

## WORK ACCOMPLISHED AT THE CONFERENCE.

*Results of Conference.*—The work achieved at the Conference is summarized in the Rapport-Général of the Commission de Rédaction, thus,—

- (1) The express mention among protected works of a category of work (speeches, sermons, addresses, and other works of the same nature) which a generally accepted opinion considered as already comprised in the general expression “productions in the literary, scientific, and artistic domain” (see Article 2 and 2 *bis*, new).
- (2) The protection of the *droit moral* (see Article 6 *bis*, new).
- (3) A slight extension of the international rule for the duration of protection, by fixing, for works produced in collaboration, the commencement of the post-mortem protection at the moment of the death of the last survivor (Article 7 *bis*).
- (4) Some improvements in the rules governing works published by the press, by placing limits on the obligation of declaring that articles upon economic, political, or religious matters have copyright reserved (Article 19).
- (5) A more precise and larger regulation of cinematograph works, by including in the protection, as well as adaptations, every new and original work (see Article 14, new).
- (6) The recognition of the exclusive right of the author in broadcasting, reserving to the national Legislature the regulation of the exercise of this right (Article 11 *bis*, new).
- (7) Finally, the limitation of the power of making reservations by parties to the convention—in the case of new adherents to the Union, to the right of making translations; and in the case of existing members of the Union, to reservations already made (Articles 25 and 27).

The President of the Commission de Rédaction expressed his opinion in the Rapport-Général that, notwithstanding this apparently very modest achievement, the Conference of Rome has produced results of considerable importance. He also, in another part of this report, says that without a doubt the two most important results of the Conference were the recognition of the authors' *droit moral* and the article dealing with broadcasting.

It is proposed in this report to deal at some length with these two most important results—first because the *droit moral* needs some explanation, and secondly because the broadcasting article is one most intimately affecting New Zealand and is one in which, as the President of the Commission de Rédaction states in his report, Australia and New Zealand appeared as the chief advocates of certain views.

*Broadcasting Part of “Public Performance.”*—Broadcasting is a part of “public performance,” and before examining Article 11 *bis* of the convention it is necessary to deal with the rights arising out of public performance in the widest sense accorded to it by copyright law.

## PUBLIC PERFORMING RIGHTS.

*Generally.*

“Copyright,” according to the English and New Zealand statutes, includes “the sole right to perform the work or any substantial part thereof in public.” The public performing right so secured to the copyright-holder by these statutes is far greater than what the Convention of Rome requires.

Public performances may be given in three ways: By broadcast; by mechanical instruments; directly—*i.e.*, where the performer is in the presence of his audience. Let us consider each of these methods separately.

1. *Broadcasting.*

Under existing New Zealand legislation the copyright-holder has sole right of communicating his work to the broadcaster. He may ask any price or terms he pleases, give preferences, or prohibit, without reason assigned, the broadcasting of his work. He has absolute control. An attempt to establish by the convention copyright-holders' rights in radio diffusion substantially the same as those now existing in New Zealand provided the hottest controversy at the Rome Conference. It was championed by France and actively supported by nearly all the countries of the Union; it was opposed by New Zealand, Australia, and Norway.

On the one hand, it was claimed that the author's rights over the products of his brain should be complete and that his right of property was sacred. On the other hand, it was urged that the broadcast was a public utility subject to public control upon just terms; that broadcasting was yet in its infancy, and the conferment of absolute rights which might conceivably be abused would be a mistake, and that the proper course to adopt was to reserve powers to the Legislatures of the various countries to deal with these Rights.

Ultimately an article in the following terms was agreed upon:—

“Article 11 *bis*.

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

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