

Intergovernmental Copyright Committee

Twelfth Session
Paris, December 1973

Comité intergouvernemental du droit d'auteur

Douzième session
Paris, décembre 1973

Comité Intergubernamental de Derecho de Autor

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REPORT

submitted by the Secretariat and adopted by the Committee

INTRODUCTION

1. The Intergovernmental Copyright Committee (hereinafter called the "Intergovernmental Committee") established under Article XI of the Universal Copyright Convention, held its twelfth ordinary session at the Headquarters of the United Nations Educational, Scientific and Cultural Organization (Unesco), in Paris, from 5 to 11 December 1973.
2. Eleven of the twelve Member States of the Committee (Brazil, France, Federal Republic of Germany, India, Italy, Israel, Kenya, Spain, Tunisia, United Kingdom, United States of America) were represented at this session.
3. The following States, parties to the Universal Copyright Convention or members of the United Nations Educational, Scientific and Cultural Organization, or the United Nations, were represented by observers: Algeria, Andorra, Australia, Austria, Belgium, Cameroon, Canada, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Japan, Khmer Republic, Mexico, Monaco, Netherlands, Norway, Philippines, Poland, Portugal, Senegal, Sweden, Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, Yugoslavia.
4. The representatives of four intergovernmental organizations and eighteen international non-governmental organizations followed the work of the Committee as observers.
5. The list of participants is contained in an annex to this Report (Annex B).

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OPENING OF THE TWELFTH ORDINARY SESSION

6. The twelfth ordinary session of the Committee was opened by its Chairman, H.E. Mr. Rafik Saïd (Tunisia).
7. The representative of the Director-General of Unesco, Mr. Claude Lussier, Director of the Office of International Standards and Legal Affairs, welcomed the members of the Committee and the observers designated by the States, and the intergovernmental and non-governmental organizations.

ELECTION OF OFFICERS

8. On the proposal of the delegation of the United States of America, seconded by the delegations of Brazil, France, Kenya, Spain and Tunisia, Mrs. Elisabeth Steup, head of the delegation of the Federal Republic of Germany, and Mr. Kanti Chaudhuri, head of the delegation of India, were elected Chairman and Vice-Chairman of the Committee respectively, by acclamation.

TRIBUTE TO THE OUTGOING CHAIRMAN

9. On the proposal of the delegation of India, the Committee paid unanimous tribute to the outgoing Chairman, H.E. Mr. Rafik Saïd, for all that he had done during his term of office for the furtherance of copyright.

DRAFTING OF THE REPORT

10. In accordance with Rule 17 of the Rules of Procedure, the Secretariat of the Committee was provided by the United Nations Educational, Scientific and Cultural Organization. The present report was drafted by the Secretariat of the Committee.

ADOPTION OF THE AGENDA

11. The agenda contained in document IGC/XII/1 Rev. was unanimously adopted.
12. At this juncture, the delegation of Tunisia, seconded by the delegations of the United States of America and India, asked the Secretariat to study the possibility of changing Rules 2 and 11 of the Committee's Rules of Procedure relating to the procedure for the Committee's renewal and the rules concerning the election of the Chairman. It was agreed that revised draft Rules of Procedure would be submitted by the Secretariat for consideration and adoption by the Intergovernmental Copyright Committee instituted by Article XI of the Universal Copyright Convention revised at Paris in 1971, which is to hold its first session one year after the said instrument comes into force.
13. The representative of the Union of Soviet Socialist Republics, taking part for the first time as an observer in the Committee's meeting following the Soviet Union's recent accession to the Universal Copyright Convention adopted in 1952,

said that his Government's decision formed part of a general policy designed to develop international relations and contacts with the peoples and cultures of other States, and to allow for a better acquaintance with the achievements of other nations in the spheres of science, literature and the arts, as these factors encouraged the spread of knowledge and information.

He said that the accession of the USSR to the Convention had occasioned changes in his country's copyright legislation, in particular the recognition of an author's right to authorize the translation of his work into a foreign language and the extension of the period of copyright protection to 25 years post mortem auctoris. In addition, a Soviet Copyright Agency had been set up to discharge all the duties connected with the protection of copyright both inside and outside the country. The Agency would take part in the work of international organizations on copyright, would represent the Union of Soviet Socialist Republics at international meetings, conferences and symposia, and would conclude bilateral working agreements with national organizations of authors with a view to the reciprocal representation of authors' interests.

The representative of the Soviet Union stated that his country was very interested in the work of the Intergovernmental Committee and was ready to cooperate in all the departments of its activity.

I. ITEMS CONCERNING THE INTERGOVERNMENTAL COPYRIGHT COMMITTEE AND THE EXECUTIVE COMMITTEE OF THE BERNE UNION JOINTLY

Reprographic reproduction of works protected by copyright

14. The Secretariat of Unesco introduced document B/EC/VI/2 - IGC/XII/2 and drew the attention of the Committees to their resolutions (No. 62(XI) of the Intergovernmental Copyright Committee and No. 1 of the Executive Committee of the Berne Union) adopted in 1971, resolution 5.151 adopted by the General Conference of Unesco at its seventeenth session in 1972 and the report of the Working Group on Reprographic Reproduction of Works Protected by Copyright (hereinafter called "the Working Group"), which was convened pursuant to the above resolutions in May 1973, under the joint auspices of Unesco and WIPO.
15. This was followed by a detailed explanation of the recommendations of the Working Group by Mr. Justice T. Hesser (Sweden) who was the Chairman of the Working Group.
16. In the discussions that followed, all speakers praised the work of the Working Group and the valuable material it had made available.
17. The delegation of Brazil felt that this question should be studied in the light of internal needs and international effects. Far too little jurisprudence was available on the domestic level and the question was so far hazy and fluctuating. Reference was also made to the recent court decision in the United States of America in the Williams and Wilkins Co. case. Though the recommendations of the Working Group might be reasonable, their adoption would raise many problems. It was doubtful whether the system adopted by Sweden could be applied elsewhere. Except for paragraph 4, the Brazilian delegation was of the opinion that

the recommendations of the Working Group were too general and might be of little assistance to States in drafting legislation on this subject; more specific recommendations would be required. This would entail further study on such issues as whether a library resorting to reprography is a non-profit organization or operates for profit, subsidized photocopying by governments, what differentiation should be made between reprography in institutions open to the public and other organizations operating for internal use only, the treatment to be accorded to educational establishments, whether different treatment should be accorded with respect to photocopying of books, journals, cultural works, scientific and technical works, and whether a difference should be made between first degree copying, that is, the current practice of libraries to build up their collection or to fill up any gaps therein by resorting to photocopying, and other forms.

18. The delegation of Tunisia supported the views of Brazil and cautioned that it might not be wise to approve a draft proposal which States would find difficult to apply. It suggested that it was premature to adopt any recommendations at this stage.

19. The delegation of Senegal shared the misgivings expressed by Brazil and Tunisia and said that, contrary to general feeling, developing countries did not wish to reduce copyright protection. Article 9 of the Paris Act of the Berne Convention permits certain exceptions, as did Article 13 regarding musical works. It felt that the recommendations of the Working Group were premature and that further studies were needed.

20. The delegation of Canada stated that it shared some of the views expressed by the delegation of Brazil. While congratulating the Working Group on the results of its work, it noted that it was somewhat premature to propose recommendations to governments at this stage and hoped the problem would be considered by a committee of governmental experts.

21. The observer from Austria felt that this subject was both important and urgent; however, he was of the opinion that further study was needed on the question.

22. The delegation of Kenya stated that this subject was of great importance to developing countries. It observed, however, that developing countries cannot afford to protect copyright idealistically but should try to establish a balance between the need to obtain foreign works and pay for them in hard currency. Therefore, it felt that neither paragraph (6) of the recommendations of the Working Group, nor a system based on discrimination between scientific works and other works, would really help developing countries. It pointed out that Kenyan law provides for reproduction for educational uses without authorization of the owner of the copyright and without payment, provided these reproductions are destroyed within twelve months. Reproduction can be made under the control of the Government, if it is in the public interest and no income is derived therefrom or no fee is charged. Kenya is considering changing its domestic law and would need more guidance than is contained in paragraph (6) of the recommendations of the Working Group. The subject should be studied further by governmental experts, with particular attention to the needs of developing countries.

23. The delegation of the United States of America pointed out that this question had been under study for 12 years. It was aware of the feelings expressed at the seventeenth session of the General Conference of Unesco; namely, that it was desirable to give States some guidance in this area. However, it associated itself with the views of other delegations that it would be premature to take any action at the eighteenth session of the General Conference of Unesco on these, or other, recommendations. In the United States, the extent of reprographic reproduction had grown to extraordinary proportions. The matter had been pending before the United States Congress since 1965; however, although the issue was recognized as of crucial importance, the differences between the parties had proved too difficult to reconcile as yet. In the recent case of Williams and Wilkins Co. v. The United States of America, the Court of Claims, reversing an earlier finding, held that photocopying by two governmental medical libraries, under certain circumstances, was not a copyright infringement. The Court of Claims decision was closely divided and included two strong dissenting opinions. Although the Supreme Court of the United States is not compelled to accept an appeal from this decision, the importance of the case makes such an appeal desirable. The Court of Claims decision does not establish comprehensive guidelines for libraries, research institutions and documentation centres; on the contrary, it is narrowly confined by the court to the unique facts of the case. The majority decision against the publishers rests upon eight grounds, all of which were required for the result in the case. In view of this, the legal situation under United States law remains unclear. It does, however, demonstrate the unsettled state of United States law and, most significantly, the court challenges the United States Congress to resolve this issue by legislation. Although the delegation of the United States of America believed that the Committee should not declare itself against the feasibility of any instrument on the subject, it felt that a recommendation to States at this stage would be premature and therefore supported the proposal of Canada that further studies be carried out at a meeting of governmental experts.

24. The observer from Denmark informed the meeting that the matter had been under study in the four Scandinavian countries and that solutions on the national level were in the offing. Their success would to a large extent depend on developments in other countries. He felt that the recommendations of the Working Group could form the basis for future work. However, if the general feeling was for further studies to be carried out, he would pose no objection and would agree to setting up a committee of governmental experts.

25. The delegation of the United Kingdom stated that on balance it was against a recommendation to States at this stage. Any recommendation to be made should be a distillation of experience gained. Every country was trying to find a path and in the United Kingdom a system of blanket licensing was under consideration. Work already in progress in the United Kingdom and other States might possibly be upset by any recommendation at this stage. If the time was premature for any recommendation, it would also be premature for referring the matter to a committee of governmental experts.

26. The observer from Australia stated that the matter had not yet been fully examined in that country and that Australia was watching with interest the progress in the international field. While he felt that the draft recommendations were an appropriate basis on which an international instrument could be

established, he would not, however, oppose a further study by a committee of governmental experts.

27. The observer from Mexico felt that it was premature to make any recommendations to States on the subject. He expressed himself in favour of establishing a balance between the interests concerned. He wondered whether a possible solution might not be to levy a charge on the owner of the reprographic equipment to compensate the copyright owner.

28. The observer from Algeria felt that this was a complicated subject and that measures to control reprographic reproduction were not as urgent in all countries of the world. For many developing countries, there would be no interest in any international instrument. He felt that the matter should wait and that, in the meantime, the implications of paragraph (6) of the recommendations of the Working Group should be clarified so as to have a precise idea concerning the exceptions available to developing countries if they should adopt the recommendations.

29. The delegation of the Federal Republic of Germany stated that the question was under consideration on the national level in its country and it was thus difficult for it to decide on the outlines of a solution. It noted that the discussion in the Federal Republic of Germany dealt not only with the points covered by the Working Group, but also with the question of whether a levy on the selling price of the reprographic equipment should form part of an adequate solution of the problem.

30. The delegation of France referred to the large number of copies involved, as noted in the report of the Working Group. It pointed out that in developing countries the incidence of photocopying was not as widespread as in developed countries, but that it was bound to grow with the passage of time. In France itself, they were still awaiting a court decree to help solve the problems raised concerning this matter. It expressed the view that there were two basic approaches to this question: either a reprographic reproduction is a reproduction under the copyright Conventions, in which case a recommendation could not provide for exceptions which are not authorized by the Conventions, or it is not a reproduction under the Conventions and thus a recommendation could not be based on copyright protection. In both cases, it favoured the adoption of a recommendation to provide States with some guidance in this area. It was of the opinion that the recommendations of the Working Group cannot be accepted as they stand, and proposed that the Committees recommend the adoption of a general recommendation based on the principle of equitable remuneration, either individual or collective, as set forth in paragraph (1) of the recommendations of the Working Group. The implementation of such a recommendation would be left for States to decide on the national level. The observer from Australia supported the views expressed by the delegation of France.

31. The delegation of Italy agreed that the essential point, as stated by France, is to assert the general principle that equitable remuneration should always be reserved for the author. It was of the opinion that reprographic reproduction was a form of reproduction covered by Article 9 of the Berne Convention. Article 68 of the Italian Copyright Law governs the matter. The delegation of Italy supported the view of the delegation of France that it would be appropriate to agree on

a simple recommendation to States based on the principle of equitable remuneration. However, any recommendation should not try to interpret the provisions of the Berne Convention which are binding on States party to the Convention.

32. The delegation of Switzerland favoured the preparation of a recommendation containing a few basic rules of a practical nature which could provide national legislation with some guidance. It felt that the recommendations of the Working Group provided a good basis for further discussion. If a simple recommendation cannot be drafted by the Committee, then it would have no objection to the convening of a committee of governmental experts, composed of specialists in this area. On the basis of the recommendations of that Committee, States could set up administrative bodies, especially with respect to scientific periodicals.
33. The delegation of Hungary referred to Article 18(1) of the new Hungarian Law and felt that, while it was premature to attempt to make detailed recommendations to States, a general recommendation covering the basic questions, as was proposed by France and Italy, would be reasonable. It was agreeable to the setting up of a working group to draw up these recommendations.
34. The delegation of Spain cautioned that any recommendation to be made to States should be viable for them. The recommendations of the Working Group were good but in most States it would be difficult to implement them. More thorough study was needed. It was agreeable to a working group being set up to carry out further studies.
35. The observer from Portugal felt that the problem was not yet ripe. He asked who would bear the cost if the principle of equitable remuneration were applied. The financial burden would fall mainly on libraries or public institutions or researchers, and there would be administrative problems. He also thought that the procedures for compulsory licences might be cumbersome.
36. The observer from Japan stated that the recommendations of the Working Group were in general acceptable to him but that, nevertheless, he would be prepared to support the setting up of a committee of governmental experts.
37. The observer from Sweden pointed out that this was not a theoretical problem but one of vital importance to authors. This was so in industrialized countries, though probably less so in some other countries. The use of reprographic methods was widespread in industrialized countries. For these countries at least, there should be a recommendation. Such a recommendation would not be of immediate value to the other countries but may become so in the future when the problem arises. To wait for States to adopt solutions on the national level and then to try to find the common denominator might be putting the cart before the horse. He endorsed the views of the delegations of France, Italy, Switzerland and Hungary that a short recommendation based on general principles should go out to States immediately. He felt that industrialized countries should provide for negotiations between users and owners of copyright. He was agreeable to the setting up of a committee to work out the recommendations.
38. The delegation of the United States of America pointed out that, in accordance with the resolution adopted by the seventeenth session of the General Conference of Unesco, the Intergovernmental Copyright Committee had the task of

declaring itself on the question of the "feasibility" of adopting a recommendation, rather than the task of adopting a recommendation itself. Although the United States delegation was not yet in a position to discuss or associate itself with the substantive contents of such a recommendation, it understood the sense of urgency to come to grips with the problem. However, it felt that there might be more danger in adopting a recommendation cast in general terms than in drafting a detailed recommendation. Even though, in its opinion, the framework of a recommendation had not yet emerged, it thought the Committee should declare that the adoption of a recommendation was feasible and that work toward this end should be undertaken as soon as possible. It proposed that a sub-committee should prepare a document for consideration by a committee of governmental experts meeting in 1975 or 1976, and that, thereafter, the recommendations of the committee of governmental experts could be communicated to the Director-General of Unesco for submission to the nineteenth session of the General Conference of Unesco. The delegation of the United States of America pointed out, however, that, since the Berne Union was also considering a similar item, the Committee might consider other procedural possibilities.

39. The delegation of Canada agreed with the necessity for further study but was concerned about making a statement that a recommendation on the matter was feasible since it was not yet demonstrated that it was feasible.

40. The delegation of France shared the view of the delegation of the United States of America that the Committees should decide on the question of whether a recommendation was feasible. It thought that a large majority was of the opinion that a recommendation was feasible and it proposed that the results of the work of the Committees be materialized, not in the shape of a recommendation, but proposals or wishes addressed to the Director-General of Unesco stating that a recommendation was feasible and that it should place priority on solutions adopted on the national level based on certain general principles. It was opposed, however, to convening a meeting of governmental experts on this subject, since this might be felt to commit the concerned governments.

41. The delegation of India stated that it was difficult to support the recommendations of the Working Group. It felt that the matter was not of urgency. The conditions in India were different. There was no photocopying equipment in schools. Some photocopying was resorted to for wider dissemination of scientific papers. Any restrictions on this would be contrary to public interest. The author is already paid. India imports scientific journals at full cost without discounts. The blanket licensing system envisaged in paragraph (4) of the recommendations of the Working Group is not feasible in India where there was no authors' society. It was clear that no recommendation was feasible at this stage, at least in regard to developing countries, and further study by a committee of governmental experts was desirable.

42. The observer from the International Federation of Library Associations (IFLA), who was also speaking on behalf of the International Association of Law Libraries (IALL), stated that a joint working group on copyright, comprising 12 ordinary and a large number of corresponding members, had recently been established, that the United States had provided the Chairmanship, and that the USSR had been offered the Vice-Chairmanship. The group is studying the copyright problem from the libraries' point of view. The results of its studies will be

made available to the governmental and non-governmental committees involved. The observer felt that it would be unwise to attempt to draft any recommendations without consultation with IFLA. Libraries stand as the link between the author and the user and, if the problems and needs of libraries are ignored, both interests would be jeopardized.

43. The observer from the International Confederation of Societies of Authors and Composers (CISAC) considered that the problem was urgent. A large number of copies were being made by reprographic techniques as evidenced by the report of the Working Group. Even if the situation was not the same in all countries, it was bound to become so in the near future. The subject had been under study since 1961, and abundant documentation already existed. He felt that it would be a pity if the Committees did not think it feasible to move forward as yet. The recommendations of the Working Group, at which all interests were represented, may appear too general or far-reaching; however, they amply illustrate the three general principles involved, namely, that reprographic reproduction is reproduction, that equitable remuneration is necessary and that general, freely-negotiated agreements are needed. Some progress could be made on this basis. He supported the proposal of the delegation of France that a general recommendation should be made without further delay.

44. The observer from the International Publishers Association (IPA) regretted that for many years the Committees considered the question premature. Sweden had shown that it was ripe, and in the Netherlands and the United Kingdom a solution was imminent. He thought that the time was ripe for a general, if not a detailed recommendation, dealing in particular with the search for negotiated agreements. He shared the opinion of the observer from CISAC regarding the basic principles and suggested that a recommendation be made to States, keeping in view the needs of developing countries. A decision on such a recommendation would be left for each country to take.

45. The observer from the International Federation for Documentation (FID) speaking for the International Council for Reprography (ICR), stated that he could not agree to a recommendation based on present knowledge as reprographic technology was changing rapidly. He emphasized the necessity for further studies into the development of reprographic techniques so that a recommendation would not be outdated before it was adopted.

46. On the question of general procedure, the Chairman of the meeting stated that the majority opinion was that further examination of the problems involved was needed and useful, that the Intergovernmental Committee should recommend that the General Conference of Unesco should not decide on the matter at its eighteenth session, but should postpone its decision to a future session, and that sub-committees of the two committees should be convened to make a further study of the question and report back to the next sessions of the Committees, sitting together, in 1975, which should decide on future action to be recommended.

47. At the request of the Chairman, the two committees set up an ad hoc group consisting of Brazil, France, Senegal and the United States of America, with the Chairman as the ex officio Chairman, to draft the necessary resolutions for adoption by the Committees.

48. The ad hoc group proposed two draft resolutions for adoption by the Intergovernmental Copyright Committee and one draft resolution for adoption by the Executive Committee of the Berne Union (reproduced in documents IGC/XII/14 and B/EC/VI/7, respectively).
49. When presenting these resolutions to the Committees, the Chairman referred to the proposal of the ad hoc group that, if the Committees should decide to recommend the convening of sub-committees of the two Committees, all the participants in the Working Group which met at Paris from 2 to 4 May 1973, be invited to attend as observers. This proposal was approved by the Committees.
50. With respect to these resolutions, the representative of the Director-General of Unesco made a declaration in which he drew the attention of the Intergovernmental Copyright Committee to the fact that the mandate of the sub-committee, as defined in draft resolution 65 (XII), went, in the opinion of the Director-General, beyond the scope of the question which the General Conference of Unesco invited the Committee to examine in its resolution 5.151 adopted at its seventeenth session. In fact, as he also pointed out, part of this mandate dealt with the question of procedure which had been decided by the General Conference in resolution 5.151. This resolution, which was adopted by 79 votes for, none against, and in particular, its paragraph 2, still stood. He was therefore obliged to reserve expressly the position of the Director-General of Unesco on the stand he will be called upon to take when he reports to the General Conference of Unesco on the results of the work on this item of the agenda, as well as at the sub-committee and the Committees during their next meetings, and at any other stage of this project.
51. The delegation of Tunisia stated that the Intergovernmental Committee was faced with a question of extreme importance. It noted that its Government could not associate itself with resolution 65 (XII) which went beyond the mandate to the Committee. The procedural question referred to in the draft resolution had already been decided by the General Conference of Unesco and none of the States represented on the Intergovernmental Committee had voted against the General Conference decision. The Intergovernmental Committee was not, in its opinion, qualified to modify the procedure adopted by the General Conference of Unesco, or adopt a position which might not be confirmed by that body. The delegation of Tunisia added that its Government approved and supported the collaboration and cooperation between Unesco and WIPO, but that this collaboration should result neither in a paralysis in the work of either of the two organizations nor a reconsideration of the decisions taken concerning the programme of either of them, which could only be prejudicial to the States for which they worked. The delegation of Senegal and the observer from Algeria associated themselves with the views expressed by the delegation of Tunisia.
52. During the discussion of this report, the French delegation stated that it regretted that "procedure" had been included in the terms of reference of the sub-committees mentioned in the draft resolutions without a detailed discussion taking place with respect to this inclusion.
53. The observer from Algeria, supported by the delegations of Brazil and Tunisia and the observer from Mexico, stated that the problem of reprography was of no interest to developing countries and therefore the preparation of a

recommendation was not of interest to them. He requested the Committees to adopt the position that the recommendation to be worked out would not be addressed to developing countries.

54. The delegation of Senegal shared the views of Algeria and Tunisia, but felt that it was up to the sub-committees to go into the matter more fully.
55. With respect to the views expressed by some developing countries, the Chairman proposed that a new consideratum be added to draft resolution 65 (XII), noting the declaration of the developing countries members of the Intergovernmental Committee. The same was to be done to the resolution to be adopted by the Executive Committee of the Berne Union.
56. Referring to the imminent entry into force of the 1971 texts, the delegation of Hungary was of the opinion that developing countries cannot avoid considering the question of reprography. It felt that it would be a great mistake to exclude developing countries, but that the sub-committees should take into account the special interests of these countries.
57. In a spirit of compromise, the delegations of Brazil, Kenya, Israel and the United States of America and the observer from Algeria supported the proposal of the Chairman, referred to in paragraph 55. The delegation of the United Kingdom noted that it had considerable doubts about the effectiveness of a committee several of whose members appeared to have opted out of its conclusions and said that he would have to reserve the United Kingdom position with regard to the Committees' findings. The delegation of Israel indicated, however, that the adoption of the Chairman's proposal did not exclude the developing countries from participating in any group which might be established to study this subject.
58. The Committees thus decided to include the new paragraph, as proposed by the Chairman, in draft resolution 65 (XII) of the Intergovernmental Committee resolution and the draft resolution presented to the Executive Committee of the Berne Union.
59. The Intergovernmental Copyright Committee and the Executive Committee adopted respectively the draft resolutions as presented to them by the ad hoc group with the addition of the new consideratum. The resolutions as adopted by the Intergovernmental Copyright Committee appear in Annex A of this report.

Transmissions via space satellites

60. The Secretariat of Unesco introduced document E/EC/VI/3 - IGC/XII/3 concerning the results of the Third Committee of Governmental Experts convened jointly by the Directors-General of Unesco and WIPO which met in Nairobi (Kenya) from 2 to 11 July 1973.
61. The Committees took note of the recommendation of the Third Committee of Experts, and decided to leave further discussion of the matter to the diplomatic conference to be held in Brussels from 6 to 21 May 1974.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF
PHONOGRAMS AND BROADCASTING ORGANIZATIONS

62. The Committees noted the progress of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961), as reported in document B/EC/VI/4 - IGC/XII/4.

Phonograms convention

63. The International Bureau of WIPO presented document B/EC/VI/5 - IGC/XII/5 concerning the development of the Convention for the Protection of Producers of Phonograms against the Unauthorized Duplication of Their Phonograms and informed the Committees that the Government of the United States of America had deposited its instrument of ratification with the Secretary-General of the United Nations on 26 November 1973.

64. The delegations of India and the Federal Republic of Germany informed the Committees that their respective competent authorities had decided to ratify the Convention and that their instruments of ratification would be deposited shortly.

Model laws on copyright for developing countries

65. When introducing document B/EC/VI/6 - IGC/XII/6, the Unesco Secretariat explained the genesis of this programme and the steps so far taken by Unesco in co-operation with WIPO.

66. The Director-General of WIPO drew the attention of the Executive Committee of the Berne Union to its earlier mandate for the establishment of at least two model laws, one for English-speaking countries and one for French-speaking countries, and stated that the International Bureau of WIPO would like to have guidance from the Committee on the question whether it wished to have a single model law or several different model laws, for countries of different regions or languages. He said that the administrative meetings of the Berne Union held in Geneva in November 1973 had voted the necessary funds for carrying on further studies on this subject but that a decision on the said question had been left to this meeting. He stated that, notwithstanding the stated earlier mandate, WIPO had collaborated with the Unesco Secretariat in the preparation of a single draft model law and in the convening of the meeting of the African consultants at Geneva in March 1973. WIPO also actively participated in the Abidjan meeting in October 1973, although that meeting was convened, and the Secretariat of the meeting, was provided, by Unesco alone. He said that the work of establishing a model law would be continued in co-operation with Unesco in the manner in which the present meeting would wish it to be continued.

67. The delegation of Tunisia expressed a sense of regret that the draft model law prepared by the Committee of African Experts in Abidjan had not been made available to the Committee for consideration. It supported the adoption of the Abidjan resolution.

68. The delegation of Kenya shared the concern of the delegation of Tunisia. It noted that Kenya would welcome a final draft as soon as possible in order to take advantage of the special provisions of the 1971 Conventions. As regards the substance of the draft, it had felt at one time that a single model law for countries following different legal traditions might not be a workable solution but it had, since the Abidjan meeting, revised its view. It also hoped that the Committees would be able to adopt paragraphs (ii) and (iii) of the resolution adopted by the Abidjan Committee.
69. In view of the many variations in the social philosophies and precedents among developing countries, the delegation of India was not sure whether it would be possible to have a single model law. It felt that unless one or more seminars were held in different continents to consider a model law, any draft prepared would be of no practical application.
70. The delegation of Israel felt that copyright was an area in which uniformity might be achieved. This was especially true in view of the fact that most countries had adopted the underlying principles of the Berne Convention. It accordingly favoured the development of a single model law for developing countries, applicable on a world-wide basis.
71. The delegation of Brazil felt that the draft prepared at Abidjan for African countries could not be proposed for other regions with a different background. It suggested that similar meetings should be held on a regional level. A global meeting could only be thought of thereafter.
72. The delegation of Senegal, while supporting the views expressed by Tunisia and Kenya, drew attention to the fact that the mandate previously given to the International Bureau of WIPO was to prepare two basic texts and that this should now be reconsidered. It felt that, as was decided in Abidjan, the draft law should be a single one designed for global application, irrespective of the language, cultural or legal traditions of the developing countries concerned.
73. The delegation of the United States of America stated that the resolution adopted in Abidjan had much to commend it. It felt that perhaps the most practical way to put the text before the largest number of countries would be to develop a single text for all developing countries instead of trying to organize regional meetings. It was aware that differences in cultural and legal traditions exist and it could be argued that a series of regional meetings, each building on the experience of the preceding, might be useful. Although it was of the opinion that the Abidjan text provided a basis for a world-wide meeting, it thought that it was not for a developed country to pronounce on this topic which was essentially to be regulated by the wishes of the developing countries. In conclusion, it urged that the Abidjan text and the commentary thereon be established as soon as possible and made available to developing countries for use and comments.
74. The delegation of Italy felt that this was a matter essentially for domestic legislation in developing countries. The two Conventions had been revised in 1971 and both offered similar provisions for the benefit of developing countries. A single model law containing draft provisions, particularly with respect to these special faculties, might be of use to all developing countries. However,

this was essentially a matter which should be regulated according to the wishes of the developing countries themselves.

75. The delegation of France shared the views expressed by the delegation of Tunisia and stated that the question of a single law was a matter for developing countries to decide.
76. The observer from Mexico felt that the idea that one single draft might suffice to meet the needs of all developing countries was utopian. Problems, cultural backgrounds, legal systems and needs differ from country to country and, therefore, it was not possible to have one model law for all countries. Although, in his opinion, regional seminars would be useful, he thought it might be even more desirable for specialists from developing countries to be given an opportunity to consult directly with the two Secretariats on copyright questions of concern to them.
77. The observer from Ghana expressed the view that the Abidjan resolution was a practical one and stressed that the text prepared at Abidjan was not based on any regional considerations or approaches and was thus susceptible of world-wide application.
78. The observer from Algeria stated that the Abidjan text had brought together both the Anglo-Saxon and French traditions. Though he did not wish to impose this text on other developing countries, he felt that such a model law would be useful in other areas.
79. The Unesco Secretariat stated that the final Abidjan text could not be established for presentation at the present meeting because of the little time left after the Abidjan meeting. It also noted that the International Bureau of WIPO could not participate so far in the establishment of the said text pending an appropriate decision of the Executive Committee of the Berne Union regarding the matter.
80. Based on these discussions, the two Committees decided as follows:
- (i) the two Secretariats should incorporate in the draft model law presented to the Abidjan meeting the changes recommended by that meeting and that they should, as soon as possible, communicate the resulting text and a commentary thereon to all the African States for information purposes;
 - (ii) the said text and commentary should be transmitted for written comments to all members of the Berne Union and the Universal Copyright Convention; and
 - (iii) a committee of experts, to which the governments of developing countries would be invited to appoint representatives, should be convened, preferably by a developing State party to the Berne or Universal Copyright Convention in co-operation with and with the assistance of Unesco and WIPO, for establishing a model law on copyright for developing countries on the basis of the text and comments referred to in the preceding paragraph and compatible with the Paris (1971) revisions of the Berne and Universal Copyright Conventions.

Date and place of the next sessions

81. The Committees decided that the next sessions of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union, sitting together, should be held in Geneva in the fall of 1975.

II. ITEMS CONCERNING THE INTERGOVERNMENTAL COPYRIGHT COMMITTEE ALONE
PARTIAL RENEWAL OF THE INTERGOVERNMENTAL COPYRIGHT COMMITTEE

82. The Committee proceeded to the partial renewal of the Intergovernmental Committee by means of a formal vote taken on 7 December, in accordance with Rules 2 and 29 of its Rules of Procedure.

83. In conformity with Rule 2 of the Rules of Procedure, the Chairman drew lots to designate, from among the four outgoing countries - namely France, Italy, Kenya and the United Kingdom - the country whose term of office could not immediately be renewed. The country thus designated was Kenya.

84. The Committee then proceeded to vote on the subject of the vacant seats. The results of the vote were the following: Ghana: 11 votes; United Kingdom: 10 votes; France: 9 votes; Italy: 4 votes; Union of Soviet Socialist Republics: 4 votes; Canada: 3 votes; Sweden: 3 votes.

85. Ghana, the United Kingdom and France were declared elected. As Italy and the Union of Soviet Socialist Republics had received the same number of votes, a further ballot restricted to those two countries was taken, in conformity with Rule 29 of the Rules of Procedure. The results of this latter vote were the following: Italy: 7 votes; Union of Soviet Socialist Republics: 4 votes. Italy was accordingly declared elected.

86. The observer from Ghana thanked the Committee for having elected his country. The delegations of the United Kingdom, Italy and France also thanked the Committee for having re-elected their countries. The delegations of Italy and France further expressed the hope that the USSR would soon be a member of the Committee. The Chairman extended the gratitude of the Committee to the delegation of Kenya for the valuable contribution to its work during its membership on the Committee and welcomed Ghana as a new member of the Committee.

APPLICATION AND OPERATION OF THE UNIVERSAL COPYRIGHT CONVENTION

87. The Committee took note of the information contained in document IGC/XII/8 concerning accessions to the Convention adopted in 1952 which had occurred since its eleventh session. Three further countries (German Democratic Republic, Morocco, Union of Soviet Socialist Republics) had deposited with the Director-General of Unesco their instruments of accession to the Convention and, in the case of Morocco, to annexed Protocols 1, 2 and 3. In addition, the Director-General of Unesco had received from the Government of Fiji a communication informing him that it considered itself bound by the Universal Copyright Convention, the application of which had been extended to its territory before the attainment of independence. Lastly, the Director-General of Unesco had received from the Government of the United Kingdom a notification concerning the extension of the Convention to Hong Kong.

88. The Committee also took note of documents IGC/XII/9 and 9 Add.1 giving an account of the situation in regard to ratifications of and accessions to the Convention as revised in 1971. The Committee further took note of the fact that Kenya had just ratified the Convention, and of the statements made by the delegations of Spain and India to the effect that their Governments would shortly deposit their instruments of ratification of the 1971 Convention.

EXAMINATION OF THE COPYRIGHT PROTECTION ENJOYED BY TRANSLATORS

89. The Committee examined the report submitted to it by the Secretariat on copyright protection enjoyed by translators (document IGC/XII/10).

90. The delegation of the United States of America considered that the time was ripe for the Committee to adopt a stand on this question which had been studied by a committee of experts and had been the subject of several excellent surveys prepared by the Secretariat of Unesco. As the General Conference of Unesco had, at its seventeenth session, adopted a resolution inviting the Committees of the Copyright Conventions to prepare any measures they might deem necessary for improving the situation of translators, the delegation of the United States of America proposed that the Intergovernmental Committee adopt a resolution on that subject. Considering that the protection enjoyed by translators under the provisions of the Copyright Conventions and of many national laws was adequate, but that there were difficulties in connexion with the practical application of those provisions - a field in which the International Copyright Information Centre could play an important rôle - the delegation of the United States of America suggested that the Committee's resolution should recognize the importance of translation, should invite the States parties to the Universal Convention to extend to translators protection equivalent to that granted to them by Article 2(3) of the Berne Convention, and should ask them to take steps to ensure the application in practice of such protection.

91. The delegations of Tunisia, the Federal Republic of Germany, Kenya, Brazil, Spain and France supported the proposal of the delegation of the United States of America. The delegation of France suggested, moreover, that the resolution should bring out the fact that while, from the legal point of view, the situation of translators was satisfactory, the difficulties to be faced were difficulties of application in practice.

92. In the light of the above observations, the Intergovernmental Copyright Committee adopted resolution 66 (XII) which is appended to the present report (Annex A).

LEGAL AND TECHNICAL ASSISTANCE TO STATES IN DEVELOPING THEIR NATIONAL COPYRIGHT LEGISLATION

93. The Committee heard with satisfaction the report submitted to it by the Secretariat on this question, which forms part of the Programme of Participation in the Activities of Member States implemented by the Unesco Secretariat. It noted that, since its eleventh session, the following programmes of assistance to developing countries have been, or are being, carried out to help them to develop their national copyright legislation, to set up administrative structures

such as national copyright information centres, societies of authors, etc., or to train copyright specialists: (i) award of three- to six-month fellowships to nationals of the Central African Republic; the People's Republic of the Congo, Ghana, Mauritius, Nepal, Sri Lanka, and Trinidad and Tobago; (ii) dispatch of experts to Argentina, Dahomey, Ghana, Ivory Coast and the Khmer Republic.

PROPOSAL FOR AN INTERNATIONAL INSTRUMENT FOR THE PROTECTION OF FOLKLORE

94. This item was placed on the agenda at the request of the Government of Bolivia, which had prepared a memorandum on the subject (see document IGC/XII/12).
95. Referring to the memorandum submitted by the Government of Bolivia, the delegation of Algeria pointed out that the existing Conventions protected tangible objects but not such forms of expression as music, dance or folk arts. As part of the national cultural heritage, folklore should be considered as State property and should not be surrendered to the public domain. To this end, the possibility should be explored: of adding to the Universal Convention a new Protocol recognizing the proprietary right of States parties to the Convention over cultural expressions of collective or anonymous origin which have acquired traditional character in their territory; of signing a Convention to regulate the aspects of folklore preservation, promotion and diffusion; of establishing an "International Register of Folkloristic Cultural Property"; and, lastly, of extending the sphere of competence of the Intergovernmental Committee to include the study of the problems which might arise in applying the proposed Protocol such as the research-based assignation of paternity between two or more States in respect of common forms of expression.
96. The United Kingdom delegation stated that it would not be possible to introduce a provision concerning folklore into British law owing to the difficulty of determining, in a country whose cultural heritage has many roots, from which of these the different folk arts stem. The delegation considered that, from the practical point of view, folklore was considered such only in its country of origin. Accordingly, folklore should not be protected at the international level.
97. The delegation of India endorsed the view expressed by the United Kingdom delegation.
98. Seconding the delegation of Algeria, the delegation of Mexico stressed the importance of folklore for the preservation of a people's identity. It proposed that an expert committee be appointed without delay to prepare a draft international instrument on the subject.
99. The delegation of Kenya, seconded by the delegation of Tunisia, recalled the work of the Stockholm Conference for Revision of the Berne Convention, and the proposal made in this connexion by the delegation of Yugoslavia at the 1952 Intergovernmental Copyright Conference at which the Universal Convention was adopted. It stated that the problem of international protection of works of folklore had taken on an urgent character because of the increasing number of fixations of examples of folk arts. Since these were not works protected by the copyright Conventions, the principle of national treatment embodied in those

Conventions was in their case inoperative, even though provision might be made for the protection of national folklore in the domestic legislation of a country, as for example in the draft model law prepared at Abidjan. In the opinion of the delegation of Kenya, it would, therefore, be necessary to draft an appropriate new international instrument and if need be to appoint for that purpose an expert committee to study the question and to propose measures designed to provide such protection.

100. The delegation of the United States of America endorsed the statement made by the delegation of Kenya. In its view, folklore ought to be protected both at the national and at the international level. The United States delegation considered that at the international level, a Protocol appended to the Universal Convention or any other separate instrument would be desirable; in view of the difficulties encountered in the protection of folklore even at the national level, it would, however, be advisable for further studies to be carried out regarding, in particular, the ways in which the protection of folklore might affect the access of authors in the developed and the developing countries to that source of culture. Since, in its view, the problem of the protection of folklore arose not only in connexion with the Universal Convention but also in connexion with the Berne Convention, the United States delegation proposed that the International Bureau of WIPO be invited to participate in Unesco's study of the question.

101. The delegation of France observed that, whereas the protection of folklore seemed feasible at the national level, it appeared to raise a number of problems at the international level. The French delegation mentioned, by way of example, a few such problems: the limitation of the benefit of such protection to the developing countries alone or its extension to the developed countries as well - a course which the French delegation did not advocate on account of the too great interpenetration of cultures in the developed countries and the consequent difficulty of determining the origin of works of folklore; moreover, in the event of the benefit of protection being limited to the developing countries alone, the need for finding a precise criterion for determining which countries belonged to that category might give rise to difficulties; the rights acquired over works of folklore when they had already been fixed or used in some other way; the scope of the protection contemplated; the tremendous amount of administrative work entailed in the compiling of an "International Register of Cultural Property" for example, and its financial repercussions.

In the opinion of the French delegation, all the foregoing questions should form the subject of preliminary studies.

102. The delegation of Italy recalled that the Stockholm Diplomatic Conference for Revision of the Berne Convention had discussed the matter of the protection of folklore at length and that its findings were summed up in Article 15(4) of the Berne Convention, to wit, that the matter should be left to the competence of the national legislations. The Italian delegation also stressed the complexity of the problems involved in such protection, especially in so far as acquired rights were concerned. It considered, however, that the developed countries ought not to be excluded from that protection. It stated, further, that if the protection of folklore were to be sought at the international level, the folklore of the developed countries ought not to be excluded and that, in the event of its being excluded, Italy for its part would not renounce the protection of its national folklore.

103. At the conclusion of its discussion on this subject the Committee decided to entrust the Unesco Secretariat with the task of studying the problem and reporting thereon to the two Committees at their forthcoming sessions.

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL COPYRIGHT INFORMATION CENTRE

104. The Committee noted with satisfaction the report submitted to it by the Secretariat on the activities of the International Copyright Information Centre (document IGC/XII/13).

105. The delegation of Czechoslovakia noted that in its country the creation of a national copyright information centre was viewed favourably and that a final decision in this respect would be communicated to the Director-General of Unesco in the near future. The delegation of Brazil announced that its Government had decided to set up a national copyright information centre in its country.

106. The delegation of Tunisia expressed its appreciation of the work done by the Centre, which was particularly useful to the developing countries.

107. The Committee endorsed the statement made by the Tunisian delegation.

ADOPTION OF THE REPORT

108. The Committee unanimously adopted this report.

CLOSING OF THE MEETING

109. The delegation of Brazil congratulated the Chairman of the Intergovernmental Copyright Committee on the competence and authority with which she had conducted the work of the Committee.

110. The Chairman then declared the meeting closed.

ANNEX A

RESOLUTIONS

REPROGRAPHIC REPRODUCTION OF WORKS PROTECTED BY COPYRIGHT
RESOLUTION 64 (XII)

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris, from 5 to 11 December 1973,

Having examined the item on its agenda relating to the reprographic reproduction of works protected by copyright,

Recalling in this connexion resolution 62 (XI) adopted by it at its eleventh ordinary session in Geneva from 3 to 5 November 1971,

Considering that, under the provisions of paragraph 3 of resolution 5.151 adopted by the General Conference of Unesco at its seventeenth session, the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union have been invited to examine, at their joint meetings in 1973, the feasibility of preparing a recommendation on this question,

Recalling that under the provisions of paragraph 4 of this resolution the Director-General of Unesco is authorized "to take account of the results of the work of the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union and, if feasible, to prepare a draft recommendation for submission to the General Conference at its eighteenth session",

Noting that this important problem was the subject of deliberations of the Working Group on Reprographic Reproduction of Works Protected by Copyright, convened under the joint auspices of Unesco and the World Intellectual Property Organization (WIPO) in Paris from 2 to 4 May 1973,

Taking into account the results of the said Working Group and expressing its gratitude for the important contribution of that Group,

Noting the declaration of developing States members of the Committee according to which the matter did not appear to be of interest to them and that they reserved their position on the question whether they wished to be among the addressees of any recommendation which might result from the studies referred to in this resolution,

Being of the opinion that the matter is not yet ripe for taking a definitive stand as to the feasibility of adopting a recommendation on this subject and its study should be continued,

Noting the resolution adopted on the same matter by the Executive Committee of the Berne Union,

Decides to continue the examination of the question at its thirteenth session which will be held in 1975, sitting together with the third extraordinary session of the Executive Committee of the Berne Union;

Recommends that the General Conference of Unesco postpone to a future session its decision concerning the adoption of a recommendation on the reprographic reproduction of works protected by copyright.

RESOLUTION 65 (XII)

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris, from 5 to 11 December 1973,

Recalling its resolution 64 (XII) on the reprographic reproduction of works protected by copyright,

Decides to appoint a sub-committee of this Committee consisting of representatives of States members of this Committee which will be charged with examining the matter covered by resolution 64 (XII) both with respect to its substantive and procedural aspects;

Charges this sub-committee with making this study, sitting together with the similar sub-committee appointed by the Executive Committee of the Berne Union;

Decides that the study of the Working Group mentioned in paragraph 5 of resolution 64 (XII), as well as a reference to the various solutions adopted at the national level should be among the documentation submitted to the sub-committee;

Requests the sub-committee to submit the results of this examination to the next session of this Committee, sitting together with the Executive Committee of the Berne Union.

PROTECTION OF TRANSLATORS

RESOLUTION 66 (XII)

The Intergovernmental Copyright Committee meeting at its twelfth ordinary session in Paris, from 5 to 11 December 1973,

Having examined the item on its agenda relating to the copyright protection enjoyed by translators,

Stresses the very important rôle which translation plays in the general context of development as well as in the interpenetration of cultures;

Considers that the protection enjoyed by translators under the Universal Copyright Convention, the Berne Convention and the majority of national laws is adequate;

Is of the opinion, nevertheless, that in order to promote the dissemination of works, States party to the Universal Copyright Convention should accord translators, on the national level, the full rights granted to authors of literary, scientific and artistic works, without prejudice to the copyright in the original works;

Invites States to adopt measures of a practical nature to ameliorate the effective application of the principles contained in the international Conventions and national laws on this subject.

ANNEXE B/ANNEX B/ANEXO B

LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS
LISTA DE PARTICIPANTES

Les noms et titres qui figurent dans la liste ci-après sont reproduits dans la forme où ils ont été communiqués au Secrétariat par les délégations intéressées. Les pays sont mentionnés suivant l'ordre alphabétique de leur nom en français.

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Mlle Ana Lucia de Lyra Tavares
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Mr. Harvey J. Winter
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Mr. Lewis Flacks
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Professeur de droit

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Ministère du développement industriel et scientifique

Mlle E. de Dampierre
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Représentant du Directeur général de l'Unesco

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M. Salah Abada
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Mr. David K. Catterns
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Ministère de la Justice

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Ministry of Cultural Affairs

Mr. J. Nørup-Nielsen
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M. Calo Ponce Benavides
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Ministry of Education

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Mr. Yukifusa Oyama
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Mr. W.J. Blackstone
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Legal Adviser
Ministry of Justice

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Chef de la Section du droit d'auteur
Bureau fédéral de la propriété intellectuelle

TCHECOSLOVAQUIE/CZECHOSLOVAKIA/CHECOSLOVAQUIA

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Professeur agrégé à l'Université Charles à Prague

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SOCIALIST REPUBLIC/REPUBLICA SOCIALISTA SOVIETICA DE UCRANIA

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UNION DES REPUBLIQUES SOCIALISTES SOVIETIQUES/UNION OF SOVIET
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Président de l'Agence Soviétique pour les droits d'auteur

Mme Julia Gaidoukova
Agence Soviétique pour les droits d'auteur
Département de la vente et de l'achat des droits

YUGOSLAVIE/YUGOSLAVIA

Dr. Vojislav Spaić
Professeur à la Faculté de Droit

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