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CHANGES IN THE CONTENT OF THIS PERIODICAL

At their session in Geneva from September 23 to October 2, 1991, the Governing Bodies of WIPO adopted the Program and Budget of the Organization for the 1992-93 biennium. As regards the item "Periodicals and Other Publications," the Program as adopted provides that "the periodicals will no longer contain articles written by specialists in intellectual property but only material coming from official sources."

In implementation of the said decision, the periodicals will, as from January 1, 1992, contain only material concerning the activities of WIPO and accessions to treaties administered by it. They will provide comprehensive and up-to-date information about those activities, such as important working documents and reports of meetings organized by WIPO and information on WIPO's development cooperation and registration activities.

WIPO 1991

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(INSERT)

Editor's Note

DENMARK

Copyright Act 1961, No. 158 of May 31, 1961, as amended to June 7, 1989 (Consolidation Act No. 453, of June 23, 1989)	Text 1-01
Photography Act 1961, No. 157 of May 31, 1961, as amended to June 7, 1989 (Consolidation Act No. 454, of June 23, 1989)	Text 2-01
Ordinance on the Application of the Copyright Act and the Photography Act With Respect to Other Countries, etc. (No. 452, of June 18, 1990)	Text 3-01
Executive Order on Calculation of <i>Droit de Suite</i> Remuneration in Pursuance of the Copyright Act (No. 440, of June 8, 1990)	Text 4-01
Executive Order on Storage and Use of Recordings of Radio and Television Broadcasts Made for Educational Purposes (No. 152 of April 6, 1979, as amended by Order No. 687 of October 11, 1990)	Text 5-01
Executive Order on Collection of Remuneration in Pursuance of Section 22a, etc. of the Copyright Act for Programs Distributed Via Radio and Cable Systems (No. 892, of December 20, 1990)	Text 6-01
Decree on Determination of Remuneration for the Use of Protected Literary and Artistic Works and Photographic Pictures (No. 260, of July 14, 1962)	Text 7-01
Royal Decree on the Access to Photographic Copying of Literary and Artistic Works, etc. by Archives, Libraries and Museums (No. 272, of July 21, 1962)	Text 8-01

UNITED KINGDOM

The Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1991 (No. 1116, of May 2, 1991)	Text 11-01
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WIPO Meetings

Governing Bodies of WIPO and the Unions Administered by WIPO

Twenty-Second Series of Meetings

(Geneva, September 23 to October 2, 1991)

NOTE*

From September 23 to October 2, 1991, the Governing Bodies of WIPO and the Unions administered by WIPO held their twenty-second series of meetings in Geneva. Delegations from 93 States, 12 intergovernmental organizations and six non-governmental international organizations participated in the meetings.

The following 23 Governing Bodies met:

WIPO General Assembly, thirteenth session (10th ordinary);
 WIPO Conference, eleventh session (10th ordinary);
 WIPO Coordination Committee, twenty-eighth session (22nd ordinary);
 Paris Union Assembly, eighteenth session (10th ordinary);
 Paris Union Conference of Representatives, nineteenth session (10th ordinary);
 Paris Union Executive Committee, twenty-seventh session (27th ordinary);
 Berne Union Assembly, twelfth session (10th ordinary);
 Berne Union Conference of Representatives, twelfth session (10th ordinary);
 Berne Union Executive Committee, thirty-third session (22nd ordinary);
 Madrid Union Assembly, twenty-third session (9th ordinary);
 Hague Union Assembly, twelfth session (8th ordinary);
 Hague Union Conference of Representatives, twelfth session (8th ordinary);
 Nice Union Assembly, twelfth session (10th ordinary);
 Nice Union Conference of Representatives, eleventh session (10th ordinary);
 Lisbon Union Assembly, ninth session (9th ordinary);

Lisbon Union Council, sixteenth session (16th ordinary);
 Locarno Union Assembly, twelfth session (9th ordinary);
 IPC [International Patent Classification] Union Assembly, eleventh session (8th ordinary);
 PCT [Patent Cooperation Treaty] Union Assembly, nineteenth session (8th ordinary);
 TRT [Trademark Registration Treaty] Union Assembly, seventh session (6th ordinary);
 Budapest Union Assembly, ninth session (6th ordinary);
 Vienna Union Assembly, fifth session (4th ordinary);
 FRT [Film Register Treaty] Union Assembly, second session (1st ordinary).

The main agenda items and the main decisions covered the following points:

Appointment of the Director General. On the basis of the nomination made by the WIPO Coordination Committee in 1990, the WIPO General Assembly appointed Dr. Arpad Bogsch, unanimously and by acclamation, as the Director General of WIPO for a further period ending November 30, 1995.

Activities from July 1, 1989, to July 15, 1991. The delegations expressed their entire satisfaction with the format and substance of the reports submitted by the Director General and, in particular, praised the comprehensiveness and clarity of those reports which made possible a full review of the activities undertaken by the International Bureau. In their view, those activities were impressive both in terms of quality, volume and variety, and they conformed to the plans laid down for the 1990-91 biennium and achieved the objectives set out therein. The delegations paid special tribute to

* Prepared by the International Bureau.

the professionalism, competence and dedication of the staff of the International Bureau led by the Director General.

Most of the delegations singled out for special mention the development cooperation activities for the benefit of developing countries and, in particular, in the areas of human resource development or training, advice and assistance in legislative and legal drafting, the upgrading of administrative procedures and office management, computerization, patent information services (including the introduction of CD-ROM technology) and the teaching of intellectual property law in universities.

The delegations of the developing countries considered such activities as being of prime importance in WIPO's work program, and expressed their great satisfaction with the assistance that their countries had received from WIPO and also, through WIPO, from other countries, both developing and industrialized, as well as from certain organizations. Most of the delegations of the industrialized countries stressed the importance which their governments attached to WIPO's development cooperation program. They pledged to continue their participation in those activities and, whenever feasible, also to increase their share in such participation.

Many delegations expressed their satisfaction with the work the International Bureau had undertaken or was undertaking in the area of norm-setting, such as the progress achieved in the preparations for a Patent Law Treaty and in discussions on the settlement of intellectual property disputes between States. In addition, they noted with satisfaction the continuing growth in the international registration activities relating to patents, marks and industrial designs.

Program and Budget for the 1992-93 Biennium. The program and budget were adopted. The Assemblies of the PCT, Madrid and the Hague Unions approved the proposal of the Director General to have these three fee-financed Unions participate (for the first time), with an amount of 4.3 million Swiss francs, in the financing of certain activities (primarily development cooperation activities) in which they had not previously participated. The total of the contributions by the member States to the Paris and the Berne Unions will be the same for the 1992-93 biennium as it was for the 1990-91 biennium.

In the 1992-93 biennium, more emphasis will be placed on activities in the following areas:

(a) development cooperation, where a greater volume of activities is foreseen, particularly for encouraging adherence by developing countries to WIPO administered treaties, for facilitating the

participation, by representatives of developing countries, in WIPO-organized meetings, for the computerization of the services of industrial property offices of developing countries, and for the development of teaching of intellectual property law in developing countries;

(b) norm-setting, where it is envisaged to conclude the Treaty Supplementing the Paris Convention as Far as Patents Are Concerned (the first part of the Diplomatic Conference which has to adopt that Treaty took place in June 1991) and a treaty on the settlement of intellectual property disputes between States, as well as to continue preparations on a possible Protocol to the Berne Convention and a proposed treaty on the harmonization of the formalities and other aspects of the protection of trademarks;

(c) international registration services, where it is planned to continue the computerization of the operations of the PCT, the international registration of trademarks under the Madrid Agreement and the international deposit of industrial designs under the Hague Agreement with a view to providing ever better services to users.

Contribution System; Arrears of Contributions of the Least Developed Countries. Two new contribution classes representing one-half and one-quarter, respectively, of contribution class VII or class C, were created as from January 1, 1992. Forty-nine developing countries with low assessments in the United Nations system of contributions will benefit from these two new contribution classes which will reduce their present contributions by 50% or 75%, respectively.

The amount of the arrears of contributions of any least developed country (LDC) relating to years preceding 1990 are placed in a special account; their payment will not be claimed although some payments will be expected and encouraged ("frozen account").

Treaty Supplementing the Paris Convention as Far as Patents Are Concerned. The Assembly of the Paris Union decided that it would take a decision on the date of the second part of the Diplomatic Conference in an extraordinary session to be convened at the latest by September 1992. The Director General would convene the extraordinary session either at the request of member States or on his own initiative when he believed the time was ripe for making a decision.

Fee Increases. The Assemblies of the Madrid and the Hague Unions decided to increase their respective fees by 10%, effective from April 1, 1992. The Assembly of the PCT Union decided to increase the PCT fees by 8%, effective from January 1, 1992.

LIST OF PARTICIPANTS**

I. States

Algeria^{1, 2, 3, 4, 6, 10, 13, 15}: A. Semichi; F. Bouzid; H. Yahia-Cherif.

Argentina^{1, 2, 3, 4, 6, 7}: J.A. Lanus; A.G. Trombetta.

Australia^{1, 2, 3, 4, 6, 7, 13, 18, 19, 21}: P.A.D. Smith; J. Hannoush.

Austria^{1, 2, 3, 4, 6, 7, 10, 13, 17, 18, 19, 21, 23}: O. Rafeiner; G. Mayer-Dolliner; T.M. Baier.

Bangladesh^{1, 2, 3, 4}: M.I. Talukdar.

Belarus²: A. Mardovitch; V. Galka.

Belgium^{1, 2, 3, 4, 7, 9, 10, 11, 13, 18, 19, 21}: L. Wuyts.

Brazil^{1, 2, 3, 4, 6, 7, 18, 19}: C.L.N. Amorim; P.A. Pereira; P.S. Tarago; A.R. de Holanda Cavalcanti.

Bulgaria^{1, 2, 3, 4, 7, 9, 10, 15, 19, 21}: K. Iliev; P. Grozdanov; H. Karakolev; P. Petkova; K. Vladov.

Burkina Faso^{1, 2, 4, 7, 15, 19, 20, 23}: A.R. Palenfo.

Cameroon^{1, 2, 3, 4, 7, 9, 19}: G. Towo-Atangana; H. Fouda.

Canada^{1, 2, 3, 4, 7, 9, 19}: J.H.A. Gariépy; M. Leesti; J. Butler.

Chile^{1, 2, 3, 4, 7, 9}: M. Artaza; M. Porzio; P. Romero.

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Colombia^{1, 2, 3, 7, 9}: J.M. Cano.

Costa Rica^{1, 2, 7}: R. Barzuna Sauma; R. Saborio Soto; H. Krygier de Przedborski; U. Alfu de Reyes.

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Cuba^{1, 2, 3, 4, 6, 10, 15}: M. Fernández Finale; M. Jiménez Aday.

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Jordan^{1, 2, 4}: F. Matalgah.

** A list containing the titles and functions of the participants may be obtained from the International Bureau.

¹ WIPO General Assembly.

² WIPO Conference.

³ WIPO Coordination Committee.

⁴ Paris Union Assembly.

⁵ Paris Union Conference of Representatives.

⁶ Paris Union Executive Committee.

⁷ Berne Union Assembly.

⁸ Berne Union Conference of Representatives.

⁹ Berne Union Executive Committee.

¹⁰ Madrid Union Assembly.

¹¹ Hague Union Assembly.

¹² Hague Union Conference of Representatives.

¹³ Nice Union Assembly.

¹⁴ Nice Union Conference of Representatives.

¹⁵ Lisbon Union Assembly.

¹⁶ Lisbon Union Council.

¹⁷ Locarno Union Assembly.

¹⁸ IPC [International Patent Classification] Union Assembly.

¹⁹ PCT [Patent Cooperation Treaty] Union Assembly.

²⁰ TRT [Trademark Registration Treaty] Union Assembly.

²¹ Budapest Union Assembly.

²² Vienna Union Assembly.

²³ FRT [Film Register Treaty] Union Assembly.

- Kenya**^{1, 2, 3, 4, 6}: T.A. Ogada; N.C. Cheluget.
- Lebanon**^{1, 2, 4, 8, 14}: A. El Khazen; H. Chaar; N. Owejdlat.
- Lesotho**^{1, 2, 4, 7}: E.L. Motsamai; N.J. Khitsane.
- Liberia**^{1, 2, 7}: H.D. Williamson.
- Libya**^{1, 2, 4, 7}: S. Shaheen.
- Luxembourg**^{1, 2, 4, 7, 10, 11, 13, 18, 19, 22}: F. Schlessler.
- Madagascar**^{1, 2, 4, 8, 19}: P. Verdoux.
- Malaysia**^{1, 2, 4, 7}: M. Yusof Hitam; A.K. Zulkaffli; V. Sudha Devi.
- Malawi**^{1, 2, 4, 7, 19}: J.B. Villiera; G.K. Chibesakunda; S.W.D. Chavula.
- Mexico**^{1, 2, 3, 4, 7, 9, 16, 23}: J.M. Morfin Patraca; D. Jiménez Hernández; A. Velez Salcedo; M. Velarde Mendez.
- Monaco**^{1, 2, 4, 7, 10, 11, 13, 18, 19}: J.-P. Campana.
- Mongolia**^{1, 2, 4, 10, 19}: J. Batsuuri; D. Demberel.
- Morocco**^{1, 2, 4, 7, 10, 12, 13}: E.G. Benhima; M. Laghmari; H. Abbar; F. Baroudi.
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- New Zealand**^{1, 2, 4, 8}: H. Burton; D.J. Walker.
- Nicaragua**^{2, 3}: J. Alaniz Pinel; M. Moncada-Fonseca.
- Nigeria**⁵: E.A. Azikiwe.
- Norway**^{1, 2, 4, 7, 13, 17, 18, 19, 21}: J. Smith; K.A. Evjen.
- Pakistan**^{1, 2, 3, 7, 9}: F. Abbas; I. Baloch.
- Panama**^{2, 3}: R.-L. Ameglio.
- Peru**^{1, 2, 7}: J. Stiglich; R. Saif de Preperier.
- Philippines**^{1, 2, 4, 7, 21}: N.L. Escaler; D. Menez-Rosal; C.V. Espejo.
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- Senegal**^{1, 2, 3, 4, 6, 7, 11, 19}: A. Sène; G. Diop.
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- Sudan**^{1, 2, 4, 10, 19}: O. Alim; A.-R.I. El-Khalifa; A.A. Gubartalla; M.A. Elkarib.
- Sweden**^{1, 2, 3, 4, 7, 9, 13, 17, 18, 19, 21, 22}: B. Erngren; L. Björklund; U. Jansson; F. von Arnold.
- Switzerland**^{1, 2, 3, 4, 6, 7, 9, 10, 11, 13, 17, 18, 19, 21}: R. Grossenbacher; A. Bauty.
- Syria**^{3, 5, 6}: C. Kayali.
- Thailand**^{1, 2, 7}: T. Bunnag; S. Suntavaruk; S. Rattanasuwan; C. Sakolvari.
- Trinidad and Tobago**^{1, 2, 4, 7}: R. Permanand; A. Gonzales.
- Tunisia**^{1, 2, 4, 7, 12, 14, 15, 22}: M. Ennaceur; A. Azaiez; T. Ben Slama.
- Turkey**^{1, 2, 4, 8}: M. Onaner; E. Enç; E. Karaahmet; A. Karanfil.
- Ukraine**²: A.A. Ozadovski; S.V. Reva.
- United Kingdom**^{1, 2, 3, 4, 6, 7, 13, 18, 19, 21}: A. Sugden; P. Hartnack; J.S. Booth; E.C. Robson; H.M. Pickering.
- United Republic of Tanzania**^{1, 2, 4}: A.H. Jamal; M. Mangachi.
- United States of America**^{1, 2, 3, 4, 6, 7, 13, 18, 19, 21}: M.B. Abram; H.J. Winter; L.J. Schroeder; M.T. Barry; C.F. Ruebensaal.
- Uruguay**^{1, 2, 3, 4, 6, 7}: J.A. Lacarte-Muro; C. Amorin; M. Cassarino.
- Venezuela**^{1, 2, 3, 7, 9}: C.R. Pestana-Macedo.
- Viet Nam**^{1, 2, 4, 10}: Doan Phuong; Thanh Long Nguyen.
- Yugoslavia**^{1, 2, 4, 7, 10, 13, 17}: N. Čalovski; M. Bijedić; B. Totić; O. Spasić.
- Zaire**^{1, 2, 4, 7}: K. Mutuale; M. Mutambula.
- Zimbabwe**^{1, 2, 4, 7}: N. Mvere.

II. Intergovernmental Organizations

United Nations Educational, Scientific and Cultural Organization (UNESCO): A. Amri. **United Nations Industrial Development Organization (UNIDO)**: I. Lorenzo; D. Rakotopare. **General Agreement on Tariffs and Trade (GATT)**: A. Otten; M.C. Geuze. **African Intellectual Property Organization (AIPO)**: V. Efon; P.A. Thiam. **African Regional Industrial Property Organization (ARIPO)**: A.R. Zikonda. **Agency for Cultural and Technical Cooperation (AGECOP)**: C. Favart. **Benelux Designs Office (BBDM)**: P. Rome. **Benelux Trademark Office (BBM)**: P. Rome. **Commission of the European Communities (CEC)**: B. Schwab; D. Franzone. **European Patent Organisation (EPO)**: P. Braendli; R. Remandas; G.D. Kolle. **League of Arab States (LAS)**: A. Harhuem; A. Ould Babakar; N. Chakroun. **Organization of African Unity (OAU)**: N. Hached; M.H. Tunis.

III. International Non-Governmental Organizations

International Advertising Association (IAA): M. Ludwig. International Association for the Protection of Industrial Property (AIPPI): G.E. Kirker. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): N'D. Ndiaye. International Chamber of Commerce (ICC): J.H. Kraus. International Confederation of Societies of Authors and Composers (CISAC): N'D. Ndiaye. International Literary and Artistic Association (ALAI): E. Martin-Achard.

IV. Officers

WIPO General Assembly

Chairman: A. Semichi (Algeria). *Vice-Chairmen:* W. Kotarba (Poland); R. Grossenbacher (Switzerland).

WIPO Conference

Chairman: M. Porzio (Chile). *Vice-Chairmen:* O. Rafeiner (Austria); O. Alim (Sudan).

WIPO Coordination Committee

Chairman: M.A.J. Engels (Netherlands). *Vice-Chairmen:* I. Iványi (Hungary); F. Abbas (Pakistan).

Paris Union Assembly

Chairman: Gao Lulin (China). *Vice-Chairmen:* P.A.D. Smith (Australia); A.H. Jamal (United Republic of Tanzania).

Paris Union Conference of Representatives

Chairman: E.A. Azikiwe (Nigeria). *Vice-Chairmen:* S.R. Zavarci (Iran (Islamic Republic of)); C. Kayali (Syria).

Paris Union Executive Committee

Chairman: W. Fukasawa (Japan). *Vice-Chairmen:* K. Amoo-Gottfried (Ghana); Y.A. Besspalov (Soviet Union).

Berne Union Assembly

Chairman: G. Boytha (Hungary). *Vice-Chairmen:* J.H.A. Gariépy (Canada); C.R. Pestana-Maccedo (Venezuela).

Berne Union Conference of Representatives

Chairman: C.A. El Khazen (Lebanon). *Vice-Chairmen:* P. Verdoux (Madagascar); M. Onaner (Turkey).

Berne Union Executive Committee

Chairman: F. Abbas (Pakistan). *Vice-Chairmen:* S. Fitzpatrick (Ireland); J.M. Morfin Patraça (Mexico).

Madrid Union Assembly

Chairman: J. Mota Maia (Portugal). *Vice-Chairmen:* M. Fernández Finale (Cuba); M. Rădulescu (Romania).

Hague Union Assembly

Chairman: M.G. Del Gallo Rossoni (Italy). *Vice-Chairmen:* J.-P. Campana (Monaco); (Suriname).

Hague Union Conference of Representatives

Chairman: J. Delicado Montero-Ríos (Spain). *Vice-Chairmen:* M. Omar (Egypt); H. Abbar (Morocco).

Nice Union Assembly

Chairman: (Benin). *Vice-Chairmen:* P.L. Thoft (Denmark); Y.A. Besspalov (Soviet Union).

Nice Union Conference of Representatives

Chairman: A. Azaiez (Tunisia). *Vice-Chairman:* C.A. El Khazen (Lebanon).

Lisbon Union Assembly

Chairman: K. Iliev (Bulgaria). *Vice-Chairmen:* R. Tchibota-Souamy (Gabon); J. Mota Maia (Portugal).

Lisbon Union Council

Chairman: (Haiti). *Vice-Chairman:* D. Jiménez Hernández (Mexico).

Locarno Union Assembly

Chairman: L. Jakl (Czechoslovakia). *Vice-Chairmen:* J. Smith (Norway); B. Totić (Yugoslavia).

IPC [International Patent Classification] Union Assembly

Chairman: H.J. Winter (United States of America). *Vice-Chairmen:* P.S. Tarrago (Brazil); M. Enäjärvi (Finland).

PCT [Patent Cooperation Treaty] Union Assembly

Chairman: A. Schäfers (Germany). *Vice-Chairmen:* L. Wuyts (Belgium); W. Rasaputram (Sri Lanka).

TRT [Trademark Registration Treaty] Union Assembly

Chairman: Y.A. Besspalov (Soviet Union). *Vice-Chairmen:* A.R. Palenfo (Burkina Faso); (Congo).

Budapest Union Assembly

Chairman: A. Sugden (United Kingdom). *Vice-Chairmen:* (Liechtenstein); N.L. Escaler (Philippines).

Vienna Union Assembly

Chairman: B. Erngren (Sweden). *Vice-Chairmen:* F. Schlessler (Luxembourg); A. Azaiez (Tunisia).

FRT [Film Register Treaty] Union Assembly

Chairman: B. Miyet (France). *Vice-Chairmen:* A.R. Palenfo (Burkina Faso); L. Jakl (Czechoslovakia).

V. International Bureau of WIPO

A. Bogsch (*Director General*); L. Kostikov (*Deputy Director General*); S. Alikhan (*Deputy Director General*); L. Bacumer (*Director, Industrial Property Division*); P. Claus (*Director-Advisor*); F. Curchod (*Director of the Office of the Director General*); T.A.J. Keefer (*Controller and Director, Budget and Finance Division*); G. Ledakis (*Legal Counsel and Director, General Administrative Services*); H. Olsson (*Director, Copyright and Public Information Department*); I. Thiam (*Director, Development Coop-*

eration and External Relations Bureau for Africa); B. Bartels (Director, PCT Legal Division); R. Beltrán (Director, Development Cooperation and External Relations Bureau for Latin America and the Caribbean); D. Bouchez (Director, PCT Administration Division); B. Dondenne (Director, Languages Division); C. Fernández-Ballesteros (Director, Developing Countries (Copyright) Division); M. Ficsor (Director, Copyright Law Division); K. Idris (Director, Development Cooperation and External Relations Bureau for Arab Countries); B. Machado (Director, Personnel Division); J. Quashie-Idun (Director, Developing

Countries (Industrial Property) Division); K. Suedi (Director, Bureau for Relations with International Organizations); G. Yu (Special Assistant, Office of the Director General); F. Gurry (Special Assistant, Office of the Director General); B. Hansson (Head, International Classification Division); P. Higham (Head, Computerization Division); N. Sabharwal (Senior Counsellor, Development Cooperation and External Relations Bureau for Asia and the Pacific); R. Sateler (Assistant Legal Counsel, Office of the Legal Counsel); C. Claa (Head, Meetings and Documents Service).

WIPO Coordination Committee

Twenty-Ninth Session (7th Extraordinary)

(Geneva, November 21 and 22, 1991)

NOTE*

The WIPO Coordination Committee held its twenty-ninth session (7th extraordinary) at the headquarters of WIPO in Geneva on November 21 and 22, 1991. The session was opened and presided over by its Chairman, Mr. Max A. J. Engels (Netherlands).

Thirty-eight of the 52 member States of the Coordination Committee were represented at the session: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Côte d'Ivoire, Czechoslovakia, Democratic People's Republic of Korea, Egypt, France, Germany, Ghana, Hungary, India, Italy, Japan, Libya, Mexico, Netherlands, Nicaragua, Norway, Pakistan, Poland, Portugal, Senegal, Soviet Union, Spain, Switzerland, Syria, United Kingdom, United States of America, Yugoslavia. Furthermore, the following 22 States were represented in an observer capacity: Ecuador, Finland, Gabon, Guatemala, Indonesia, Iran (Islamic Republic of), Jamaica, Madagascar, Malaysia, Mali, Mongolia, Morocco, Paraguay, Philippines, Romania, Rwanda, Sudan, Sweden, Thailand, Viet Nam, Yemen, Zaire. The list of participants follows this Note.

At its second session in November 1973, the WIPO General Assembly decided that there should be three posts of Deputy Director General of equal

rank and equal remuneration, and that one should be occupied by a national of a developing country, one by a national of one of the other countries and one by a national of a socialist country.

In conformity with the proposals made by the Director General, the Coordination Committee approved

—the extension for a period of two years, that is, from December 1, 1991, to November 30, 1993, of the appointment of Mr. Shahid Alikhan as Deputy Director General, in the post of Deputy Director General to be occupied by a national of a developing country,

—the extension by three months (from December 1, 1991, to February 29, 1992) of the appointment of Mr. Lev Kostikov as Deputy Director General; the Committee came to the conclusion that that part of the 1973 decision of the WIPO General Assembly dealing with the post of Deputy Director General to be filled by a national of a socialist country should be referred to the General Assembly,

—the appointment of Mr. François Curchod to the post of Deputy Director General, to be occupied by a national of a country other than a developing country or a socialist country, for a period of four years (from December 1, 1991, to November 30, 1995).

* Prepared by the International Bureau.

LIST OF PARTICIPANTS

I. States Members of the Committee

Algeria: A.H. Semichi; H. Yahia-Cherif. Argentina: A.G. Trombetta. Australia: P.A.D. Smith; J. Hannoush. Austria: H. Preglau; T.M. Baier. Belgium: M. Gcdopt. Brazil: P. Tarrago. Bulgaria: P. Grozdanov. Canada: A. McCaskill. Chile: P. Romero. China: Ma Lianyuan; Li Jizhong; Liu Gushu; Wang Zhengfa; Wan Jiaqing; Wu Zhenxiang. Colombia: R. Salazar. Côte d'Ivoire: N'C.A. N'Takpe. Czechoslovakia: L. Jakl; V. Benisko. Democratic People's Republic of Korea: Ri Tchul; Pak Chang Rim. Egypt: N. Gabr. France: P. Delacroix. Germany: A. Schäfers; P. Voss; M.H. Flugger. Ghana: H.O. Blavo; F.W.Y. Ekar. Hungary: E. Lontai. India: P. Shah; D. Chakravarty. Italy: M.G. Fortini. Japan: Y. Takagi. Libya: I.A. Omar; S. Shaheen. Mexico: M. Vargas Campos; D. Jiménez Hernández. Netherlands: M.A.J. Engels; W. Neervoort. Nicaragua: J. Gazol Salcedo. Norway: E. Liljegren. Pakistan: F. Abbas; I. Baloch. Poland: A. Skrybant. Portugal: J. Mota Maia; A. Queiros Ferreira. Senegal: B. Dia. Soviet Union: V.M. Oushakov; B. Smirnov. Spain: P. Barrios; A. Casado Cerviño. Switzerland: R. Grossenbacher. Syria: C. Kayali. United Kingdom: A. Sugden; H.M. Pickering. United States of America: M. Kirk; M.T. Barry. Yugoslavia: O. Spasić.

II. Observer States

Ecuador: M.A. Guerrero Murgueytio. Finland: S. Ruokola. Gabon: M. Nziengui. Guatemala: C. Rodríguez-Fankhauser. Indonesia: B. Kesowo; R.R. Siahaan; K.P. Handriyo; E.D. Husin; T. Maroef. Iran (Islamic Republic of): M. Mokhtari-Amin; M. Chitsaz. Jamaica: P. Coke. Madagascar: P. Verdoux. Malaysia: A.K. Zulkafli. Mali: K.S. Diawara. Mongolia: G. Gongor. Morocco: F. Baroudi. Paraguay: R. Gauto. Philippines: D. Menez-Rosal. Romania: L. Bulgar; G. Istode. Rwanda: E. Nsabimana. Sudan: A.A. Gubartalla. Sweden: M. Lindstrom. Thailand: C. Sakolvari. Viet Nam: Luong Nguyen; Thanh Long Nguyen. Yemen: S. Mokbil. Zaire: M. Mutambula.

III. Officers

Chairman: M.A.J. Engels (Netherlands). *Secretary:* G. Ledakis (WIPO).

IV. International Bureau of WIPO

A. Bogisch (*Director General*); G. Ledakis (*Legal Counsel and Director, General Administrative Services*); F. Gurry (*Director-Counsellor, Office of the Director General*); B. Machado (*Director, Personnel Division*); G. Yu (*Director-Counsellor, Office of the Director General*).

Studies

Problems of Book Publishing and Copyright in Nigeria— Measures to Combat Piracy

Akin THOMAS*

I would like first to examine the main problems facing the book publishing industry in Nigeria. These problems are many, and are as diverse and complex as the ills plaguing the country; and they are problems which seem to defy obvious remedies. I shall discuss four of these problems.

The Problem of Piracy

Piracy is a serious plague which afflicts the rank and file of the book industry—especially publishers—in Nigeria. Until recently the Nigerian Government did not appear to be doing enough to bail out the industry from the quagmire in which it had found itself. The bane of piracy can only be removed through an effective copyright law, and Nigeria has taken some laudable steps in this direction since December 1988, when a new Copyright Decree was promulgated to replace the former Copyright Act of 1970, which was grossly inadequate and had no deterrent effect on the activities of pirates.

As we all know, book pirates have no overheads, they pay no royalties to authors (whose intellectual property is stolen and sold for profit by the pirates), they do not pay taxes to the Government, they have no registered offices and they do not offer employment or skill training for the development of the publishing business. No developing country can therefore afford to treat them with anything but the sternest measures if it wants to have unimpeded educational and social growth. Beyond not making any positive contribution to the growth of any developing country, piracy has some frightening negative effects on society. The main effect is that it has the potential to kill the growth of the book industry, authorship and legitimate book-selling and printing; and above all, it has the potential to destroy education and socio-political growth.

It was the grave danger posed by piracy in Nigeria that motivated the Nigerian Government

to undertake the review of the Copyright Act of 1970, and impose harsher penalties for this crime which, in a way, is as heinous as murder and drug trafficking—two crimes which attract the death penalty in Nigeria.

The Problem of Inadequate Manpower Resources

In Nigeria, as in most developing countries, the publishing industry still suffers to some extent from a dearth of highly specialized staff in the areas of editing, illustrating, book design and typography, color separation and certain modern printing processes. In Nigeria, people working in these areas have usually only managed to attain a level of proficiency through job experience, the limited printing courses of the nation's premier college of technology (the Yaba College of Technology), induction courses and other related training programs organized periodically by the Nigerian Publishers' Association and other professional associations. For the moment, courses in publishing are not offered in Nigerian universities and polytechnics, but the Yaba College of Technology is in the final stages of the establishment of a publishing diploma program, whilst a few publishing-related courses are offered in communication arts departments in some Nigerian universities. Nigerians in the publishing field recognize the need, and have drawn attention to it, for the relevant Government agency (in the first instance the Federal Ministry of Education) to take positive steps to rectify this anomaly or neglect, as well as the need for the various state ministries of education (30 states in all) to explore the establishment of suitable courses in editing and book production as part of the Ordinary National Diploma and/or Higher National Diploma programs in the state polytechnics.

The Problem of Procurement of Machinery and Raw Material

To meet the desired full local production of books (which has been identified as a *sine qua non*

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for progress in the development of publishing), there is a need to tackle the problem under two categories—machinery and printing materials.

(a) Machinery

Printing and typesetting machines are a sorry sight in Nigeria. Modern typesetting machines are hard to come by, while those available cost a fortune to purchase, install and maintain. The few new ones and the army of old equipment are hardly adequate to meet the challenges of the growing Nigerian book publishing industry. The story is the same for printing machines which are often in varying states of disrepair with spare parts not being available.

Spare parts: The lack of spare parts for printing machines portends doom for the book industry. It is hoped that the Government will beef-up ongoing research into local production of machine parts with the assistance of the Manufacturers' Association of Nigeria. In addition, the Machine Tools Company at Osogbo (Nigeria's pioneer tools manufacturing factory) needs to be encouraged to produce spare parts to meet the needs of the majority of printeries in Nigeria, since it is obviously becoming more difficult to import new printing machinery under our present currency exchange rates, and attendant duties payable.

(b) Printing materials

(i) *Book production materials:* The major ingredients for book production—paper, boards, ink, chemicals, films and additives—are still largely imported into Nigeria. The importation of these items is done under strenuous payments of duties, in some cases as high as 40%. This of course adds to the cost of producing books. In contrast, the importation of finished books attracts no duties, in line with international practice and conventions. This dichotomous situation does not help the Government's educational or book policies. One hopes that the Government would relax measures on the importation of these items until a level of development conducive to cheap production of books in Nigeria can be achieved. Otherwise, the future would remain bleak for the growth of the book publishing industry, particularly with the crippling effect of the "structural adjustment program" and the current exchange rates operative on the Nigerian Foreign Exchange Market.

(ii) *Paper:* The need for paper (of the right quality and quantity and at the right price) is very serious. Attempts to source this raw material (paper) locally have generated further problems as the "success" story of Nigeria's paper mills has shown.

At present, the nation's paper requirements are supposed to be met by the three paper mills at Jebba in Kwara State, Oku-Iboku in Akwa-Ibom State and Iwopin in Ogun State. The Oku-Iboku mill is meant to satisfy the needs of the print media, notably newspapers and magazines, through the production of 100,000 metric tons of newsprint a year, whilst the Jebba mill is geared to the annual production of 65,000 metric tons of industrial grade paper (including kraft paper and board materials). Unfortunately, the Iwopin paper mill, which is designed to provide the paper and cover-boards needs of book publishers, is yet to be completed. Thus the publishing industry may have to be content for the time being with the production of the Nigerian Newsprint Manufacturing Company Limited at Oku-Iboku, whose bleached newsprint may stand as a poor substitute for the machine-finished wood-free paper needed for book production until the Iwopin mill starts production. Unfortunately, even the Oku-Iboku mill's operations and pricing could do with restructuring to reduce the price of its newsprint which has increased phenomenally from around 900 to 7,500 naira a ton within the last few years. In the meantime, as efforts continue to speedily complete the Iwopin mill, one hopes that the Government will allow importation of paper and boards, machinery and other printing equipment and materials, duty-free.

As the weakened naira continues to fall in relation to the dollar and other hard currencies, the cost of paper in relation to the means of the end users of printed books will push published books beyond the reach of the consumer, unless, of course, the Nigerian Government takes extra interest in the paper supply needs of book publishers.

The Problem of Government Educational Policy Changes

Finally, there is the problem of educational policy changes by the Government, which has made meaningful planning in the book publishing industry hazardous. Examples of such government policy changes relate to modern mathematics and the 6-3-3-4 system.

* * *

I am sure the reader appreciates the relationship of the four problems treated above to the second part of this article, dealing with the problems of copyright in Nigeria (particularly measures to counter piracy), which I shall now treat.

Piracy of the printed word is a worldwide problem, and in Nigeria this problem has reached a most alarming and frightening scale during the past

10 years. Book piracy poses a danger to the Nigerian publishing industry, not only in terms of the havoc done to Nigerian publishers' sales and turnover, but also in terms of the overall, long-term damage to the morale of authors and legitimate booksellers and honest printers. But more importantly, piracy of educational books puts a question mark over the future of the entire educational industry in a developing country like Nigeria.

The problem is a source of concern to authors, publishers and educationalists in Nigeria, and I believe this concern is shared by all men of conscience all over the world, especially in the developing countries.

I think there are enough provisions in the statute books of most countries to combat the offense of infringement of copyright, but these laws are weak, in most cases their enforcement is clumsy and inefficient, and the penalties have proved ineffective as deterrents. Fortunately, the Nigerian copyright law has recently been upgraded and efforts are currently being made to educate all parties having a role to play in its enforcement.

What exactly is piracy? And how widespread is the problem in a country like Nigeria? Piracy is the unauthorized or illegal reproduction of the work of an author, for sale without payment of royalty or other compensation to the owner of the intellectual property so exploited.

Forms of Piracy

Piracy of printed matter takes various forms, mainly:

- (i) illegal reproduction of books for sale by booksellers and traders;
- (ii) photocopying of printed matter for sale;
- (iii) unauthorized translation of copyright material for commercial purposes.

All these modes are present in Nigeria, but the most serious of them all, obviously, is the illegal reproduction or reprinting of copyright books for sale to the primary publisher's audience, either through normal trade outlets or new outlets.

Some of the Root Causes of Piracy in Nigeria

Strangely enough, the problem of piracy has its main root in the growth of the book industry during the last 15 years or so. There was a boom in the business of educational book publishing as a result of the increased sale of books arising out of the then military government's Universal Primary Education scheme, backed up by the supply of free books by the government, in the mid-70s. Later, in 1979-

1983, a further growth in sales turnover occurred as a result of the purchase and supply of free books by the governments of the populous educational market in some of the southern states of the Nigerian federation. Of course, there was also the key factor of the irrepressible yearning for education across the southern part of the country. The attendant growth in sales volume occurred without any meaningful "development" of the book publishing and book production sectors as such; and most of the books which provided the turnover were imported.

Unfortunately, as the country's earnings from oil (its major foreign exchange earner) dropped, so did the ability to finance not only education but the purchase of books from abroad. Import licensing, introduced to control the outflow of foreign exchange, did not in fact achieve this objective; but it put enough obstacles in the way of book publishers and printers to ensure that the already meager capacity of the book production sector shrank further in relation to the needs of the market, bringing with it an *availability* crisis (a major incentive for piracy).

Gradually, the foreign exchange and import license crisis was compounded by the problem of the devaluation of the naira, which brought with it the problem of an increase in the *price* of books in naira—a factor which further enhanced the prospects for pirates. The *availability* and *price* issues put the final nail in the coffin. Furthermore, an inadequate and not too efficient bookselling trade made the availability and distribution problem worse and further encouraged pirates.

Finally, problems in the law enforcement sectors prevented any meaningful fight to contain or prevent the growth of piracy, and the vicious circle grew. In a country where there was a low level of enlightenment (at all levels) of the meaning and impact of copyright and piracy, and where the laws were obviously weak and their enforcement not adequate, the growth of piracy was guaranteed, as it were.

This is disastrous, more so if you consider that Nigeria, with a population of about 100 million, has a book market that has grown so phenomenally that the potential for books could be measured in hundreds of millions per year made up of approximately:

- (i) 16 million primary school children, each needing about six books/subjects per year. Total potential market: 96 million books;
- (ii) 7.5 million junior or secondary school pupils, each requiring about 14 books/subjects per year. Total potential market: 105 million books;
- (iii) 6 million senior secondary school pupils, each requiring about 10 books/subjects per

year. Total potential market: 60 million books;

- (iv) 1.5 million students in teacher training institutions, each requiring about 10 books/subjects per year. Total potential market: 15 million books;
- (v) 500,000 students in polytechnics/technical colleges, each requiring about 10 books/subjects per year. Total potential market: 5 million books;
- (vi) 250,000 students in universities, each requiring about 10 books/topics per year. Total potential market: 2.5 million books.

These give a potential total annual sales figure of 283.5 million books, and if you were to add some projected 12.5 million books for adult literacy and general readers you would end up with a grand total of 296 million books per year. The above growth potential brings with it problems related to the achievement of Nigeria's 1981-85 National Development Plan targets, namely:

- (i) 100% local production of books for primary education by 1985;
- (ii) 100% local production of books for secondary education by 1985;
- (iii) 50% local production of books and educational materials for university and technical education by 1985.

The last two targets set out above are still unachieved up to now (end September 1991). In fact, up till the present time, there is inadequate local publishing expertise to fully meet projected growth; and there is inadequate printing capacity to cope. Unfortunately, in some government circles printing is still regarded as a "service" outfit rather than a priority "manufacturing" industry and as such has received little attention in terms of direct government investment or indirect government patronage and encouragement via financial institutions. The result of this trend is that there is a weak link in the "local manufacturing" chain. Both the publishing and printing sectors in Nigeria still require more expertise for effective growth, and to achieve the full potential of the country's book sector.

Many people believe that the above-mentioned factors were basically responsible for the infrastructural weaknesses of the Nigerian book production machinery, leading to the preference of authors of books destined for the Nigerian market (in most cases these authors are Nigerians) for overseas (mainly British) publishers; with the attendant foreign exchange drain via book import bills. And because the majority of successful authors and best-sellers were published abroad, there was little incentive for local publishers, thus creating a vicious circle. Indigenous publishers ended up publishing second-rate manuscripts, texts of the "ob-

jective questions" or "questions-and-answers" kind.

The book import flow referred to above soon became an incentive for piracy of books published overseas. The pirates produced in the Far East and other havens for pirates and imported into Nigeria. But soon local piracy (with overseas and locally-published books being reproduced locally) became a flourishing business.

Effects of Piracy

It is widely known that piracy leads, among other things, to:

- (i) discouragement of creativity and authorship,
 - (ii) demise of meaningful publishing,
 - (iii) decline in the provision of textual and other inputs into educational growth,
 - (iv) loss of earnings in form of taxes, etc. for the Government and loss of royalties for authors and other creative people,
- all of which are frightening prospects for a developing country like Nigeria; and that was why efforts during recent years concentrated on finding potent measures to counter piracy.

Recent Improvements

Fortunately, developments in Nigeria during the last two years have raised hopes for a better copyright protection future for the country. For a start, the new Copyright Decree of December 1988 has redressed most of the shortcomings of the old law. There are now stiffer penalties for both civil and criminal offenses; "presumptions" are correctly in favor of the plaintiff; affidavit evidence is accepted; and the Anton Pillar order of surprise inspection and seizure of offending material (for use as evidence in subsequent prosecution) is now firmly in place in the new law. Furthermore, the new law has widened the scope of acts covered by copyright with bigger nets and finer mesh to catch both the big (manufacturers) and small (vendors) copyright infringers. Also, there is a useful check in the legislation that all printers and publishers must keep registers of printing and publishing assignments. And finally, the fact that copyright cases can only be tried in a High Court is a major positive step.

The new copyright culture that is gaining ground in Nigeria is being nurtured by the Nigerian Copyright Council, which since its inception early 1989 has directed its efforts at enlightening all concerned with copyright, including the police, customs, judiciary, publishers, printers, musicians, etc. In addi-

tion to this, the Nigerian Copyright Council is currently engaged in efforts to establish an efficient copyright administration machinery with adequate personnel for routine duties as well as specialist monitoring and inspection roles, amongst others. Furthermore, there has been a well-directed media campaign which is producing desirable awareness of copyright issues among the general public.

But like all laws in a dynamic society, there is a need to fine-tune the new law and smooth out some rough edges; and this is being looked into by the Nigerian Copyright Council which may need to sponsor some revisions of a few weak points in the 1988 Decree.

Publishers are also beginning to respond positively to the need for a "price" and "availability" war against pirates. The use of relatively cheap paper and some reduction in quality (where it is safe to do so) have combined to bring down prices and cut the ground from under the feet of some pirates. And of course, publishers now see the wisdom of ensuring that they have stock at all times and in all sales outlets. The only remaining weak link is the distribution chain; and all that is now required is joint action by publishers and booksellers to improve the distribution network.

All these achievements augur well for the future of publishing in Nigeria, but a look at the real future of publishing must necessarily take us to an examination of electronic publishing, which is gradually coming into Nigeria. I shall examine the implications of the advent of electronic publishing for Nigeria and other developing countries.

Copyright and Electronic Publishing

First, we need to understand what the term "electronic publishing" means, and I shall attempt to explain this in my layman's way. Electronic publishing touches upon three major areas of "information dissemination":

(a) *Desk-top publishing* and sophisticated word-processing capabilities, even though they do not constitute electronic publishing *per se*, to my mind touch the periphery of the origins and fringe of electronic publishing. The capacity for storing written material electronically, in machine-readable form, on floppy discs or optical discs which can be used for reproducing copies via "on-line" or "off-line" laser printers, makes them part of the electronic publishing set-up.

(b) *Data base/data bank*, offering limitless prospects for access to information in a well-organized, machine-readable format, which can be made ac-

cessible to authorized users or subscribers "on-line" via cable or other means, or "off-line" via magnetic discs like the CD-ROM (Compact Disc-Read Only Memory) which can be read on a screen and, if required, transmitted to another compatible computer unit or reproduced on floppy discs or optical discs.

(c) *Disc or other computer hardware* available to the owner of intellectual property who may wish to prepare his work in machine-readable form only, stored safely in a computer memory or on discs.

Within the scope of the three areas above, one can define electronic publishing as the collection, storage, organization and dissemination of information by electronic means to a specialist, a restricted audience or a general audience.

Because the material involved in electronic publishing is usually copyright material/protected works, it enjoys the same protection as other intellectual property in fixed form. Such protection covers the acts of storage in and retrieval from computer memories, data bases and electronic libraries.

In relation to the general principles of protection of intellectual property, the protection of such material is desirable. However, in terms of copyright and the future of publishing (particularly electronic publishing), there is a need to examine the implications for developing countries like Nigeria, especially in terms of "the use of computer systems for access to or the creation of protected works" and the need to protect "the legitimate interests of both the copyright owners and the users of the protected works in order to stimulate creativity of authors and not hamper the dissemination of works by means of computer technology" (as noted in paragraphs 173(a) and (b) of the Memorandum prepared by the Secretariats for the Committee of Governmental Experts (UNESCO/WIPO/CGE/PW/3-II, September 14, 1987)).

I believe that developing countries can only hope that electronic publishing and computer technology, in an age in which non-book materials are fast replacing books, will not mean the death of publishing and knowledge in the developing countries (bearing in mind that the developing countries have neither the technology nor the financial resources to cope with the new and ever-changing developments). Especially also, as it is just possible that intellectual property (at present vulnerable to piracy in book form) may be better stored in "safer" computer terminals and CD-ROMs in future. There is already a trend for new scientific, technological research to be made available only, or mainly, via electronic outlets, which most developing countries cannot afford, and therefore have no access to.

Unfortunately, recourse to the traditional published book will offer little hope in the professional and technological field since most new developments may not find their way into books for a long time, if ever, in an age in which every home in the developed world can afford a personal computer and access to electronically published materials, but in which developing countries are farther and farther away from such prospects.

It is also just possible that, as books become less relevant to the developed world, further developments and improvements in, and manufacture of, the relevant machinery and parts will cease in respect of traditional book printing as it is known today.

The experience in the electronic media is worth noting. Very few developing countries can afford to develop television (even radio, in some cases) as a means of education and entertainment because of the cost of equipment and the fast-changing technology. Such countries have become less able to disseminate information, while developed countries have established cable television network tentacles to fill the gap. Unfortunately the intentions and orientation of such developed countries are not tailored to the national interests of the developing countries. The sad fact of course is that the copyright culture is, quite rightly, getting stronger and developing countries will soon be paying through the nose for cable television services for decades to come. The implied information-colonization trap is worrying, as are the financial implications for the poor, developing nations.

The point of the last few paragraphs is not to be taken to mean that electronic publishing is evil, but rather to draw attention to the fact that, unless the developing nations are helped to progress beyond their present state of helplessness in respect of traditional book publishing and the technology required to sustain it, so as to meet their basic needs for education, enlightenment and cultural mobilization through the written word in published book form, their future is gloomy viewed against the backdrop of recent and future developments in the electronic publishing sector.

Such a prospect does not augur well for world peace, friendship and the protection of intellectual and other property rights at the global level. I believe that it is the duty of the international educational and cultural community, and the copyright community especially, to draw attention to this and suggest solutions to world governments.

To return to the problems of copyright and its enforcement in Nigeria, it is necessary to point out that there are still some other residual problems to tackle, and I shall highlight some of them.

(a) Availability and affordability of copyright works

To exploit fully the potential of a copyright system requires the copyright owner and/or protector to make copyright works available in the most practical form at the most practical price. Nigeria's economic problems make this almost impossible for the moment.

(b) Some limitations

Beyond the idea of exploitation of copyright for economic, political and cultural growth, there is a need to be aware of the importance of the limitations of copyright in the fields of education, information and culture. Unless handled in a pragmatic and purposeful way, aspects of copyright could become obstacles to progress in a few areas.

Education

The first area is the education field, where the need for scientific and technological growth will dictate the wisdom of using a negotiated or compulsory license option in a responsible and civilized way. The current weak naira has made prospects for book imports (and indeed the importation of other educational material) bleak; so local manufacture under license (compulsory or voluntary) is imperative. I know that the Nigerian Copyright Council is making efforts towards achieving cooperation between Nigerian and overseas publishers in this area.

However, the license system is based on mutual trust and cooperation between licensee and licensor; and an effective national copyright enforcement system (that is, an effective copyright law backed up by a determined and honest copyright enforcement agency) is the first step in ensuring hitch-free negotiations of license agreements. Fortunately, Nigeria now has this, and the Nigerian Copyright Council guarantees it.

Information

The second area is that of information, where again because of the weak Nigerian currency, the impossible costs of mass communication and other media equipment and raw materials may soon lead Nigeria into an information-colonization trap. This is daily becoming more obvious with the combination of the print and electronic media's incessant problems and the incursion of American and European cable television transmissions into the nation's world information and news flow.

Culture

The third area is that of a cultural recolonization through the music and television media. Ironically,

a copyright culture, if well exploited, should be a stimulant for a resurgence of local cultural awareness and growth, both in terms of breaching foreign cultural assault on Nigerian youth and developing the positive sides of Nigerian culture for the new generation.

Finally, let us take one last look at the Nigerian Copyright Decree and the supporting organizations for the effective monitoring and enforcement of the intentions of the new Decree. One major instrument of effective enforcement is the newly established Nigerian Anti-Piracy Committee, which has a national supra unit, and state committees with

grass-roots involvement. The committees have the following broad objectives:

- (i) to plan and execute strategies that will effectively combat piracy in the country;
- (ii) to coordinate all anti-piracy programs in the country;
- (iii) to carry out such other functions as may be assigned by the Nigerian Copyright Council in the crusade against piracy.

It is obvious that for the new copyright culture to take root it will require a combination of enforcement of the new law, together with the awareness campaign and education programs of the anti-piracy committees.

Correspondence

Letter from France

André FRANÇON*

Since the Law of July 3, 1985, there has been little French legislation in the copyright field. There has however been an abundance of case law, which has given the Cour de cassation, France's Supreme Court of Appeal, the opportunity of handing down a certain number of important rulings on matters of literary property, and it could be interesting to give a brief account of them.

I. We start with a mention of some decisions on the application of copyright to *computer technology*. That they are momentous rulings is attested by the fact that they come from the Court sitting in Plenary and not from just one of its chambers.

We have first to report on three rulings of March 7, 1986,¹ all of which relate to the originality concept as applied to *software*. In particular the information afforded by the Pachot ruling is noteworthy. In it the Cour de cassation departs from the orthodox subjective conception of originality in copyright. It upholds the lower court's finding, according to which certain programs are original in the case in point. Its own view in this connection is that "the author had made a personal effort that went beyond the mere application of an automated logic imposed on him, and that the material form assumed by that effort was an individually conceived structure." That, according to the Cour de cassation, was tantamount to saying that the software concerned "bore the stamp of the programmer's intellectual contribution."

Also in connection with the application of copyright to computer technology, we should mention another ruling of the Cour de cassation sitting in Plenary, handed down on October 30, 1987, at the end of a long drawn-out proceeding in the Microfor affair.² The subject of the ruling was *data banks*. It does not settle the question whether data banks are themselves protected by copyright, but it does spec-

ify the extent to which they have to respect the copyright subsisting in the existing works incorporated in them. The ruling opts for an approach favorable to data banks by giving them the benefit of a broad interpretation of the right of quotation provided for in Article 41 of the 1957 Law. Whereas quotations are not normally lawful unless they are incorporated in a second work, the Court considers that the mere fact of including them in a data bank has to be regarded as giving rise to a work of information, which then counts as a second work for the purposes of the Article in question.

In the same ruling the Court further decides that the making of a summary of a protected work does not require the consent of the author of the work summarized, provided that the summary does not have such a content as to obviate reference to the earlier work by the reader.

Legal writers have questioned the consistency of these approaches with the basic tenets of copyright. However, the controversial position taken by the Cour de cassation is no doubt explained by concern to lend assistance to the information technology industry.

II. Two decisions that seem more orthodox on the whole were handed down recently by our Supreme Court on the subject of the *ordinary law of copyright*.

A. With regard to *protected persons*, decisions concerning works by two or more authors have attracted attention.

(a) In the case of *works of joint authorship*, it is to be noted that, according to the Cour de cassation, in the case of infringement only of the economic rights of the coauthors, one coauthor cannot on his own bring an infringement action against a third party. He is obliged to involve also the other joint copyright owners.³ This attitude could be considered rather hard on coauthors.

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¹ See *Revue internationale du droit d'auteur* (RIDA) No. 129, July 1986, pp. 130 *et seq.*

² See RIDA No. 135, January 1988, p. 78.

³ 2nd Civ., October 4, 1988, D. 1989, J. p. 482, with note by P.Y. Gautier.

(b) As for *collective works*, after a great deal of hesitation, our Supreme Court seems now to be moving towards a narrow conception of this type of work.⁴ As far as it is concerned, in the case of a work by two or more authors, the notion of collective work should not be spoken of unless it is shown to be impossible for any one of the coauthors involved to enjoy an undivided right in the work as a whole, in other words if it is established that the work could not be a work of joint authorship. That was the finding of the Cour de cassation in a case in which a sofa design had been created by two salaried employees and produced by a cabinet maker and an upholsterer.

This ruling has the effect of restricting the circumstances in which a legal entity can be the original owner of copyright in a work. For collective works such ownership is covered by Article 13 of the 1957 Law, but it is contrary to the traditionally humanistic French conception of copyright. This is why it is desirable to have the possibility of describing a work as a collective work confined to a limited area.

B. With regard to the *rights of authors*, there are important lessons to be learned from the recent case law of the Cour de cassation in connection with both moral rights and economic rights.

(a) With regard to *moral rights*, the most striking decision during this recent period is the one handed down by the First Civil Chamber of the Cour de cassation in the Huston affair on May 28, 1991.⁵ A film in black and white had been made in the United States of America and as such was subject to US law, but the producer wanted to distribute a color version of the film in France, to which the heirs of the deceased filmmaker objected, invoking their moral rights. They went to court, and the judges ruling on the merits found for the producer, allowing the provisions of US law to operate in his favor. Its decision was quashed, however.

In its ruling, the Cour de cassation invoked Article 6, paragraph 2 of the Law of July 8, 1964, which has to do with reciprocity in copyright, and also Article 6 of the Law of March 11, 1957, on Literary and Artistic Property. It stated

...that, according to the first of the two texts, in France, there shall be no violation of the integrity of a literary and artistic work, regardless of the State on whose territory the work was first disclosed; that the person who is the author of that work, by virtue of the mere fact of its creation, is invested with the moral rights established in his favor by the second text; and that the application of those provisions is mandatory.

What this formulation means is that, in the opinion of the Cour de cassation, the provisions protect-

ing moral rights have in France the character of directly applicable laws. The French courts therefore have to apply them, even where the rules on the conflict of laws would normally have given jurisdiction to a foreign law.

This ruling affords striking and gratifying evidence that our Supreme Court intends to uphold the French "personalistic" conception of *droit d'auteur* against the influence of the purely economic conception of literary property that underlies the theory of copyright in the Anglo-American sense.

Another recent decision concerning moral rights should be mentioned. It concerned a matter of transfer by succession. As we know, the wording of the 1957 Law seems somewhat infelicitous on that particular subject. Article 6, on the right to respect and the right of authorship, makes use of a succinct formula which appears to mean that, in the case of those two moral rights, the system of transfer by succession of the Civil Code should be applied. And yet Article 19, on the right of disclosure, gives precise and detailed information on its fate when the author dies which is not always consistent with that to be found in the ordinary law on inheritance. So, to prevent the moral rights from being awarded on the author's death to different heirs depending on which such right is involved, legal writers put forward the idea of applying the provisions of Article 19 on transfer by succession in the case of the right to respect and the right of authorship as well as in the case of the right of disclosure.

This interpretation was certainly a timely one, but the Cour de cassation found that it took rather too many liberties with the letter of the law. It therefore quashed a ruling that had denied an heir's eligibility to invoke the right to respect, the lower court ruling on the merits having itself invoked the provisions of Article 19 against him. The Supreme Court said in its ruling that, in the case of this particular moral right, it was Article 6 and therefore the ordinary law of inheritance that was to be applied. The case ended in the heir's claim being declared valid.⁶

(b) The last few years have seen some noteworthy rulings in France on *economic rights*, including first the *droit de suite*.

Whereas traditional case law has tended to be somewhat reserved on the subject of this right, it is worth mentioning two recent Cour de cassation rulings that come out in favor of it. The first gives an indication of the type of work in relation to which the right can be exercised. It is of course most likely to be an artistic work that exists in just one copy,

⁴ Com., April 7, 1987, RIDA No. 133, July 1987, p. 192.

⁵ See RIDA No. 149, July 1991, p. 197.

⁶ 1st Civ., January 11, 1989, RIDA No. 141, July 1989, p. 256.

like a painting. Yet it is recognized that one can also contemplate invoking this right in the case of a work existing in several copies, provided that the production run is very limited, as each copy can then still be regarded as the product of the author's hand. The Supreme Court showed great, indeed perhaps excessive generosity, in allowing the exercise of the *droit de suite* in relation to a small production run of copies occurring only after the artist's death, which therefore was bound to be beyond the latter's control⁷ (the case involved castings of Rodin sculptures).

While the above decision gave rise to certain misgivings, this was not true of another, which also involved the *droit de suite*, but which seems to have put an end once and for all to a case law that had attracted criticism. The previous controversial line taken by the Cour de cassation had been to say that the *droit de suite* was reserved for the author's blood heirs. Consequently, if the first blood heir were to die less than 50 years after the author, the subsisting *droit de suite* could then only pass to another blood relation, to the exclusion of any heir who might have a claim on the estate of the first heir, but without actually belonging to the author's family.

In a Braque ruling on January 11, 1989, the First Civil Chamber of the Cour de cassation does seem to have effected a jurisprudential volte-face on this point by saying that "Article 42, second paragraph, of the Law of March 11, 1957, makes no distinction between the author's legal heirs and the subsequent heirs for whom the *droit de suite* subsists." What this means is that the subsequent heirs can inherit even if they are not blood heirs of the artist.⁸

Among the important case law developments in France during recent years that concern authors' economic rights, we should also mention the use made of a provision inserted in the 1957 Law in 1985. The provision in question is now Article 20 of that Law. The text originally provided for the possibility of judicial intervention in the case of *manifest abuse* in the exercise and non-exercise of *moral rights* on the part of the author's heirs. The 1985 Law extended this solution to cases where, in the same circumstances, manifest abuse occurred in relation to *exploitation rights*. Observers wondered what the courts would make of the new provision. The Cour de cassation has seemed reluctant to apply the sanctions prescribed; in one case indeed it actually criticized the lower court for having found for the existence of manifest abuse in the

non-exercise of exploitation rights. The facts of the case were as follows: after the death of the painter Fujita, it was held against his widow that she had systematically opposed the publication of art books about her husband which included reproductions of his works. The appeal judges had supported this view, but the Supreme Court of Appeal refused to uphold their arguments when it found that, in the course of the proceedings, a publishing contract for a work of that type had been concluded by Madame Fujita in Japan.⁹ One could of course wonder whether this really constituted an act of exploitation sufficient to rule out the application of Article 20.

Other noteworthy recent rulings of the Cour de cassation in connection with the economic rights of authors include a number that have to do with *exceptions to exclusive exploitation rights*. The matter at issue was often the right of *quotation*. We have already mentioned one ruling on this subject (see above, under 1) which could be considered somewhat lax and which had to do with the application of the right of quotation in relation to data banks. In the artistic field, however, it has to be admitted that our Supreme Court is exercising the utmost care and firmness to ensure that this exception to the right of reproduction does not spread too far, which would be wrong inasmuch as the Law authorizes only "short" quotations. This has led the Court to reject the claim of lawful quotation as soon as the reproduction of an artistic work in its entirety is involved.¹⁰

It has made the point with quite some force notably in connection with reproductions of protected artistic works that auctioneers include in the catalogs published by them for the purposes of their auctions.¹¹ If we compare the terms of the two rulings handed down that related to such situations, we can see that, for the purposes of the Cour de cassation, total reproduction done in this way can never be seen as lawful quotation, regardless of its format or its nature, or for that matter the nature of the work in which it is included.

We would also mention that the Cour de cassation has had to rule recently on the scope of the exception to the authors' exclusive exploitation rights provided for in Article 41 of the 1957 Law, under 4, in favor of *parodies, pastiches and caricatures*, in relation to the laws of the genre. Desbois once proposed the making of a distinction between the three by saying that parody concerned musical

⁷ 2nd Civ., March 18, 1986, RIDA No. 129, July 1986, p. 138.

⁸ 1st Civ., January 11, 1989, RIDA No. 141, July 1989, p. 252.

⁹ 2nd Civ., April 13, 1988, RIDA No. 138, October 1988, p. 297.

¹¹ In this connection see Civ., January 22, 1991, two rulings, *Cahiers du droit d'auteur*, May 1991, p. 140.

works, pastiche literary works and caricature artistic works.¹² This proposal was a convenient one and for that reason had therefore been adopted by all legal writers, but the Cour de cassation did not subscribe to it. For it, seemingly, pastiche is when an "in the manner of" is made on the basis of an author's entire production. Parody on the other hand is supposedly the imitation, for entertainment, of one particular work of an author, while caricature consists in making fun of a person by caricaturing a work of which he is the author.¹³ There is a risk that this courtroom interpretation may confuse the issue, whereupon we will have cause to regret case law's rejection of the above-mentioned stance taken by Desbois on the problem.

Finally, this review of recent French case law on authors' economic rights would be sadly incomplete if we did not mention that, during the period under consideration, the Cour de cassation has established the *right of destination* for the benefit of the author. It deduced the existence of this right from the third paragraph of Article 31 of the 1957 Law. Article 31 specifies the particulars that the instrument by which the author assigns his rights has to include. The provision is worded as follows:

The transfer of authors' rights shall be subject to the condition that each of the rights transferred shall be specifically men-

tioned in the act of transfer, and that the field of exploitation of the rights transferred shall be delimited as to extent and purpose, as to place, and as to duration.

The author is therefore entitled to set limits on the authorization that he gives third parties to make use of the copies of his work. Moreover those limits are binding on all persons, without even having to be specified on the copied works.

The Cour de cassation has had occasion to invoke this doctrine in connection with the additional right of mechanical reproduction. The case involved the public dissemination of protected music that had been recorded on a phonogram. It was ruled that, in the mind of the owner of the music copyright, the disk was intended solely for the private use of those who bought it. If then it was to be played in public, that operation required, apart from the consent of the holder of the right of performance, an additional authorization, against payment of a royalty, for the right of mechanical reproduction.¹⁴

The picture that we have just presented seems to indicate that in France authors have more often than not won solid support from the courts during this recent period. For their part the courts have been at pains, as indeed the legislator was in 1985, to assure creators of satisfactory protection.

(WIPO translation)

¹² See *Le droit d'auteur en France*, 3rd edition, No. 254, p. 322.

¹³ 2nd Civ., January 12, 1988, RIDA No. 137, July 1988, p. 98.

¹⁴ 2nd Civ., March 22, 1988, JCP 1988, II, 21120, with note by us.

Calendar of Meetings

WIPO Meetings

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

1992

February 10 to 18 (Geneva)

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

The Committee will continue to 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, the Commission of the European Communities and, as observers, States members of WIPO not members of the Berne Union and certain organizations.

March 30 to April 3 (Geneva)

WIPO–IFIA Symposium on “Support to Inventors”

This symposium, which is the fifth symposium organized jointly by WIPO and the International Federation of Inventors’ Associations (IFIA) since 1984 on questions of topical interest to inventors, will examine the assistance and services offered to inventors (both individual and corporate) by industrial property offices, innovation centers and universities.

Invitations: States members of WIPO, inventors’ associations and certain organizations (R&D institutions, innovation centers). The symposium will be open to the public.

April 27 to 30 (Geneva)

N.B. New Dates

Committee of Experts on the Development of the Hague Agreement (Second Session)

The Committee will continue to consider possibilities for revising the Hague Agreement Concerning the International Deposit of Industrial Designs, or adding to it a protocol, in order to introduce in the Hague system provisions intended to encourage States not yet party to the Hague Agreement to adhere to it and to make it easier for applicants to use the system.

Invitations: States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

May 25 to 27 (Geneva)

Meeting of Non-Governmental Organizations on Arbitration and Other Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties

The meeting will consider the desirability of establishing within WIPO a mechanism to provide services for the resolution of disputes between private parties concerning intellectual property rights, as well as the type of services that might be provided under such a mechanism.

Invitations: International non-governmental organizations having observer status with WIPO.

June 1 to 5 (Geneva)

N.B. New Dates

Committee of Experts on the Harmonization of Laws for the Protection of Marks (Third Session)

The Committee will continue to examine a draft trademark law treaty, with particular emphasis on the harmonization of formalities with respect to trademark registration procedures.

Invitations: States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

June 15 to 19 (Geneva)

N.B. New Dates

Committee of Experts on a Model Law on the Protection of the Intellectual Property Rights of Producers of Sound Recordings

The Committee will consider a draft Model Law dealing with the protection of the rights of producers of sound recordings, which could be used by legislators at the national or regional level.

Invitations: States members of the Berne Union or WIPO, or party to the Rome Convention or the Phonograms Convention, and, as observers, certain organizations.

September 21 to 29 (Geneva)

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

Some of the Governing Bodies will meet in ordinary session, others in extraordinary session.

Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.

- October 12 to 16 (Geneva)** **Working Group on the Application of the Madrid Protocol of 1989 (Fifth Session)**
 The Working Group will continue to review joint Regulations for the implementation of the Madrid Agreement Concerning the International Registration of Marks and of the Madrid Protocol, as well as draft forms to be established under those Regulations.
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.
- November 2 to 6 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Tenth Session)**
 The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1991) 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.
- November 9 to 13 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fifteenth Session)**
 The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (July 1991) 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.
- November 23 to 27 (Geneva)** **Committee of Experts on a Possible Protocol to the Berne Convention (Third Session)**
 The Committee will continue to examine the question of the preparation of a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union, the Commission of the European Communities and, as observers, States members of WIPO not members of the Berne Union and certain organizations.

UPOV Meetings

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

1992

- April 8 and 9 (Geneva)** **Administrative and Legal Committee**
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 26 and 27 (Geneva)** **Administrative and Legal Committee**
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 28 (Geneva)** **Consultative Committee (Forty-Fifth Session)**
Invitations: Member States of UPOV.
- October 29 (Geneva)** **Council (Twenty-Sixth Ordinary Session)**
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental and non-governmental organizations.
- October 30 (Geneva)** **Meeting with International Organizations**
Invitations: International non-governmental organizations, 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

1992

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| 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 |