

1948
NEW ZEALAND

INTERNATIONAL COPYRIGHT CONFERENCE, BRUSSELS, 1948

REPORT THEREON BY THE HON. MINISTER OF JUSTICE AND TEXT OF REVISION
OF COPYRIGHT CONVENTION

Presented to the House of Representatives by Leave

THE last Conference of the International Copyright Union was held in Rome in 1928, in which New Zealand was represented by the late Mr. S. G. Raymond, K.C., of Timaru. A further Conference was held at Brussels in June of 1948, at which the Berne Convention for the Protection of Literary and Artistic Works was further revised.

Arrangements were made by Government for Sir Harold Saunders, the Controller of Patents in England, who attended on behalf of the United Kingdom Government, to represent New Zealand also at the Conference. Sir Harold held largely a watching brief, but he was requested especially to press for the retention of the right of each country to retain the right to make its own provisions as to broadcasting, and in signing the Convention the New Zealand delegate made the following reservation :—

The New Zealand delegate accepts the provisions of Article 11 of the Convention on the understanding that the New Zealand Government remains free to enact such legislation as it may consider necessary in the public interest, or deal with any abuse of the monopoly rights conferred upon owners of copyright by the law of New Zealand.

In officially reporting on the proceedings, Sir Harold Saunders states, *inter alia*,—

Throughout the Conference there was a continual contrast between the extreme views of authors' rights as presented by France and other Latin American countries, particularly Spain, and the moderate view, taking account of the rights of Government (representing the public interest), publishers, and others. As the French had fifteen to twenty delegates and the Spanish delegate was very persistent, it was by no means easy to bring the discussion down to earth. The general report prepared by M. Marcel Plaisant, the senior French delegate, indicates in various passages, and particularly in the last paragraph, the reluctance of some of the countries to face reality.

In general, my brief from the New Zealand Government was in line with that from the United Kingdom Government. As New Zealand delegate I was appointed to the Committee on Applied Art, but I attended also all the meetings of the Committees of Radio Diffusion and on Photography and on Cinematography, on which Mr. Crewe was a member.

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May I say again how very happy I was to act a second time as delegate of the New Zealand Government at an International Conference.

The following is a résumé of the translation of the proceedings of the Conference by M. Marcel Plaisant:—

The Conference of Brussels was equally as important as those of Berlin and Rome proved to be. Thirty-five Unionist countries participated in the deliberations, and one, Bulgaria, sent observers. The non-participating Unionist countries and non-Unionist participating countries which were represented numbered eighteen, and the Conference had the benefit of representation from UNESCO. There were three plenary sessions, twenty-seven General Committee sessions, and twelve sessions of the Drafting Committee. In addition to these, there were various sittings of Study Committees which had been set up to organize the work of the Conference. Thus, the Committee of Applied Art, presided over by M. Coppieters de Gibson, met on three occasions; the Radio-diffusion Committee, presided over by M. Bolla, held eight meetings; and the Committee of Photography and Cinematography, presided over by M. Julio Dantas, held five meetings. So acute were the problems which arose during the course of the debates that a number of sub-committees were found necessary: one for the co-ordination of texts; another relative to Article 6bis; another relative to Article 4, paragraph (4); another relative to Article 11 and 11ter; and, finally, one for the purposes of Article 14, paragraph (3). A feature of the Conference was the diligence which was displayed by all representatives in the course of the sittings of the General and Special Committees.

Over eight justificatory documents were submitted during the course of the debates.

The title of the Convention now includes mention of the revision made at Brussels, and at the same time brings to attention the revision of Berlin of the 13th November, 1908, and that of Rome of the 2nd June, 1928.

The basic principle of the Convention is affirmed by Article 1. It is this Article which regulates protection under the Convention, and it has not undergone any change. On the contrary, such exchanges of views as took place on this subject appeared to have strengthened the essential purpose of the Union, which is to ensure protection of the rights of authors.

WORKS PROTECTED

Included in the Programme was a proposal to introduce cinematographic works in the enumeration of works to be protected. This proposal was favourably received by Great Britain and France, and from the first session it was unanimously agreed that cinematographic works should be given equality of protection. At the request of France, who had sponsored a similar proposition at Rome, the General Committee welcomed the principle of incorporating photographic works, which thus rise to the top rank of general protection. For both these types of work, the reference is completed by the phrase "and works produced by a process analogous to cinematography" or "analogous to photography." This has the advantage of including forms of inventive development impossible at this stage to foresee. It was not deemed necessary to specify that these works constitute an intellectual creation, for, as the delegate from Hungary observed, if literary and artistic works are spoken of, that in itself is a term which indicates that a personal creation or an intellectual creation in the realm of letters and the arts is involved.

Works of applied art likewise enjoy advancement into the general enumeration contained in Article 2. This has been the result of a long effort of mutual understanding. Equality of protection is henceforth secured, since applied arts are now inscribed in the frontispiece of the Brussels Convention. It should be mentioned, however, that paragraph (5) reserves to national Legislatures the application of laws concerning works of applied art and industrial models and designs as well as the conditions of protection of these works.

Paragraph (2) of Article 2, relating to translations and transformations, underwent a purely formal change in its first sentence. The second sentence, relating to translations of official texts of a legislative, administrative, or judicial character, indicates that, in accordance with the wish of Great Britain and a number of other countries, these works of general utility are not accorded the protection of the Convention. Indeed, countries are within their rights in reproducing these works in any manner necessary for their effectiveness.

Collections of works, which merely received mention in the text of Rome, formed the object of a Programme proposal. Henceforth they will figure in Article 2, paragraph (3). It was clear from the discussion of this subject that protection was acquired each time that the assembly or combination of texts assumed the character of an intellectual creation. If newspapers, magazines, and periodicals are not specifically designated, as the British delegation originally proposed they should be, they are nevertheless included to the extent that they constitute artistic creations in the matter of distribution and presentation of their contents. This right in respect of collective works cannot be recognized without recalling the right of authors as regards the individual works constituting such collections, and without taking into account a suggestion of the Danish delegation in this respect.

New paragraph (4) of Article 2 of the Convention assures protection directly on the Convention itself. In proposing this text, the Programme aptly observed that numerous provisions of the Convention directly establishing rights already existed without the intervention of national legislation

being necessary. To exemplify, it was shown that rights under Articles 4, 5, 6^{bis}, 7, 8, 9, 10, 11^{bis} 12, 13, 14, 15, and 18 already formed the framework of a codification based upon the Convention. In all countries treaties require ratification, and in certain countries, notably Great Britain, Sweden, and Norway, as well as many others, laws which assure the application of a Convention must be passed before ratification may be proceeded with. Such countries will not be embarrassed by their acceptance of new paragraph (4) providing for direct protection, and the delegates of the three countries cited were thus able to accede to this very comprehensive formula, which in no manner weakens the general principle to which they subscribed. Incidentally, the text of paragraph (4) marks a remarkable evolution over a period of twenty years in convention rights. Persons within the jurisdiction of those countries wherein a treaty can receive immediate application will immediately find themselves under protection based on the Convention, which will take its place in the internal legislation, augmenting it in its authority by further reinforcement of law.

Although it had always been thought that the protection of rights of authors provided by the Convention extended to the legal representatives and assignees of such authors, and that Article 6^{bis}, with its bearing upon rights which follow assignment, involved implicit recognition of assignees, a debate was necessary to secure express mention of their rights. The British delegation pressed strongly for these rights to be included in some part of the Convention; they now form the object of the second sentence of paragraph (4), which assumes a general scope. The term "legal representatives and assignees" (*ayants-droit*) covers all those who by any title whatever find themselves invested with the rights of the author. The British delegation thus secured the equivalent of the proposed new Article 2^{ter}, which had been initiated by them. It should, however, be noted that Article 6^{bis} specifies the author alone, while Article 14^{bis}, paragraph (1), contemplates persons or institutions not necessarily legal representatives or assignees.

Article 2^{bis}, which is devoted to oral works, contains no change from the Rome text in its first two paragraphs. These leave subject to national legislation the protection of political speeches and speeches delivered in the course of legal proceedings as well as lectures, addresses, sermons, and other works of the same nature. The French delegation desired to secure that all oral works other than political speeches—that is to say, lectures, sermons, and addresses—should be placed under the protection of the Convention. France was supported by Spain, Greece, Italy, and Portugal, while the British, Czech, Swiss, Danish, Finnish, Norwegian, and Swedish delegations were unable to accept it. The right reserved solely to the author to re-unite in a collection those of his works mentioned in the preceding paragraphs becomes the subject of a third paragraph designed to establish clearly that this right belongs equally to the political speaker, the lawyer, the lecturer, the writer, and the preacher. Clarification due to observations by the British delegation enabled it to be affirmed that the right of the author is to be no obstacle to the traditional use in law reports of speeches made in the course of legal proceedings.

The debate on Article 4, which has for its object the determination of the basis of protection upon which authors can found their rights, was one of the keenest of the conference. Paragraph (1) remains according to the Berlin text as confirmed at Rome. It lays down the principle that Unionist nationals enjoy in the Union two kinds of rights:—

- (1) National rights, by reason of the recognition of the rights acquired, and of the assimilation of Unionists to nationals; and
- (2) Special rights specifically conferred by the Convention.

Paragraph (2) likewise remains unchanged. Paragraph (3) defines the country of origin of a work, which is the very root of copyright protection. Thus, published works are distinguished in so far as concerns the place of their first publication from works published simultaneously in countries admitting different degrees of protection and so calling for comparison of the periods, and selection of the period of shortest duration. Furthermore, there were the cases of works published in countries outside the Union. A liberal provision was agreed upon to recognize every work to have been "simultaneously" published if it appeared in two or more countries within thirty days from its first publication.

Almost insurmountable difficulties occurred in connection with Article 4 when it came to the question of providing a definition of "published works." The Programme, which did not attempt to evade the question, suggested that there was no reason for not assimilating the recording of a work upon apparatus designed for mechanical reproduction or upon a cinematograph film with publication by printing. The Programme proposal was therefore to add, after the words "published works," the words "whatever may be the mode or form of publication: printed matter, records, films." The British delegation was unable to accept either the formula or the conception, and the distinction between *la publication* and *l'édition* was to them indiscernible. The Conference resorted to a special Committee to endeavour to surmount the opposition. They succeeded in discovering an accommodating formula whereby it should be accepted that the expression *oeuvres éditées* should mean "works, copies of which have been issued and made available in sufficient quantities to the public." This expression is sufficiently ample to be generally understood and it is moreover completed by the negative statements which follow—viz., "The presentation of a dramatic 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."

In principle, the country of origin for unpublished works is the country to which the author belongs : such is the prescription of paragraph (5). In so far, however, as concerns works of architecture or of graphic or plastic art forming part of a building, appreciation of practice led to the more equitable solution of fixing as the country of origin the country where the works have been built or incorporated in a building.

Article 5, which lays down the equivalence of rights of nationals of countries of the Union who first publish their works in another country of the Union and the nationals of such latter country, is conserved in the same form as the texts of Berlin and Rome.

Article 6, which envisages restrictions capable of being imposed upon works of a non-Unionist author first published in a country of the Union, was not changed in its general sense. The Programme, however, proposed to specify more clearly the right of other countries of the Union to adopt such retaliatory measures as might have been taken by the country of first publication. A provision was accordingly added to paragraph (2) to provide that retaliatory measures are capable of producing a general effect throughout all Unionist countries, which, so to speak, thus unite to ensure the broadest protection of authors' rights.

To the Italian delegation must be attributed the inclusion in the Rome text of Article 6^{bis} of the Convention which is designed to fix the extent of the moral right of an author in connection with his work. The first desire expressed by France in this connection received the cordial support of the delegation of Poland, Czechoslovakia, and Belgium, and the discussions at Brussels opened under favourable auspices. Amendments worthy of consideration were proposed by Austria, Hungary, Norway, Spain, and Switzerland. Following a general discussion, the General Committee entrusted the task of reconciling the conflicting points of view to a special subcommittee. The French delegation wished the right to be inalienable, and that an author should be permitted to defend the integrity of his work to the extent of checking, by appropriate means, all acts prejudicial thereto. They succeeded in securing the acceptance of the extended conception of moral right which all the delegates had in mind, provided it did not go beyond the generally accepted notion of an author's rights. It was accordingly inscribed in paragraph (1) that the author, notwithstanding any assignment of his copyright, shall conserve, throughout his lifetime, the right of claiming authorship of his work in the face of any deformation thereof. The author is to have the right to take proceedings against all acts prejudicial to his honour or reputation, and the amplitude of the debate revealed that he should be protected equally in his capacity as a writer and in his personality as a literary figure. Hence the addition that he can oppose all prejudicial acts.

Paragraph (2) maintains the continuance of the moral right even after the death of the author, at least until the expiry of the patrimonial rights. This formula, without establishing a forced union between moral and patrimonial rights, will permit national Legislatures to institute, if they so desire, a longer duration of such rights, which could, if desired, even be perpetual.

If there can be a means of public action to provide respect for moral rights, it is natural to leave to national Legislatures the decision as to the persons or institutions who should be invested with the necessary powers, as well as the determination of conditions under which such powers may be exercised. Thus, paragraph (3) provides that the means of safeguarding an author's moral right shall be regulated by the law of the country where protection is claimed. Certain delegations appeared to fear that the notion of this personal right might prove a future obstacle to the accession to the Convention of certain countries whose interest in copyright is more deeply concerned with questions of its exploitation. It was thought that these apprehensions would prove unfounded. Indeed, the Finnish delegation directed attention to a paragraph of the American law on the right of copying which recognized the moral right of an author to prevent mutilation of a work, even when he had authorized its use for theatrical or other adaptation. Although destruction of a work was not specifically forbidden, the debate at least made clear the desire of the Conference to protect works effectively against all derogation. The Brussels Conference, having augmented authors' rights by surrounding them with new guarantees and conferring a more extended scope to the law bearing upon moral right, thus succeeded in providing evidence of the humanistic conception of the person who is entitled to respect not merely by lip-service, but also by the added weight of the Convention and of law.

The Conference also marked a new effort in the direction of standardizing the normal term of protection. A uniform term of fifty years was considered as a minimum, although Spain and Brazil, respectively, for eighty and sixty years after the death of an author, and Portugal imposes no limit of time. In view of the liberal declarations of Great Britain on the question of complete and unconditional protection, the International Bureau was able to agree to the suppression of the proposed new paragraph (3) of the Programme, which had been put forward with the peculiarities of British legislation specially in mind. The Swiss and Swedish Governments for their part abandoned a term of protection of less than fifty years from the death of the author. The British delegation withdrew its amendment seeking to insert in paragraph (1) the words "at least fifty years," which it felt would not longer serve any purpose if the principle of reciprocity was not to be abandoned in so far as concerned any longer period of protection. Paragraph (1) consequently remains unchanged by comparison with the Rome text.

Paragraph (2) arises essentially from the principle set out in paragraph (1), and it involves a comparison of terms: in the case where several countries of the Union grant a period in excess of that provided for in paragraph (1), the term is to be governed by the law of the country where protection is claimed, but is not to exceed the term fixed in the country of origin of the work. The new paragraph (3) fixes the term for cinematographic and photographic works, which also is to be governed by the law of the country where protection is claimed, but which is not to exceed the term fixed in the country of origin of the work.

Anonymous and pseudonymous works will henceforth benefit from a protection fixed at fifty years from their publication. Two exceptional cases are, however, envisaged: when the pseudonym leaves no doubt as to the identity of the author, the term of protection is to be that provided in paragraph (1)—that is to say, fifty years from the death of the author. The same favourable solution was adopted for cases where the anonymous author discloses his identity.

Paragraph (5) grants to posthumous works a term of protection for the benefit of the heirs and other persons deriving title from the author ending fifty years after the author's death.

In this manner, the terms for all categories of works were unified.

The Conference arrived at a most concise formula as regards the period of copyright belonging in common to joint authors of a work. This term is to be calculated from the date of death of the last surviving author. Paragraphs (2) and (3) of the Rome text of Article 7^{bis} disappear.

Article 8, which relates to translating rights, underwent little change apart from drafting amendments. The form of this Article was reduced, while it preserves for the author's benefit the exclusive right of making or authorizing the translation of his works.

Since the Convention does not include complete regulation of the right of reproduction enjoyed by authors in connection with the publication of their works by the daily and periodic press, the French delegation would have liked to have filled this gap with a general systematization assuring the most extended protection, and covering the rights of journalists. They therefore proposed an analytical text for Article 9. The Scandinavian countries, as well as Poland, the Netherlands, and Czechoslovakia, were, however, opposed to any restriction on the freedom of information, and pronounced against the change. The text of Berlin, which received at Rome a noteworthy improvement by the introduction of the notion of reserved reproduction and by the imposition of a clear indication of source, was accordingly accepted. In conserving the former text, several delegations desired to emphasize the fact that the Convention protection does not extend to news of the day or to miscellaneous facts merely having the character of news. The delegation of Belgium, the Netherlands, Luxembourg, and the Nordic countries actually requested that a note to this effect be included in the general report. It is therefore recorded that the fixing of sounds or images in connection with the photographic, cinematographic, or radiophonic recording of a popular or patriotic festival also fall outside the scope of the Convention. These acts are exceptional and fragmentary and, as such, they would be permitted. But the text certainly does not attain to the ideal as regards a true literary work reproduced by the press, and of the respect which is due thereto. The question of making extracts from known works has always given rise to abuses; but, on the other hand, it is very difficult to limit the right of quotation, which, without being of itself a mark of culture, remains a custom of cultured writers. Certain drafting changes of a substantial character were made to the Article to avoid disturbing accepted custom. Henceforth it will be permissible to make short quotations from newspaper articles and periodicals.

The right to make extracts from literary and artistic works for educational purposes or for chrestomathies is reserved to national legislation. The permission granted by the second paragraph of Article 10 is broader than that granted by the first. It is justified by the purpose of the extract—namely, use in educational or scientific works, or in chrestomathies. These extracts must always be accompanied by an indication of their source. Thus Article 10 as adopted at Brussels reconciles the rights of authors on the one hand and the needs of a public anxious to draw upon the treasures of human knowledge on the other hand.

The object of new Article 10^{bis} is the extension of the right of making extracts and short quotations for recording and presentation of reports of current events by means of cinematography and radio-diffusion. This represents a new concession granted to the freedom of news. Only short extracts are involved, and then only in cases where the use of such extracts appears indispensable to a faithful account of actual happenings.

The right of presentation finds its expression in Article 11. According to the former wording adopted at Berlin and confirmed at Rome, it was clear that the protection of this right could not be contested in good faith. However, it was essential that the Convention consecrate this very essential right of an author in formal terms giving it the character of the exclusive right of authorizing public presentation and public performance. This, split into precise propositions, was the argument developed by the Programme in justification of the proposed new wording finally adopted by the Conference. From the debates, and particularly from the final discussion arising from the report of the sub-committee, the following conclusions were drawn: basically the right of performance has not been modified either in its character or in its scope. The form of the right will henceforth be indisputable, and it is now placed beyond the risk of all misleading interpretations. It is expressed in favour of the author as an exclusive right authorizing public presentation, performance, and transmission.

Nevertheless, at the end of the first paragraph the application of the provisions of Articles 11^{bis} and 13 has been reserved. Consequently, the Reporter-General felt required to recall by express mention the possibility of what might be termed small reservations in national legislations in this respect. Delegates of Norway, Sweden, Denmark, Finland, Switzerland, and Hungary evoked limited exceptions in favour of religious ceremonies, military music, and the requirements of teaching and popular festivals. These allusions are of a transient character and in no way impinge upon the legal principle involved.

The second paragraph establishes equivalent rights in so far as translations are concerned, and the third paragraph reproduces the former text.

During the course of the debates on Article 11, mention was made of a possible codification of the right of presentation. This right will henceforth figure in a clear-cut inscription in the text of the Convention.

The Rome Conference had meritoriously created, by Article 11^{bis}, the exclusive right of an author to communicate his work by radio-diffusion. Elliptical in principle, the text of the Convention resembled the state of an invention still only in the initial stages of development. The Programme, taking account of the prodigious development in the field of radio, proposed a new Article splitting up the right according to the ultimate manner of its exploitation. It was accordingly necessary to provide for plain emissions, relayed emissions, emissions made after recordings, communications by loud-speaker, and, finally, television, whilst seeking also to provide for such improvements or extensions of which this final means might still be capable.

The Committee presided over by M. Bolla produced a report which served as a basis of discussion in the plenary Commission.

The French proposal, which spoke of the exclusive rights of authors to authorize the radio-diffusion of their works or the communication to the public by any other means serving to diffuse signs, sounds, and images, was retained from the beginning of the discussion as being the most far-seeing in a domain where technology might yet reveal surprises. It now forms the first part of paragraph (1). The author still has the right of all public communication by all secondary means—means for which two processes are known: wireless relays and radio distribution. This right was consigned to the second part of paragraph (1). Finally, the author is further entitled to enjoy a third right: the right of public communication by loud-speaker or by any similar instrument transmitting signs, sounds, or images of the radio-diffused work. This right forms the third part of paragraph (1). It is a living right, and also a virtual right over whoever seeks to ponder upon the infinite possibility of invention. If loud-speakers are mentioned and if television is included within the scope of paragraph (1), they nevertheless give rise immediately to further rights. Each time there is use of apparatus and transmission occurs by such means, the question of authorization may arise.

Paragraph (1) in its three heads is indivisible from paragraph (2), which reserves to national legislation the regulation of the conditions of exercise of these rights. Exceptions of a free character can be envisaged in the cause of religion, patriotism, or culture. These ultimate conditions are set in a fairly wide framework: they cannot in any case affect moral right, nor the right of the author to receive a just remuneration fixed by the competent authority in the absence of agreement. Each country may take such steps as it considers proper to avoid possible abuses, the role of the State being to check excesses, no matter where they originate.

Disagreement reached its highest level when it was sought to resolve the respective rights of authors and of stations exploiting performances received and recorded at one stage, but relayed or held back for re-emission after an indefinite period. This results in either conflict or confluence of the rights of reproduction and of presentation. It was also impossible to ignore the unquestionable technical considerations which have an ever-increasing importance in these matters, and it was difficult to draw the line between an ephemeral recording of a performance and a lasting recording in which rights of high potential may subsist. Not without difficulty did the Conference succeed in reaching unanimity upon the text of the third paragraph which reassumes the form of a proposal put forward by Benelux: "Except where otherwise provided, permission granted in accordance with the first paragraph of this Article shall not imply permission to record the radio-diffused work by means of instruments recording sounds or images."

The second sentence of paragraph (3) reserves to national legislation in the following terms, the regulation of the right of ephemeral recordings made solely with the object of an early performance: "It shall, however, be a matter for national legislation 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 authorized by legislation."

It would thus be legitimate for national Legislatures to declare whether an authorization to broadcast does or does not carry with it the right to make a record with a view to further broadcasting, provided the recording is carried out by the actual broadcasting organization itself by its own resources and for its own use, and provided that the recording is of a purely ephemeral character. National Legislatures have the right to define what constitutes ephemeral recordings and to determine, in a general manner, their juridical limits: for instance, in so far as concerns their ultimate preservation in official archives by reason of the exceptional documentary character of the recordings. If a national Legislature does not make use of the right conferred upon it by the final sentence of

paragraph (3) of Article 11^{bis}, then it is the agreement concluded between the author and the broadcasting organization which will determine whether the authorization to broadcast does or does not carry with it the right of recording, and, if so, whether such right is implied solely for ephemeral recordings or also for other recordings. If the interpretation of the contract does not disclose agreement between the parties on the point, the presumption is that the first sentence of paragraph (3) of Article 11 will become applicable—the authorization to broadcast not implying the right of recording, even ephemerally.

If it were permitted to impose sub-titles to these two sentences of the third paragraph the significance of which would be appreciated, the first would come under the heading of contractual liberty and the second of oriented legislative freedom. In this form, Article 11^{bis} represents a compromise reached at the end of a long debate where all interests, whatever they were, were clearly shown and recognized.

Article 11^{ter}, establishing the right of public recitation, was adopted in the form in which it was proposed by the Programme. By "recitation" must be understood the reading or uttering of a literary work which does not assume the character of dramatic presentation.

Indirect appropriations, such as adaptations, arrangements, and transformations, found, in the Berlin text of Article 12 as confirmed at Rome, protection to the benefit of the original author, but this was not clearly expressed. The Programme sought to remedy this defect by proposing a text which would establish the right of the original author by referring to Article 2, paragraph (2), in such a manner that the respective domains of the first creator and of the person adapting the work were precisely defined. The very precise text proposed by France appeared to secure the support of the greatest number of delegates. It was summarized by one delegate in the following terms: "an exclusive authorization granted by the author for the transformation of his work; and a non-exclusive right in connection with this transformation, since the author of the transformation clearly has his rights in the transformation, but nevertheless the subsisting right of the original author must continue to exist concurrently with the right of the author of the transformation." The Programme had hoped to systematize the right of authors of musical works as regards the recording of such works, together with new forms of so doing. The French delegation had supported and reinforced the Programme in this respect; it sought to distinguish the recording, the putting into circulation of instruments for mechanical reproduction, and the use of these instruments in broadcasting or any other performance. The Article as adopted has assumed the most modest of forms, but it nevertheless contains substantial guarantees.

According to the first paragraph of the new Article 13, the author enjoys the exclusive right of authorizing the recording of works by instruments capable of reproducing them mechanically, in place of the term "adaptation," which was somewhat vague and which was also capable of being amphibological. Under the second subheading of the paragraph, the author enjoys the same right in respect of public performance by means of these instruments of the works thus recorded. The right of putting into circulation of records or apparatus has not been specified by the Conference, but the Conference instructed its Reporter-General to recall that the author may stipulate by contract that the putting into circulation of apparatus or recordings is capable of giving right to claim for royalty or like payment. It is one of those attributes of copyright which it is fitting to mention here, in an exergual sense, as being the source of an actual right.

Paragraph (2), which is devoted to the reservations relating to the application of rights arising from national legislation, reproduces the original paragraph, but with the addition of an important amendment which was inserted only after long and conflicting discussion. It is here specified that the reservations "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." It is considered that a text of this nature is incompatible with a system of compulsory licences. In any case, it strengthens the position of an author *vis-à-vis* record-manufacturers in negotiations regarding their respective rights.

According to conjectures arising from the Programme and the proposals of delegations, it might have been expected that Article 14 would have included detailed regulations, and would have embodied a discrimination as regards cinematographic films. Divergences of view disclosed by the discussions forced the Conference to content itself with a more restrained text which is nevertheless still valuable. The first paragraph clearly gives rise to two rights for the benefit of an author:—

- (1) The adaptation and cinematographic reproduction of works, to which is added the putting into circulation of the reproduced works, which is capable of giving rise to a separate right; and
- (2) The public presentation and performance of the works thus adapted or reproduced.

Paragraph (2) is drafted thus: "Without prejudice to the rights of the author of the work adapted or reproduced, a cinematographic work shall be protected as an original work." This text should be interpreted in the sense that no discrimination is called for in the production of films, and that the Convention abstains from imposing any criterion upon their value as artistic creations. The British delegate asked that a note be taken of his declaration, supported by France, and according to which the time had come, in view of the perfecting of the film industry, to treat cinematographic productions on a footing of equality, without any discrimination as regards their nature or the term of their protection.

The Committee endorsed the French proposal concerning a new paragraph (3) in the following terms: "The adaptation under any other artistic form of cinematographic productions derived from literary, scientific, or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work."

The Committee likewise adopted paragraph (4) of the Programme text, which sought to exclude, as regards cinematographic adaptations, the application of reservations and conditions contained in Article 13, paragraph (2). It did, however, record the wish that, in the interest of freedom of information, news-reel films should be separately mentioned in the general report of the Conference as being subject to national legislation.

As regards paragraph (5), the Committee decided in favour of maintaining the text previously forming the subject of paragraph (4), indicating at the same time the desirability of maintaining harmony between Article 14, paragraph (5), and paragraph (1) of Article 11^{bis} as proposed in the Programme.

This brief note is clearly an inadequate portrayal of the lengthy discussions of this Committee, over which M. Dantas presided.

Droit de suite constitutes a legacy from the Rome Conference which welcomed the principle advanced by Jules Destree in the form of the third Resolution recorded by that Conference. Thus do the advantages of these Conferences reveal themselves: they provide a period of incubation for ideas which are capable of arriving at maturity following the advantages of this initial exposition and examination. During this period *droit de suite* has found a place in several national legislations, largely inspired by French and Belgian legislation, which go back to the year 1920. Thus the Conference saw the Czech, Polish, Italian, and Uruguayan laws analyzed in the explanatory portions of the Programme. Delegates to the Conference welcomed favourably the labours of M. Raymond Weiss, one of the earliest protagonists of this right. They also welcomed the work of M. Duchemin, who condensed the lessons of experience and general documentation into a vast work which will surely never be excelled. The revelations and observations of the British delegate, Mr. Crewe, were found worthy of careful thought, and the same applied to Sweden. The delegates of Portugal, Czechoslovakia, Italy, Belgium, and Hungary lent their support, thereby permitting the elaboration of a text which, in its first paragraph, sets out the principle involved, and in paragraphs (2) and (3) reserves the matter to national legislation and on a basis of reciprocity.

In the terms of its prudent drafting, Article 14^{bis}, which establishes for the profit of the author or for the persons and institutions who succeed him an inalienable right of interest in any sale after the first, appears to display in some respects a lover's role: the future will show whether or not it holds any lasting attraction to national Legislatures.

The Conference was prepared to adopt, almost without debate, the proposal put forward by France as regards Article 15, establishing that the protection of the author arising from disclosure of his name is applicable, even if this man is a pseudonym, provided such pseudonym leaves no doubt as to his identity. Paragraph (2) provided that the publisher shall be regarded as representing the author of anonymous works and of works bearing unknown pseudonyms.

The matters dealt with by Articles 16, 17, and 18, of the Convention gave rise to no observations, the Rome text having been adopted without change.

RELATIONSHIP BETWEEN THE CONVENTION AND NATIONAL LEGISLATION

Article 19 is one of the most important from the point of view of the general theory of the Convention. It was recalled that at the Berlin Conference a doubt had subsisted as to the extent of the rights conferred by Article 19. As a predecessor, M. Louis Renault, had said that the Convention of the Union constituted a minimum of protection, this implied that authors should be admitted to claim the benefits of internal legislation in other countries, even where such legislation was more favourable than the protection which the Convention afforded. It was this which was always in the minds of the delegates, on the hypothesis that national law must be a stage further advanced than the actual provisions of the Convention.

Authors are to have the benefit of domestic laws; but in drafting the Berlin text, instead of referring to domestic laws purely and simply, there were inserted the words "by the legislation of a country of the Union in favour of foreigners in general." It might thus be thought that authors are only permitted to claim, in so far as provisions concerning foreigners are concerned, those provisions which are more favourable than the text of the Convention. Obviously this would be contrary to Article 4 of the Convention. Under this Article the position is that all foreigners are admitted to enjoy the rights in all Convention countries. In order to harmonize the final stipulation of Article 19 with Article 14, it must be said that the minimum of protection operates when an author is permitted to claim in a Unionist country not merely Convention rights, but is also permitted to claim the benefit of domestic legislation in general, whatever such legislation may be, and whether it refers to nationals or foreigners. Thus, by the construction applied to Article 19, Convention rights are admitted for all authors, this being the basis of the Union, and they are admitted at the same time to their advantage to the benefit of all domestic laws with the force of their internal application, when more advantageous than the provisions of the Convention. This, of course, is subject to the principles which are the essence of the Convention. Thus there is obtained a harmonizing of Article 19 in its broad application with the principles admitted in Article 4 as regards the admission of foreigners to equality of rights.

RESERVATION AS TO SPECIAL ARRANGEMENTS: STATUTE OF THE BUREAU, AND ITS LANGUAGE AND FUNCTIONS

Article 20, which reserves the right of making special arrangements, Article 21, which confers designation upon the Bureau of the International Union, the official language of which is French, and Article 22, which fixes the functions of the Bureau, have not formed the object of any change. The Berlin text, as confirmed at Rome, was once more conserved.

Article 23, which regulates the expenses of the International Bureau, gave rise to a debate, of which the terms were foreseeable as the result of a circular which had been sent out by the Bureau and which had received a probatory response from delegations. The British delegate not having insisted on the principles of equal sharing, the system of proportional sharing is to be continued, provisionally at any rate. The permitted expenditure of the Bureau has been increased to a maximum of 120,000 gold francs per annum.

Opportunity was taken here of saying that the Berne Bureau had always been most economical in its spendings, that it had fully lived up to its obligations, that it had never failed to give proof of impartiality, and that it had always been careful to disseminate information abundantly to all contracting countries. The desire was expressed that it would remain faithful to these salutary rules, and the Swiss Government was asked to take fitting steps to ensure that it be endowed, like other Unions, with a definite statute.

The Programme proposed to substitute for the present requirement of unanimity before changes can be made in the Convention an arrangement whereby a majority of five-sixths of the votes cast should suffice, thereby following the example set by the Pan-American Conference of Washington of June, 1946, which seemed to have been haunted by the fear of the right of veto. Czechoslovakia, Poland, and Hungary supported the principle of unanimity, and the Bureau, as a consequence, withdrew its proposal. Apart from the traditional arguments which can be developed in favour of the rule of unanimity, it is fitting to recall here that the Convention of the Union is a treaty law rather than a treaty contract. On the other hand, following the adoption of Article 2, paragraph (4), direct protection of copyright can arise for all countries parties to the Convention—that is to say, there is in existence a Convention right equivalent to a domestic right, which will assume increasing importance. By all appearances, unanimity imposes itself, apart from other reasons, between countries which accept this new legislative basis.

RIGHTS OF ACCESSION

The Berlin text of Article 25, as confirmed at Rome, remains unchanged.

POSITION OF COUNTRIES UNDER TRUSTEESHIP AND UNDER SPECIAL REGIMES

Article 26, which affords to countries the right of notifying in writing to the Swiss Government the application of the Convention to colonies, protectorates, and countries subject to special arrangements, naturally called for modifications following the observations of the delegate of Great Britain. These modifications were introduced whilst taking account of the requests and of the style employed in the Charter of the United Nations in 1945.

SUBSTITUTION OF THE BRUSSELS CONVENTION FOR THE BERNE CONVENTION

Article 27, which is purely formal, is an abbreviation of the Rome text. It provides for the replacement of the Berne Convention, and the texts which have successively revised it, by the Convention of Brussels in the relationships between those countries which have ratified it. The earlier texts will retain their effectiveness between those countries which do not ratify this Convention.

CLAUSE RELATING TO INTERNATIONAL JURISDICTION

The new Article 27^{bis} institutes a clause governing international jurisdiction for the interpretation or application of the present Convention when differences arise between two or more countries. This text is the outcome of a long doctrinal campaign of which the stages are marked by proposals of the same kind submitted to the Hague Conference of 1925 for the Protection of Industrial Property and to the Rome Conference of 1928. At those stages the proposals emanated from the International Institute of Intellectual Co-operation, as well as from the Norwegian delegation, and they were also supported by M. Raymond Weiss, who made himself the ardent protagonist of this extension of international justice within the domain of these Unions. The proposal was likewise renewed at the London Conference of 1934. The present proposal was initiated by the Swedish delegation, which invited the French delegation to join forces in the matter. Numerous other delegations also gave their support.

The competence of the International Court of Justice and its procedure, regulated by the Statute annexed to the Charter of the United Nations of the 26th June, 1945, is established without being imposed. The contracting countries retain the right to choose arbitration or any other means of settling differences.

The principle of accepting judgments will be respected.

Litigation will be limited, and can naturally only arise between countries themselves eligible to appear before the Court of International Justice.

Following the request of the Netherlands delegation, the International Bureau will be informed of any dispute, and will communicate particulars of it to other countries of the Union. This provision is in keeping with Articles 62 and 63 of the Statute of the Court of International Justice, which envisaged spontaneous provoked intervention. Arising from an important question raised by the British delegate, it was made clear that decisions of the Court should involve no condemnation, that these should be limited to a declaration of law, and that, according to custom, it would devolve upon the countries concerned to give effect to the necessary consequence through diplomatic or legislative channels as they saw fit.

A new Article 31 was inserted in the Convention, and reads as follows :—

“The official Acts of the Conference shall be established in French. An equivalent text shall be established in English. In case of dispute as to the interpretation of the Act, 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 that office. Those texts shall be published in the Acts of the Conference, annexed to the French and English texts.”

The British delegation had demanded on three occasions, with most pressing instance, that the text of the Convention be drawn in French and English, both texts to be equally valid. The British delegation was energetically supported by all British dominions represented at the Conference. Strong in her sixty-two years of membership, and relying upon the text of the Berne Convention itself, which has always been in French, the sole language throughout three Conferences of revision, France would have been able to refuse this substantial change, which would have required unanimity. But, with a feeling of international good will, France did not wish to be inflexible in her attitude. Yet she regretted the loss of the sole text, which was an unequivocal guarantee of general understanding for those countries which speak all other languages and who are accustomed to refer to the French wording. Conscious of defending the general interest, the French delegation only gave way on condition that, in the case of dispute, the French text should always prevail. However, from the moment when the Conference departed from the principle of a single language, it was equitable to provide that other countries should have the right of obtaining an authorized text of the Acts in the language of their choice. These texts are to be published in the Acts of the Conference annexed to the French and English texts, the term “authorized” implying for texts other than French and English an authentic character in the countries where they are applicable.

It was not thought fair to compare the results obtained by the Brussels Conference with the changes introduced by the Rome Conference. The old French adage “Comparison is no argument” (*comparaison n'est pas raison*) has long been repeated. It was said that times had changed; though sometimes the maintenance of certain permanent positions was more meritorious than fresh advances.

The following may be taken into account as the outstanding amendments of the text of the Convention :—

The inclusion of cinematographic and photographic works in paragraph (1) of Article 2: the promotion in the Article of works of applied art—these new creative forms now adorn the portal of the Convention.

The right as regards collective works is clearly defined. The mention of the legal representatives and assignees of the author determines their position.

The notion of publication is made clear in Article 4, as also is the relationship between publication, and making of works available to the public, and the making of records and between the right of reproduction and presentation. The meaning of the word “simultaneous” in this connection is also defined.

Direct protection is inscribed in the Convention with all the vistas that this opens up as regards the development of common-law rights in this connection.

Moral right is enlarged in its scope, and in the exercise for a term of fifty years and, despite difficulties, tends towards unification.

The position of posthumous anonymous, and pseudonymous works is now clearly defined. The right of making references and extracts is to profit from prudent control.

In the new Article 10^{bis}, account is taken of the needs of the press and circumstances. The right of presentation is fixed in unequivocal terms. The right of public recitation is included in Article 11^{ter}. Articles 11^{bis} and 13 have undergone a complete recasting. The relationship of authors and composers with the broadcasting and mechanical reproduction industries is fixed in an equitable manner. The position of cinematography is defined and *droit de suite* makes its entry into the Convention through the medium of Article 14^{bis}.

The principle of the minimum of protection receives recognition and ultimate enlargement in Article 19.

Finally, the Convention is furnished with a clause relating to international jurisdiction. Such are the advances.

M. Plaisant, in his concluding remarks, reminded the Conference that his distinguished predecessor, M. Louis Renaud, had closed the Berlin Conference forty years ago, in 1908, by flattering himself in the name of his colleagues of having remained faithful to the spirit of his predecessors. M. Plaisant did not similarly pride himself, and, indeed, thought perhaps that such a thing would not be desirable. In international law, more than anywhere, he claimed, it was necessary to reconcile the inner voice of tradition with the trend of outward movements. But when it became a matter of fixing the rights of two widely varying categories, of which the outlook in each case was eminently proper, it was incumbent on one to act above all in accordance with the lessons of life. For twenty years they had witnessed such prodigious development of invention and of the means of diffusing that they remained astonished in the face of scientific evolution and of the unforeseen forms which this might impose upon dealings in intellectual works. Now, as the result of long war and its consequences, the world in general, and Europe in particular, had undergone quite profound political and social consequences that M. Plaisant considered the delegates were powerless to conceive its passing patterns in a society in the full course of evolution. Their mission, he said, was to assure protection to authors' rights in a period when the written work was being outstripped by electrical, mechanical, and other means of exploitation arising from future and unknown inventions. The Conference had been primarily concerned with broadcasting, with records, with the cinema, and perhaps its greatest achievement was that by artificial and material means it had blended copyright, which was in essence an intellectual right, with material realities of a powerful and overwhelming character.

In M. Plaisant's view the delegates had had to take account in another direction of the existence of new forces in the world arena. Literary salons, he said, had been displaced by broadcasting and by the cinematographic screens, thanks to waves of mysterious character. It was now entire peoples and hungry crowds and no longer the select few who wished to drink at the fountain of knowledge, and who demanded to be allowed to participate freely at the feast. In all countries organizations were formed, and news, teaching, and even culture tended to assume national forms or even, to use such a barbaric expression, nationalized forms. The delegates would recollect that on several occasions they had been compelled to take account of these modern needs. Meritoriously they had understood them, and at the same time they had imposed just conditions upon them. In this report, M. Plaisant thought the Conference would go down to posterity as a success. Nevertheless, whilst they had given due regard to the contemporary aspirations, the delegates had remained faithful to and even inheritors of a tradition. The Conference had felt that an author's right was one of the manifestations of the right of man, and it had always sought to assume protection of such rights throughout all changes. Those among them who had remained faithful to individualistic philosophy might deplore the change which facilitated such exchanges of idea between civilized peoples. But M. Plaisant could not concede that they would have been true humanists if, despite obstacles and apprehensions, they had not been preoccupied above all with the safeguarding of the dignity of mankind, and with assuring the reflection of the most precious fruit of human intelligence for the reception of others. He liked to think, he said, that the delegates had succeeded in this respect thanks to the admirable spirit of international understanding which had so often raised the Conference above its objectives. Those who came after should give them credit for their supreme gesture both to mortal man and to immortal thought.

The Convention, if accepted by New Zealand, will require to be ratified and such ratification deposited at Brussels not later than the 1st July, 1951.

I desire to place on record appreciation of the valuable service rendered by Sir Harold Saunders in representing New Zealand at the Conference.

H. G. R. MASON, Minister of Justice.

APPENDIX

BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, SIGNED ON THE 9TH SEPTEMBER, 1886, COMPLETED AT PARIS ON THE 4TH MAY, 1896, REVISED AT BERLIN ON THE 13TH NOVEMBER, 1908, COMPLETED AT BERNE ON THE 20TH MARCH, 1914, REVISED AT ROME ON THE 2ND JUNE, 1928, AND REVISED AT BRUSSELS ON THE 26TH JUNE, 1948. (The portions in italics indicate the changes from the Rome Conventions of 1928).

AUSTRALIA, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Finland, France, Greece, Holy See, Hungary, Iceland, India, Ireland, Italy, Lebanon, Liechtenstein, Luxembourg, Monaco, Morocco, New Zealand, the Netherlands, Norway, Pakistan, Poland, Portugal, Spain, Sweden, Switzerland, Syria, Tunis, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland,

Being equally animated by the desire to protect in as effective and uniform a manner as possible the rights of authors over their literary and artistic works.

Have resolved to revise and to complete the Act signed at Berne on the 9th September, 1886, completed at Paris on the 4th May, 1896, revised at Berlin on the 13th November, 1908, completed at Berne on the 20th March, 1914, and revised at Rome on the 2nd June, 1928.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows :—

(Amendment made by the Brussels Conference are printed in italic type.)

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; choerographic 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 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 encyclopædias 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 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 2bis

(1) It shall be a matter for legislation in 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 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 3

(Omitted.)

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.

(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 the present Convention.

(2) Nevertheless, where any Country outside the Union fails to protect in an 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 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 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 declarations to all the Countries of the Union.

ARTICLE 6bis

(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 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 authorized 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.

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 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 7bis

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.

ARTICLE 8

Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorizing 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 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 of 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.

ARTICLE 10bis

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, cinematography or by radio-diffusion.

ARTICLE 11

(1) The authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorizing: 1° the public presentation and public performance of their works; 2° the public distribution by any means of the presentation and performance of their works.

The application of the provisions of Articles 11bis and 13 is always 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 of performance thereof.

ARTICLE 11bis

(1) Authors of literary and artistic works shall have the exclusive right of authorizing: 1° 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; 2° 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; 3° the communication to the public by loud-speaker 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.

(3) *Except where otherwise provided, permission granted in accordance with the first paragraph of this Article shall not imply permission to record the work radio-diffused 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 authorized by legislation.

ARTICLE 11ter

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

ARTICLE 12

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

ARTICLE 13

(1) *Authors of musical works shall have the exclusive right of authorizing: 1° the recording of such works by instruments capable of reproducing them mechanically; 2° the public performance of works thus recorded by means of such instruments.*

(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 the first paragraph 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 into force of the Convention signed in 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 authorizing: 1° the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; 2° 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 authorization of their authors, remain subject to the authorization 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 14bis

(1) *The author or, after his death, the persons or institutions authorized 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.*

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 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 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.

(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 organization 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 co-ordinate 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 the questions which concern the purpose of the Union. The Government of the Countries of the Union reserve to themselves the power to authorize 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 120,000 *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. :—

1st class	..	..	..	..	..	..	25 units.
2nd „	..	..	..	..	..	..	20 „
3rd „	..	..	..	..	..	..	15 „
4th „	..	..	..	..	..	..	10 „
5th „	..	..	..	..	..	..	5 „
6th „	..	..	..	..	..	..	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.

(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 shall take part in the discussions 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 the present 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 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 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.

* This monetary unit is the gold franc of 100 centimes, weighing 10/31 of a gramme and of a fineness of 0,900.

(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 this 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 form provided for in Article 25*. In that event they may enjoy the benefit of the provisions of the preceding paragraph.

ARTICLE 27bis

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 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 of all ratifications deposited.

(2) This Convention 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 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 acceded to 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.

(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 the 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.

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