1928.

NEW ZEALAND.

INTERNATIONAL COPYRIGHT CONFERENCE.

ROME, 1928.

(REPORT OF THE NEW ZEALAND DELEGATE, MR. S. G. RAYMOND, K.C.)

Presented to the House of Representatives by Leave.

I. THE CONFERENCE—THE DELEGATIONS—THE PROCEEDINGS.

THE Conference was held at the Palazzo Corsini, Rome. It opened on Monday, 7th May, 1928, and continued until the 2nd June, 1928, when the final sitting was held, and a Convention was signed by representatives of nearly all the States of the Copyright Union. The convention, a copy of which is sent with this report, is subject to ratification by the Governments of the various countries of the Union.

Delegates from sixty-nine countries took part in the Conference, representing thirty-nine countries of the Copyright Union and thirty countries not of the Copyright Union. There was also present, and assisting, delegates from the Secretariat of the League of Nations, the International Institute of Intellectual Co-operation, and the International Bureau for the Protection of Literary and Artistic Works. There were present 169 delegates and experts.

More than 150 amendments of the last previous convention—that of Berlin, 1908—were proposed and discussed. Accompanying this report are documents containing the proposals distributed either through the Bureau of Berne before the opening of the Conference or by the Bureau of the Conference during its progress. Various memoirs presented to the Conference are also sent herewith.

Organization of Conference Proceedings.—The rules of procedure of the Conference at Berlin in 1908 were adopted, with certain minor variations.

In the months which preceded the Conference the Italian Administration and the Bureau of Berne prepared and distributed, in conformity with Article 24 of the Berlin Convention, to the Administrations of those countries adhering to the Conference a series of proposals for the amendment of the convention, accompanied by a statement of the reasons or agreements supporting these proposals. During the same period a number of proposed amendments were given notice of to the Bureau by several countries of the Union. All of these proposals for the amendment of the convention are to be found in the accompanying booklet, "Documents Preliminaries, Propositions et Observations des Administrations."

At the first sitting of the Conference numerous sub-committees were appointed to deal with particular branches of the activities of the Conference. The general discussions were held, and the greater part of the work was done, by the Conference sitting in committee of the whole. During the Conference a Commission de Redaction (combining the functions of drafting and revision) was set up, and it finally published the valuable Rapport-Général of which a copy accompanies this report.

List of Delegates.—A complete list of the delegations and delegates is sent herewith. The British Empire was represented by delegations from Great Britain, Canada, Australia, New Zealand, the Irish Free State, and India.

Signatures by British Empire Delegates.—All the British delegates signed the Convention except the Irish Free State.

Irish Free State Objection.—That State proposed that the signatures to the convention be in alphabetical order, the method adopted when the Industrial Property Convention, 1925, was signed. The Irish proposal was, however, objected to by Great Britain and certain other of the Dominion delegates, including New Zealand, as being a departure from the resolutions arrived at by the Imperial Conference, 1926. The Irish Free State delegates protested and abstained from signing, but it may adhere later on, as allowed by article 27 (3). Its protest is to be found on page 24 of the Report of the Deuxiémé Séance Pléniere sent herewith.

Ratification, 1st July, 1931.—The Rome Convention, if accepted by New Zealand, must be ratified and ratifications exchanged at Rome not later than the 1st July, 1931.

Brussels Sitting, 1935.—The next Conference is fixed for Brussels, in 1935.

II. DOMINION'S ENTRY OF UNION.

Advantages and Results.

New Zealand's Status.—New Zealand became a member of the International Copyright Union on the 26th April, 1928. (See the Copyright Act, 1913, sections 28 and 33, and Orders in Council made thereunder). For some fourteen years prior to that date works first published in British or foreign countries members of the Union received the same protection as was accorded to works published in New Zealand under the Copyright Act, 1913. New Zealand was, however, without a vote at a Union Conference. But all that was altered when it entered the Union. Thenceforward its voice could be heard as of right, and its vote cast as it thought fit.

Advantages of Entering Union.—The change of status was timely for various reasons, some of which are—

(1) The interests of New Zealand do not in all respects coincide with those of Britain, in whose wake it had followed. This was evident at one of the most critical and active of the controversies at Rome.

(2) The cultural achievements of radiophony have already been so great, while its potentialities are so enormous, that a remote country such as New Zealand must, if it is to keep its place in the march of civilization, be vigilant in keeping, so far as it can, the great discoveries in the radiophonic field free from domination by commercial and financial combines and associations.

(3) A third reason arises out of the constitution of the Union. A decision of the Union in conference must be unanimous. This applies as well to the alteration of an existing article in the convention as to the adoption of a new one. The experience of the New Zealand delegation at the Conference of Rome in 1928 is that, while, on the one hand, an interest (whether it be literary, artistic, industrial, or financial) is virtually unassailable once it is protected by an article of the convention, on the other hand, a proposal for the bettering of the convention, be the proposal ever so meritorious, has no chance of adoption if it conflicts with one of these interests. One adverse vote is enough, and an adverse vote is not difficult to find, for invariably the views of some country or other are found to coincide—quite honestly, of course—with the interests adversely affected by the proposal.

Accessions of other Dominions.—Shortly before the Rome Conference two other Dominions, Canada and Australia, joined the Union as members. They also had been content, up to that time, to adopt the Revised Berne Convention by similar procedure to that adopted by New Zealand. The Irish Free State also about this time came into the union as a member.

Results of Dominions Entry of Union.—The entry of the Union by Canada, Australia, and New Zealand introduced an entirely new element—an element putting forward views considered as little short of revolutionary by some of the older members of the Union. Not that the Dominions were of great importance from the population standpoint. In that respect, although rapidly increasing, they are, and must for a long time remain, insignificant compared with the other densely peopled countries. The importance of their entry lies in the fact that at the Rome Conference the interests of the public—that great body of purchasers and consumers of copyright wares—were vigorously voiced by the Dominions for the first time in the history of International Copyright Conferences.

III. MOVEMENT IN INTERNATIONAL COPYRIGHT.

From Diversity towards Uniformity Counteractions.

Previous International Conferences.—The first International Copyright Conference was held in Berne in 1885, and resulted in the framing of the Berne Convention, 1886. By that convention the contracting States were constituted a Union "for the protection of the rights of authors over their literary and artistic works." The Berne Convention was modified and amended in certain respects by the Conference at Paris in 1896. In 1908 a further Conference was held in Berlin, when a new convention, replacing those of 1886 (Berne) and 1896 (Paris), was signed and ultimately adhered to by Britain. It was this Berlin Convention, 1908, that was before the Rome Conference of 1928.

Development, 1886-1928.—The years between 1886 and 1928 had witnessed in the domain of copyright some remarkable developments, of which it is necessary to give a brief account for a proper understanding of the part taken by New Zealand in the proceedings at the Conference at Rome.

The Berne Convention of 1886 was the work of a Conference called together to deal with the hardships experienced by authors in not obtaining in foreign countries adequate copyright protection, and that Conference succeeded in satisfactorily securing for foreign authors, in a country of the Union, the same amount of protection as the laws of that country afforded to its own nationals. This convention did not attempt to interfere with the right of each country to enact its own copyright legislation.

1886: Protection against Piracy, otherwise Home Rule.—Home rule in copyright matters continued, subject only to the provision established by the convention that thenceforth there was to be no discrimination between foreign and native authors. No serious attempt was made by the convention to establish copyright uniformity within the countries of the Union. The delegates in 1886 were mainly representatives of authors and publishers. They were imbued with a sense of the wrongs sustained through unauthorized appropriation of authors' works in foreign countries, and, concentrating upon those wrongs, achieved their aim by the Berne Convention of 1886.

After 1886: Movement from Home Rule to Uniformity.—After 1886, however, and once the authors and copyright holders were assured, throughout Union territories, against piracy by foreigners, further developments became noticeable. The holders of copyright henceforth aimed at obtaining fuller measures of copyright protection. This they considered might be best achieved by extending the ambit of the Union's copyright activities and by establishing uniformity of law within the Union's

territories. Accordingly efforts were made, sometimes successfully, to extend copyright to literary and artistic productions not hitherto protected; to raise the general level of protection throughout all the countries of the Union; and to abolish, as far as possible, the reservation to each Union country of the power to make its own copyright legislation. In short, the movement was towards international uniformity and away from the principle of national reservations prevailing in 1886. This movement was natural so long as the aim and object of the Conferences were the protection and advancement of authors' rights, and so long as authors and publishers were dominant at the Conferences and were successful in having their views accepted by the national Legislatures.

Checks to Movement.—But the movement has since 1886 sustained two checks, each time occasioned by the entry to the Conference of representatives of interests differing from those of the copyright-owners.

First Check, Industrial.—The first interest to make itself felt was the industrial one. Between 1886 and 1908 the gramophone industry had sprung up and was well established, employing large numbers of workmen and much capital. It asserted itself so effectively at the Berlin Conference of 1908 that any person may now, subject to certain conditions, without the consent of the owner, make gramophone records of a copyright musical work upon payment of a royalty. This is the compulsory-license system, bitterly opposed at the time, and still subject to bitter but hopeless attacks. It is secured by Article 13 of the Berlin Convention, and reappears in Article 13 of the Rome Convention, and is there for good and all, for its revocation can only be obtained by the unanimous vote of the nations of the Union.

Second Check, Public Interests: Dominions' Influence.—The second check to the progress of the movement towards uniformity occurred at the Rome Conference. This time the debate was on radio-diffusion, and it was at the hands of the Dominions of Australia and New Zealand, representing the public interests, that the check was administered. These Dominions were unfettered by the over-emphasized traditional respect for copyright-holders' rights, and unhampered by capitalistic interests, so powerful in the counsels of the Old World countries. They were combating a world-wide association, having great capital revenues, and they succeeded by asserting the principle of home rule in radiophonic control, and thus stemmed the tide of copyright uniformity.

The Problem.—The problem as it appeared to the New Zealand delegate was how to reconcile the just claims of the owners of copyright with the public interest.

IV. EXAMINATION OF THE CONVENTION.

Interpretation of Convention.—Before dealing in detail with the agreement ultimately arrived at and embodied in the Convention of Rome, it is necessary to consider how New Zealand's legislation is to be accommodated to the Rome Convention, and also how that convention is to be interpreted.

Copyright in New Zealand, as in England, is a purely statutory right (section 4, New Zealand Act of 1913, adopting section 31 of the English Act, 1911), and there is nothing to prevent the New Zealand Parliament making any alteration it pleases in its copyright legislation, as it can in any other branch of the law, subject, however, always to this consideration—namely, that if it desires to remain in the Copyright Union its legislation must not conflict with the International Copyright Convention.

Bringing New Zealand Legislation within Convention.—But who is to determine whether New Zealand's copyright legislation is within the convention? That is not a justiciable question—not a question within the competence of jurisdiction of the New Zealand Judiciary or of the Judicial Committee of the Privy Council. In some countries a treaty or convention becomes part of the law of the land, enforceable as such without more ado; and doubtless in such countries the question now being considered comes within the jurisdiction of the law-courts. But that is not the New Zealand law, nor that of any country where the English common law prevails.

Nor is the question determinable by any outside tribunal. It was indeed proposed at the Conference at Rome by the Norwegian and Swedish delegations that such questions should be referable to the Hague Court of International Justice. That proposal was, however, negatived. It met with opposition from some of the Continental States. It did not receive support from the British or New Zealand delegations. If adopted, it meant trouble for the British Empire, for differences between Empire units are to be settled by the Empire without reference to foreigners.

No; there is no final Court competent to deal with questions of interpretation: they are left to the good sense and honour of the several countries members of the Union. If a Union country obviously or flagrantly violates the terms of the convention it can be dealt with by the Union itself, and presumably in the last resort excluded from the Union. Such a violation, if persisted in, implies refusal to accept the convention.

No International Uniform Method of Interpretation.—In this connection it is important to keep in mind that different countries have different methods of interpretation. In a country where the common law prevails a convention is apt to be read much as a statute is in its law-courts—that is, each word is weighed, but reference to parliamentary or Conference debates or discussions is not permitted. These common-law methods are not understood by countries having different legal systems from ours. Those countries look for what they call the spirit of the convention, and when interpreting such a document have recourse to all debates, discussions, and documents deemed to be relevant, and in draftmanship they are mush less meticulous than we are.

Latitude in interpreting.—In interpreting the convention for the purposes of New Zealand legislation we may therefore, it is submitted, safely and properly adopt, if we care to, the interpretation placed upon it by other nations or any not inconsiderable body of them, even though that interpretation may not commend itself to a common-law lawyer. This proposition is not an academic one merely, but has a practical importance when legislation is considered, as later on in this report it will be, concerning certain branches of public-performance rights.

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 Redaction 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."

This article your delegate considers satisfactory. It reserves power to each country's Legislature to control within its own national area the exercise of the right. That was the provision contended for by New Zealand throughout the Conference. Power is thus given to adopt a compulsory-license system, or any other system; and in this connection comparison with Article 13 and consequent English legislation is instructive. The principle of compensation was never contested by New Zealand, as that country does not contemplate turning highwayman, but wishes only to secure itself against monopolies.

Herewith are copies of the reports of the various committees; of the New Zealand delegate's speeches; of the speeches made at the final plenary; and of other matters relating to Article 11 *bis*. A perusal of them is recommended for a proper understanding of the arguments advanced, the position taken up by your delegate, and the viewpoint of other nations. They certainly will be of use to the New Zealand delegate at future Conferences, when, undoubtedly, efforts will be made to reduce national control over this important branch of copyright.

2. *Mechanical Music—Public Performances.*

Public performance of this class is generally accomplished by gramophone amplified. By Article 13 the exclusive right is conferred upon authors of musical works to authorize the public performance of the said works by means of these instruments, but reservations or conditions relating to the application of this article may be determined by the domestic legislation of each country in so far as it is concerned.

In relation to Article 13, it is to be noted:—

(*a*) The only works protected by this article are "musical" ones. All others, such as lectures, readings, and speeches, delivered through the gramophone, are unprotected by the convention.

(*b*) The reservation has been used in Britain and other countries for purposes of acquiring the right to make records by compulsory license.

(*c*) It is competent to the Legislature to authorize compulsory license or other system of acquiring public performance rights of gramophone records.

3. *Direct Performance.*

Article 11 of the Rome Convention repeats Article 11 of the Berlin Convention, 1908, and affords copyright protection for public performances of dramatic, dramatico-musical, and musical works. It is to be noted—

(*a*) Other public performances, such as lectures, readings, and speeches, are unprotected by the convention.

(*b*) There is no express reservation to each country to deal with direct public performance rights under this article as there is under the Broadcasting Article 11 *bis* and the Mechanical Music Article 13.

It will no doubt, therefore, be claimed by the Performing Rights Association that the New Zealand Legislature is not entitled to control in any way the exclusive right of the author conferred by this article.

Propositions: Direct Public Performance.—The following propositions can, however, your delegate considers, be maintained with regard to the group of public performances now being considered—namely, direct performances:—

(1) That if the exclusive right conferred by Article 11 is or may be so exercised as to become an abuse, then the New Zealand Legislature can control it.

(2) That what constitutes an abuse is a question exclusively for the Legislature, subject to its acting honestly and reasonably.

(3) That the New Zealand Legislature may provide for compulsory license or other scheme upon payment of a royalty, percentage on door or other receipts, or other compensation to the copyright-holder, to be assessed in such manner as the Legislature thinks fit.

These propositions are maintainable because they are accepted and have been acted upon by various countries of the Union.

Some countries hold that power is inherent in the State to suppress or otherwise deal with abuses, as, for instance, those arising out of monopolistic or trade conditions. In some countries legislation is not necessary—the power is what we call a common-law power; in others, legislation is requisite. All these countries, however, hold that an international Convention cannot interfere with this power, whether exercised through the Judiciary or Legislature.

On the 11th May, 1928, in the early days of the Conference, a proposal standing in the name of Australia and New Zealand was moved by the New Zealand delegate as follows: "While recognizing the rights given by Articles 11 and 11 *bis*, the countries of the Union do not relinquish the power to take measures against any abuse which may arise in the exercise of the said rights." (C.D.A. 2, 28, forwarded herewith, and the New Zealand delegate's speech in support).

The leader of the Conference (M. Giannini, of the Italian Delegation) opposed the proposal on the ground that, as every country's Legislature and Judicature have inherent power to deal with abuses, the proposal was not necessary or proper for inclusion in a convention. The proposal was rejected.

Adopting M. Giannini's view, it follows that determination of whether an abuse arises or may arise must be left to the Legislature or Judicature of each country to determine, and necessarily a very wide latitude in determining must be given to each country. So much for propositions (1) and (2).

Norway's Mémoire.—Proposition (3) is somewhat more difficult. The arguments for it are set forth in a *memoire* placed by the Norwegian Delegation before the Conference. (This *memoire* is sent herewith). The arguments are developed with much skill and knowledge in the *memoire*, and, briefly, are that when the substance of Article 11 was adopted at the first International Conference—that of Berne in 1886 (see Article 9, Berne Convention, 1886)—the royalty system, or something similar, was operating in various countries; that the Berne Conference was occupied with establishing the right of a foreign author to equal copyright protection in other countries of the Union to that of natives, and not with establishing a uniform code throughout the Union; and that accordingly the royalty or other system was not within the purview of, or dealt with by, the Berne Conference or by the subsequent Conferences at Paris in 1896 and Berlin in 1908.

The Norwegian arguments were not contested at the Rome Conference.

Norway and Denmark, and it may be other countries, act upon this view without objection. It therefore seems to the New Zealand delegate that it may safely be adopted by New Zealand.

Before parting with this branch of the subject, it is to be observed that Dr. Raestadt, the Norwegian delegate, a writer of repute on international law, concurred with your delegate in the view that the arguments advanced in the Norwegian *memoire* had no application to broadcasting. In 1886 control by each country's Legislature was implied; in 1928 the opposite condition existed, and control was excluded unless expressly reserved. Norway therefore acted with Australia and New Zealand in insisting upon the reservation ultimately incorporated in Article 11 *bis*—the broadcasting article.

The "Droit Moral."

The difference between the Latin and Anglo-Saxon mentality was nowhere more evident than in the discussion on this subject. It was originally introduced by the Italian Administration, and its proposition and recommendations are to be found in the "Documents Preliminaire" (booklet herewith). One of the chief characteristics of the *droit moral* is the clothing of the author with certain rights of authorship inalienable by contract, unaffected by his death and perpetuated through all time. These rights include the right of asserting the authorship of his work, and of opposing the mutilation of the work or of any modification of it which may be prejudicial to the author's reputation. There was evidently some acute need for it in some of the Continental countries, judging by the interest and enthusiasm it evoked. But it was coldly received by the British countries, and to them the Italians addressed a special appeal, particularly pointing out that countries within the common law already afforded by various principles of their law the protection which was now sought. The British countries were anxious to help their neighbours, and ultimately a small sub-committee was formed and a formula was adopted, largely through the efforts of Sir Harrison Moore, the Australian delegate, and Mr. Becket, one of the legal advisers to the British Foreign Office. It now emerges as Article 6 *bis* of the convention, and is in the following terms:—

"*Article 6* bis.

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

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

It will be at once seen it does not prejudice New Zealand.

It is to be noted that the "moral rights" referred to in Article 11 *bis* (the broadcasting article) are those dealt with by Article 6 *bis*.

V. SUGGESTIONS FOR LEGISLATION.

Copyright legislation hitherto has mainly concerned itself with protecting against piracy of literary and artistic works as expressed in print, musical sheets, engravings, photographs, &c., and public performances of musical, dramatic, and similar class of works by performers in the presence of their audiences.

Discoveries and inventions resulting in cinematography, mechanical music, and broadcasting have effected a change of conditions. These inventions have three things in common: (1) They provide a world-wide audience; (2) they are all concerned with performance, and two of them (cinematography and broadcasting) entirely with public performance; (3) all involve great capital enterprise.

The world-wide Performing Rights Association, controlling virtually all public-performance copyrights, discharge two useful functions: they efficiently protect copyright-holders, and by their representative character straighten out difficulties which would be occasioned by attempting to deal with numerous individual copyright-holders.

The Holland delegation suggested at the Conference compulsory concentration of broadcasting performing rights in one great association in each country, but as the suggestion was also coupled with many details its was unacceptable.

Any attempt to limit the right of the copyright-holder to deal as he pleases with his "performing-right" is resented. Such a limitation can only be by some form of expropriation, and as such needs very careful consideration. The gramophone business has been built upon the compulsory-license system, and many gramophone companies have made vast profits, declared large dividends and

bonuses, and their shares have appreciated five, six, and seven fold. While this has been going on, the payments to composers have been ridiculously small. Moreover, while the composer has received little for his work, the executants of the composer's music, if skilful and popular, receive great sums, running into thousands of pounds in some cases. The foregoing is the statement of the composer's case as brought under your delegate's notice. On the other hand, complaints are rife of the exactions of the Performing Rights Association wherever they have unlimited property rights; and in British countries, outside of mechanical music, they have such rights at present. The complaints arise mainly in connection with broadcasting.

Your delegate has heard *ex parte* statements from representatives of both sides, but it has not been part of his duty to hold an inquiry, nor has he done so. What he has done is to concentrate his energies upon reserving for the New Zealand Legislature power to deal with this matter, and Article 11 *bis* secures that power.

SUGGESTIONS.

NOTE.—Such of the following suggestions as deal with broadcasting and public performance rights proceed upon the assumption that the New Zealand Legislature adopts the view that they should be subject to control.

(*a*) That the existing copyright law, conferring upon copyright-holders public-performance rights, needs alteration to meet present-day conditions.

(*b*) Some system of compulsory license be established, thus affording protection against overcharge and other abuses.

(*c*) That a "competent authority" to deal with compensation in default of agreement, in terms of Article 11 *bis*, be appointed.

(*d*) To avoid delay it may be desirable to allow performance before assessment of compensation in certain events and subject to proper safeguard.

(*e*) Whether compensation shall be on a royalty basis, a percentage-on-door-receipts basis, or other method, is a question needing investigation. Probably the method must vary with conditions. Public performance may occur in many ways—*e.g.*, in a restaurant, in a crowded city theatre, or in a remote country hall—and may be of items varying from a great musical work to a temporarily popular jazz.

(*f*) Concentration in one representative body of performing rights seems necessary. At present the Australasian Performing Rights Association appears to fill this position.

(*g*) Broadcasting may play a very important part in educational work, and some of the Continental delegates attached much importance to that aspect of it, particularly when coupled with television, an invention rapidly developing. It is already used in the teaching of languages. This use possibly needs legislative protection.

(*h*) Broadcasting is in the nature of a public utility. The modern tendency is towards State ownership or control. Britain has adopted it, and a recent cablegram in the *Times* indicates Canada is contemplating the same thing.

(*i*) Apart from broadcasting and public performances, New Zealand may consider it desirable to await the British legislative proposals. There is apparently little divergence between British and New Zealand views in the other alterations effected by the Rome Convention.

(*j*) As the needs of the various Dominions are much the same, conference with them, and particularly with Australia, where the Australasian Performing Rights Association also operates, seems desirable.

VI. CONCLUSION.

To the Italian Government, the Parliament of Italy, and the Mayor and civic authorities of Rome, all the delegations are indebted for extending to them great privileges and hospitality; whilst to the leader and members of the very able Italian delegation who undertook the initiative and leadership of the Conference we were also greatly indebted for not only hospitality, but also courtesy and helpfulness in our task. For it is only by the exercise of much tact, such as the Italians displayed, that an agreement is possible where so many conflicting interests and ideals are involved, and where unanimity is necessary.

The British Ambassador and Lady Grahame entertained and interested themselves in the Empire delegates, and the staff of the Embassy rendered assistance wherever needed. Consultation with the British and other Dominion delegations was close and most helpful, and the New Zealand delegate was especially fortunate in having as a colleague Sir Harrison Moore, of Australia, representing interests much resembling ours, and especially qualified to deal with constitutional questions as they arose.

Your delegate also desires to record his recognition of the valuable secretarial services rendered by Mr. V. G. Housden, of the High Commissioner's Office.

24th July, 1928. S. G. RAYMOND.

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