

PART XIII

PERFORMING RIGHTS SOCIETIES

One of the most controversial matters that came before the Commission was that of performing rights in musical works and the compensation to be paid by those using them.

Under Section 3 of our Act copyright includes the sole right to perform the work or any substantial part thereof in public. This right, sometimes referred to as the right to perform in public or the public performance right, is usually referred to simply as the performing right. It applies to dramatic works and dramatico-musical works, the performing right in which is usually referred to as the grand right, and also to musical compositions other than dramatico-musical works, the performing right in which is often referred to as the small right or petty right. The performing right in musical works has been provided for in Acts of the United Kingdom since 1842 but no provision creating or recognizing the performing right appeared in our legislation until the Copyright Act of 1921 was enacted. This Act came into force on January 1, 1924, and a performing rights society was then promptly incorporated in Canada whose main objects were to acquire and hold performing rights in musical works, to license these rights to Canadian users of music, and to collect license fees from them. This society was called the Canadian Performing Right Society Limited and carried on business under that name until 1945 when its name was changed to Composers, Authors and Publishers Association of Canada Limited, which will be referred to as CAPAC.

CAPAC is a private company with share capital, incorporated under the Dominion Companies Act. Half its shares are owned by or by the nominees of a company limited by guarantee (not having a share capital) which was registered in England in 1914 under the Companies Act of the United Kingdom, the name of which is the Performing Right Society Limited, to be referred to, for the sake of brevity, as PRS. The other half of the shares in CAPAC are owned by or by the nominees of a voluntary association founded in 1914 in the United States, known as the American Society of Composers, Authors and Publishers, which will be referred to as ASCAP. The objects or purposes of PRS and ASCAP are similar to those of CAPAC and all three have counterparts in many other countries of the world. In many countries, as for example the United Kingdom and France, there is only one performing rights society. That society acquires from composers, authors or publishers, who are the owners of performing rights in musical works, these performing rights for the purpose of collecting from users of these works fees or compensation for their use or damages if they are used by way of infringement. The net revenue of the Society after administration costs, etc., is then in some way divided among the owners of the performing rights.

In addition to CAPAC there is one other performing rights society in Canada. This is BMI Canada Limited, to be referred to as BMI. BMI is a private company with share capital which was incorporated under the Dominion Companies Act in 1940. Its shares are all or nearly all owned by Broadcast Music Inc., to be referred to as BMI-U.S., a New York corporation which is engaged, amongst other things, in licensing performing rights in the United States of America. Both CAPAC and BMI made extensive submissions to us, and in these sub-

missions they were supported for the most part by the following organizations: Canadian Music Council, Canadian League of Composers, and the Canadian Music Publishers Association. In fact it might be said that CAPAC and BMI, either by themselves or through their sister associations, represent the interests of authors, composers and publishers of music throughout the world.

Something should now be said about the operations of CAPAC and BMI.

Section 1—CAPAC

CAPAC has a repertoire of over three million musical works, most of which they have obtained from other performing rights societies, directly or indirectly. For example they have the full repertoire of ASCAP, the largest performing rights society in the United States, having an annual income which we are informed is approximately \$20,000,000.00. An additional substantial part of CAPAC's repertoire is obtained from its other shareholders, PRS, the only performing rights society carrying on business in the United Kingdom, and a further part of the repertoire comes from SACEM (Société des Auteurs, Compositeurs et Editeurs de Musique) which is the designation for the performing rights society in France, and from performing rights societies in other countries. In addition to these repertoires obtained from other performing rights societies, CAPAC takes assignments which run for five years and successively for succeeding five year periods until terminated by notice, from individual composers, authors and publishers.

The practice of CAPAC is to ensure, as far as possible, that the owners of the performing rights vested in it are compensated for the public performance in Canada of the works in which these rights exist. The compensation is distributed by CAPAC, in accordance with a point system which was described to the Commission, among the entitled societies and individual composer, author and publisher members of CAPAC and the heirs or personal representatives of deceased composers, authors and publishers. Where the compensation is paid to societies these in turn distribute it among their members. The word member as applied to CAPAC is not used in the sense of shareholder but in the sense of a person or organization that has assigned his performing right to CAPAC. The directors of CAPAC have an unfettered discretion as to the proportions in which their revenues are divided among their members. But CAPAC has a rule that no publisher member can, in any event, and regardless of his contract with a composer or author, receive from CAPAC more than 50% of the net compensation received by CAPAC in respect of any work, and it is understood that at least ASCAP and PRS, and the foreign societies with which they are affiliated, have similar rules. Unless there is a contract between the composer or author and the publisher that the publisher is to receive more than one-third of the net compensation, the publisher receives only one-third and the other two-thirds go to the composer and author. If they have separate rights, one-half of this two-thirds goes to the composer and one-half to the author. If the composer and author rights are vested in one person, the whole two-thirds goes to that person.

Reference will be made later to the Parker Report, so-called, which was made in October of 1935 by Judge Parker, a Commissioner appointed by the Government of Canada to investigate and report concerning the operations of the Canadian Performing Right Society Limited. At that time the only members of Canadian Performing Right Society Limited were ASCAP and PRS, and it was found that 80% of the music played by licensees of the Performing Right

Society Limited belonged to the repertoire of ASCAP and 20% belonged to PRS. The proportions at the present time were not stated to us but it would appear that the bulk of the music played in Canada in respect of which CAPAC collects fees is the more popular music in the repertoire of ASCAP. This fact has led to the somewhat loose statement that CAPAC is ASCAP operating in Canada under another name. While there are over three million works in CAPAC's repertoire, not more than fifty thousand—perhaps a far smaller number—are in current use at any one time, and probably the number of works which are used to any appreciable extent is much smaller. As works in the repertoire of CAPAC pass into the public domain they are, we were told, struck off the CAPAC repertoire. There is a continual flow of new works into the CAPAC repertoire. It is clear that by far the greater number of the works the performing rights in which are vested in CAPAC were created by non-Canadians. This is shown by the smallness of the number of Canadian authors and composers who are members of CAPAC (about 200 at the time of the public hearing of CAPAC's representations) and by the figures showing the distribution in 1956 of the net receipts of CAPAC. The amount distributed during the year was \$1,409,144.07. Of this amount \$110,983 was distributed to Canadian authors and composers and of this \$110,983, only \$25,639 was obtained from Canadian sources, the rest coming from foreign societies in respect of works of Canadian origin performed in countries other than Canada. It should be noted that just as CAPAC acts for foreign societies in the collection of fees, foreign societies similarly act for CAPAC.

It perhaps should be added that CAPAC normally has twelve directors (only ten at the date of writing this report), only two of whom seem to be directly connected with ASCAP and PRS, one with each. Two are Canadian composers, three are Canadian publishers (who may or may not be representatives of foreign publishers), one is connected with SACEM, one with the Italian performing rights society, and one is a former president and managing director of CAPAC.

CAPAC's operating expenses are ordinarily about 15% of its receipts.

Section 2—BMI

BMI differs from CAPAC in that apart from its functions as a performing rights society it is also a music publishing organization. Seven directors control its operation, three being representatives of the CBC and three being representatives of private radio organizations. The seventh director is the President of BMI-U.S.

Since BMI's incorporation in 1940 under the Dominion Companies Act it has engaged in the business of licensing public performing rights in musical compositions. BMI represents BMI-U.S., its parent company, in respect to all catalogues of works in which BMI-U.S. has the performing rights for Canada. There is however not an identity of repertoire between BMI and BMI-U.S. BMI acquires rights from Canadian authors, composers and publishers. The usual assignment is for a five-year period and renewable. BMI's repertoire consists of approximately 150,000 works. It has been impossible for us to ascertain how many are in current use.

It is believed that all radio stations in Canada use BMI music as well as CAPAC music.

BMI's total revenue for the fiscal year of the company ending July 31, 1956, was \$185,583.83 of which \$151,692.30 appears to have consisted of performing right fees collected from users of music in Canada and the balance was from other sources. A statement of the amount of the administrative expenses of BMI might be misleading as a substantial portion of them are said to be applicable to the publishing activities of BMI. The net amount available in the fiscal period mentioned for distribution to Canadian composers and authors for Canadian performing rights was \$14,856.32 and to Canadian publishers for performing rights was \$6,187.50.

It may appear in much of what follows that in discussing Canadian performing rights societies we have CAPAC rather than BMI in mind, but this is because the contacts between CAPAC and the music users are much more numerous and extensive than those between BMI and the music users.

Section 3—The Parker Commission's Report and Consequent Legislation, etc.

In March of 1935 the Government of Canada appointed His Honour Judge James Parker as a Commissioner to investigate and report whether the Canadian Performing Right Society Limited or any other society, association or company was unduly withholding the issue or grant of licenses for or in respect of the performance of musical works in Canada, or was proposing to collect excessive fees, charges or royalties in compensation for the issue or grant of such licenses, or was otherwise conducting its operations in a manner detrimental to the interest of the public; and on such other matters as the Commissioner might deem relevant and material to the investigation; and further to investigate and report on the fees, charges or royalties which the Canadian Performing Right Society Limited or any other such society, association or company should be entitled to collect from licensees in compensation for the grant of such licenses, and the basis on which such fees, licenses or royalties should rightly be computed. After investigation, Judge Parker recommended, among other things, that the Copyright Act be amended so as to provide for the establishment of an appeal tribunal to determine disputes arising out of performance in public and to approve the tariffs of the Canadian Performing Right Society Limited from time to time before they become effective. Following this report the Copyright Act was amended (in 1936) to provide for the appointment of a board to be known as the Copyright Appeal Board. The Act now contains a group of sections—48 to 51 inclusive—under the heading Performing Rights Societies. It is unnecessary to consider section 51 but the other sections must be set out verbatim as nearly all of them were the subject of submissions made to us. These sections follow:

48. (1) Each society, association or company that carries on in Canada the business of acquiring copyrights of dramatico-musical or musical works or of performing rights therein, and deals with or in the issue or grant of licences for the performance in Canada of dramatico-musical or musical works in which copyright subsists, shall, from time to time, file with the Minister at the Copyright office lists of all dramatico-musical and musical works, in current use in respect of which such society, association or company has authority to issue or grant performing licences or to collect fees, charges or royalties for or in respect of the performance of its works in Canada.

(2) Each such society, association or company shall, on or before the 1st day of November, 1936, and, thereafter, on or before the 1st day of November in each and every year, file, with the Minister at the Copyright Office statements of all fees,

charges or royalties which such society, association or company proposes during the next ensuing calendar year to collect in compensation for the issue or grant of licences for or in respect of the performance of its works in Canada.

(3) Where any such society, association or company refuses or neglects to file with the Minister at the Copyright Office the statement or statements prescribed by subsection (2) no action or other proceeding to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any such association, society or company shall be commenced or continued, unless the consent of the Minister is given in writing.

49. (1) As soon as practicable after the receipt of the statements prescribed by subsection (2) of section 48, the Minister shall publish them in the *Canada Gazette* and shall notify that any person having any objection to the proposals contained in the statements must lodge particulars in writing of his objection with the Minister at the Copyright Office on or before a day to be fixed in the notice, not being earlier than twenty-one days after the date of publication in the *Canada Gazette* of such notice.

(2) As soon as practicable after the date fixed in said notice as aforesaid the Minister shall refer the statements and any objection received in response to the notice to a Board to be known as the Copyright Appeal Board.

50. (1) The Copyright Appeal Board shall consist of three members, who shall be appointed by the Governor in Council.

(2) One of the members of the Copyright Appeal Board shall be a person who holds or has held high judicial office and he shall be the Chairman of the Board; the other two members of the Board shall be selected from officers of the public service of Canada.

(3) No fees or emoluments of any kind shall be payable to, or received by, any member of the Board in connection with services rendered as such member, but the said members shall be paid actual travelling and living expenses necessarily incurred in connection with the business of the Board.

(4) Subject to the provisions of this Act, the Copyright Appeal Board may make rules and provisions respecting

- (a) the sittings of the Board;
- (b) the manner of dealing with matters and business before the Board; and
- (c) generally, the carrying on of the work of the Board and the management of its internal affairs.

(5) The Copyright Appeal Board may call to its aid in an advisory capacity the services of any person having technical or special knowledge of the matters in question before it and may pay such person such fees or other remuneration and actual travelling and living expenses as may be approved by the Minister.

(6) As soon as practicable after the Minister has referred to the Copyright Appeal Board the statements of proposed fees, charges or royalties as herein provided and the objections, if any, received in respect thereto, the Board shall proceed to consider the statements and the objections, if any, and may itself, notwithstanding that no objection has been lodged, take notice of any matter which in its opinion is one for objection; the Board shall, in respect of every objection, advise the society, association or company concerned of the nature of the objection and shall afford it an opportunity of replying thereto.

(7) In respect of public performances by means of any radio receiving set or gramophone in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, no fees, charges or royalties shall be collectable from the owner or user of the radio receiving set or gramophone, but the Copyright Appeal Board shall, so far as possible, provide for the collection in advance from radio broadcasting stations or gramophone manufacturers, as the case may be, of fees, charges and royalties appropriate to the new conditions produced by the provisions of this subsection and shall fix the amount of the same; in so doing the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of the provisions of this sub-section.

(8) Upon the conclusion of its consideration, the Copyright Appeal Board shall make such alterations in the statements as it may think fit and shall transmit the statements thus altered or revised or unchanged to the Minister certified as the approved statements; and the Minister shall thereupon as soon as practicable after

the receipt of such statements so certified publish them in the *Canada Gazette* and furnish the society, association or company concerned with a copy of them.

(9) The statements of fees, charges or royalties so certified as approved by the Copyright Appeal Board shall be the fees, charges or royalties which the society, association or company concerned may respectively lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or any of its works in Canada during the ensuing calendar year in respect of which the statements were filed as aforesaid.

(10) No such society, association or company shall have any right of action or any right to enforce any civil or summary remedy for infringement of the performing right in any dramatico-musical or musical work claimed by any such society, association or company against any person who has tendered or paid to such society, association or company the fees, charges or royalties that have been approved as aforesaid.

It will be noted that these sections have the effect of authorizing the Board to establish the license fees collectable by performing rights societies, of imposing as a condition precedent of their right to collect any fees, the filing with the Minister at the Copyright Office of statements of the fees proposed to be collected, and of depriving performing rights societies of any right of action or any right to enforce any civil or summary remedy for infringement of the performing right against any person who has tendered or paid to such society the approved fees.

While CAPAC and BMI did not object to the present system of control, doubts were expressed before us—at least by CAPAC—as to whether the legislation is consistent with the Rome Convention as it makes the right to collect fees by a copyright owner (the society) subject to the performance of a formality, namely the filing of statements of fees to be collected, and it deprives the performing right owner (the society) of its right, which would otherwise exist, of preventing the performance of its works.

It may be noted that Article 2 (4) of the Brussels Convention provides that the works mentioned in that article shall enjoy protection in all countries of the Union and that “this protection shall operate for the benefit of the author and his legal representatives and assignees”. No such words as those quoted appear in the corresponding article of the Rome Convention and it is at least arguable and some authors maintain that the provision in the Rome Convention in Article 4 (2) which reads “The enjoyment and the exercise of these rights shall not be subject to the performance of any formality” does not refer to a formality imposed upon an assignee, such as a performing rights society.

Whether this is true or not we do not think that the word “formality” in Article 4 (2) of the Rome Convention extends to such an act as the filing of statements of fees which our legislation requires of performing rights societies. The true purport of our legislation in reference to performing rights societies is that the societies are not obliged to offer the musical works in which they have copyright for use by the public at all but that if they do offer them they must submit their proposed fees for official approval as a condition of entitlement to recovery, and that upon such approval being given they must make the works available on those terms. It is quite clear, we think, that all this is permissible by the Rome Convention which, as stated before, does not provide that the owners of copyright in musical works must be given an exclusive right to authorize the public performance of the works in which that copyright subsists. The extent of the protection which a Rome Convention country gives in respect of public

performance is purely a matter for the domestic legislation of that country. This appears clear from Article 4 (2) of the Rome Convention which reads:

4. (2) The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed.

and there are no "express stipulations" concerning public performance to be found elsewhere in the Convention respecting these particular matters. We can find nothing in UCC either which obliges a contracting state under that convention to give any protection in respect of public performance other than such as is essential for the provision of adequate and effective protection of the rights of authors and other copyright proprietors. Canada is therefore perfectly free, so far as the conventions are concerned, to enact such provisions as it thinks fit to prevent or deal with any abuse of the rights centralized in performing rights societies.

The present Copyright Appeal Board consists of the President of the Exchequer Court of Canada, the Under Secretary of State (a Deputy Minister), and a citizenship court President.

Some notes on the extent and limitations of the present authority of the Copyright Appeal Board may now be made.

- (1) The Board cannot fix or vary the terms of licenses in respect of which it determines fees.
- (2) The Board has power to approve fees or charges to be based upon receipts or expenditures by the licensee during the period covered by the license.
- (3) The Board need not give reasons for its decisions.
- (4) There is no appeal from the Board's decisions.
- (5) The Board can only consider the statements of fees filed by the societies and the objections thereto. Those statements and objections must relate to proposed licenses, the terms of which are framed by the societies. The Board cannot consider proposals by music users for licenses in other terms.
- (6) The Board can only consider statements of fees proposed to be collected "during the next ensuing calendar year". It is not available for resort thereto at times in the year other than those when such statements are being considered. This, in practice, means that the Board sits only at regular yearly intervals.
- (7) No standard or yardstick for the approval of fees is provided in the Act. In this connection it may be said to be doubtful whether the Board could fix nominal fees.

It may be added that the meaning of the word tendered in section 50, subsection 10, is not clear. Judicial opinion has been expressed that it may be interpreted as extending to tender of what is already due at any particular time coupled with an offer to pay what later may fall due.

The Board, in practice, approves tariffs of fees or charges which may be collected by each of the performing rights societies from various classes of music users. The most recent tariffs approved have been those for the year 1957. These are not in all respects the same as those for 1956 but the 1956 tariffs may be

taken as examples of the kinds of tariff the Board has approved. The titles of the approved tariffs of fees collectable by CAPAC for 1956 were the following:

<i>Tariff No.</i>	<i>Titles</i>
1	Performance of Individual Works
2	Radio Communication
3	Telecasting
4	Theatres
5	Performances by means of 16 mm. Films.
6	Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Lounges, Restaurants, Roadhouses, Taverns, and Similar Establishments
7	Ballrooms, Dance Halls, Roller or Ice Skating Rinks
8	Conventions and Assemblies
9	Baseball Parks, Hockey Arenas and Other Sports Grounds when used for Athletic Purposes, whether Open Air Fields or Enclosed Arenas and Amphitheatres
10	Public Parks, Streets or Squares
11	Concerts or Recitals
12	Large Exhibitions
13	Race Tracks, Motor Shows, Circuses, Fashion Shows, Small Exhibitions and Fairs
14	Industrial Establishments
15	Performances Conveyed by Telephone Wire, etc.
16	Steamships

The titles of the approved tariffs of fees collectable by BMI for 1956 were the following:

<i>Tariff No.</i>	
1	Radio Broadcasting and Television Broadcasting
2	Cabarets, Cafes, Clubs, Cocktail Bars, Dining Rooms, Hotels, Lounges, Restaurants, Roadhouses, Taverns and Similar Establishments
3	Ballrooms, Bandstands, Dance Halls, Skating Rinks where an admission fee is charged
4	Performances of Music by Tape Libraries, Record Libraries, or by Wired Music.

The amount collected by CAPAC in 1956 under Tariff No. 2, the radio broadcasting tariff, was \$809,897.94 (far more than under any other tariff—indeed more than under all of the other tariffs). The fees payable by the CBC were in part based on gross revenue in 1956 (although not in 1957) and the fees payable by a private broadcasting station were in 1956 and are in 1957 based entirely on gross revenue. (Other tariffs approved by the Board (including one of the BMI tariffs) have based the fees which are payable on gross receipts.) Gross revenue is defined in the 1956 and 1957 tariffs as the total revenue earned by the licensee in the operation of the station or stations less agency commissions, commissions paid to representative agencies, and artists and other talent fees, line fees, recording and other production fees billed to sponsors and paid out. The principle of basing charges upon gross revenue, involving as it does the right of CAPAC to examine the books of broadcasting stations, was the subject of an acrimonious controversy before us and will be considered later. There was

a similar controversy with regard to Tariff No. 6, which bases the charges collectable under that tariff on the total amount paid for all entertainment of which music forms a part including the amount paid to the orchestra, vocalists and all other entertainers. The controversy also extended to Tariff No. 7, under which the charges are a percentage of the receipts from admissions. Tariff No. 15 was objected to on the same grounds, as that tariff provides for payment of a sum equal to 4% of the gross amount paid or payable to the person, firm or corporation operating the central studio. It was submitted by CAPAC that this Commission should not review these tariffs as we would, in effect, be reviewing decisions of the Copyright Appeal Board. However, these tariffs must be referred to as the submission by those objecting to them was that there should be a provision in the Act that tariffs providing for charges based on expenditures or receipts of a music user should be prohibited, a submission which will be fully considered later. The practice pursued by the societies in demanding and collecting these fees cannot be fully described because of the great variety of situations which arise. It did appear, however, that CAPAC—and we presume the situation as to BMI is similar—makes every effort to avoid bringing actions for infringement, by repeated demands and explanations, but that when actions are brought they are ordinarily brought in the Exchequer Court of Canada.

CAPAC and BMI have no complaints about the provisions of the Act quoted above with the exception of Section 50, subsection (7). They both take strong exception to the exemption of users of gramophones from license fees, a complaint which will be dealt with later.

No composers or authors made any representations to the Commission to the effect that the legislation was not operating satisfactorily to them and no complaints were made by any composer or author as to the system of division or distribution of the fees by either of the societies.

This satisfaction with the present legislation is not shared by the organizations of music users. What may perhaps be regarded as the chief submission by them was made by the Musical Protective Society of Canada, a non-profit association which was incorporated as a company without share capital under the Dominion Companies Act in 1927. Included in the membership of this society are the following: The Hotel Association of Canada and its member associations; the Canadian Music Operators Association, being an association of persons engaged in the business of operating automatic equipment for the sale of music, known as juke boxes; the Canadian Association of Radio and Television Broadcasters, representing over 130 radio stations in Canada (not CBC stations); the Motion Picture Exhibitors Association of Canada; Associated Broadcasting Company Limited and others engaged in the dissemination of wired music; the Auditorium Owners Association Inc.; Arenas Association of Ontario; Canadian Restaurant Association; Canadian Association of Exhibitions. Some of these constituent members of the Musical Protective Society of Canada made separate submissions either in writing or orally before us. There was a submission by CJOR Limited and by the Associated Broadcasting Company Limited which like CJOR Limited disseminates wired music. The submission of the Canadian Association of Exhibitions was of a specialized character requesting an amendment to Section 17 (2) (g) of the Act. The submission of the Motion Picture Exhibitors of Canada was chiefly informative in character, but expressed opposition to the percentage basis in the computation of performing right fees as applied to motion picture entertainment (a basis which does not apply now) and urged the

continuation of a tribunal such as the present Copyright Appeal Board. The submissions of the other music users bore considerable resemblance to each other with differences in detail varying with the interest represented. They all fall pretty well into line with the representations made by the organization of which they are members, the Musical Protective Society of Canada.

The term "purveyors of music" was used by some of those appearing instead of "users of music", and counsel for the Musical Protective Society said that if they lapsed into the term "music users" they did not for that reason admit that they were engaged in the use of music in the sense that it means consumption. The term music users or users of music is employed in this report as the most convenient term for describing those responsible for performance or at whose instance music is performed in public.

The submissions of the music users, apart from the specialized ones mentioned above and the complaints on which they were founded, cannot easily be summarized but the following pretty well covers the field. It was submitted:

(1) That both records and sheets of music should be marked with the name of the owner of the performing right subsisting in the music in the record or sheet so that such owner could readily be identified at the time of purchase. At the present time many records and sheets of music are not marked with the name of the owner of the performing right and if they are marked the marking is not one on which the music user can safely rely. As a result, a person wishing to use a musical work must ascertain by inquiry (and ascertain correctly at his peril) who the owner of the performing right is. It was submitted that if compulsory registration is impossible by reason of international conventions to which Canada is a party, (and compulsory registration was itself urged), a legal obligation should be laid on some person to mark every record of a musical work and every sheet of music before sale to the user with the name of the owner of the performing right. As to who this person should be, submissions varied. But counsel for the Musical Protective Society in his final representation to us submitted that in the case of records this person should be the record manufacturer and that if a manufacturer did not mark the record or did not mark it correctly, he should be subject to a penalty. Instances of claims to a performing right in one work by both societies was cited. It was represented as intolerable that an applicant to a society for a license should not be able to find out what works he would be entitled to use if he obtained a license. In practice, every licensed radio broadcaster obtains licenses from both societies. But the spokesman for music users operating under Tariff No. 7 said that if all music was marked and correctly marked the operators of, say, dance halls, or at least some of them, could safely confine themselves to music the performing rights in which are owned by one society.

(2) That the Board should be given power to fix the terms and conditions of the licenses either of its own motion or upon application of any interested person. Now it has power only to attach price tags to licenses framed by the societies; for example, the societies offer no "per-program" licenses to radio broadcasters or to certain other classes of users, and such licenses should be available. The societies submit licenses containing conditions objectionable to the users and the users must accept these conditions. A variation of this submission was that the licenses should contain no conditions and that upon payment to a society of a fixed and final amount before the beginning of a calendar year a user should be entitled to a license to use any of the society's repertoire during that year. A further

variation of the submission was that the Act should compel the offering of "per-program" licenses. The nature of a "per-program" license will be discussed later.

(3) That the Act should prohibit the basing of compensation on receipts or expenditures of users, which necessitates the examination of the books of users by the societies, and should prohibit terms of licenses entailing such examination.

(4) That the Act should provide that in the case of a network broadcast the fees should be paid by the station originating the broadcast and should exempt the stations relaying it. As most broadcasting stations are virtually compelled to broadcast network music and have no control of the selection of the music by the network they are compelled for all practical purposes to obtain licenses from both societies. Such compulsion should not exist.

(5) That the Board should be directed by the Act to take into account the existence of more than one society when fixing the fees payable to that society. Until 1941 there was only one society in Canada. Today there are two. Tomorrow there may be three or more. The entrance of new societies into the field should not be allowed to cause an increase in the fees paid by the users. Many of the users must use the works of both or—if the number of societies is increased—all societies, in order to stay in business. They can use only so much music during a given time of broadcasting. The more societies there are, the more the fees payable to each should abate, other things being equal.

(6) That tariffs once established should remain in force (not subject to alteration) for at least two years, the Board to have power to alter them thereafter on application by any interested person, the onus being on the applicant to show the need for the alteration applied for. A variation of this submission was that when a society proposes a tariff or an alteration of a tariff, the onus should be on the society and the Act should so provide.

(7) That provisions differing from those of the present Act should be made as to the constitution of the Board. In particular neither a Judge of the Exchequer Court nor the Under Secretary of State should be eligible for membership, the former because by reason of his membership in the Board he is likely to find it necessary to refrain from sitting as a Judge in certain cases in which it would be desirable for him to sit; the latter because he might be embarrassed in the discharge of his regular departmental duties by his membership in the Board. Those making the submissions made it clear that they were made on principle and that they are not objecting in any way to the manner in which the present incumbents had discharged their duties.

(8) That appeals from Board decisions should be provided for.

(9) That the Board should be given investigatory powers—powers to make surveys in this country or any other country, etc.,—not now expressly conferred.

(10) That the Board should be authorized or directed to hold some of its hearings outside of Ottawa.

(11) That the Act should direct the Board to give reasons for its decisions.

(12) That there should be some statutory standard or yardstick for the determination of fees by the Board. At least the Act should provide that these be fair and reasonable.

(13) That it should be provided that evidence at the hearings be given under oath.

(14) That the date of filing of tariffs for an ensuing year and the hearings, if any, that follow should be advanced so that the provisions of the tariff may be known before the beginning of the year.

(15) That the Act should provide that the societies must file statements each year showing in detail the distribution of the monies collected by them.

The foregoing are the main submissions made by the Musical Protective Society and its constituent organizations and the main complaints on which they are based.

In addition, the following representations by some of these organizations were made:

- (1) That the term of copyright is too long;
- (2) That performing rights should be abolished;
- (3) That performing right fees should be paid to the owners of performing rights in full by manufacturers of records and publishers of sheet music on some scale to be fixed by or under statute, these payments to be carried into the price of the records or sheet music and in this way passed on to the public.

Section 4—General Recommendations

It is now proposed to take up the submissions made by the music users, one by one, in the order set out above, and to make our recommendations with regard to each.

User Submission (1):

We do not think that there should be compulsory registration as a condition precedent to right of action, mainly because we think that the expense and inconvenience incidental to a system of compulsory registration of assignments of performing rights in music would be out of proportion to the use to which the register would be put. For most music users the use of the register would, we think, be too slow and too expensive. It would be of little value to heavy users of music—radio stations, for example—who could not find out from the register with certainty at the beginning of a year whether they would be safe in relying on a license from one society only, because new works the rights in which might be owned by the other society would be coming in from time to time. Some users might be in a position to stick to the repertoire selected at the beginning of the year. The benefit to these would not in our judgment be sufficient to offset the disadvantages mentioned.

We do not think that it would be fair to place on the record manufacturer or publisher of the sheet music the burden of ascertaining correctly, on peril of penalty, who the owner of the performing right is. The record manufacturer has no interest in the fees chargeable for public performance of his record. The publisher of sheet music has no interest as such either. Imported records and sheet music would raise complications. The most that could fairly be imposed on the record manufacturer or the sheet music publisher would be the obligation to mark the article he sells with the name of the society which he believes owns the performing rights (in some cases one society would own the rights in the words, the other in the music). This would be a loose type of legislation which we would not care to recommend. At all events, we are informed that many records and sheets of music are now so marked.

We see no reason, however, why each society should not keep on file in a central office a completely up to date list of all the works in which it claims performing rights. If either society makes a claim for which it has no reasonable grounds it should be subject to a penalty. There should be penalties for delays in filing, or delays in removal of works from the list if the society's interest in the work ceases either by withdrawal of members, by works passing into the

public domain, or otherwise. The society filing the list should be deemed to warrant to every music user that the list is accurate, complete and correct at all times both as to the works that are on the list and those which are not on the list, and should be liable to indemnify any music user against any loss he sustains as a result of proceeding in accordance with the information contained in the list. A system of this kind would go far to solve the problems which arise for some users from the existence side by side of two societies in Canada.

User Submission (2):

We are of the opinion that the Board should have the power to pass upon and fix the terms of licenses upon the application of any interested person. If, for example, the Board is of opinion that it is in the public interest that "per-program" licenses be made available, the Board should have the power to order that such licenses be made available and fix their terms—and this upon the application of a user as well as upon the application of a society. The Board should not be directed to authorize per-program licenses. Whether it does so should be left to it. A per-program license is a license to use any of the society's repertoire for a particular program. Such licenses are not now available to certain classes of users, e.g., radio broadcasting stations. A radio broadcasting station must now rent, so to speak, a society's repertoire by the year (or by the piece, which would be absurd) not by the program. Per-program licenses are available from ASCAP in the United States, we were told, but are little used. Possibly they would be little used here. But the private radio broadcasters' spokesman submitted that they should be available, and we agree that the Board should be authorized to make them available. We do not think the Board should be hampered in fixing conditions of licenses.

User Submission (3):

It follows from the last paragraph that the Board should be free to approve of a term in a license providing that the license fee shall be a percentage of revenues or expenditures, and providing that the society shall be given the necessary facilities for examining books of the licensee. The Board should be free to approve tariffs based on the percentage principle. The manager of CAPAC supplied figures as to the time taken to examine the books of a licensee. The average time is a little over an hour. The inconvenience to the licensee is small. It was suggested that if such examinations are allowed information as to the business of a licensee may find its way to his competitors. No case of this having happened was given. Tariffs based on the percentage principle have undoubtedly given rise to much bitterness and acrimony. Nevertheless, in our opinion, the Board should be free to approve this kind of tariff and this kind of license if it sees fit.

User Submission (4):

We consider that the Board should have power to fix a nominal fee to be payable by any broadcasting station which does not broadcast any music the performing rights in which are owned by a society except music obtained from a network broadcast. That station not knowing at the beginning of a year what network music it would broadcast would still have to obtain a license from both societies, but if it were prepared to deny itself the use of one society's music (except network music) it might wish to obtain from that society a nominal fee license. The result would be that that society would look to the originating station (ordinarily the CBC) for virtually all of its license fees (all except the nominal

fee) in respect of network music broadcast from that private broadcasting station rather than to the station itself. If a station were not prepared to rely entirely on network music it would be liable to full license fees in respect of at least one society (unless indeed it broadcast only music in the public domain and network music). If a station were prepared to use nothing but network music all the fees (except two nominal fees) would be paid at the source (by the originating station). We are making no recommendations that the Board make any such order but it should have the power to do so. As we understand it, network music is wired from the originating station to broadcasting stations and broadcast from those stations. When network music is wired by the originating station to a broadcasting station, the originating station authorizes the broadcasting of the music. The broadcasting of that music from the broadcasting station will under our recommendations be a restricted act. The originating station and each broadcasting station will be liable for a fee. The situation is unlike that where a work is broadcast and then relayed by wire from the pick-up of that broadcast. In that situation if our recommendations are accepted, only one fee will be payable, namely, the fee payable by the broadcaster.

User Submission (5):

While we are disposed to be sympathetic with the view expressed by the users that the mere multiplication of societies in the Canadian field should not be allowed to increase the total performing right fees payable by the users, we do not think that any legislation directed to this end should be necessary. The Board should undoubtedly have power to fix tariffs in such a way as to abate fees payable to any society if the use of that society's music diminishes because of the coming forward of other societies. But there seems little reason for the enactment of legislation directing it to do so. Matters of this kind, like so many others, must be left to the discretion of the Board.

Under Submissions (6), (7), (8), (11) and (14):

Our recommendations with respect to the submissions are as follows:

The powers which we recommend to be vested in the Copyright Appeal Board will vary in certain important respects from those now exercisable by the Copyright Appeal Board, with the result that the tariffs now in existence may be radically changed in many respects. In view of this fact we think that if legislation in accordance with our recommendations is enacted a commission should then immediately be appointed by the Government to make a complete investigation in the whole field of performing rights in so far as such rights are owned by performing rights societies. This commission should be empowered to determine the terms and conditions of licenses for all classes of users, including, but not limited to, proposed tariffs of fees. The users as well as the societies should have the right to make proposals to this commission and the commission should have power to initiate proposals itself. When the terms of the licenses and the tariffs are determined by the commission they should be submitted to the Governor in Council for approval. If and when they are approved by the Governor in Council, with or without changes, they will become established as the applicable terms, conditions and tariffs for the following calendar year. As it cannot reasonably be expected that the terms, conditions and tariffs so established will remain static indefinitely, provision must be made for periodic revisions.

These revisions should, we think, be made by a Board to be known, as the present Board is, by the name of the Copyright Appeal Board and to be appointed by the Governor in Council. This Board should consist of three mem-

bers. The Chairman of the Board should be either a person who holds or has held judicial office or the Chairman of one of the permanent Boards or Commissions in the public service. The other two members should be selected from officers of the public service of Canada.

The plan we recommend for periodic revisions is as follows (the word tariff or tariffs to include terms and conditions of licenses):

(a) In any calendar year, after the calendar year in which the Governor in Council establishes the tariffs under the proposed legislation, any interested person may apply to the Copyright Appeal Board for approval of new or varied tariffs. If no such application is made on or before September 15th the existing tariffs will be applicable for the next ensuing calendar year. If any application is so made, any other interested person may, on or before October 15th apply for approval of any other new or varied tariffs which relate to the subject-matter of the previous application. On or before November 15th any interested person may file with the Board particulars of his objections, if any, to any tariff approval of which has been applied for. The Board will, as soon as practicable after November 15th, hear and dispose of all applications before it, proper notice having been given to all persons, if any, who have made applications or filed particulars of objections. The Board will be empowered to make rules of practice and procedure. The Board will also be empowered to approve any tariff (approval of which is applied for) with or without such modifications as it thinks fit, or to refuse approval, whether or not particulars of objections have been filed. The tariffs as approved by the Board will apply during the next ensuing calendar year.

(b) The onus of establishing that there should be any change in or addition to tariffs or terms and conditions in existence at any time will be on the person who applies for approval of the change or addition. This provision should give a considerable measure of stability to the tariffs and terms and conditions initially established by the commission and Governor in Council.

(c) All applications (but not necessarily particulars of objections) must be published promptly in the *Canada Gazette*.

(d) The Board's decisions are also to be published in the *Canada Gazette* and there will be a provision that if a decision which approves new or varied tariffs is not published in the *Canada Gazette* until after the end of the year the existing tariffs will apply for the proportionate part of the new year up to the time when the new or varied tariffs are published in the *Canada Gazette* and the latter will apply thereafter.

The Board should not be required by the Act to give reasons for its decisions. However, in so far as it is within our terms of reference, we recommend that it do so whenever possible.

In view of the impossibility of providing the Board with any definite statutory standard of fees to be fixed, appeals on tariffs and terms and conditions would largely be attempts to substitute a court's judgment for that of the Board. They would be time consuming and expensive. It may be noted that in the new United Kingdom Act which provides for the appointment of a Performing Right Tribunal no appeal from that Tribunal's decisions is provided for. Prerogative writs will be available to disappointed parties in appropriate cases if any such arise. Moreover, if the Board approves a tariff without jurisdiction, it will be unenforceable. We recommend that there be no appeal from the Board's decisions.

It should be provided that if a license is applied for and the approved fees are tendered a music user shall be free to proceed to perform the work even

though the license is delayed or refused and that if he performs the work his performance will be treated as having been performed subject to the approved terms of the license.

It should be provided that tender means a tender of the amount, if any, which by the approved terms of the license is then payable coupled with an offer of an undertaking to pay the approved fees as and when they become payable. These fees may later fall due and become payable from time to time throughout the year depending upon the terms of the license.

If a user uses music to which a tariff applies without first applying for a license and making the tender he should be liable as an infringer.

These recommendations comply with the submissions of the users to some, though not to the full, extent.

User Submissions (9), (10) and (13):

There should, we think, be no direction that the Board be ambulatory. Whether it travels or not should be left to its own determination. The Board should have the fullest investigatory powers. Whether testimony given before the Board should be under oath or not should be left to the Board's determination.

User Submission (12):

Submission (12) has given us some concern. There seems to be no admitted or acknowledged standard now. As far as we could ascertain the main arguments before the Board have been as to whether the scales of fees proposed have been commensurate with those collected by ASCAP in the United States and as to whether they are in line with those collected by performing rights societies elsewhere. If this comparative standard were set up in the Act, endless arguments as to differences in conditions can be envisaged. Other standards were proposed by the music users but none, we think, are capable of satisfactory application. We can think of no standard which it would be desirable to express in the Act other than that the terms and conditions of licenses and the charges to which they are to be subject are to be such as the tribunal may determine to be reasonable in the circumstances.

User Submission (15):

The argument for this submission was that if a society is retaining an excessive amount for cost of operation this might indicate that the charges against the users is excessive. The societies have, however, submitted statements of the percentage of their revenues which go to meet costs of operation and we are unable to say that these percentages are excessive. The music users expressed an interest in ascertaining how much of the revenues of the societies find their way to composers and authors as distinguished from publishers—and possibly (though this was not clearly stated) to particular classes or individual authors and composers. The users felt that this was information that the Commission should obtain. But in the absence of any complaint by authors or composers as to the division and distribution of the net revenues we do not see that information of this kind would be helpful to the Commission and perhaps not if there had been such a complaint.

As to the three submissions found at the end of those numbered from (1) to (15) above, we have only the following to say:

The question of terms has been fully dealt with in Parts III and VIII above.

The submission that performing rights should be abolished was, we gathered, not very seriously made and we think it should not be seriously considered.

The submission that performing right fees should be paid by the manufacturers of records and publishers of sheet music and passed on in the price of the records and sheets of music would be most unfair for at least two reasons: first, the manufacturers of records and the publishers would be compelled by law to become agents for the performing rights societies for the collection of fees in which they have no interest, the manufacturers of records no interest at all and the publishers no interest as such. Secondly, purchasers of records and sheet music for performance not in public would be forced to pay performing right fees with every purchase. One of the record companies informed us that 95% of its records are sold for domestic or private use and that 75% of the records which it sold are records of copyrighted music. It was suggested that these purchasers of records for domestic use all listen to radio and otherwise to music publicly performed and that to impose charges on them at the time they purchase records would have substantially the same result as if the charges were imposed on users who perform the works in public and pass the charges on directly or indirectly to patrons, listeners to radio broadcasts, etc. But it is obvious that the proportionate parts of compensation for performing rights borne respectively by persons listening to music would be very different under the system suggested from those borne under the present system. We think the present system a much fairer one.

Section 5—Particular Submissions and Recommendations Concerning Section 50 (7)

We now come to the submissions of the performing rights societies and others that Section 50 (7) should be amended. The nature of the amendment desired appears from a letter which was written by CAPAC to the Secretary of State in 1949, a copy of which CAPAC submitted to us. This letter in effect proposes that the Act provide that "public performances by means of any radio receiving set or gramophone" shall not be deemed to include performances in respect of which any fee or charge not being a license or other tax is paid by any person, nor performances which result from a transmission wholly by wire or other tangible conductor of electrical impulses to a point or points apart from the instruments containing the physical record of the sounds produced. If this provision were enacted the following results would ensue:

(a) The exemption of the owner or user as to music played by gramophones (from which there is no transmission by wire, etc.) in places other than a theatre, etc., which are not coin-operated would remain.

(b) The exemption would be removed as to coin-operated gramophones (usually called juke boxes).

(c) The exemption would not exist if the gramophone music were transmitted from one point on the premises to another by wire or other tangible conductor. (The courts have not decided, so far as we know, whether there is such an exemption now. It may be noted that CAPAC Tariffs 6 and 14 for 1956 establish scales of fees for performances by means of amplifying loudspeaker systems activated locally).

(d) The exemption of the owner or user as to radio music would remain. Of these results (b) and (c) are of chief interest.

As to (b), something should be said about the use of juke boxes in Canada. We were informed by the Canadian Music Operators' Association that there are about 10,000 of these, operated almost entirely by "operators". An operator owns a number of juke boxes, it may be several hundreds, which he places in

"locations". These locations are premises such as restaurants, etc., where people place coins in juke boxes to listen to music. The intake of the juke box industry was variously estimated before us as from 25 to 35 million dollars a year. We suspect that these figures are high, perhaps very much too high, as statements made before Congressional committees in the United States would indicate that the intake there where juke boxes are very widespread and numerous is about \$250 million. An operator installs the juke boxes, which he supplies with records and which he services, in return for which he receives a percentage of the take. We were informed that there are from 600 to 700 operators in Canada, that the records played on juke boxes are nearly all records of popular music in copyright and that the juke boxes are all imported from the United States and cost from \$1200 to \$1500 apiece.

The main grounds on which the operators through their association defend the exemption are (i) that their use of records in this way popularizes the musical works recorded and greatly stimulates the sale of records and sheet music, thereby greatly increasing the returns which the authors and composers receive in royalties for mechanical rights and royalties on the sheet music sold; and (ii) that nearly all the works recorded and played are those of American authors and composers who are members of ASCAP or BMI-U.S.; that these authors and composers are not entitled to collect in respect of juke box playing in the United States and that it is unfair that they should be permitted through CAPAC and BMI to collect in Canada.

The first ground is plausible but is one which could probably with equal plausibility be relied on by radio broadcasters as a reason why they should be exempt from performing rights fees. The second ground is hardly connected with the terms of reference of this Commission. It has, however, considerable appeal. It does seem anomalous that we should authorize agencies to comb the country for fees from Canadian music users so that these fees can be sent to authors, composers and publishers in another country whose legislature exempts the residents of that country from such fees. Of course not all of the money collected for the playing of juke box records would go to residents of the United States. Some would find its way to other foreign authors, etc., and some small, probably insignificant, sum to Canadians. But we think that in this particular field of performing rights the great bulk of all license fees paid would go to American authors, etc., of popular music. It might be that Parliament would consider that Canada's position vis-à-vis the United States should be that once that country allows its authors, composers and publishers to levy on its own people, Canada will allow them to levy on ours and not before. From this point of view the problem is not strictly one in the copyright field.

At the same time if the performing right is regarded as a species of property, which it is, we see no reason based on what may be called copyright principles why operators of juke boxes should be permitted to encroach on that property when other music users are obliged to pay for that privilege. We do not feel ourselves qualified to appraise the strength of the second ground mentioned above. It is peculiarly one for Parliament rather than for a commission.

If Parliament decides to maintain the exemption of owners of gramophones, in places other than theatres that are ordinarily and regularly used for entertainments to which an admission charge is made, from liability for performing right fees, we think it should go further and provide that these owners and users will not be liable for infringement of performing rights and that this provision should

apply to performing rights vested not only in performing rights societies but in anyone. Section 50 (7) does not appear to exempt owners or users of gramophones from performing right fees which are collectable by performing right owners unless these owners are performing rights societies. Nor does it prevent a performing rights society from obtaining an injunction to prevent performance in public, by the owner or user of a gramophone, of music the performing right in which is owned by the society if that owner or user has no license, because only one remedy, recovery of fees, is taken away from the society by the section. We think, however, that the exception in respect of theatres should be maintained, as otherwise much of the music played in motion picture theatres, particularly, might be free from the restrictions of the performing right.

With regard to the reference to radio receiving sets in Section 50 (7), this will no longer be necessary if our other recommendations are accepted, because the performance in public by a person receiving a radio or television broadcast and causing to be heard in public simultaneously with reception will not be an infringement.

As to (c) above, should the exemption apply not only to gramophones as the term is usually understood but also to sets of equipment such as those described in CAPAC tariff No. 6 as "an amplifying loud speaker system activated locally"? We heard representations from CJOR Limited and Associated Broadcasting Co. Limited, two of the companies which are engaged in the business of transmitting background music by wire into industrial or non-industrial establishments. This wired music, if our recommendations are accepted, will be subject to fees as diffused music. The companies named fear that they will be exposed to serious competition from music played from contrivances on the premises of establishments which may or may not be properly described as gramophones. We think that contrivances which are likely to compete in a substantial and important way with fee-paying systems such as wired music systems should not be exempt from license fees. Parliament may wish to provide that definitions of such contrivances will be made from time to time by Order in Council.

It may be noted that the exemption of owners or users of gramophones from liability for causing them to be heard in public is consistent with the Rome Convention, the only relevant provision of which is Article 13, which (as far as relevant) reads as follows:

13. (1) The authors of musical works shall have the exclusive right of authorizing (1) the adaptation of those works to instruments which can produce them mechanically; (2) the public performance of the said works by means of these instruments.

(2) Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

Apart from the foregoing possible exceptions, we think that public performance by means of gramophones should not be an infringement.

PART XIV

MISCELLANEOUS RECOMMENDATIONS

Section 1—Reciprocal Protection:

Denial of Copyright to Citizens of Countries Not Giving Adequate Protection to Canadian Works

Section 35 of the new United Kingdom Act is as follows:

35. (1) If it appears to Her Majesty that the laws of a country fail to give adequate protection to British works to which this section applies, or fail to give such protection in the case of one or more classes of such works (whether the lack of protection relates to the nature of the work or the country of its author or both) Her Majesty may make an Order in Council designating that country and making such provision in relation thereto as is mentioned in the following provisions of this section.

(2) An Order in Council under this section shall provide that, either generally or in such classes of cases as are specified in the Order, copyright under this Act shall not subsist in works to which this section applies which were first published after a date specified in the Order, if at the time of their first publication the authors thereof were—

(a) citizens or subjects of the country designated by the Order, not being at that time persons domiciled or resident in the United Kingdom or in another country to which the relevant provision of this Act extends, or

(b) bodies incorporated under the laws of the country designated by the Order.

(3) In making an Order in Council under this section Her Majesty shall have regard to the nature and extent of the lack of protection for British works in consequence of which the Order is made.

(4) This section applies to the following works, that is to say, literary, dramatic, musical and artistic works, sound recordings and cinematograph films.

(5) In this section—

“British Work” means a work of which the author, at the time when the work was made, was a qualified person for the purposes of the relevant provision of this Act; “author”, in relation to a sound recording or a cinematograph film, means the maker of the recording or film; “the relevant provision of this Act” in relation to literary, dramatic and musical works means section two, in relation to artistic works means section three, in relation to sound recordings means section twelve, and in relation to cinematograph films means section thirteen, of this Act.

This we regard as an important section the substance of which should be enacted in Canada with appropriate alterations to make it apply to Canadian works rather than to British works.

Section 2—Assignments and Licenses

Section 36 of the new United Kingdom Act is as follows:

36. (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as personal or moveable property.

(2) An assignment of copyright may be limited in any of the following ways, or in any combination of two or more of those ways, that is to say,—

(a) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copyright has the exclusive right to do (including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated);

(b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right;

(c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist; and references in this Act to a partial assignment are references to an assignment so limited.

(3) No assignment of copyright (whether total or partial) shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act, in relation to any copyright, to the doing of anything with, or (as the case may be) without, the licence of the owner of the copyright shall be construed accordingly.

We recommend that provisions to like effect be enacted in Canada, without however the exception in favour of a bona fide purchaser for value without notice which is in the following words in subsection (4):

except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

This exception seems to be based on English case law which regards a license, where it confers an interest in the copyright on the licensee, as creating an equitable interest. See *Copinger and Skone James* at p. 114. We see no convincing reason why this right should not be treated for the purposes of the Act as a legal right or interest and have priority over an assignment made afterwards, whether or not the assignee is a bona fide purchaser for value without notice—so that a license cannot be retroactively invalidated by an act of the licensor.

Section 3—Prospective Ownership of Copyright

Section 37 of the new United Kingdom Act is as follows:

37. (1) Where by an agreement made in relation to any future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person (in this subsection referred to as "the assignee"), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to require the copyright to be vested in him (wholly or partially, as the case may be), the copyright shall, on its coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

(2) Where, at the time when any copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Subsection (4) of the last preceding section shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright, as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

(4) The provisions of the Fifth Schedule to this Act shall have effect with respect to assignments and licences in respect of copyright (including future copyright) in television broadcasts.

(5) In this Act "future copyright" means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter, or on the coming into operation of any provisions of this Act, or in any other future event, and "prospective owner" shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in subsection (1) of this section.

We recommend the enactment in substance of subsections (1), (2), (3) and (5) of this section.

This section in the new United Kingdom Act seems to have been the result of a recommendation of the Gregory Committee. That Committee, after referring to the difficulties about section 5 (1) of the Imperial Act of 1911, which states that the author of a work shall be the first owner of the copyright therein with certain provisos, went on to say: (paragraphs 269 and 270)

We are satisfied that the fundamental principle should be maintained that the author or originator of a work is the first owner of the copyright except in specified circumstances. We do not think that any definition of "author" is required, but it should be stated, as is the case at present, who is to be deemed the author in the case of photographs and records, and a similar provision will be required in relation to the new rights which we propose for cinematograph films and broadcasts. The principal exception which we recommend to the rule that the author is to be the first owner is in the case in which the parties have expressly agreed before the creation of the work that someone else should be the first owner. We recommend that, where a work is created in pursuance of an express contract in writing providing that the copyright or some defined right forming part of the copyright shall vest initially in some person other than the author, then the legal title shall so vest. We think this recommendation would facilitate business relations.

It would appear to us that the enactment of this provision might in some circumstances make some difference between the rights which exist now and those which will exist under the proposed section. Assume that a composer agrees to assign his future musical compositions to a performing rights society. He later agrees with a film maker to make a composition for use with a motion picture film and agrees that the film maker will have the performing rights in his composition for the purposes of the film. At the present time upon completion of the composition the composer as author owns the copyright. An assignment from him to the film company will be effectual if the film company has no notice of the previous agreement to assign to the performing rights society. Under our recommendation an assignment to the film maker would be invalid whether the film maker had notice of the previous agreement with the performing rights society or not because the copyright would vest in the performing rights society immediately upon the creation of the work. What would formerly have been an equitable right in the performing rights society defeasible by a later assignment to a bona fide purchaser for value without notice now becomes a legal right in the performing rights society not so defeasible. In the case assumed we see no objection to this result as film making companies must all be aware that performing rights in future works have likely been assigned by composers. We think that as a practical matter the result would be just in other situations as well and for this reason and the reasons given by the Gregory Committee we recommend the enactment of the provision.

The adoption of this recommendation would have the further effect of making uniform the application of copyright law in Canada in this regard by bringing it in line with its present probable application in at least one province. Although there does not appear to have been a decision on the point, it would seem that Articles 1079 et seq. and, more particularly, 1085 of the Civil Code of the Province of Quebec, which relate to conditional rights and obligations, if applied to the case assumed above would have exactly the effect of sub-section 1 and of sub-section 2 of Section 37 of the United Kingdom Act, the principles of which we recommend be adopted.

We are not unaware, of course, that, if our recommendation formulated earlier in respect to commissioned works and works made in the course of employment are accepted, the present recommendation would not prevent the film company, in the case assumed, from becoming vested with copyright in any musical or other works, which it would have commissioned from an author or which an author would have made in the course of his employment by the film company after the author had assigned in advance to a third person copyright in all future works. Notwithstanding this we believe that both recommendations should be made.

Section 4—Bequests of Unpublished Works

Section 38 of the new United Kingdom Act is as follows:

38. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

We recommend the enactment in substance of the provisions of this Section.

Section 5—Crown Copyright and Liability of the Crown

By virtue of section 11 of our Act where any work is or has been prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in such case shall continue for a period of fifty years from the date of the first publication of the work.

We recommend that in relation to literary, dramatic, musical and artistic works, the provisions of Section 11 be re-enacted in effect except the provision as to term; and that these provisions be extended to sound recordings and films. We see no need to make any special provision as to term of protection, except, perhaps, a statement that the provisions elsewhere for term of protection of these classes of works etc. shall apply to the rights of the Crown conferred by these provisions.

We do not think that there should be any liability of the Crown for infringement of copyright. We think, however, that if the Crown does any act in relation to any work in copyright or in relation to any record, film or broadcast in copyright which if done by any other person would be an infringement, the Crown should be liable to the copyright owner for payment of compensation, which, in the absence of agreement, should be fixed by a judge of the Exchequer Court. It will be noted that such payment would not be in the nature of damages for infringement—there would be no infringement—but would be statutory compensation.

This recommendation to some extent assimilates the Crown's right to use works in copyright to the right given the Crown under the Patent Act to use patented inventions. The provision we recommend with regard to the payment of statutory compensation should extend only to the Crown in the right of Canada and not to the Crown in the right of a Province because, as we are advised, the Parliament of Canada has no constitutional right to impose liabilities upon the

Crown in the right of a Province. The Crown in the right of Canada should, however, be defined as including such crown corporations as by the statutes creating them are stated to be agents of the Crown in the right of Canada and are specified by Order in Council. If, for instance, a corporation is stated in the statute creating it to be an agent of the Crown in the right of Canada the Canadian Government would have the right but would not be obliged to declare by Order in Council that that corporation has the same rights and is subject to the same liabilities as the Crown would be with regard to the use of works in copyright and the payment of compensation therefor.

Such an Order in Council should not we think extend to such corporations as the CBC, and the National Film Board. The general purpose should be to provide some means of placing crown corporations which are to all intents and purposes merely government departments in the same position as government departments but not other crown corporations.

Section 6—False Attribution of Authorship, etc.

The new United Kingdom Act contains a section relating to false attribution of authorship and alterations of works and we think that legislative provisions should be enacted in Canada (if and to the extent that the matter is within the jurisdiction of the Canadian Parliament) relating to the same subject matter but differing substantially from the United Kingdom provisions. The provisions we recommend should in our opinion be to the effect of the following which we are putting in the form of a draft section for the new Canadian Act and which is self-explanatory:

(1) The restrictions imposed by this section shall have effect in relation to literary, dramatic, musical or artistic works; and any reference in this section to a work shall be construed as a reference to such a work.

(2) A person (in this subsection referred to as "the offender") contravenes those restrictions as respects another person if, without the license of that other person, he does any of the following acts in Canada, that is to say, he—

- (a) inserts or affixes that other person's name in or on a work of which that person is not the author, or in or on a reproduction of such a work, in such a way as to imply that the other person is the author of the work, or
- (b) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a work in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work, or
- (c) does any of the acts mentioned in the last preceding paragraph in relation to, or distributes, reproductions of a work, being reproductions in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work, or
- (d) performs in public, or broadcasts, a work of which the other person is not the author, as being a work of which he is the author, if to the offender's knowledge that person is not the author of the work.

(3) The last preceding subsection shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person as it applies where a work is so represented as being the work of another person.

(4) In the case of a work which has been altered after the author parted with the possession of it, the said restrictions are contravened, in relation to the author, by a person in Canada, without the license of the author,—

(a) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire the work as so altered, as being the unaltered work of the author, or

(b) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if to his knowledge it is not the unaltered work, or, as the case may be, a reproduction of the unaltered work, of the author, and if any such act is prejudicial to the honour or reputation of the author.

(5) The three last preceding subsections shall not apply with respect to anything done with respect to another person after that person's death.

(6) In the case of an artistic work in which copyright subsists, the said restrictions are also contravened, in relation to the author of the work, by a person who in Canada—

(a) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a reproduction of the work, as being a reproduction made by the author of the work, or

(b) distributes reproductions of the work as being reproductions made by the author of the work,

if (in any such case) the reproduction or reproductions was or were to his knowledge not made by the author.

(7) The preceding provisions of this section shall apply (with the necessary modifications) with respect to acts done in relation to two or more persons in connection with the same work.

(8) The restrictions imposed by this section shall not be enforceable by any criminal proceedings; but any contravention of those restrictions, in relation to a person, shall be actionable at his suit, or, if he is dead, at the suit of his personal representatives, as a breach of statutory duty.

(9) Any damages recovered under this section by personal representatives, in respect of a contravention committed in relation to a person after his death, shall devolve as part of his estate, as if the right of action had subsisted and had been vested in him immediately before his death.

(10) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section:

Provided that this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

(11) In this section "name" includes initials or a monogram.

It will be noted that we recommend that the foregoing provisions shall not be enforceable by criminal proceedings. This, we think, is the correct general

principle. But it may be that some breaches of the statutory duties to be created by some of the provisions will be considered by Parliament as justifying the possibility of resort to criminal proceedings. If so, we can think of no convincing reason why appropriate provisions to that effect should not be enacted.

If provisions to the foregoing effect are enacted we would consider the following provision of our present Act unnecessary:

26. (2) Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, or any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in such work or composition itself without the written consent of the author or of his legal representative, in order that the same may be performed in whole or in part in public for private profit, is guilty of an offence, and is liable on summary conviction to a fine not exceeding five hundred dollars, or in the case of a second or subsequent offence, either to such fine or to imprisonment for a term not exceeding four months, or to both.

Section 12 (7) of our present Act is as follows:

Independently of the author's copyright, and even after the assignment, either wholly or partially, of the said copyright, the author shall have the right to claim authorship of the work, as well as the right to restrain any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation.

The words "the author shall have the right to claim authorship of the work" give little indication of what constitutes a denial of this claim and what remedies they give the author. We think his rights and remedies as spelled out in the foregoing recommended provisions are sufficient. His rights will we presume ordinarily be defined and protected by contract.

Section 7—Interpretation

We do not propose to set out in detail the interpretation provisions which we think should be enacted. A draftsman preparing a new Canadian Act can, we think, without much difficulty frame interpretation provisions on the basis of the foregoing recommendations. However, we should perhaps call attention to a few matters. It should, we think, be provided:

(a) that the transmission of a work or other subject matter to subscribers to a diffusion service should not extend to a service of distributing programs where the service is only incidental to a business of keeping or letting premises where persons reside or sleep, and is operated as part of the amenities provided exclusively or mainly for residents or inmates therein;

(b) that broadcasting or the causing of a work or other subject matter to be transmitted to subscribers to a diffusion service shall not be taken to constitute performance or to constitute causing the visual images or sounds to be seen or heard;

(c) that except as to the provisions regarding restricted acts, in determining whether a work or other subject matter has been published, or was published or otherwise dealt with in the lifetime of a person, or whether the publication was the first publication, no account shall be taken of any unauthorized publication or the doing of any other unauthorized act;

(d) that references to the time at which or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first reduced to writing or some other material form.

Section 8—Transitional Provisions, Repeals, etc.

It should be provided that no copyright or right in the nature of copyright shall subsist otherwise than by virtue of the Act or some other enactment in that behalf, but that neither this provision nor anything else in the Act shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

To work out detailed recommendations of transitional provisions is a task which could we think be performed more profitably after other provisions of any new Canadian legislation are decided upon. We propose merely to refer to transitional provisions in relation to term of protection.

Generally speaking, we would think it should be provided as follows:

If when the new Act comes into force there has, in relation to a literary, dramatic or musical work been no publication, performance of the work, offer of sale to the public of records of the work, or broadcasting of the work, the provisions of the new Act relating to term of protection should apply—otherwise not.

If when the new Act comes into force there has in relation to any artistic work other than a photograph been no publication of the work, the provisions of the new Act relating to term should apply—otherwise not.

If when the new Act comes into force, a photograph has been taken, the provisions of the new Act relating to term of protection of photographs should not apply to that photograph.

If when the new Act comes into force a record has been published, the provisions of the new Act relating to term of protection of records should not apply to that record—otherwise they should.

If when the new Act comes into force a film has been exhibited in public, the provisions of the new Act relating to term of protection of films should not apply to that film—otherwise they should.

The provisions of the new Act relating to term of protection of broadcasts should apply only to broadcasts made after the new Act comes into force.

The other transitional and repeal provisions we must we think leave for consideration by others after the main provisions of the Act are decided upon.

We should like to express our appreciation of the help we have received from those who appeared before us or communicated with us in writing and who furnished us with information without which the performance of our task, incomplete and imperfect as it is, would have been impossible. And although other reports by us (not on copyright) are to follow, we desire to mention here with deep appreciation the services of the Secretary of the Commission, Mr. A. M. Laidlaw, whose work in relation to the report has been efficient, arduous and long sustained.

All of which is respectfully submitted.

Dated at Ottawa
this first day of August, 1957.

(Signed) J. L. ILSLEY,
(Chairman),

Guy FAVREAU,
W. W. BUCHANAN,
Commissioners.

Appendix A

COPYRIGHTS

1. What are your views respecting

- (a) compulsory licensing of copyrighted works;
- (b) the period of protection presently allowed the owner, or owners, of a copyrighted work;
- (c) the importation into Canada of works copyrighted in Canada;
- (d) the performance of dramatic or musical works of copyrighted material by educational, social, charitable, religious or fraternal associations or organizations;
- (e) copyrights in the fields of radio and television (both live and recorded programmes);
- (f) royalties payable under present copyright legislation;
- (g) adherence by Canada to International Copyright Conventions;
- (h) the filing, with the application for registration, of a copy of the work; and
- (i) copying by librarians or others of copyrighted material for use by other persons?

2. Have you any suggestions with respect to the present provisions of the Copyright Act relative to performing rights and performing rights societies which might mitigate the conflict of views between the users of musical and dramatico-musical works, on the one hand, and of authors, composers, publishers and performing rights societies, on the other hand?

3. Apart from your answer to question 2, do you favour the abolition or alteration of the Copyright Appeal Board as it is presently constituted?

If so, outline any views you may have respecting the powers and procedure of such a Board (if continued).

Appendix B

1. Organizations which made representations in public to the Commission:—
 - Arenas Association of Ontario
 - Associated Broadcasting Company Limited
 - Auditorium Owners and Operators Association
 - Book Publishers' Association (a branch of the Board of Trade of the City of Toronto)
 - BMI Canada Limited
 - Canadian Association of Exhibitions
 - Canadian Association of Radio and Television Broadcasters
 - Canadian Authors' Association
 - Canadian Broadcasting Corporation
 - Canadian Federation of Mayors and Municipalities
 - Canadian Graphic Arts Association
 - Canadian Hotel Association
 - Clarke, Irwin & Company
 - Canadian League of Composers
 - Canadian Manufacturers' Association
 - Canadian Music Council
 - Canadian Music Publishers' Association
 - Canadian Underwriters' Association
 - Composers, Authors and Publishers Association of Canada Limited
 - CJOR Limited
 - Columbia Records of Canada Ltd.
 - Independent Fire Insurance Conference
 - Macmillan Company of Canada Limited
 - McClelland & Stewart Limited
 - Modern Medicine of Canada
 - Musical Protective Society
 - Musical Publishers' Section of the Toronto Board of Trade
 - Ontario Federation of Printing Trade Unions
 - Oxford University Press
 - Patent Institute of Canada
 - Performing Right Society Ltd. (U.K.)
 - Periodical Press Association
 - RCA Victor Company, Limited
 - G. Ricordi & Company (Canada) Ltd.
 - Rotary Club of Toronto
 - Société des Écrivains Canadiens
 - University of Toronto Press
 - Walt Disney Productions
2. Individuals who in their personal capacities made representations in public to the Commission:—
 - Dr. Harold G. Fox, Q.C.
 - Redmond Quain, Esq., Q.C.
 - Samuel Rogers, Esq., Q.C.
3. In addition to the foregoing the Commission received more than 150 written representations, and many oral representations, not made in public.

Appendix C

CONVENTION OF ROME

ARTICLE 1

The countries to which the present Convention applies are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE 2

(1) The term "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, geographical charts, plans, sketches, and plastic works relative to geography, topography, architecture or science.

(2) Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works without prejudice to the rights of the author of the original work.

(3) The countries of the Union shall be bound to make provision for the protection of the above-mentioned works.

(4) Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

CONVENTION OF BRUSSELS

ARTICLE 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE 2

(1) The term "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works produced by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works and works produced by a process analogous to photography; works of applied art; illustrations, geographical charts, plans, sketches and plastic works relative to geography, topography, architecture or science.

(2) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the rights of the author of the original work. It shall, however, be a matter for legislation in the countries of the union to determine the protection to be granted to translations of official texts of a legislative administrative and legal nature.

(3) Collections of literary or artistic works such as encyclopaedias and anthologies which by reason of the selection and arrangement of their contents constitute intellectual creations shall be protected as such without prejudice to the rights of the authors in respect of each of the works forming part of such collections.

(4) The works mentioned in this article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his legal representatives and assignees.

(5) It shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws

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ARTICLE 2 *bis*

(1) The right of partially or wholly excluding political speeches and speeches delivered in legal proceedings from the protection provided by the preceding Article is reserved for the domestic legislation of each country of the Union.

(2) The right of fixing the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press is also reserved for the domestic legislation of each country of the Union. Nevertheless the author shall have the sole right of making a collection of the said works.

ARTICLE 3

The present Convention shall apply to photographic works and to works produced by a process analogous to photography. The countries of the Union shall be bound to make provision for their protection.

ARTICLE 4

(1) Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives, as well as the rights specially granted by the present Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed.

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to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected.

Works protected in the country of origin solely as designs and models shall be entitled in other countries of the union only to such protection as shall be accorded to designs and models in such countries.

ARTICLE 2 *bis*

(1) It shall be a matter for legislation in the countries of the Union to exclude wholly or in part from the protection afforded by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press.

(3) Nevertheless, the author alone shall have the right of making a collection of his works mentioned in the above paragraphs.

ARTICLE 4

(1) Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

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(3) The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

(4) By "published works" must be understood, for the purposes of the present Convention, works copies of which have been issued to the public. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.

ARTICLE 5

Authors who are nationals of one of the countries of the Union and who first publish their works in another country of the Union shall have in the latter country the same rights as native authors.

ARTICLE 6

(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries, shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention.

(2) Nevertheless, where any country outside the Union fails to protect in an

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(3) The country of origin shall be considered to be, in the case of published works, the country of first publication, even in the case of works published simultaneously in several countries of the union which grant the same term of protection; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

A work shall be considered as having been published simultaneously in several countries which has been published in two or more countries within thirty days of its first publication.

(4) For the purposes of ARTICLES 4, 5 and 6, "published works" shall be understood to be works copies of which have been issued and made available in sufficient quantities to the public whatever may be the means of manufacture of the copies. The presentation of a dramatic, dramatico-musical or cinematographic work, the performance of a musical work, the public recitation of a literary work, the transmission or the radio-diffusion of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture or of graphic and plastic works forming part of a building, the country of the Union where these works have been built or incorporated in a building shall be considered as the country of origin.

ARTICLE 5

Authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as native authors.

ARTICLE 6

(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries, shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by this Convention.

(2) Nevertheless, where any country outside the Union fails to protect in an ade-

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adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are at the date of the first publication thereof nationals of the other country and are not effectively domiciled in one of the countries of the Union.

(3) No restrictions introduced by virtue of the preceding paragraph shall in any way affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put in force.

(4) The countries of the Union which restrict the grant of copyright in accordance with the present Article, shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation will immediately communicate this declaration to all the countries of the Union.

ARTICLE 6 *bis*

(1) Independently of the author's copyright, and even after transfer of the said copyright, the author shall have the right to claim authorship of the work, as well as the right to object to any distortion, mutilation or other modification of the said work which would be prejudicial to his honour or reputation.

(2) The determination of the conditions under which these rights shall be exercised is reserved for the national legislation of the countries of the Union. The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed.

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adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(3) No restrictions introduced by virtue of the preceding paragraph shall effect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

ARTICLE 6 *bis*

(1) Independently of the author's copyright, and even after the transfer of the said copyright, the author shall have the right, during his lifetime, to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof, or any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the copyright, and shall be exercisable by the persons or institutions authorised by the said legislation.

The determination of the conditions under which the rights mentioned in this paragraph shall be exercised shall be governed by the legislation of the countries of the Union.

(3) The means of redress for safeguarding the rights granted by this article shall be governed by the legislation of the country where protection is claimed.

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ARTICLE 7

(1) The term of protection granted by the present Convention shall be the life of the author and fifty years after his death.

(2) Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country where protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the countries of the Union shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.

(3) For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.

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ARTICLE 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

(3) In the case of cinematographic and photographic works, as well as works produced by a process analogous to cinematography or photography, and in the case of works of applied art the term of protection shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

(4) In the case of anonymous and pseudonymous works the term of protection shall be fixed at fifty years from the date of their publication. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1).

(5) In the case of posthumous works which do not fall within the categories of works included in paragraphs (3) and (4) the term of the protection afforded to the heirs and the legal representatives and assignees of the author shall end at the expiry of fifty years after the death of the author.

(6) The term of protection subsequent to the death of the author and the terms provided by paragraphs (3), (4) and (5) shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the 1st January of the year following the event which gives rise to them.

ARTICLE 7 *bis*

(1) The term of copyright protection belonging in common to joint authors of a work shall be calculated according to the date of the death of the author who dies last.

(2) Authors who are nationals of the countries which grant a term of protection shorter than that mentioned in paragraph (1)

ARTICLE 7 *bis*

In the case of a work of joint authorship the term of protection shall be calculated from the date of the death of the last surviving author.

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cannot claim a longer term of protection in the other countries of the Union.

(3) In no case may the term of protection expire before the death of the author who dies last.

ARTICLE 8

The authors of unpublished works, who are nationals of one of the countries of the Union, and the authors of works first published in one of those countries, shall enjoy, in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works.

ARTICLE 9

(1) Serial stories, tales, and all other works, whether literary, scientific or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.

(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

(3) The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.

ARTICLE 10

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing, or to be concluded, between them is not affected by the present Convention.

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ARTICLE 8

Authors of literary and artistic works protected by this convention shall have the exclusive right of making and of authorising the translation of their works throughout the term of protection of their rights in the original works.

ARTICLE 9

(1) Serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.

(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

(3) The protection of this Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news.

ARTICLE 10

(1) It shall be permissible in all the countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries.

(2) The right to include excerpts from literary or artistic works in educational or scientific publications, or in chrestomathies, in so far as this inclusion is justified by its purpose, shall be a matter for legislation in the countries of the Union, and for special arrangements existing or to be concluded between them.

(3) Quotations and excerpts shall be accompanied by an acknowledgment of the source and by the name of the author, if his name appears thereon.

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ARTICLE 11

(1) The stipulations of the present Convention shall apply to the public representation of dramatic or dramatico-musical works and to the public performance of musical works, whether such works be published or not.

(2) Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorised public representation of translations of their works.

(3) In order to enjoy the protection of the present Article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof.

ARTICLE 11 *bis*

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorising the communication of their works to the public by radio-communication.

(2) The national legislations of the countries of the Union may regulate the conditions under which the right mentioned in the preceding paragraph shall be exercised, but the effect of those conditions will be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral right (*droit moral*) of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by the competent authority.

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ARTICLE 10 *bis*

It shall be a matter for legislation in countries of the Union to determine the conditions under which recording, reproduction and public communication of short extracts from literary and artistic works may be made for the purpose of reporting current events by means of photography, or cinematography or by radio-diffusion.

ARTICLE 11

(1) The authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorising: i. The public presentation and public performance of their works; ii. The public distribution by any means of the presentation and performance of their works.

The application of the provisions of Articles 11 *bis* and 13 is, however, reserved.

(2) Authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, shall enjoy the same right with respect to translations thereof.

(3) In order to enjoy the protection of this Article, authors shall not be bound, when publishing their works, to forbid the public presentation or performance thereof.

ARTICLE 11 *bis*

(1) Authors of literary and artistic works shall have the exclusive right of authorising: i. The radio-diffusion of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; ii. Any communication to the public, whether over wires or not, of the radio diffusion of the work, when this communication is made by a body other than the original one; iii. The communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the radio-diffusion of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral right of the author, nor to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.

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ARTICLE 12

The following shall be specially included among the unlawful reproductions to which the present Convention applies: Unauthorised indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or piece of poetry, into a dramatic piece and vice versa, etc., when they are only the reproduction of that work, in the same form or in another form, without essential alterations, additions, or abridgments and do not present the character of a new original work.

ARTICLE 13

(1) The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

(2) Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

(3) The provisions of paragraph (1) shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of

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(3) Except where otherwise provided, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record the radio-diffused work by means of instruments recording sounds or images.

It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting body by means of its own facilities and used for its own emissions. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorised by such legislation.

ARTICLE 11 *ter*

Authors of literary works shall enjoy the exclusive right of authorising the public recitation of their works.

ARTICLE 12

Authors of literary, scientific or artistic works shall enjoy the exclusive right of authorising adaptations, arrangements and other alterations of their works.

ARTICLE 13

(1) Authors of musical works shall have the exclusive right of authorising: i. The recording of such works by instruments capable of reproducing them mechanically; ii. the public performance by means of such instruments of works thus recorded.

(2) Reservations and conditions relating to the application of the rights mentioned in the preceding paragraph may be determined by legislation in each country of the Union, in so far as it may be concerned; but all such reservations and conditions shall apply only in the countries which have prescribed them and shall not, in any circumstances, be prejudicial to the author's right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) The provisions of paragraph (1) of this Article shall not be retroactive and consequently shall not be applicable in a country of the Union to works which, in that country, may have been lawfully adapted to mechanical instruments before the coming

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the Convention signed at Berlin on the 13th November, 1908, and in the case of a country which has acceded to the Union since that date, or accedes in the future, before the date of its accession.

(4) Adaptations made in virtue of paragraphs (2) and (3) of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.

ARTICLE 14

(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorising the reproduction, adaptation and public presentation of their works by cinematography.

(2) Cinematographic productions shall be protected as literary or artistic works if the author has given the works an original character. If this character is absent the cinematographic production shall enjoy protection as a photographic work.

(3) Without prejudice to the rights of the author of the work reproduced or adapted, a cinematographic work shall be protected as an original work.

(4) The above provisions apply to reproduction or production effected by any other process analogous to cinematography.

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into force of the Convention signed at Berlin on the 13th November, 1908, and, in the case of a country having acceded to the Convention since that date or acceding to it in the future, before the date of its accession.

(4) Recordings made in accordance with paragraphs (2) and (3) of this Article and imported without permission from the parties concerned into a country where they are not lawfully allowed shall be liable to seizure.

ARTICLE 14

(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorising: i. the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; ii. the public presentation and performance of the works thus adapted or reproduced.

(2) Without prejudice to the rights of the author of the work adapted or reproduced, a cinematographic work shall be protected as an original work.

(3) The adaptation under any other artistic form of cinematographic productions derived from literary, scientific or artistic works shall, without prejudice to the authorisation of their authors, remain subject to the authorisation of the author of the original work.

(4) Cinematographic adaptations of literary, scientific or artistic works shall not be subject to the reservations and conditions contained in Article 13, paragraph (2).

(5) The provisions of this Article shall apply to reproduction or production effected by any other process analogous to cinematography.

ARTICLE 14 *bis*

(1) The author, or after his death the persons or institutions authorised by national legislation, shall, in respect of original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first disposal of the work by the author.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits and to the degree permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

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ARTICLE 15

(1) In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

(2) For anonymous or pseudonymous works the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.

ARTICLE 16

(1) Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

(2) In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the domestic legislation of each country.

ARTICLE 17

The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE 18

(1) The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiration of the term of protection.

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ARTICLE 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary be regarded as such, and consequently be entitled to institute infringement proceedings in countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) In the case of anonymous and pseudonymous works, other than those referred to in the preceding paragraph, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be regarded as representing the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply if the author reveals his identity and establishes his claim to authorship of the work.

ARTICLE 16

(1) Works infringing copyright may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

(2) In these countries the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

ARTICLE 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE 18

(1) This Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

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(2) If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.

(3) The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.

(4) The above provisions shall apply equally in case of new accessions to the Union, and also in the event of the term of protection being extended by the application of Article 7 or by abandonment of reservations.

ARTICLE 19

The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.

ARTICLE 20

The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the above-mentioned conditions shall remain applicable.

ARTICLE 21

(1) The International office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

(2) That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organisation and supervises its working.

(3) The official language of the Office shall be French.

ARTICLE 22

(1) The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and

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(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be in accordance with the provisions contained in special Conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the manner in which the said principle is to be applied.

(4) The above provisions shall apply equally in the case of new accessions to the Union, and in the event of protection being extended by the application of Article 7 or by abandonment of reservations.

ARTICLE 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any wider provisions which may be afforded by legislation in a country of the Union.

ARTICLE 20

The Governments of the countries of the Union reserve to themselves the right to enter into special Arrangements between each other, in so far as such Arrangements shall confer upon authors more extended rights than those granted by the Convention, or embody other provisions not contrary to this Convention. The provisions of existing Arrangements which satisfy these conditions shall remain applicable.

ARTICLE 21

(1) The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

(2) That Office shall be placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organisation and supervise its working.

(3) The official language of the Office shall be the French language.

ARTICLE 22

(1) The International Office shall collect information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall coordinate

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publishes such information. It undertakes the study of questions of general interest concerning the Union, and, by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

(2) The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.

(3) The Director of the International Office shall make an annual report on his administration, which shall be communicated to all the members of the Union.

ARTICLE 23

(1) The expenses of the Office of the International Union shall be shared by the countries of the Union. Until a fresh arrangement be made, they cannot exceed the sum of 120,000 Swiss francs a year. This sum may be increased, if necessary, by the unanimous decision of one of the Conferences provided for in Article 24.

(2) The share of the total expense to be paid by each country shall be determined by the division of the countries of the Union and those subsequently acceding to the Union into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

	Units
1st class	25
2nd class	20
3rd class	15
4th class	10
5th class	5
6th class	3

(3) These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

(4) Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed, but it may subsequently declare that it wishes to be placed in another class.

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and publish such information. It shall undertake the study of questions of general interest to the Union and, by the aid of documents placed at its disposal by the different Administrations, it shall edit a periodical publication in the French language on questions which concern the purpose of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by agreement the publication by the Office of an edition in one or more other languages, if, by experience, this should be shown to be necessary.

(2) The International Office shall always place itself at the disposal of members of the Union in order to provide them with any special information which they may require relating to the protection of literary and artistic works.

(3) The Director of the International Office shall make an annual report on his administration, which shall be communicated to all the members of the Union.

ARTICLE 23

(1) The expenses of the Office of the International Union shall be shared by the countries of the Union. Until a fresh arrangement is made, they shall not exceed the amount of one hundred and twenty thousand gold francs a year. This amount may be increased, if necessary, by unanimous decision of the countries of the Union or of one of the Conferences provided for in Article 24.

(2) The share of the total expense to be paid by each country shall be determined by the division of the countries of the Union and those subsequently acceding to the Union into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

	Units
1st class	25
2nd class	20
3rd class	15
4th class	10
5th class	5
6th class	3

(3) These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

(4) Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed, but it may subsequently declare that it wishes to be placed in another class.

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(5) The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account which shall be communicated to all the other Administrations.

ARTICLE 24

(1) The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

(2) Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the programme of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.

(3) No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE 25

(1) Countries outside the Union which make provision for the legal protection of the rights forming the object of the present Convention may accede thereto on request to that effect.

(2) Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

(3) Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention, and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other countries of the Union, unless some later date has been indicated by the adhering country. It may, nevertheless, contain an indication that the adhering country wishes to substitute, provisionally at least, for Article 8, which relates to translations, the provisions of Article 5 of the Convention of 1886 revised at Paris in 1896, on the understanding that those provisions shall apply only to translations into the language or languages of that country.

ARTICLE 26

(1) Any country of the Union may at

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(5) The Swiss Administration shall prepare the budget of the Office, supervise its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

ARTICLE 24

(1) This Convention may be submitted to revision for the purpose of introducing improvements intended to perfect the system of the Union.

(2) Questions of this kind as well as those which in other respects concern the development of the Union, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet shall, with the assistance of the International Office, prepare the programme of the Conference. The Director of the Office shall attend the sessions of the Conferences, and may take part in the discussions, but without the right to vote.

(3) No alteration in this Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE 25

(1) Countries outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto upon request.

(2) Such accession shall be notified in writing to the Government of the Swiss Confederation, who shall communicate it to all the other countries of the Union.

(3) Such accession shall imply full acceptance of all the clauses and admission to all the advantages provided by this Convention, and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other countries of the Union, unless some later date has been indicated by the acceding country. It may, nevertheless, contain an indication that the acceding country wishes to substitute, provisionally at least, for Article 8, which relates to translations, the provisions of Article 5 of the Convention of 1886 revised at Paris in 1896 on the understanding that those provisions shall apply only to translations into the language or languages of that country.

ARTICLE 26

(1) Any country of the Union may at

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any time notify in writing to the Government of the Swiss Confederation that the present Convention shall apply to all or any of its Colonies, Protectorates, territories under mandate or any other territories subject to its sovereignty or to its authority, or any territories under suzerainty, and the Convention shall thereupon apply to all the territories named in such notification. Failing such notification, the Convention shall not apply to any such territories.

(2) Any country of the Union may at any time notify in writing to the Government of the Swiss Confederation that the present Convention shall cease to apply to all or any of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in the notification given under this paragraph twelve months after the receipt of the latter notification by the Government of the Swiss Confederation.

(3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of the present Article shall be communicated by that Government to all the countries of the Union.

ARTICLE 27

(1) The present Convention shall replace, in regard to the relations between the countries of the Union, the Convention of Berne of the 9th September, 1886, and the subsequent revisions thereof. The instruments previously in force shall continue to be applicable in regard to relations with countries which do not ratify the present Convention.

(2) The countries on whose behalf the present Convention is signed may retain the benefit of the reservations which they have previously formulated on condition that they make a declaration to that effect at the time of the deposit of their ratifications.

(3) Countries which are actually members of the Union, but on whose behalf the present Convention is not signed may accede to the Convention at any time. In that event they may enjoy the benefit of the provisions of the preceding paragraph.

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any time in writing notify the Swiss Government that this Convention shall apply to its overseas territories, colonies, protectorates, territories under its trusteeship, or to any other territory for the international relations of which it is responsible, and the Convention shall thereupon apply to all the territories named in such notification, as from a date determined in accordance with Article 25, paragraph (3). In the absence of such notification, the Convention shall not apply to such territories.

(2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or any of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation.

(3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

ARTICLE 27

(1) This Convention shall replace, in relations between the countries of the Union, the Convention of Berne of the 9th September, 1886, and the subsequent revisions thereof. The Instruments previously in force shall continue to be applicable in relations with countries which do not ratify this Convention.

(2) The countries on whose behalf this Convention is signed may retain the benefit of the reservations which they have previously formulated, on condition that they make declaration to that effect at the time of the deposit of their ratifications.

(3) Countries which are at present members of the Union, but on whose behalf this Convention is not signed, may accede to it at any time in the manner provided for in article 25. In that event they shall enjoy the benefit of the provisions of the preceding paragraph.

ARTICLE 27 *bis*

A dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, shall be brought before

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ARTICLE 28

(1) The present Convention shall be ratified, and the ratifications deposited at Rome, not later than the 1st July, 1951.

(2) It shall come into force between the countries which have ratified it, one month after that date, nevertheless, if before that date, it has been ratified by at least six countries of the Union, it shall come into force between those countries one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications.

(3) Until the 1st August, 1931, countries outside the Union may join it by acceding either to the Convention signed at Berlin on the 13th November, 1908, or to the present Convention. On or after the 1st August, 1931, they may accede only to the present Convention.

ARTICLE 29

(1) The present Convention shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

(2) Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

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the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement.

The country requesting that the dispute should be brought before the Court shall inform the International Office; the office shall bring the matter to the attention of the other countries of the Union.

ARTICLE 28

(1) This Convention shall be ratified, and the ratifications deposited at Brussels, not later than the 1st July, 1951.

The ratifications, with the dates thereof and all declarations which may accompany them shall be communicated by the Belgian Government to the Government of the Swiss Confederation, which shall notify the other countries of the Union thereof.

(2) This Convention shall come into force, between the countries which have ratified it, one month after the 1st July, 1951. Nevertheless, if before that date it has been ratified by at least six countries of the Union, it shall come into force between those countries one month after the notification to them by the Government of the Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications.

(3) Until the 1st July, 1951, countries outside the Union may join it by acceding either to the Convention signed at Rome on the 2nd June, 1928 or to this Convention. On or after the 1st July, 1951, they may accede only to this Convention. The countries of the Union which shall not have ratified this Convention by the 1st July, 1951, may accede thereto in accordance with the procedure provided by Article 25. In this event they shall be entitled to the benefit of the provisions of Article 27 Paragraph (2).

ARTICLE 29

(1) This Convention shall remain in force for an indefinite period. Nevertheless, each country of the Union shall be entitled to denounce it at any time, by means of a notification in writing addressed to the Government of the Swiss Confederation.

(2) This denunciation, which shall be communicated by the Government of the Swiss Confederation to all the other countries of the Union, shall take effect only in respect of the country making it, and twelve months after the receipt of the notification of denunciation addressed to the Government of the Swiss Confederation. The Convention shall remain in full force and effect for the other countries of the Union.

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ARTICLE 30

(1) Countries which introduce in their legislation the duration of protection for fifty years contemplated by Article 7, paragraph (1), of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other countries of the Union.

(2) The same procedure shall be followed in the case of countries renouncing the reservations made or maintained by them in virtue of Articles 25 and 27.

In faith whereof the respective Plenipotentiaries have signed the present Convention.

Done at Rome, the 2nd day of June, 1928, in a single copy, which shall be deposited in the archives of the Royal Italian Government. A copy, duly certified, shall be transmitted by the diplomatic channel to each country of the Union.

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(3) The right of denunciation provided by this article shall not be exercised by any country before the expiry of five years from the date of its ratification or accession.

ARTICLE 30

(1) Countries which introduce into their legislation the term of protection of fifty years provided by Article 7, paragraph (1), of this Convention shall give notice thereof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other countries of the Union.

(2) The same procedure shall be followed in the case of countries abandoning the reservations made or maintained by them in accordance with Articles 25 and 27.

ARTICLE 31

The official acts of the Conferences shall be established in French.

An equivalent text shall be established in English.

In case of dispute as to the interpretation of the Acts, the French text shall always prevail.

Any country or group of countries of the Union shall be entitled to have established by the International Office an authoritative text of the said Acts in the language of its choice, and by arrangement with the office. These texts shall be published in the Acts of the Conferences, annexed to the French and English texts.

In faith whereof the respective Plenipotentiaries have signed this Convention.

Done at Brussels, The 26th Day of June, 1948, in a single copy, which shall be deposited in the archives of the Department of Foreign Affairs and Foreign Trade of Belgium. A copy, duly certified, shall be transmitted by the diplomatic channel to each country of the Union.

Appendix D

UNIVERSAL COPYRIGHT CONVENTION

Geneva, September 6, 1952

The Contracting States,

Moved by the desire to assure in all countries copyright protection of literary, scientific and artistic works.

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts.

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have agreed as follows:

ARTICLE I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

ARTICLE II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

ARTICLE III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 of this article shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 of this article shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in article IV, such State shall not be required to comply with the provisions of paragraph 1 of this article III in respect of the second or any subsequent term of copyright.

ARTICLE IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of article II and this article, by the law of the Contracting State in which protection is claimed.

2. The term of protection for works protected under this Convention shall not be less than the life of the author and 25 years after his death.

However, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than 25 years from the date of first publication.

Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than 25 years from the date of first publication or from its registration prior to publication, as the case may be.

If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified above.

3. The provisions of paragraph 2 of this article shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in

question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

For the purposes of the application of the preceding provision, if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4 of this article, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4 of this article, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

ARTICLE V

1. Copyright shall include the exclusive right of the author to make, publish, and authorise the making and publication of translations of works protected under this Convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not been published in the national language or languages, as the case may be, of the Contracting State, by the owner of the right of translation or with his authorisation, any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorisation by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organisation which may have been designated by the government of that State. The licence shall not be granted before the expiration of a period of two months from the date of the despatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to inter-

national standards to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if one of the national languages of such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

The licence shall not be granted when the author has withdrawn from circulation all copies of the work.

ARTICLE VI

"Publication," as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

ARTICLE VII

This Convention shall not apply to works or rights in works which, at the effective date of the Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

ARTICLE VIII

1. This Convention, which shall bear the date of September 6, 1952, shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organisation and shall remain open for signature by all States for a period of 120 days after that date. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this Convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General of the United Nations Educational, Scientific and Cultural Organisation.

ARTICLE IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession, among which there shall be those of four States which are not members of the International Union for the Protection of Literary and Artistic Works.

2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

ARTICLE X

1. Each State party to this Convention undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.

2. It is understood, however, that at the time an instrument of ratification, acceptance or accession is deposited on behalf of any State, such State must be in a position under its domestic law to give effect to the terms of this Convention.

ARTICLE XI

1. An Intergovernmental Committee is hereby established with the following duties:

- (a) to study the problems concerning the application and operation of the Convention;
- (b) to make preparation for periodic revisions of this Convention;
- (c) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organisations, such as the United Nations Educational, Scientific and Cultural Organisation, the International Union for the Protection of Literary and Artistic Works and the Organisation of American States;
- (d) to inform the Contracting States as to its activities.

2. The Committee shall consist of the representatives of twelve Contracting States to be selected with due consideration to fair geographical representation and in conformity with the Resolution relating to this article, annexed to this Convention.

The Director-General of the United Nations Educational, Scientific and Cultural Organisation, the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works and the Secretary-General of the Organisation of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

ARTICLE XII

The Intergovernmental Committee shall convene a conference for revision of this Convention whenever it deems necessary, or at the request of at least ten Contracting States, or of a majority of the Contracting States if there are less than twenty Contracting States.

ARTICLE XIII

Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organisation that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.

ARTICLE XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories as to which a notification has been given under article XIII. The denunciation shall be made by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organisation.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

ARTICLE XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

ARTICLE XVI

1. This Convention shall be established in English, French and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this Convention shall be established in German, Italian and Portuguese.

Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General of the United Nations Educational, Scientific and Cultural Organisation other texts in the language of its choice by arrangement with the Director-General.

All such texts shall be annexed to the signed texts of this Convention.

ARTICLE XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a Declaration has been annexed to the present article. This Declaration is an integral part of this Convention for the States bound by the Berne Convention on January 1, 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the Convention.

ARTICLE XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more

American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this Convention comes into force in such State shall not be affected.

ARTICLE XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this article shall affect the provisions of articles XVII and XVIII of this Convention.

ARTICLE XX

Reservations to this Convention shall not be permitted.

ARTICLE XXI

The Director-General of the United Nations Educational, Scientific and Cultural Organisation shall send duly certified copies of this Convention to the States interested, to the Swiss Federal Council and to the Secretary-General of the United Nations for registration by him.

He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under Article XIII of this Convention, and denunciations under Article XIV.

APPENDIX DECLARATION RELATING TO ARTICLE XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Convention of Berne and the Universal Convention,

Have, by common agreement, accepted the terms of the following declaration:

- (a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;
- (b) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention.

Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees

The States parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as the "Convention") have accepted the following provisions:—

1. Stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the Convention, be assimilated to the nationals of that State.

2. (a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(b) This Protocol shall enter into force in respect of each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the Convention with respect to such State, whichever is the later.

Protocol 2 annexed to the Universal Copyright Convention, concerning the application of that Convention to the works of certain International Organisations

The States parties hereto, being also parties to the Universal Copyright Convention (hereinafter referred to as the "Convention"),

Have accepted the following provisions:

1.—(a) The protection provided for in article II (1) of the Convention shall apply to works published for the first time by the United Nations, by the Specialised Agencies in relationship therewith, or by the Organisation of American States;

(b) Similarly, article II (2) of the Convention shall apply to the said organisation or agencies.

2.—(a) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of article VIII of the Convention applied hereto.

(b) This Protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the Convention with respect to such State, whichever is the later.

Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of or accession to that Convention

States parties hereto,

Recognising that the application of the Universal Copyright Convention (hereinafter referred to as the "Convention") to States participating in all the international copyright systems already in force will contribute greatly to the value of the Convention;

Have agreed as follows:—

1. Any State party hereto may, on depositing its instrument of ratification or acceptance of or accession to the Convention, notify the Director-General of the United Nations Educational, Scientific and Cultural Organisation (hereinafter referred to as "Director-General") that that instrument shall not take effect for the purposes of Article IX of the Convention until any other State named in such notification shall have deposited its instrument.

2. The notification referred to in paragraph 1 above shall accompany the instrument to which it relates.

3. The Director-General shall inform all States signatory or which have then acceded to the Convention of any notifications received in accordance with this Protocol.

4. This Protocol shall bear the same date and shall remain open for signature for the same period as the Convention.

5. It shall be subject to ratification or acceptance by the signatory States. Any State which has not signed this Protocol may accede thereto.

6.—(a) Ratification or acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

(b) This Protocol shall enter into force on the date of deposit of not less than four instruments of ratification or acceptance or accession. The Director-General shall inform all interested States of this date. Instruments deposited after such date shall take effect on the date of their deposit.

Appendix E

Section 10 of the Copyright Act, 1956 (United Kingdom) and the First Schedule to that Act.

SECTION 10

(1) Where copyright subsists in an artistic work, and a corresponding design is registered under the Registered Designs Act, 1949 (in this section referred to as "the Act of 1949"), it shall not be an infringement of the copyright in the work—

- (a) to do anything, during the subsistence of the copyright in the registered design under the Act of 1949, which is within the scope of the copyright in the design, or
- (b) to do anything, after the copyright in the registered design has come to an end, which, if it had been done while the copyright in the design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles:

Provided that this subsection shall have effect subject to the provisions of the First Schedule to this Act in cases falling within that Schedule.

(2) Where copyright subsists in an artistic work, and—

- (a) a corresponding design is applied industrially by or with the licence of the owner of the copyright in the work, and
- (b) articles to which the design has been so applied are sold, let for hire, or offered for sale or hire, and
- (c) at the time when those articles are sold, let for hire, or offered for sale or hire, they are not articles in respect of which the design has been registered under the Act of 1949,

the following provisions of this section shall apply.

- (3) Subject to the next following subsection,—
- (a) during the relevant period of fifteen years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would have been within the scope of the copyright in the design if the design had, immediately before that time, been registered in respect of all relevant articles; and
- (b) after the end of the relevant period of fifteen years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would, if the design had been registered immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

In this subsection "the relevant period of fifteen years" means the period of fifteen years beginning with the date on which articles, such as are mentioned in paragraph (b) of the last preceding subsection, were first sold, let for hire, or offered for sale or hire in the circumstances mentioned in paragraph (c) of that subsection; and "all relevant articles", in relation to any time within that period, means all articles falling within the said paragraph (b) which had before that time been sold, let for hire, or offered for sale or hire in those circumstances.

(4) For the purposes of subsections (2) and (3) of this section, no account shall be taken of any articles in respect of which, at the time when they were sold, let for hire, or offered for sale or hire, the design in question was excluded from registration under the Act of 1949 by rules made under subsection (4) of section one of that Act (which relates to the exclusion of designs for articles which are primarily literary or artistic in character); and for the purposes of any proceedings under this Act a design shall be conclusively presumed to have been so excluded if—

(a) before the commencement of those proceedings, an application for the registration of the design under the Act of 1949 in respect of those articles had been refused;

(b) the reason or one of the reasons stated for the refusal was that the design was excluded from such registration by rules made under the said subsection (4); and

(c) no appeal against that refusal had been allowed before the date of the commencement of the proceedings or was pending on that date.

(5) The power of the Board of Trade to make rules under section thirty-six of the Act of 1949 shall include power to make rules for the purposes of this section for determining the circumstances in which a design is to be taken to be applied industrially.

(6) In this section, references to the scope of the copyright in a registered design are references to the aggregate of the things, which, by virtue of section seven of the Act of 1949, the registered proprietor of the design has the exclusive right to do, and references to the scope of the copyright in a registered design as extended to all associated designs and articles are references to the aggregate of the things which, by virtue of that section, the registered proprietor would have had the exclusive right to do if—

(a) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and the said proprietor had been registered as the proprietor of every such design, and

(b) the design in question, and every other design such as is mentioned in the preceding paragraph, had been registered in respect of all the articles to which it was capable of being applied.

(7) In this section “corresponding design”, in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work.

FIRST SCHEDULE

FALSE REGISTRATION OF INDUSTRIAL DESIGNS

1. The provisions of this Schedule shall have effect where—

(a) copyright subsists in an artistic work, and proceedings are brought under this Act relating to that work;

(b) a corresponding design has been registered under the Act of 1949, and the copyright in the design subsisting by virtue of that registration has not expired by effluxion of time before the commencement of those proceedings; and

(c) it is proved or admitted in the proceedings that the person registered as the proprietor of the design was not the proprietor thereof for the

purposes of the Act of 1949, and was so registered without the knowledge of the owner of the copyright in the artistic work.

2. For the purposes of those proceedings (but subject to the next following paragraph) the registration shall be treated as never having been effected, and accordingly, in relation to that registration, subsection (1) of section ten of this Act shall not apply, and nothing in section seven of the Act of 1949 shall be construed as affording any defence in those proceedings.

3. Notwithstanding anything in the last preceding paragraph, if in the proceedings it is proved or admitted that any act to which the proceedings relate—

(a) was done in pursuance of an assignment or licence made or granted by the person registered as proprietor of the design, and

(b) was so done in good faith in reliance upon the registration, and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the register of designs relating thereto,

subsection (1) of section ten of this Act shall apply in relation to that act for the purposes of the first-mentioned proceedings.

4. In this Schedule "the Act of 1949" means the Registered Designs Act, 1949, and "corresponding design" has the meaning assigned to it by subsection (7) of section ten of this Act.