

(Continued from Page 1.)

Coming to the points of particular interest of listeners, the report deals with the broadcasting part of public performances. Under the heading of "Public Performing Rights," it says:—"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 authorise 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.

### 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 authorise 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:—

- 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.
- The reservation has been used in Britain and other countries for purposes of acquiring the right to make records by compulsory license.
- It is competent to the Legislature to authorise 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—

- Other public performances, such as lectures, readings, and speeches, are unprotected by the convention.
- There is no express reservation to each country to deal with direct public performance rights under this article as there is under the Broadcasting 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.

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

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

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

#### Various Viewpoints.

"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 May 11, 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 recognising 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.'

"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."

"Norway's Memoire.—Proposition (3) is somewhat more difficult. The arguments for it are set forth in a memoire placed by the Norwegian delegation before the Conference. 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, 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 applied; in 1928 the same contention 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.

#### Suggestions for Legislation.

SUGGESTIONS for legislation are dealt with as follows:—

"Copyright legislation hitherto has mainly concerned itself with protecting against piracy of literary and artistic works as expressed in print, musical sheets, engravings, photographs, etc., and public performances of musical, dramatic, and similar class of works by (Concluded on page 31.)

## Save Money on Household Removals by Rail

Avoid the risk of breakages over long rough roads.

When moving furniture it pays to consign by rail.

A recent reduction in rate of over 6/- in the £ ensures economy. Roomy, smooth running furniture vans ensure safe transit.

Quotations and information gladly supplied by any Stationmaster, Business Agent, or District Manager.