, the *Cour de cassation* considered in its first ruling on September 3, 1981, that there could also be conflict with Article 85, and put the question to the Court of Justice of the European Communities, which replied in a ruling of October 6, 1982 (*L'Ingénieur-Conseil*, 1982, 275).

The Court concluded that a contract under which an exclusive right for the showing of a film was granted by the owner of the copyright in the work for a specific period on the territory of a member State did not, in itself, come under the provisions of Article 85. It was however up to the national court to determine whether the exercise of the right granted did not, in a given case, take place in an economic or political context the object or effect of which might be that the distribution of the film was prevented or hindered, or that the film's competitiveness on the market was adversely affected.

In a second ruling on June 30, 1983, the *Cour de cassation* was of course bound to declare what the Court of Appeal had not done, and so set aside the ruling of March 30, 1979.

In the meantime, however, a general solution to the problem of copyright and cable television had been found, so that the parties did not take the matter any further.

As for the essence of the affair, namely the application to cable television of copyright, and in particular Article 11bis of the Berne Convention, the decision of the Court of Appeal was final, as we pointed out in our previous survey, in view of the fact that the first ruling on the subject by the *Cour de cassation* on September 3, 1981, had dismissed the appeal from it.

Since then the *Cour de cassation* has moreover confirmed its attitude in an unpublished ruling of June 25, 1982. That ruling annulled a (likewise unpublished) decision of the Antwerp Court of Appeal of December 3, 1980. The Antwerp Court was of the opinion that, where an author consented to transmission by broadcasting, it was to be presumed that the consent related also to cable distribution, in view of the fact that the author knew of the existence of cable television, and could have

prohibited distribution but had omitted to do so. The *Cour de cassation* rightly mentioned in its ruling that copyright did not admit of any presumption that an author who had consented to the broadcasting of his work had also consented to its communication to the public by another body.

3. Free Circulation of Phonograms and Videograms

(a) Import of phonograms from the United States of America (Brussels Court of Appeal, May 17, 1984)

In the United States, the mechanical reproduction of musical works comes under a system of legal licensing whereby reproduction is allowed without the author's consent, but against payment of remuneration laid down by law. The amount of that remuneration is quite small, and in any event far smaller than that agreed upon by contract in Belgium.

The defendant had imported records from the United States of America without paying the fee customary in Belgium, or even the difference between the American legal license fee and the Belgian fee. One interesting feature of this action is that it was not brought by the aggrieved authors themselves, but by the trade association of Belgian record producers, which applied for a restraining injunction under the Law on Trade Practice.

In a ruling on April 21, 1982 (*L'Ingénieur–Conseil*, 1982, 97), the president of the Commercial Court in Brussels granted the application. The ruling considered that the trade association was admittedly not the owner of tbe copyright, but that its application was nevertheless acceptable. Evading payment of copyright royalties was indeed contrary to honest trade practice.

With regard to the non–payment of royalties, tbe judgment confined itself to noting somewhat laconically that the reproduction had been done in the United States of America under a legal license, that the license was valid only on the territory of tbe United States and that in Belgium the American author could take action under Belgian law. For its part, the Court of Appeal looked into this point in greater depth and eventually came up with an original finding. Its starting point was tbe fact that reciprocity existed between the United States and Belgium under tbe Universal Copyright Convention (Geneva, 1952); under Article II of that Convention, the works of the nationals of any Contracting State enjoy in each other Contracting State the same protection as that other State accords to works of its own nationals.

In Belgium it is of course Belgian law tbat applies, but also the Berne Convention (by virtue of the Law of July 27, 1953; the Court did not state that fact). Now the Berne Convention says clearly that legal licenses are confined to the territory of the State that imposes them (Article 13). So the nationals of the United States of America enjoyed the benefits of the Berne Convention, to which their country at the time was not party!

The Court could just as well have invoked the territoriality principle generally accepted in legal literature, according to which the law of the country in which protection is sought is to be applied (the sole exception being the provisions on the term of protection). Belgian law does not recognize legal licenses; copyright is absolute.

(b) Free circulation of videograms (Charleroi Court, March 27, 1986; *L'Ingénieur–Conseil*, 1986, p. 302, with note by J. Steenbergen; RIDA, 130, p. 128)

In this case two Belgian distribution companies had secured the exclusive distribution rights for Belgium in two French films. Those rights included showing in cinemas, television broadcasting and videographic reproduction. When it transpired that other firms, having found a direct source of supply in France, had distributed videograms of the two films in Belgium, the distribution companies attempted to stop the dissemination of the offending videograms.

The defendants argued that they had acquired the videograms legitimately in France, that the owners of rights had therefore been paid for the use of their right of reproduction and that the right of reproduction was thereby exhausted, and then that European law, more specifically Article 85 of the EEC Treaty, was opposed to any obstruction of the free circulation of videograms in EEC member States, as it was in the case of phonograms and books.

First tbe Court recalled the existence of the "right of destination," based in Belgium on the ruling of tbe *Cour de cassation* of January 19, 1956 (Pas. I, 484).

By virtue of the right of destination, the author may specify the "destination" or intended purpose of reproductions of his work; he may among other things impose territorial limitations, authorize distribution of a reproduction in one country and not in another, etc.

In the case reported on here, the videograms put on the market in France therefore could not at the outset be distributed in Belgium (except where separate authorization was given: that had been given to the plaintiffs).

As for the application of the EEC Treaty, the Court recalled that Article 36 of the Treaty allowed departures from Article 85 insofar as they were based among other things on the protection of intel-

lectual property. Then the Court referred to the famous Coditel rulings of the Court of Justice of the European Communities, of March 18, 1980, and October 6, 1982 (cf. our earlier "Letters").

More specifically in the ruling of October 6, 1982, the Court had decided that a contract under which an exclusive right for the showing of a film for a certain period on the territory of a member State was granted by the owner of the copyright in a work did not in itself come under Article 85.

It has to be said that the above rulings concerned a dispute involving the right of performance (the showing of the film), whereas here the right of reproduction was involved. According to the Court, however, "the fact remains that these two facets of copyright are of equal value."

The Court acceded to the plaintiff's conclusions, according to which,

> ...if one were to acknowledge that a film could be the subject of an exclusive territorial concession when distributed in cinemas, but that the concession would not be binding on third parties with respect to videocassettes, the latter fact would obviously make the exclusive concession for cinema exploitation meaningless, as the domestic market would then be flooded with videocassettes, to the direct prejudice of the cinema exploitation of the film, which was precisely what the exclusive concession was intended to protect.

The least that one can say of this decision is that it is a very sweeping interpretation of the Coditel rulings. Certainly the rulings are just a little ambiguous; certainly the Court of Justice did not make any precise distinction between the right of performance and the right of reproduction[4]; but from there to use the specific nature of cinematographic works as a pretext for discarding wholesale the principles of the free circulation of goods can be considered questionable.

The judgment went to appeal, but unfortunately nothing seems to have come of it, as the defendants have in the meantime gone into liquidation.

4. *The Originality Concept*

First there are two rulings of the *Cour de cassation* that reflect important viewpoints.

A first *ruling, dated April 27, 1989* (RW 1989–1990, p. 362) was handed down in a dispute involving the protection of a photographic work. Here the *Cour* concluded

> ...that, if a photograph is to enjoy legal protection, it is necessary but sufficient that it be the expression of its creator's intellectual effort, which condition is essential if the work is to be given the required individual character whereby creation is seen to have occurred.

This finding leaves one with mixed feelings.

The first part of the sentence, "it is necessary but sufficient that it be the expression of its creator's intellectual effort," reminds one powerfully of the attitude of the French *Cour de cassation* towards software protection,[5] which attracted a great deal of criticism from legal writers.[6]

However the Belgian Supreme Court continues: "... which condition is essential if the work is to be given the required individual character whereby creation is seen to have occurred." An intellectual effort is indeed essential if individual character is to be given, but it is not sufficient in itself. More is needed, and it is unfortunate that the Court did not address that subject, but reassuring at least that it seemingly considers "individual character" to be a requirement if creation is to be spoken of.

In its *ruling on October 25, 1989* (RW 1989–1990, p. 1061), the *Cour de cassation* took a clearer position. It had to pronounce on an appeal against a ruling of the Liège Court of Appeal on the protection of a catalog.

The Liège Court had conceded that "the catalog was the result of many years of long and difficult research," but had nevertheless considered it unoriginal. The appeal alleged that this reasoning was contradictory, but the *Cour de cassation* rejected the allegation, considering the appeal judges to have "decided by implication, but unequivocally, that the catalog at issue does not bear the personal stamp of the author, and therefore cannot be regarded as original." It is thus clearly stated by the Supreme Court that the author's personal stamp is essential if an original work is to be spoken of.

Two decisions of the Brussels Court of Appeal are also important, because they relate to types of work that regularly present problems in both case law and doctrine.

A *ruling of June 21, 1988*, deals with the conditions for the protection of a building, and finds that

> It is sufficient for the work—an architectural work in this instance—to bear the imprint of a creative personality which identifies it as an original work, but without the originality having to be such that it causes the work to be assimilated to a "work of art," as "artistic" character *per se* is not required.

The other *ruling of October 26, 1989* (JT 1990, p. 611), refused to protect an interview because

> ...it does not have any of the characteristics that could make a protected work of it;...it is not a creation of the person in question insofar as that person did not intend, by leaving the mark of a personal composition and style, to lend his thought an original form that would make it eligible for protection.

---

[4] Cf. A. Françon in *Revue trimestrielle de droit commercial*, 1980, p. 339.

[5] Ruling of March 7, 1986, RIDA 109, p. 103, with note by Lucas.

[6] Cf. P. Gaudrat, "La protection des logiciels par le droit d'auteur," RIDA 138, p. 77.

To summarize, then, we can say that both the *Cour de cassation* and the Court of Appeal clearly require the "personal stamp" before they speak of originality.

Let us bear in mind in passing that the same terms are used in the decision of the Benelux Court of Justice of May 22, 1987 (RW 1987–1988, p. 14), which had to rule on the interpretation of Article 21 of the Uniform Benelux Designs Law, and it decided that, for protection to be accorded under the Copyright Law, it was necessary for a design to be considered a work, "that is, a product having original character of its own and bearing the personal stamp of its creator."

5. Photographic Works

The protection of photographic works continues to generate a great deal of jurisprudence. Copyright protection for these works still does not seem to be taken for granted. While there is still some divergence here and there, it is nonetheless generally accepted that the "originality" condition is sufficient, as it is for all other works, for photographic works to be protected, and that the "artistic quality" requirement does not appear either in the Law or in the international conventions.

However, this is the first time that the *Cour de cassation*, in the *ruling of April 27, 1989*, mentioned earlier, concerns itself clearly with this notion, and that it declares a decision illegal for having made the protection of a photographic work "contingent on its artistic value."

The Brussels Court of Appeal goes further into the question of what exactly constitutes originality in a photographic work in a *ruling of March 8, 1989* (JT 1989, p. 404).

The Court declares the following:

> The fact remains that circumstances, choice of subject and the photographer's vision can give a work a unique, very specific character, which the law protects by conferring on it the status of work of art.

So not all photographs are protected as a matter of course; they have to meet with certain requirements which the courts evaluate at their discretion.

This too was the finding of the Brussels Court of First Instance, in a *ruling on June 19, 1987*. The Court objected to the opinion according to which every photograph, with human intervention at every stage in the operation, is necessarily eligible for protection: "original creation is not achieved by the mere fact of a person operating a camera, with the range of variations that this is bound to involve."

One has to admit that this opinion, which we ourselves have occasionally defended, is perhaps somewhat extreme.

So what is to be done? The matter is a simple one, says the Court, when the photograph is, "in terms of its form, the record, recognizable to any person, of a sensual, fantastic, symbolic or hyperrealistic universe, which bears a certain personal stamp," and moreover "when the record is perceived at the outset as being characteristic of a personality and imprinted with an immediately recognized subjectiveness: the photographer is as much embodied in the photograph as the photograph is itself embodied in paper; it is in that sense that one speaks of personal expression." The Court realizes that the matter becomes more complex when "the photographed element of outward reality, or indeed the event recorded, forming the subject of the photograph, seems to be determinative."

Even then however the photograph may "embody and reveal not only what is photographed...but also the personal vision of the photographer, which actually imprints itself on the creative composition, a vision that is conveyed to the public at the same time as the composition and also through it."

The courts will always have the last word, and they are bound to judge subjectively. One has indeed to accept that originality is a subjective concept (in the case in question, the Court considered three news photographs, accepting two for protection but rejecting the third).

6. Droit de Suite (Cass., September 28, 1984, RW 1984–85, 2702)

We recall first and foremost that the *droit de suite* is a sort of *sui generis* right that is not actually written into the Copyright Law, but derives from the Law of June 25, 1921. It consists in the entitlement of the author of an original work of three-dimensional art to a percentage of the selling price on every public sale of the work. The percentage is a progressive one: it represents 2% of any price between 1,000 and 10,000 BF, 3% of any price between 10,000 and 20,000 BF, 4% of any price between 20,000 and 50,000 BF and 6% of any price above 50,000 BF. For a number of years the *droit de suite* has clearly been a great nuisance to art galleries; it is, without any doubt, a question of competition.

Droit de suite is also recognized in neighboring countries such as France, Italy, Germany and Luxembourg, but the United Kingdom (with its famous auction houses Christie's and Sotheby's) and the Netherlands do not recognize it. It is obvious that unsympathetic gallery operators are behind legislative proposals for the outright elimination of the *droit de suite* (Chamber, 1971–72, document No. 253), or for the limitation of foreigners'

droit de suite to the tariff applied in their own countries (Senate, 1977–78, document No. 417).

These proposals were not well received by the Copyright Advisory Board, the first because it would have been a considerable step backwards socially for artists, and because it ran counter to an international trend, as the *droit de suite* had at that time just been introduced in Germany and Luxembourg (Notification No. 3 of September 20, 1972), and the second because it was contrary to the Berne Convention (Notification No. 9 of November 29, 1978). Neither proposal was even examined.

At this stage procedural action was taken. Two questions were raised at the outset. The first was the question of liability: under the Law it is the vendor, the purchaser and the public official conducting the sale who are jointly liable (Article 3); yet the Royal Decree of September 23, 1921, speaks of the vendor, the purchaser and the organizer or director of the auction (Article 1), which is clearly an unconstitutional broadening of the Law.

The second question had to do with the method of calculating the resale levy. It could be calculated on the overall price: this would correspond to the second part of Article 2 of the Law, which provides that "the said levy shall be withheld from the selling price of each work." The calculation could however also be done by "tranches," which seems to correspond better to the presentation of the tariff in the first part of Article 2.

In a judgment on February 18, 1980, the Justice of the Peace of Bruges (JT 1980, 495, with note by Van Bunnen) decided with reference to the first question that the owner or the auctioneer performed the role of vendor vis–à–vis the purchaser and the public. The true identity of the vendor did not have to be known, and the public officer was not bound to check it. Consequently the owner and the auctioneer both came within the definition of the vendor in terms of the law.

As for the second question, the Justice of the Peace opted for calculation by "tranches," but did not back up his arguments. This case was decided on appeal by the Bruges Court in a judgment dated April 18, 1983 (RW 1983–84, 573). On the first question, the ruling of the Justice of the Peace was upheld. It was considered that no document was submitted that revealed the identity of the true vendors. The gallery operator was therefore acting in his own name, taking upon himself all the obligations of the vendor, so in terms of the law he had to be regarded as the vendor.

As for the calculation of the levy, the Court considered however that the tariff should be applied to the price attained. It based this finding on a practice of more than 50 years' standing, on legal literature and above all on the preparatory material, from which it emerged that, during the discussion, an example had been quoted in which the calculation had clearly been made in relation to the total price. However, a new element was then introduced, which was that French artists could not avail themselves of the *droit de suite* because the implementing decree concerning it had not been validly published in the *Moniteur*. Unlike copyright in the general sense, the *droit de suite* does not operate for all foreigners, but only for the nationals of States with which equivalence has been recognized by royal decree (Article 4 of the Law). This had been done for France (Royal Decree of September 5, 1923) and Germany (Royal Decree of May 26, 1977). The matter at issue therefore was the publication of the Decrees in the *Moniteur*. To this the Court replied curtly that "the action brought by the French artists relies on Article 4 of the Law, in view of the fact that Belgian artists are accorded equivalent rights in France and vice versa."

The defendant sought to have this judgment quashed on appeal. The ruling of the *Cour de cassation* upheld the lower court's finding with regard to the definition of the vendor. It stated that the term "vendor" should be taken to mean not only the person who, under civil law, disposes of his property against payment, but also the person who, under commercial law, sells on behalf of the trader, acts in his own name and makes stipulations and contracts obligations as the vendor in relations with the purchaser and third parties.

The ruling also upholds the Bruges Court's decision on the calculation of the levy: the Law does not say anywhere that it is a proportional right or that there is a tariff in parts or "tranches"; but with regard to the position of the French artists, the ruling finds that the lower court has not answered the question raised concerning publication, and sets aside its decision on that point.

The case was referred to the Courtrai Court, which passed judgment on September 19, 1986 (RW 1987/88, p. 888). That Court held that the Law of April 18, 1898, and even before that the Law of February 28, 1845, provided that Royal Decrees that affected the generality of citizens had to be published in full in the *Moniteur*.

The disputed Royal Decree of September 5, 1923, is important not only to the French artists who are granted the benefit of the *droit de suite*, but also to Belgians in general, in view of the fact that all of them, whether as purchasers or as vendors, may one day become liable to pay resale levies to French artists. The notice published in the *Moniteur* of October 13, 1923, thus does not conform to the provisions of the Law of April 18, 1898, so the Royal Decree of September 5, 1923, is not binding, and French artists cannot claim the *droit de suite* in

Belgium. Consequently the judgment was adapted hy the removal of the amounts payable to the French artists from the calculation.

7. Works of Joint Authorship and Derived Works (Brussels Court, February 18, 1981)

This dispute concerned the well-known opera *The Tales of Hoffmann* by Jacques Offenbach. The original lihretto of the opera was written hy Jules Barhier. The work was first performed in 1881, some months after Offenbach's death; Jules Barbier died in 1901. A new version of the work, suhstantially adapted by Pierre Barbier, the son of Jules, was puhlished in 1907. Barhier had written new words for certain arias, removed some passages and added others, including one from another work by Offenbach. He in turn died in 1918. It was his version that was performed at the Théâtre de la Monnaie in Brussels without any copyright royalties being paid from 1962 onwards because, the theater claimed, the work had been in the public domain since 1961.

Both Offenbach's and Barbier's heirs sued for damages; a ruling of the Civil court in Brussels on November 22, 1967 (unpublished), dismissed their suit because it considered that there was no proof of Pierre Barbier having made an original contrihution. The Court of Appeal, on the other hand, acknowledged for its part that Pierre Barbier was indeed the author of an original, creative work, apart from which the revision and the adaptation of a preexisting work qualified to be considered for protection if they reflected an expression of personality, which they did. However, as Pierre Barbier had not been involved in the creation of the work from the outset, his intervention was not joint authorship in the legal sense of the term; with his alterations and additions he had produced a derived work.

Yet it is joint authorship alone that makes a work indivisible, whereupon the term of protection is calculated as from the death of the last surviving coauthor. Derived works do not enjoy this status, so two convergent rights are created: the rights of the author of the original work and those of the author of the arrangement. The successors in title of the author of the original work can no longer exercise their rights after the term of protection has expired. The action brought hy Offenbach's heirs was therefore dismissed, but the action brought by Barbier's heirs had a measure of validity: the arrangement eventually remained protected until 1978.

8. Neighboring Rights

(a) Rights of performers (Comm. Brussels, summary proceeding, June 5, 1984)

Legal writers have long distinguished what are known as neighboring rights or related rights alongside copyright. These are the rights of persons or corporate bodies that do not actually create a work but nevertheless make a creative contrihution that deserves to he protected. Those persons or hodies are performers, producers of phonograms and broadcasters. In a great many countries their rights already form part of positive law; not so in Belgium, however; nor has Belgium ratified the 1961 Rome Convention which governs the international protection of the rights in question.

In the decision that concerns us here, the rights—or rather a group of them, namely the rights of performers—have found their way into case law. The famous singer Shirley Bassey had entered into an agreement with a producer for the recording of a work on discs, with a second voice provided hy Alain Delon. Without the singer's authorization, the producer brought out another version of the work with the second voice provided by Al Corley. Shirley Bassey objected to the distribution of the latter recording, and the Brussels Court acceded to her application. Thus the Court recognized that, in the absence of copyright, the musician or other performer had a neighboring right. Shirley Bassey's neighhoring right consisted in her heing able to judge for herself whether or not her reputation would be prejudiced if her voice were mixed with another that offended her, or with the voice of a performer whom she did not like. This case is still pending on appeal.

Brussels Court, March 9, 1987 (JT 1988, p. 280, with note by C. Doutrelepont)

A conductor had conducted the recording of a musical work in exchange for an agreed lump-sum fee, with a view to distribution on discs. Later the work was also put on the market in cassette form.

The conductor demanded additional remuneration proportional to the sales of discs and cassettes, and also damages hecause the cassette distrihution had supposedly taken place without his consent.

The Court rejected both his applications.

A conductor is not an author but a performer. Belgian law is one of the last in Europe that still does not accord specific rights to such performers, but there is nevertheless a certain element of case law that already allows a performer, as it does an author, moral rights in relation to his performance (cf. Brussels Commercial Court, summary proceeding, June 5, 1984, mentioned earlier).

This does not mean however that the performer will be devoid of all protection. For one thing he will enter into contracts for his performances, which will give him the opportunity to specify the circumstances and conditions under which use may

be made of his performance. Apart from that he is protected by ordinary legal provisions: any use made of his performance must not be prejudicial to him.

In the case in point, the conductor had entered into a contract which provided only for a lump-sum fee for the making of a recording, the subsequent use of which was not specified further. The conductor contended that it was a widespread international practice for a conductor to be remunerated in proportion to the phonograms sold, in the form of royalties; he was unable to provide proof of his contention, however.

The situation is indeed not as simple as that. The remuneration of performers is either in the form of a lump sum or proportional, or a combination of the two. Much depends moreover on the performer's status (orchestra member or soloist), the nature of the work recorded (classical or light music) and the reputation and celebrity of the performer.

Many performers actually prefer the lump-sum fee, on account of the uncertainties of proportional remuneration. It is therefore significant that the Court should have rejected this demand.

Apart from that, the Court also held that the conductor had no reason to object to the production of cassettes, in view of the fact that he had given his authorization for the production of discs:

> Having given his authorization for the recording of the performance, without specifying that it should be used only for marketing in the form of discs, to the exclusion of other recording materials, the plaintiff has no further right to control the use made of that performance except where his personal rights are prejudiced, which in the case in point they were not.

This is certainly more open to criticism: the Court is interpreting the conductor's authorization very broadly, whereas it could have adopted a stricter approach, on the analogy of copyright, in this comparable case. It is probable however that the fact of the performer having waited a very long time (13 years!) before taking his grievance to court played some part. It might indeed have been thought that he had in the meantime tacitly given his authorization.

(b) Rights of broadcasters (Brussels, June 13, 1986; JT 1986, p. 529, with note by Van Bunnen; RIDA, 131, p. 225, with note by C. Doutrelepont)

Broadcasters whose programs can only be received against payment of a subscription fee (such as FilmNet and Canal Plus) distort their signals on emission. The subscriber receives a decoder to plug into his television receiver, and also the necessary antenna or cable connections, whereupon the signal can once again become a visible picture.

Unscrupulous experts sometimes try to imitate the design of these decoders and then sell them to anyone who wishes to see the programs without paying. The action in question was brought by Canal Plus against a number of infringers.

The procedure relied on the Law on Trade Practice, but its interest for us lies in the fact that the Court is made to acknowledge that the broadcaster is the owner of neighboring rights: "considering that...further committed a violation of the rights neighboring on copyright accruing to Canal Plus..." This violation was considered an infringement of Article 54 of the Law on Trade Practice, and led, together with a number of other infringements, to a ban on the continued marketing of counterfeit decoders.

This is the first time that case law has ever recognized the neighboring rights of broadcasters.

(WIPO translation)

Calendar of Meetings

WIPO Meetings

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

1991

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 Naimbi 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