reference is made to rights granted by domestic legislation, it should not be thought that we have taken a stand on the serious question of the nature of copyright: from the position we take here, rights granted and rights recognized are absolutely synonymous expressions.

In appearance it would seem that we have achieved maximum simplicity, since we are providing you with the single text called for by the wishes of the Paris Conference. The reality is not so brilliant, and we do not hide the fact. The new Convention will only put an end to the previous Acts in the relations between the States which sign it and, consequently, it is to be feared that these Acts will subsist for some. Furthermore, we have accepted the fact that signatory States, on ratification, could make reservations and that non-Union States, on joining, could also prefer the earlier right. This will necessarily produce something of a mixture, while we do have the Union, we do not have unity. This should not come as a surprise: simplicity is not achieved at the first attempt and complexity should not be regretted when it is the only means of guaranteeing the freedom of some and of bringing about the accession of others. Time will do its work, the anomalies will disappear, the notifications referred to in our last article will announce their gradual disappearance and a time will come when all the provisions of our Convention will be the only ones to apply. Let us also hope that our Union will develop externally, that it will come to include all the European States and even gain members from across the seas. It would be a glorious triumph for international law in a limited but extremely interesting sphere.

And now permit the Rapporteur to end with a personal word. He would like to make a point of expressing his sincere gratitude for the kindness you have all shown him in carrying out his duties as Chairman, for the assistance which the members of the Drafting Committee have given him especially, and thanks to which he hopes to have succeeded in providing you with an exact commentary on your decisions. He would add his particular gratitude to our devoted Secretary General, Mr. ROTHISBERGER, who, with tireless zeal, has been his real collaborator in an often delicate task. It is not without a touch of melancholy that, after participating in the creation and development of a piece of work which is dear to him, the Rapporteur sets down his pen and sincerely hopes that his successors will receive the same kind assistance.

Louis Renault
Committee Chairman and Rapporteur

Records of the Conference

Convened in Rome May 7 to June 2, 1928

I. Memorandum by the Italian Delegation Concerning the Protection of the Personal (Moral) Rights of the Author

The Italian Delegation proposes the addition to the Convention of the following text:

‘Article 6bis

Independently of the protection of economic rights provided for in the following articles, and notwithstanding any assignment, the author shall at all times have:

(a) the right to claim authorship of the work,
(b) the right to decide whether the work should appear,
(c) the right to object to any alteration of the work that would be prejudicial to his moral interests.

It shall be a matter for the domestic legislation of the Contracting Parties to introduce provisions to regulate the above rights, and especially to reconcile the exclusive right of publication with the dictates of the public interest, as well as to reconcile the right mentioned under (c) with the right of the owner of the physical object embodying the work.'
'After the death of the author, these rights shall be exercised by the persons or bodies designated by the legislation of the country of origin of the work. The means of redress for safeguarding these rights shall be regulated by the country in which protection is claimed.'

We believe that it would be permissible to maintain that the idea of extending Union protection to the author's personal rights has already been acknowledged in principle in Article 7 of the Convention, which makes the licence to reproduce newspaper articles subject to the condition of 'mentioning the source.' What really is this 'mention of the source' other than rudimentary recognition of the personal right of the author to claim authorship of his work?

The demand for international protection of the personal rights of authors dates back a long way, moreover.

In 1899, almost 30 years ago, here in Rome, the International Press Congress expressed the wish 'that it should be laid down as a matter of principle in all legislation that the author of a literary or artistic work, even where he has transferred full ownership of that work, yet without renouncing his authorship, has transferred only the right of using it and reproducing it such as it is, without any modification, and that he retains in relation to it a moral right that permits him to object to any reproduction or public display of the work after alteration or modification; and also that an article should be incorporated in the Berne Convention at its next revision which establishes the same principles.'

The same wishes have been repeated at more recent congresses, and, as we mentioned in the explanatory memorandum that accompanied our proposal, the Commission of the International Institute of Intellectual Cooperation decided, at its July 1927 session, to submit a recommendation to the Conference in favour of the introduction in national legislation of the 'right to respect.' The French Administration has also proposed to the Conference a wish that Union countries introduce formal provisions as soon as possible in their national legislation whose purpose would be to establish the moral rights of authors in relation to their works; and that it be declared desirable that the rights be made inalienable and the procedures surrounding them laid down in identical form in each country.

The question has been stirred up a number of times within our Conferences. At the Berlin Conference it seems to have been taken into consideration more in the sense that personal rights strengthened the justification of exclusive economic rights. For instance, in the Renault report, on the question of assimilating the right of translation to the right of reproduction, the following is noted:1

'Mr. Georges Lecomte looked at the situation particularly from the point of view of the author's right, his moral right as much as his pecuniary one, in supporting the German proposal, in keeping with traditional French doctrine. The author is the best judge of whether his work can be translated and which translator is the most competent to do so: in this way he is in a position to prevent any distortion of his thought.'

It should be mentioned that the shift of focus that has occurred in legal doctrine in favour of the protection of personal copyright has recently taken on a more general, more uniform and more precise character, in spite of the divergent theories on the nature of copyright. For, regardless of whether this right is assimilated to the right of physical ownership, or conceived as a new economic right in immaterial or intellectual property, or if the opposite view is held to the effect that the right represents no more than a branch of the group of rights of the private person, or, finally, if the right is conceived as being a sui generis right which, in the course of its development and according to the various prerogatives that make up its content, operates as a personal right and

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1 See the long list of those wishes in the brochure of the International Institute of Intellectual Cooperation, *La protection internationale du droit d'auteur*, Paris, 1928. To that list should be added the wishes of the Logano Congress of the International Literary and Artistic Association (1927) and those of the Brussels Congress of the International Federation of P.E.N. Clubs (1927).

Appendix

as an economic right by turns, it is agreed today that, independently of the exclusive rights of economic character, which are essentially temporary and transferable, the author does own one right, or a set of rights strictly inherent in his person, that are intransferable and without limitation in time, and which mainly concern the absolute right to publish or not to publish the work, to recognition of authorship and finally to the protection of the integrity of the work.

The courts of countries of the Union have recognized these rights on many occasions. Indeed this unanimity of doctrine and case law has even led to the argument that ultimately the rights do not need to be regulated by law, the common principles that operate to safeguard the rights of the private person being sufficient to guarantee them.

This opinion is a mistaken one, however. The analogy with the rights of the private person is not a conclusive one, not only on account of the difference of content of these two categories of rights, but also on account of the diversity of the interests with which they are in conflict. The personal interests of authors, particularly with regard to control over the publicity given to the work and resistance to any alteration or deformation, are very often at odds with the equally respectable interests either of the assignee of the exclusive rights or of the public in the case of works that have fallen in the public domain or permissible reproductions (rights of quotation and borrowing). In the field of the figurative arts, moreover, the conflict between the author and the owner of the work, which is the material embodiment of the intellectual or artistic concept, often presents itself as a conflict of a complex and very delicate nature. How can one, under such circumstances, rely on the discretionary assessment of a court, and put up with the inevitable uncertainties of case law?

We take the liberty of drawing the attention of the Conference to another very interesting point, from which emerges another argument in favour of the need for the legislative control that we are advocating.

The system of exclusive rights, as we know, is not the sole form adopted for the protection of the economic rights of authors. Two other forms have long been incorporated in the legislative provisions of a number of States of the Union, namely the system of the 'domaine public payant' and that of compulsory licences, both of which restrict economic rights to a percentage share of the commercial exploitation of the work. The pros and cons of the two systems have been widely discussed. What is certain is that they have enabled Great Britain to prolong the protection of rights up to a full term of 50 years after the death of the author. There is moreover no proof that they cannot, if they are carefully regulated, afford as great benefits to the author's purse as those that might result from the exploitation of exclusive rights, and at least more reliable benefits. Apart from that we should not forget that the rise in the standard of living of the broad masses of the population, which has been one of the results in the European War in a number of countries of the Union, has created very extensive intellectual and cultural needs that have to be taken in hand by the State, and which militate in favour of the systems concerned. Finally there are certain works and certain modern means of reproduction and means of communication to the public in general which, by virtue of their particular nature, suggest new arguments in support of those systems that aim towards the more intensive and wide-ranging dissemination of the work.

We do not wish to anticipate the viewpoint of the Italian Delegation in the great question of radio broadcasting, but we do wish to establish quite simply that it is at the very least highly probable that the compulsory licence and 'domaine public payant' systems will remain in force, and in the future may indeed be given broader and more widespread application in the territory of the Union.

If that should be true, the result is a new reason for recognizing and safeguarding the personal rights of authors as being independent rights completely separate from the economic rights. For while the system of exclusive economic rights also covers, up to a point and within certain limits, the personal interests of the author, the systems mentioned above, on the other hand, leave those interests without any protection; they even increase the risk of prejudice precisely owing to the sheer intensity
of the industrial exploitation that they aim to bring about.

The wishes of the Congresses, the trends of doctrine and case law and the need to protect the author against abuses of the compulsory licence and *domaine public payant* systems are all evidence that the matter of the protection of the personal rights of the author is ripe for legislative solutions. What is more, those legislative solutions already exist.

The range of laws enacted after the Great War that recognized and regulated these personal rights with more acute sensitivity to modern realities is already quite considerable.

We would mention the Romanian Law of June 28, 1923, the Italian Law of November 7, 1925, the Polish Law of March 29, 1926, and the Czechoslovak Law of November 24, 1926. In a number of other States draft legislation on the same lines has been presented to the parliaments concerned or is under consideration, for instance in France (Plaisant draft), in Norway, in Yugoslavia, etc.

Could one object that the example of the above laws is not conclusive in that they are domestic laws, whereas the question to be solved is whether international regulation is necessary?

Such an objection—we feel bound to say it—would really be lacking in seriousness. As much as the exclusive economic rights, and indeed more than it, the author's personal rights call for international protection.

It should be sufficient to point out, with regard to principles, that, while these rights are not identified with the generic rights of the human personality, as eminent writers have argued, they are at the very least strictly related to those rights, which at all times have enjoyed protection by international law. From that point of view, personal rights demand Union protection by virtue of a claim that is even older and stronger than that of exclusive economic rights.

It is certain that for banal works, or those which by their nature are destined exclusively for the national intellectual market, the question does not even arise. However, for intellectual works that transcend the limits of State frontiers and elevate the personality of the author to the heights of international renown, the protection of that personality cannot be anything but international.

Moreover, the subjective, intellectual value of the work is closely tied up with its objective, commercial value. The protection of the personal rights of the author is therefore justified as being an adjunct and also an accessory of the protection of his economic interests. The authors' rights to claim authorship of the work, to decide whether and under what conditions the work is to appear, and to object to any alteration that would prejudice his moral interests, are designed to protect his credit, his reputation, his renown; however, by a natural repercussion they have the effect of also protecting his present and future economic interests.

If, finally, we relate this problem to the questions specifically submitted to the Conference for discussion, we see clearly how much the proposal that we are advocating will help solve the matters at issue.

First, the general matter of reservations. It is to be hoped that reservations will disappear completely from the Convention both for the present and for the future. It is however possible that they will not disappear completely, and above all that a certain, more or less extensive right to make reservations will have to be retained in order to attract new accessions, particularly on the part of countries at a lower level of progress. Under these circumstances, who can fail to see the desirability of making the reservation faculty subject to respect for the author's personal rights? One need only consider the reservation concerning the limits of the exclusive right of translation to concede this point.

And then, proceeding to some of the main amendments on the Conference table, who can fail to see that absolute, complete respect for the personal rights of the author has to be the *sine qua non* for granting exceptions to exclusive rights, either in connection with the press or in the licensing of quotations and borrowings?

Moreover, how can it be doubted that the system of compulsory licences for the

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1 A number of other laws could also be mentioned that have likewise recognized the personal rights of the author, albeit in an indirect or fragmentary fashion.
adaptation of musical works for phonographs, which has already been recognized within certain limits in Article 13, and which it is proposed should be maintained and indeed broadened, has to be subject to the condition that the integrity of the work is respected?

And what sound structure of rules can we hope to erect in order to reconcile contrasting interests in the so-delicately and so-complex question of radio broadcasting if we do not start by safeguarding first the interests of the author's personality?

We are profoundly convinced that the protection of the author's personal rights has to be ensured first. Once these rights have been guaranteed, we can discuss the problems of the Conference more freely.

We believe that we have in this way demonstrated the fairness and necessity of international protection for the author's personal rights. A short address would be sufficient to clarify the proposed text, subject to the provision of such more detailed explanations as may be necessary in the course of the discussion.

In any event the text is very simple. Care has been taken in drafting it to ensure that this first official recognition of international protection is limited to the contents of the rights, which seemed the most elementary and the least liable to engender dispute. Moreover the text confines itself to stating general principles, and refers to national legislation to establish the procedure and also such limits as may need to be placed on the application of those principles.

The proposed new article should have the number 6bis, as it should occupy an intermediate position in the sequence of articles after the first six, which contain general provisions applicable to the regulation of copyright in its double, personal and economic content, and before the subsequent articles which deal with exclusive economic rights.

The self-contained and independent character of this protection of personal rights is apparent in the first words of the text: 'Independently of the protection of copyright governed by the articles which follow. . . .'

The text continues with the mention of the two fundamental characteristics of the rights concerned, namely those of being not susceptible to any assignment and of being not subject to the limitation in time that affects economic rights. Indeed the Article continues as follows: '

(a) the right to claim authorship of the work;
(b) the right to decide whether the work may be published;
(c) the right to object to any modification of the work which is prejudicial to his moral interests.'

The first right, mainly that of claiming authorship of the work, is really the primary and elementary right that necessarily and exclusively arises from the intimate and personal fact of creating the work. Other, secondary and derived rights follow from this one. For instance, taking the Italian law as an example, there follows the author's right to demand that any reproduction, whether authorized or allowed by the law as an exception to his exclusive rights, or because his exclusive rights have lapsed, should always mention the name of the author and the title of the work reproduced. There also follows the right of the author of an anonymous or pseudonymous work to disclose his identity and oblige those who are handling the publication or reproduction of the work to mention the name of the author in subsequent publications, reproductions, etc., notwithstanding any provision to the contrary. We are asking for the organization of these and other, secondary rights to be entrusted to national legislation.

The second personal right, which is also of an elementary nature, is given in the phrase 'to decide whether the work should appear.'

These words encompass the whole status of the work, from its creation and purpose to its publication; that status is so closely, so delicately and so intimately linked to the person that the writers of old, hypnotized by the assimilation of copyright to the right of ownership, had even doubted whether it actually belonged to the sphere of legal relations. It does belong to it, but in the form of a set of personal rights that establish a sovereignty over the work that is far more absolute and unlimited than would belong to the author after it has been designated for publication. Thus, during this period, the work is protected against any attachment by creditors, and also, in general,
against all encumbrances or limitations that are imposed on the published work in the public interest. There is no time limitation on this right of publication before it is exercised, as the very fame or obscurity of the author can depend on it, indeed the very success or failure of an entire scientific, literary or artistic career. Universal doctrine therefore tends to safeguard the exercise of that right until such time as publication has actually occurred, and indeed afterwards (right of withdrawal).

The third element is

"The right to object to any alteration of the work that would be prejudicial to his moral interests."

This right has been and still is abundantly discussed. There is no option of denying the author the right to prevent his work from being altered, deformed, transformed or mutilated, to the detriment not only of his economic interests but also of the more delicate interests of his scientific, literary or artistic personality, which is represented by the work itself, and we have indicated the great importance of guaranteeing that right, not only after the term of protection has expired but also during it, when the exercise of the exclusive right has been assigned or replaced by the attenuated form of compulsory licensing or the 'domaine public payant.'

The importance of and the justification for this right of prohibition, with which some legal writers even identify the entire content of the author's personal rights (in that case called the right to 'respect' or 'regard'), are beyond dispute. One should not, however, exaggerate to the extent of protecting what would not be a legal interest so much as excessive sensitivity on the part of the scientist, artist or writer. Moreover, in the field of figurative art, this right has to be reconciled with the opposing right of the owner of the _corpus mechanicum_, namely the physical object in which the artistic conception is embodied. The delicate problem of the limits on the application of this right therefore arises as a problem still more obviously in need of solution than in relation to the other personal rights, and that solution too should also be referred to national legislation.

The next paragraph of the proposed text precisely refers to that question of the procedure for and limitations on the application of these rights, by providing as follows:

'It shall be a matter for the domestic legislation of the Contracting Parties to introduce provisions to regulate the above rights, and especially to reconcile the exclusive right of publication with the dictates of the public interest, as well as to reconcile the right mentioned under (c) [right to oppose alterations of the work that would prejudice the author's moral interests] with the right of the owner of the physical object embodying the work.'

The need to leave the States of the Union free to regulate these new rights as they see fit appears obvious to us. It would no doubt be desirable to have uniform rules in this area, as mentioned in the resolution proposed by the French Administration, but it does not seem possible to us to impose such uniformity from the outset.

The last two paragraphs of the Article concern the exercise of the right after the author's death and the means of redress.

It is generally acknowledged that the personality of the author has to be protected even after his death. Close relatives have a personal interest in asserting this protection not only on account of its connection with the exercise of the economic rights that have passed to them, but also on account of the reflected honour and standing that the author's renown sheds on his family.

Certain laws, such as the Italian one, recognize that the author may entrust the provision of that protection to a specific person, and that the State may always intervene in cases where no action is taken by heirs. Some other laws entrust the provision of protection directly to a special body, for instance an academy. That has to be a problem for domestic legislation to solve. But of which country? We felt that a situation where sole competence belonged to the country of origin of the work should be preferred, but we do recognize that one could just as well confer the right on the country of which the deceased author was a national.

According to the principles of the rule indicated at the end of the seventh paragraph of Article 4 of the Convention, and pursuant to it, it is stated at the end of the text that the means of redress to safeguard the rights will be regulated by the legislation of the country in which protection is sought.
We would conclude as follows: the wishes of the Congresses, the deliberations of the previous Conferences, the trends in doctrine and case law, the example of the most recent laws on copyright and, finally, the nature of the questions presented to the present Conference for consideration prove, in our opinion, not only that the problem of the international protection of the personal rights of authors has matured, but also that the Convention's formal recognition of those rights as bringing self-contained rights, independent of the international protection of economic rights, is imperative for the purposes of the revision of the Convention in relation to the questions included in the deliberations of the Conference.

The draft text that the Italian Delegation has the honour to submit to the Conference moreover contains very simply and very broadly formulated provisions that refer only to the most elementary and least contentious aspects of those personal rights, leaving the national legislation of countries of the Union to organize procedures and limits for the application of that protection.

The Italian Delegation is confident that its proposal will be accepted. It has vigorously defended it in this Memorandum for three reasons at the same time:

First, because it seems that such formal recognition of the personal or moral content of copyright elevates the task of the Union or throws it into relief, and in turn seems to point the way to a new and beneficial turning point in the progress of protection.

Secondly, because the new protection will considerably benefit the interests of letters and the arts, and most especially the interests of musical works, to which Italy has to pay particular attention.

Finally, because the new protection corresponds to the principles that have inspired the new copyright law of the new Italian national regime. This new law, which was promulgated in November 1925 in the course of the parliamentary session that sanctioned the fundamental laws of the Fascist regime, proves of itself, and on account of the very efficacious protection that it gives to the personal interests of authors, to what great extent Fascism intends to support and further the efforts of intellectual workers.

In the name of common ideals, in the legitimate interest of authors and, for Italy, those of its performing and other artists above all, we wish that the Conference may see fit to place personal rights under the wing of international protection.

II. Reports of the Sub-committees

1. Sub-committee on Moral Rights

This report can be brief, because, in the course of two discussion meetings, complete agreement emerged not only on the matter of principle, but also on the manner in which the amended Italian proposal had ingeniously succeeded in condensing the essence of the various proposals formulated by national delegations. A number of delegates would admittedly have preferred more clear-cut and detailed affirmations, such as are already written into some recent legislation, but a great desire for union, a common will to bring about the international establishment of a new principle of the noblest and most elevated order, made for mutual concessions and the achievement of agreement. We would note that the concessions relate only to drafting and possible applications, but that the principle is fully established, and that it is henceforth beyond doubt that the creator of a literary and artistic work retains rights in the product of his intellectual effort that are above and outside all agreements on disposal. Those rights, which for want of a more adequate expression are called moral rights, are distinguished from economic rights, and assignment of the latter leaves the former intact. The Conference has not considered it necessary to specify them, as any enumeration introduces a risk of limitative interpretation. It intends to leave national legislation and jurisprudence to take care of the exercise, extent and conditions of those rights, which circumstances can make infinitely diverse. Everything in the sphere of moral rights, as in all spheres, is governed by measure and moderation. In future the courts will find that the ratified Convention is the very text that they lacked to determine the consequences imposed by the nature of things and common
 equity in order that the author's honour and reputation may be fully safeguarded.

The Sub-Committee did not think it necessary, in its text, to go beyond the protection of the personal rights of the author. As for what would happen after his death, it acknowledged in principle that the right to respect could be exercised even against the owners of the economic rights, but thought it wise not to choose between the various systems proposed to determine who should be given responsibility for ensuring respect of that right: academies, scientific bodies, States, etc. The writer of this report is convinced that, sooner or later, the broadest conception will be worked out, which is that adopted by the Commission of the International Institute for Intellectual Cooperation, which confers on every citizen the right to claim respect for works that are the common heritage of mankind.

Whatever might be thought of that individual opinion, it was with a real and growing enthusiasm that the Sub-Committee heard the various delegations give their support to the recognition of moral rights, and its rapporteur hopes to find the same conciliatory spirit, the same appreciation of the greatness of the progress made in the protection of literary and artistic works, within the Plenary Committee.

It therefore has the honour to propose to the Conference that it finally adopt the text below:

**Article 6bis**

'(1) Independently of the economic rights of the author, and even after assignment of those rights, the author shall retain the right to claim authorship of the work, and also 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 in which protection is claimed.'

**Resolution**

'The Conference expresses the wish that the countries of the Union consider the possibility of introducing, in such of their legislation as does not contain provisions in that respect, such rules as would prevent the author's work, after his death, from being distorted, mutilated or otherwise modified in a manner prejudicial to the author's reputation and the interests of literature, science and the arts.'

**Jules Destréée**

Reporting Chairman

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2. **Sub-committee on Broadcasting**

The Sub-Committee took as the basis for its discussions the proposals contained in Article 11bis as formulated by the Berne Bureau and the Italian Administration.

A general agreement emerged, following an examination in depth of the proposals made by the various administrations and delegations on the necessity of protecting the author's moral rights as well as his economic rights, even with regard to broadcasting.

However, because national legislation has, in various guises, given broadcasting services a markedly social character, it is difficult, precisely when the tendency seems destined to increase more and more, to anticipate the manner in which broadcasting services and the laws governing them are going to develop.

A number of delegations consequently laid stress on the necessity of proceeding with great care in the international regulation of this important problem, and proved ill-inclined to make undertakings that might hamper the development of broadcasting as a social service.

It was therefore considered essential to adopt principles that both safeguarded the rights of authors and also reconciled them harmoniously with the social purposes of broadcasting.

Those were the ideas that guided the drafting of Article 11bis, which is worded as follows:

'(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their work to the public by broadcasting.

'(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 shall be strictly...
limited to the countries which have put them in force. Such conditions shall not in any case prejudice either the moral rights of the author, or the right which belongs to the author to obtain equitable remuneration which shall be fixed, failing amicable agreement, by the competent authority.

In its first paragraph, the above Article emphatically confirms the author’s right; in the second, it leaves national legislation to regulate the conditions under which the right concerned is exercised, at the same time recognizing that, in the light of the general public interest of the State, limitations may be imposed on copyright; it is understood, however, that a country must not make use of the possibility of introducing such limitations unless the need for them has been shown by that country’s own experience; in any case the limitations may not diminish the moral rights of the author, neither may they prejudice the right to such equitable compensation as may be either amicably agreed upon or, in the absence of agreement, fixed by the competent authorities. The Sub-Committee thus wished to bring the author’s rights into harmony with the general public interests of the State, the only ones to which specific interests are subordinate.

The Sub-Committee feels bound to point out in this connection that, if a reproduction is lawful (for instance, the reproduction of an article in the press under Article 9), the author could never be allowed to file a claim for indemnification on account of the reproduction being effected by means of broadcasting.

In the second paragraph, it is also said that the conditions laid down in national law will have an effect ‘strictly limited to the countries which have put them in force,’ which means of course that they do not bind other States.

The Sub-Committee considers that the proposed rules, while reconciling the general public interest of the State with the interests of authors, give useful guidance for the international protection of the author’s rights regarding broadcasting.

GIANNINI
Reporting Chairman

3. Sub-committee for Cinematography and Photography

It was generally agreed that cinematographic works would be mentioned in Article 2(1) (proposal by the French Government). As for the new wording of Article 14(2) proposed by France (‘cinematographic works shall be protected in the same way as literary, artistic or scientific works’), and the proposal that the words ‘and performance’ in paragraph (1) should be replaced by ‘adaptation and presentation,’ the United Kingdom, Yugoslavia and Norway resisted them. As for the British proposal whereby the word ‘scientific’ should be deleted from paragraph (1), it was mainly opposed by the French Delegation. The proposals by the Italian Government and the Berne International Bureau regarding the text of Article 14(2) were approved.

In the discussion on the paragraphs (3) to (5) that France had proposed should be inserted ((3): intangibility of the work consisting of the positive of the finally edited film; (4): copyright of the intellectual creators of a film and the original author; (5): mention of the intellectual creators), there was a great divergency of opinion, so that no unanimity was possible in this area.

As for photographic works, it was unanimously agreed that they should be dealt with in Article 3, as hitherto, and not in Article 2. However, according to majority opinion, the second paragraph should be worded as follows: ‘these works shall, regardless of their merit or purpose, enjoy protection in all the countries of the Union’ (proposal by the Italian Government and the Berne International Bureau).

The wording proposed by Ireland, which wished to place the words ‘to cinematographic productions not provided for in Article 2, to photographic productions and to works produced by processes analogous to cinematography or photography’ in the first sentence instead of the words ‘to photographic works and to works produced by a process analogous to photography’ was not approved.

France and Switzerland had proposed setting a minimum term of protection for photographs of 20 years following their publication. Japan declared that it could not endorse anything other than a ten-year term. A French proposal
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to permit the prosecution of infringement according to criminal procedure only where the name of the author and the date of publication were added to the photograph met with objections from a large number of delegations. While noting that such a provision incorporated in the text of Article 3 was not to be regarded as an obligation on a country to provide for such formalities in its domestic legislation, the majority of the member States of the Union opposed such a measure, even in optional form, all the more so since the question of the legal consequences of failure to add the name and date remained in doubt.

Many objections were made to the proposal made by Hungary on the subject of Article 9, the purpose of which was to allow the free reproduction of photographs accompanying news of the day and miscellaneous items of information, as it was pointed out that such photographs could equally well have artistic merit and for that reason should be given protection.

**GEORG KLAUER**
Reporting Chairman

4. Sub-committee On the Mechanical Reproduction of Musical Works

Report on the Question as a Whole

At its meeting on May 9, the Sub-Committee decided not to adopt the draft submitted by the Austrian Delegation for a new Article 13bis, and entrusted Mr. Barduzzi with presenting a report to that effect.  

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The general discussion on Article 13 took up the meetings of the Sub-Committee of May 11, 15 and 18, during which the proposals by the Berne Bureau and the Italian, German, British, Hungarian, Dutch, French, Norwegian and Bulgarian Delegations were discussed.

At the end of the last meeting is was decided to refer the Article to the Drafting Committee, which would endeavour to find a satisfactory formulation.

A text was submitted to the General Committee by the Drafting Committee on May 29, which contained solely modifications of form according to which, in particular, it was made clear that 'works' were to be understood as pieces of music. However, as a result of a number of interventions, it was eventually agreed that the Article would not be amended, and the General Committee decided to submit Article 13 to the Conference in its Berlin version.

**M. PESSOA DE QUEIROS**
Reporting Chairman

Report on a Specific Item
(Draft of a new Article 13bis)

The Delegation of Austria has proposed the insertion in the Convention of a new Article numbered 13bis and worded as follows:

‘Article 13bis

(1) Any person shall have the right to apply for authorization, against payment of equitable indemnification, to adapt a musical work for instruments whereby it may be performed mechanically if the author of the work has already given such authorization, and in so far as mechanical instruments of the kind for which the work is adapted are available on the market, or the work is published in another manner.

(2) Procedures for the application of paragraph (1) may be provided for in specific agreements existing or to be made between countries of the Union or by the legislation of each country as far as it is concerned.’

The proposal by the Austrian Delegation thus submits to the Conference for consideration the system of 'compulsory licensing' or 'legal licensing' in connection with the application of a musical work to mechanical instruments. Three arguments are put forward in support of the proposal:

(a) The first is general, based on the social necessity, in the interest of culture, of permitting wider dissemination of musical works;

(b) The second is of a more restricted nature, being based on the supposition that the exclusive right of the author to agree to mechanical-musical applications could be a threat to or a restriction on the development of the phonomechanical...
Appendix

industries, in which so many economic and financial interests are involved;

(c) The third is of private character, being based on the assertion that the compulsory or legal licence system would dramatically increase the profits of authors and their successors in title.

The Italian and French Delegations have formally declared their opposition to the proposal by the Austrian Delegation on the following grounds:

1. The spirit of the International Convention and its provisions call for and propose the unification of copyright as far as possible, for the purpose of its protection, and of the author's exclusive right to use his work as he sees fit. There are already reservations that encroach partly on this fundamental principle of the Convention in the field of national legislation. The efforts of the Conferences for the revision of the Convention have been directed towards removing those reservations. It would be a backward step for the world history of the formation and recognition of copyright if an international rule clearly opposed to that fundamental principle were to be allowed, even in part.

2. The arguments of a general nature derived from the social need for dissemination of musical culture have no particular influence on the phonomechanical question, as it is one presented to the Conference for consideration under the same conditions as all the other forms of expression and exploitation of copyright.

The term of protection of copyright is already a sufficient limitation on private rights in the social interest of broader dissemination of culture.

3. The risk, which is expected, that the further development of the phonomechanical industries will be hampered by the right given to the author to use his work as he sees fit is disproved precisely by the development of those industries under the present system.

4. On the contrary, the compulsory licensing system would in practical terms constitute a dangerous monopoly, almost exclusively favouring existing industries which are already grouped in consortia that cover the whole world.

By allowing free disposal of the raw material—the products of the intellect—and in view of the vast financial, commercial and technical strength of present phonomechanical organizations, one would be making practically impossible the creation and growth of new industries powerful enough to mitigate the consequences of the existing monopoly.

5. Those nations that do not yet have sufficiently developed phonomechanical industries on their territory would find themselves in a position of obvious inferiority. Yet the interest of every nation demands freedom for such development, for exalted reasons that have to do with the dissemination and protection of national culture, and for all the other social reasons associated with the formation and day-to-day life of national industries.

6. The compulsory licence system cannot increase the profits of authors, for both material and moral reasons:

(a) Material reasons, namely the practical impossibility of controlling production and sale, left as they are—throughout the world—to private organizations that would have interests contrary to those of authors.

There is also the impossibility of fixing really equitable prices, which cannot be determined otherwise than by free operation of the law of supply and demand, which would be lost if one were to promote the formation of an industrial monopoly of world character.

(b) Moral reasons, namely the impossibility, for the author, of protecting his moral right to the integrity of his work and to its interpretation, performance and broadcasting.

To summarize, the system of exclusive protection seems to be the only one that, in the greater interest of all nations, and in the specific interest of copyright, affords the fairest protection to products of the intellect.

BARDUZZI
Rapporteur

5. Sub-committee for Works of Art Applied to Industry

The Sub-Committee entrusted with the study of the question of works of art applied to industry
Appendix

held four meetings, in the course of which the opinions of the delegations present at the Conference were confronted on the subject of the protection to be given to the works concerned by the Convention.

The proposal by the Italian Administration and the International Bureau was for the insertion of works of art applied to industry in the third paragraph of Article 2, which contains the list of protected works; it also proposed to make it clear, in the third paragraph, that the works in question should be protected regardless of their merit or purpose, and finally to delete the fourth paragraph, which in 1908 had prompted a reservation on the part of France.

This proposal, supported by the French Delegation and endorsed by the Delegations of Belgium, Germany, Austria, Netherlands, Poland and Czechoslovakia, was vigorously countered by those of Norway, the United Kingdom and Japan, which, on account of the legislation of their countries, declared that they could not agree to works of art applied to industry being assimilated to the artistic works protected by the Convention.

The proposal by the Norwegian Delegation, whereby paragraph (4) was to be replaced with a provision under which the specific legislation of each country would have the task of setting the criteria according to which works eligible for the benefits of the Convention would be distinguished from those that could only be protected by the laws on designs, was rejected by the French Delegation. It declared expressly that it could not accept a situation where France would be obliged to afford to the works of applied art of all the signatory countries of the Convention the very broad protection that was provided for in its legislation, whereas in certain countries French works actually enjoyed no protection at all or only a ridiculously low level of protection.

In a conciliatory move, the Delegations of Belgium, Poland and Czechoslovakia each presented proposals, which also met with opposition from the Delegations of Norway, the United Kingdom and Japan.

At the last meeting of the Sub-Committee, following a further exchange of views, the United Kingdom Delegation expressed the opinion that it could probably, after having examined it, subscribe to a new compromise solution suggested by the French Delegation, and which Japan would probably be also likely to endorse.

In addition, the Italian Delegation stated that, in the face of the protracted discussions to which the subject has given rise without any result so far, it would purely and simply withdraw the proposal submitted jointly with the International Bureau, and asked for the status quo to be maintained.

Under these circumstances it was agreed, by way of conclusion to the work of the Sub-Committee, that the General Committee could possibly be asked to pronounce on the compromise proposal that would be presented to it in good time by agreement between the British and French Delegations, or failing that on the maintenance of the status quo.

DROUETS
Acting Reporting Chairman

III. General Report of the Drafting Committee

Presented at the Plenary Meeting of Friday, June 1, 1928

Importance of the Conference of Rome

The remarkable importance of the Conference of Rome is apparent from the following figures:

Taking part in the Conference were the delegates of 57 countries, namely:

- 34 Union countries and
- 23 non-Union countries,

in addition to the representatives of the following bodies:

- League of Nations (General Secretariat);
- International Institute of Intellectual Cooperation;
- International Bureau for the Protection of Literary and Artistic Works.

The total number of those delegates, representatives and experts was 169 and this number, together with the eminence, ability and personal merit of these members and experts is proof of the importance which the Governments represented attached to the problems submitted to the Conference.
Fifty-seven sessions were held, namely:
4 of the Conference;
13 of the General Committee;
13 of the Drafting Committee;
27 of the Sub-Committees and Commissions.

Over 150 amendments to the Convention were proposed and discussed, these being contained in 115 documents, namely:
7 documents distributed before the opening of the Conference by the Berne Bureau;
108 documents distributed in the course of the work by the Conference Office. Several memoranda were presented in support of the most important amendments.

Organization of the Work of the Conference
In general, the Rules of Procedure of the 1908 Berlin Conference were adopted for the organization of the Conference.

In July 1927, pursuant to Article 24 of the Convention, the Italian authorities and the Berne Bureau prepared and distributed a series of proposals for amending the Convention, accompanied by a preamble, to the authorities of the countries invited to the Conference. During the following months, the Bureau communicated the proposals, counter-proposals and observations which were presented to it by the Governments of several Union countries (Austria, France, Germany, Great Britain, Hungary, Italy, the Netherlands, Norway, Poland, Sweden and Switzerland).

At the formal opening meeting of the Conference the nomination of the Vice-Chairmen and the Conference Office took place.

At the first plenary meeting of the Conference the following business was conducted:
(1) approval of the Rules of Procedure of the Conference by adoption of the Berlin Conference Rules with some slight variations;
(2) constitution of four Sub-Committees (the Conference having decided that there would be only one Committee):
on moral rights;
on broadcasting;
on photography and cinematography;
on mechanical reproduction of musical works.

Subsequently, other Sub-Committees or Commissions were created: on art applied to industry, on reproduction of press articles, on the Berne Bureau, on ’reservations,’ on Article 27bis, on Article 7, on Article 9, on Article 10 and on oral works.

At the start of its work, the Committee appointed its Drafting Committee as follows:
Messrs. Maillard (France), Chairman;
Piola Caselli (Italy), Rapporteur-General;
Wauwermans (Belgium), Mintz (Germany), Beckett (Great Britain), Alker (Hungary), Giannini (Italy), Akagi (Japan), Zoll (Poland).

Alternate delegates:
Karel Hermann-Otavski (Czechoslovakia), Linant de Bellefonds (Egypt), Grunebaum-Ballin (France), Martin (Great Britain), Raestad (Norway).

Results of the Work of the Conference
They consist of the following amendments to the articles of the Convention and also of the resolutions approved by the Conference which are appended to the text of the new Convention.

Title and Preamble of the Convention
Title. The title adopted at Berlin was retained, with the addition of the reference to the revision just undertaken at the Rome Conference.
Preamble. The wording adopted at the Berlin Conference was retained except for:
(a) the amendments in the list of the representatives of the contracting countries resulting either from the accession of new States or from changes in the political constitutions of the signatory States of the Berlin Act, or, in the case of Great Britain, from the decisions of the 1926 Imperial Conference;
(b) an alteration to paragraph 3 owing to the fact that, except where the right of reservation is exercised, the Berlin Act replaced the previous Acts, which therefore no longer need to be mentioned.
The title and preamble would be worded as follows:

**Berlin text**


His Majesty the Emperor of Germany, King of Prussia, in the name of the German Empire, His Majesty the King of the Belgians, etc.

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

Have resolved to conclude a Convention for the purpose of revising the Berne Convention of September 9, 1886, the Additional Article and Final Protocol attached to the same, and also the Paris Additional Act and Interpretative Declaration of May 4, 1896;

Consequently, they have appointed their Plenipotentiaries, namely... (see the signatures);

Who, having presented their full powers, recognized as in good and due form, have agreed on the following Articles:

**Article 1**

At the request of the British Delegation, which observed that the expression 'contracting countries' was not in keeping with the present conception of the constitutional law of the British Empire, these words were replaced by 'countries to which this Convention applies.'

Moreover, since the Article establishes the state of Union between those countries, it was decided that the same words 'contracting countries' should be replaced by the words 'countries of the Union' in all the other Articles in which the expression was used.

The amendment introduced is thus the following:

**Rome text**

Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, revised at Berlin on November 13, 1908, and at Rome on June, 1928.

The President of the German Reich; His Majesty the King of the Belgians, etc.

Have resolved to revise and to complete the Act signed at Berlin on November 13, 1908.

Who, being duly authorized so to have agreed as follows:

**Article 1**

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

**Article 2**

In the preliminary proposals which were adopted as the Conference's discussion programme, the Italian authorities and the Berne Bureau had observed in relation to the first paragraph of Article 2:

'A slight inaccuracy ought to be corrected in the first sentence which refers to the form of reproduction, whereas, in the case in point, it is a question of 'production.' It stems from the text of the original Convention of 1886 which, in its Article 4, listed amongst the works which enjoyed protection, 'every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of printing or reproduction.'

'To avoid any doubts as to whether oral works (for example, speeches delivered in legal proceedings, sermons, university lectures) are included in the Convention's listing, it would seem useful to adopt the wording which appears in the Syro-Lebanese law of January 17, 1924, and to replace the words "whatever may be the mode or form of its reproduction" by "whether it be written, plastic, graphic or oral."'

There was no difficulty in reaching agreement on the usefulness of correcting the inaccuracy in the first sentence of this Article. On the other hand, objections were raised in relation to the other question involved—that of
adding oral works to the list of protected works. Several delegations, and in particular the Australian, Brazilian, British, German, Japanese and Norwegian ones, insisted either on having some further detail in the list of those works or on national legislation being reserved the right to decide on certain limitations relating to the exercise of the exclusive right for its own purposes.

After numerous sessions, the following wording was adopted for the first part of paragraph 1 of Article 2 to which was added an Article 2bis containing the reservations called for.

The clarity of these provisions, which correspond moreover to those adopted by the legislation of several Union States, spares me the need to make any comments. I shall therefore confine myself to reproducing the provisions adopted.\(^1\)

\[\text{Berlin text} \quad \text{Article 2, paragraph 1} \quad \text{The expression 'literary and artistic works' shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture or science.}\]

\[\text{Rome text} \quad \text{Article 2, paragraph 1} \quad \text{The expression 'literary and artistic works shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture or science.}\]

\[\text{Article 2bis (new)} \quad \text{(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article, political speeches and speeches delivered in the course of legal proceedings.}\]

\[\text{(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. Nevertheless, the author alone shall have the right of making a collection of the said works.}\]

Several other proposals for amendment were presented on Article 2, and amongst others, one which the French Delegation strongly urged concerning the protection of works of the arts applied to industry. With regard to these proposals I refer to the report of the discussions of the conference prepared by the report of the discussions of the Berne Bureau. Since the short amount of the time available before the Conference closes compels me to confine myself to commenting on the provisions which were unanimously approved.

I should also like to add, and in this I voice the Drafting Committee’s unanimous feeling, that we were very sorry not to be able to take into consideration a series of amendments of pure wording proposed by the distinguished Professor Zoll of the Polish Delegation. However, we felt that, apart from exceptional cases, it was not appropriate to make alterations designed only for improvements of this kind.

\(^1\) The amendments to Article 2, paragraph 1, are in italics.
Thus it was that, on a proposal by the British authorities, the provisions contained in No. 1 of the Additional Protocol to the Revised Berne Convention, dated March 20, 1914, were introduced into this Article, together with some amendments of form relating to the decision taken on Article 1.

It ought to be added that, since the Convention merely confirms the provisions of this Additional Protocol of March 20, 1914, there can be no doubt that the countries which have already adopted the restrictions which are involved in the application of this Protocol are not obliged to repeat the declaration to the Swiss Confederation provided for therein. In fact, only Canada has made use of the Protocol to date.

Artículo 6bis (new)

Protection of Literary and Artistic Works With Respect to Authors’ Personal or Moral Interests

The question of extending the protection of the Berne Convention to authors’ personal or moral interests, irrespective of the exclusive privilege concerning a work’s economic exploitation, was brought up for discussion at the Conference by the French, Italian and Polish authorities or Delegations and by the International Institute of Intellectual Cooperation.

Before the opening of the Conference the authorities and Delegations in question presented and communicated the following proposals through the intermediacy of the Berne Bureau:

**FRENCH PROPOSAL**

‘The Conference expresses the wish that all the signatory countries of the Berne Convention
introduce as soon as possible in their respective legislation formal provisions whose object is to institute the moral rights of authors in their works.

'It seems desirable for this right to be declared inalienable and for its conditions to be fixed in an identical manner in every country.'

ITALIAN PROPOSAL

The Italian Delegation proposed adding the following text to the Convention:

**Article 6bis**

'Independently of the protection of copyright governed by the articles which follow and notwithstanding any transfer, the author shall always have:

(a) the right to claim authorship of the work;
(b) the right to decide whether the work may be published;
(c) the right to object to any modification of the work which is prejudicial to his moral interests.

I should like to mention that Mr. Grunebaum-Ballin, a member of the French Delegation, distributed a very interesting pamphlet to the Conference participants entitled 'The Moral Rights of Authors and Artists,' containing a report he had presented at the session of the International Literary and Artistic Association on April 24, 1928.

'It is reserved for the national legislation of the Contracting Parties to draw up provisions to regulate the aforementioned rights and, in particular, to reconcile the exclusive right of publication with the demands of public interest as well as to reconcile the entitlement mentioned under (c) with the right of the owner of the physical copy of the work.

'After the author's death, these rights shall be exercised by the persons or bodies so designated by the legislation of the country of origin of the work.

'The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed.'

POLISH PROPOSAL

The Polish authorities asked for the provisions on the right to respect along the lines of those proposed by the Commission of Intellectual Cooperation (see below) to be introduced into the Convention with the following amendments:

'(1) The author shall have the right, despite any stipulation to the contrary, to object to any attempt to undermine his character of author as well as to any transformation or mutilation whatsoever which might distort the way in which his work was intended to be presented to the public.

'(2) [See the proposal presented by the Commission of Intellectual Cooperation.]

'(3) This right carries with it the sanction of prohibiting a third party from assuming the authorship of a work or from preserving or reproducing a distorted work, and possibly also damages either for the author's or for the community's benefit.'

The same authorities also proposed the following resolution relating to the author's moral rights, to be included in the Final Protocol of the Rome Conference:

'The Delegates of the Union States at the Conference of Rome, recognizing that the author's moral rights, being rights attaching to his person, should enjoy protection in all civilized countries, independently of any international treaty, in the same way as the other rights of the private person—right to life, to physical integrity, to freedom, to honour, to one's physiognomy, etc.—do not wish to confine themselves to introducing the new Article 15, which only partially settles the question, in the text of the revised Convention, but consider it necessary to recommend to all the States of the Union that they safeguard and defend the full extent of these the author's moral rights by the measures enacted in their legislation without making any differentiation between authors' nationalities or as to whether or not they are nationals of one of the States of the Union, and regardless of the existence or otherwise of the economic copyright and, especially, whether or not the economic copyright has fallen into the public domain, and whether or not it has been relinquished by the author.'

For its part, the Institute of Intellectual Cooperation distributed a pamphlet entitled

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1 This text corresponds to the one presented at the Lugano Congress by the International Institute of Intellectual Cooperation.
'International Copyright Protection,' page 8 of which contained the following proposal for submission to the Conference:

'The author shall have the right, notwithstanding any provision to the contrary, to guard the integrity of his work and to object to any transformation or mutilation whatsoever which might distort the way in which he wished to present it to the public.

'The same right shall belong to every citizen and may be exercised even against the author's successors in title.

'It carries with it the sanction of prohibiting the preservation or reproduction of the distorted work, and possibly also damages either for the author's or for the community's benefit.'

At the first plenary meeting the author of this report, as the second Italian Delegate, spoke on behalf of his Delegation in support of the proposal it had presented and concluded with the following words:

'I feel I must say, on behalf of the Italian Delegation, that we attach very great importance to this proposal. It would be a matter of ineffable pride for us if we could obtain from you, in this Conference which is being held in Rome, in this eternal city where so many human ideals have been attained, the recognition of this principle that a work of the mind does not only have a market value, but especially a spiritual and moral value; if we could obtain from you that the chapter which it lacks is added to the Berne treaty, that chapter which would serve to interpret, to complete, to ennoble all the others: the chapter on the protection of the author's intellectual personality.'

At the same session the Conference appointed a Sub-Committee to examine the question of the protection of moral rights. The Sub-Committee was chaired by Mr. Destée, the second Belgian Delegate.

The Sub-Committee held two meetings, on May 8 and 18, taking the Italian Delegation's proposal as a basis for discussion.

In the course of these sessions the following proposals were presented:

**Romanian Proposal**

(1) With regard to the new Article 6bis presented by the Italian Delegation, the last two paragraphs would be replaced by the following text:

'AFTER the author's death, his rights shall be exercised by the persons so designated by the legislation of the country of origin of the work.

'Independently of those persons, the moral right of control shall belong to the State which may exercise it, either through the Ministry of Fine Arts, in those countries where that authority exists, or through the most important academic institute recognized by national legislation, in those countries where there is no Ministry of Fine Arts.'

(2) Article 15 as worded at present would be replaced by the following text:

'Notwithstanding any provision to the contrary, the author shall have the right to control over his published works and shall be entitled to object to any modification or distortion whatsoever which might be prejudicial to his reputation.'

**Czechoslovak Proposal**

In case it should not prove possible to find a formula to settle the question *jure conventionis*, the Czechoslovak Delegation proposes accepting at least a *resolution* recommending that Union States ensure the ideal mission of works of general importance for the art, the education and the culture of peoples by protecting the integrity of the work, for an unlimited period, against any utilization, even by the author's successors in title, which might be prejudicial to the work's aforementioned mission.

**Belgian Proposal**

*Article 6bis*

National legislation shall determine the conditions of exercise of the inalienable rights which the author shall have despite any agreement to the contrary, namely:

(a) the right to be recognized as the author and to sign any work created by him; that of authorizing its reproduction and of determining the conditions attached thereto;

(b) the right to designate the persons who, after his death, may exercise his personal rights in those works which are not yet published;

(c) the right to share in the successive prices attained by his works at public auctions;

(d) the right to object to any mutilation, transformation or modification whatsoever which alters the character of the work.
On the author’s death, this last right shall pass over to the community and may be exercised by any citizen, even against the author’s heirs, if necessary.

The Italian Delegation supported its proposal with a memorandum drafted by the author of this report, in which were outlined the reasons explaining that the problem of the recognition of ‘moral rights’ was ripe for legislative solutions and that the Union’s international protection should be extended to those rights as a matter of urgency; there was also a brief commentary on the proposed text. However, as certain passages in the memorandum had led some delegates to believe that the matter was one of protecting a pure right of the private person, an additional memorandum was presented to show that it was still very much a matter of the copyright in the work, the latter being considered in relation to the author’s personal interests.

The English-law delegations objected very strongly, however, to the proposed text’s incompatibility with the general principles of English law and with the particular provisions of English copyright legislation. However, thanks to the conciliatory and enlightened spirit of Mr. Beckett of the British Delegation and to the great legal ability of Sir William Harrisson Moore, an Australian Delegate, it proved possible to overcome these difficulties and to draw up a compromise text which was approved by the Sub-Committee at its meeting of May 18, and by the General Committee at the meeting on May 23, after a few formal amendments had been made by the Drafting Committee.

The text as approved is thus the following, which it is useful to compare with the original:

A comparison of the two texts shows that the main alterations to the original text consist in:

(a) deleting the reference to ‘the right to decide whether the work may be published’; it seemed, above all, that the very interesting, but also very delicate and complex problem of harmonizing the author’s personal or moral interests with those of the assignee of the copyright in the work, in relation to both the first as well as successive publications of the work and its transformations or adaptations, was outside the scope of the Convention;

(b) deleting any reference to protection of the work, in the same connection, after the author’s death; it does indeed seem advisable, at least for the time being, to reserve the
solution to this problem for the national legislation, in view of the differences of opinion which still exist and which are confirmed by the provisions of the more recent copyright laws, both as regards determining the person or body whose right or obligation it would be to exercise this protection and as regards the means by which or the conditions under which this protection should be achieved.

However, in order to encourage the countries of the Union to deal with the problem, which is obviously of the utmost interest for the preservation and respect of the great conquests of the human mind, the Committee approved the following formal wish:

'The Conference expresses the wish that the countries of the Union envisage the possibility of introducing rules in their legislation, where it does not contain provisions in that regard, which, after the author's death, will prevent his work from being distorted, mutilated or otherwise modified to the prejudice of his reputation and the interests of literature, science and the arts.'

Mr. Destrée, the Sub-Committee's distinguished rapporteur, presented a most interesting report, inspired by the highest conception of the content of copyright, which effectively completes this brief summary.

May I, however, be permitted to add the following brief considerations, in order to establish clearly the legal basis of this right to which the Convention has just granted the high sanction of international protection.

(1) Leaving aside all doctrinal apriorism, it is in fact clear that, although they are economic goods which enjoy the exclusive privilege of publication and reproduction, works of the mind are distinct from all other economic goods in that they are the product of acts of intellectual creation and, because of this, they are representative in character of their authors' personalities. To say the author 'lives in his work' is not an entirely metaphorical expression: in point of fact, the literary, scientific or artistic idea contained in the work or, at the very least, the literary, scientific or artistic form which the author has been able to give it to present it to the public, reveal and reflect his personality and thus the degree of his intellectual capacities, his culture, his spiritual or moral leanings and, in those works which do not belong to the sphere of pure art, his personal—for example, political or scientific—opinions. Moreover, the link between the work and the author's person is apparent, in practice, from the fact that often the work is not commercially exploited but represents merely an instrument or factor in, for example, a scientific or political career. Well, it is precisely works of the mind not only as economic goods of a material nature but also as reflecting or representing their authors' intellectual personalities which the 'moral right' covers and protects.

(2) When positive law recognizes and protects this intimate link between the author and his work and the interests deriving from it, it thus creates or recognizes a very different right or rights from those which relate to the intellectual work's exploitation as an economic article, while still remaining within the framework proper to copyright, i.e. within the framework of the legal relations of the author to his work.1

(3) As is henceforward generally recognized, and as the discussions at the Conference have confirmed, the need to protect works of the mind in this particular respect is no longer at issue. And this need becomes more and more serious as new means or forms of communication or dissemination by phonograph, cinema and radio make works known to an ever-wider public and as, furthermore, the rules adopted by domestic laws in these fields—especially those to control broadcasting—weaken the exclusive exercise of the rights of publication and reproduction.

(4) By stating that 'independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right . . .' the first paragraph of Article 6bis clearly indicates that this is a right

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1 The eminent Professor Zoll, in supporting the Polish Delegation's amendments, asserted the old theory that a pure right of the private person is involved. However, the fact that modern copyright legislation lays down these rights is obviously proof that the movement of legal consciousness is tending towards the complete or unitary conception of copyright, which I have been defending in Italy for the last 20 years, namely a single right in which, as Mr. Ruffini aptly puts it ('Int. Copyright Protection in Lit. and Artistic Works,' Carnegie Academy, Lectures 1926, p. 566), personal elements and economic ones, moral elements and purely material ones interwine and merge indissolubly, constituting a single whole.
which is different and distinct from the exclusive privilege and confirms its fundamental, specific nature as a right which inhaeret personae and which is thus non-transferable.2

(5) The paragraph continues by fixing, as the first element of this right, the entitlement ‘to claim authorship of the work’; this is a primordial right which stems from the act of creation. The Italian Law determines its exercise in detail (see Article 14). In my opinion, just as it is not transferable, it cannot be effectively relinquished; the agreements which Martial condemned in the well-known epigram, 

_Carmina Paulus emit, recitavit SUA carmina Paulus Nam quod emas possis jure vocare TUUM_ (Martial 11, 20),

amount to deception of the public, which a properly policed society would not tolerate.

(6) In stating ‘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,’ the end of the paragraph sets out the second element of this right recognized by the Convention. This second element, or second right, is of such fundamental importance in the application of copyright that it is often regarded as constituting the sole content of the entitlements in question—under the name of the ‘right to respect,’ which has replaced the earlier name of ‘moral rights’ in most recent French doctrine.3

(7) However, as I had already observed in the memorandum supporting the Italian proposal, it would be wrong to go too far and protect what would not be a legal interest but an excessive sentimentality on the part of the scholar, artist or writer. In the original proposal the limit on this right was indicated by referring, as in the Italian Law, to ‘any modification of the work which is prejudicial to his (the author’s) moral interests.’ But, following the talks conducted by me with the English-law delegations, it was recognized that there was a need to devise a more easily intelligible wording by referring to any distortion, mutilation or other modification of the work which would be prejudicial to his honour or reputation.

(8) The object of the second paragraph of this Article is to grant the domestic laws of the countries of the Union wide powers to regulate these new rights, the extent of which may be assessed in quite different ways by each nation’s legal consciousness. The last part of the paragraph, which refers the means of redress for safeguarding these rights, available under the legislation of the country where protection is claimed, merely applies the rule sanctioned in Article 4, paragraph 2, relating to protection of the economic copyright.

**Article 7**

Article 7 of the Convention, which concerns the term of copyright, gave rise to most interesting discussions with regard to which I refer to the summary of the proposals and the discussion, drawn up by the Berne Bureau, which is appended to this report.

I shall confine myself to commenting on the results achieved and also on an amendment of particular interest which came very close to being adopted.

It should be recalled that even today, in view of the differences in the systems on the term of protection adopted by the various countries of the Union, the provision of Article 7, paragraph 2, still remains effective. Under this provision the term of international protection is fixed on the basis of the law of the country where protection is claimed, provided, however, that this term does not exceed the one fixed in the country of origin of the work; in such a case it is the latter term which must be applied.

In the last part of this paragraph the Convention adds:

‘Consequently, the countries of the Union shall only be bound to apply the provisions of
the preceding paragraph (which establishes in principle the term of 50 years after the author’s death) in so far as such provisions are consistent with their national legislation.’

Seeking to take a step further to extend the effects of international protection, the Italian authorities and the Berne Bureau had proposed replacing the aforementioned paragraph by the following one:

‘A difference between the extent of protection granted in the country of origin and that which is established in the country where protection is claimed shall not prevent the application of this provision.’

As explained in the explanatory memorandum, the intention was to establish, by a sort of authentic interpretation of Article 7, paragraph 2, coupled with Article 4, that in fixing the term of international protection in the various cases, the sole consideration should be the material one of the term of protection, accepted equally in both countries, i.e. in the country of origin of the work and in the country where protection was claimed, without any account being taken of a possible difference in the content and extent of the protection.

The explanatory memorandum stated that ‘for as long as the right claimed in a country has not fallen into the public domain in the country of origin as a result of the expiry of the term of copyright, any restrictions on this right in the country of origin have no bearing on the protection in the other country; the more extensive right conferred by the legislation of the country of import must be granted for as long as the same right normally lasts in the country of origin, even if its extent is restricted there. Thus the British Law, for example, only affords complete protection to works for 25 years post mortem; the following 25 years are given up to the “domaine public payant.”’

Nevertheless, these British works must enjoy in France the full protection granted by the French law for 50 years post mortem, and therefore also during the second 25-year period when the work is protected in the country of origin only in the reduced form which has been called the “domaine public payant.” The same solution is called for with regard to any restrictions placed on protection in the country of origin which do not exist in the country where protection is claimed, and the courts of the latter country are not entitled to refuse to grant all the special effects conferred on copyright by their legislation under the pretext that some of those effects are not granted by the law of the country of origin of the work.’

The proposal in question was supported by the German Delegation from the more restricted standpoint of drawing up uniform regulations governing international protection in cases where the legislation of one of the two countries fixed the final period of protection in the reduced form of the “domaine public payant.” After long discussions the majority of delegates reached agreement to the effect that these rules should be based on the principle of reciprocity, so that works which had fallen into the final period of protection, during which the legislation of one of the two countries granted only the reduced protection, would enjoy equal treatment in the two countries.

However, wording the text was not easy. Finally, agreement was reached on adding a paragraph 2bis, after paragraph 2, couched in the following terms:

‘If in a country of the Union, the term of protection includes a period, after the death of the author, in which reproduction of the work, for sale, is lawful, provided that a royalty is paid to the author’s successors in title, the other countries of the Union are only bound to apply the same treatment during this period as that which is granted in the said country to works originating therein. However, the duration of the exclusive right shall never be less than 25 years.’

However, this proposal, which had received the votes of the great majority of delegations at its first and second reading, did not obtain the necessary unanimity to enter into the Convention, thus leaving the question which was to have been settled still open.

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1 The British delegation wishes to observe, however, that the expression ‘public domain,’ as applied to the system operating under the English Act, is equivocal in its view. The English Act of 1911 (Section III) establishes only that, during the second period of 25 years after the author’s death, it is permissible to reproduce a work without infringing the rights of copyright but only for sale, and provided that the owner of the rights is notified and is paid a ‘royalty’ of 10% of the price indicated on the work.
Appendix

With regard to paragraphs 2 and 3, the Belgian Delegation had proposed replacing the words 'pourra' and 'puisse' (may) by the words 'devra' and 'doive' (must) with a view to bringing the texts into line with Article 19. But this amendment was not found to be necessary, since it is true to say that nothing in the terms of the Convention obliges those countries whose domestic legislation is more liberal than the Convention to limit the effects of that legislation.

Article 7bis

Works of joint authorship. The Italian authorities and the Berne Bureau had proposed regulating the term of protection for works of joint authorship.

‘In order to take account of a wish expressed at the International Literary and Artistic Association’s Congress in Warsaw in 1926,’ the explanatory memorandum stated, ‘we propose adding another paragraph at the end of Article 7 worded as follows: ‘The rights of the successors of the author who dies first shall subsist until the expiration of the copyright of the last surviving author.’ This principle is recognized in a large number of the most modern laws (Italy, Section 28; Germany, Section 30; Great Britain, Section 16; Romania, Section 40, etc.). It is justified by the indivisible nature of a work to which two or more people have contributed, which prevents the work from falling into the public domain in part only. In French case law, a different opinion has been expressed in passing by a Court of Appeal, despite doctrine being in opposition. That is why there is some usefulness in the Convention ruling on the subject in a formal provision. It would be futile to argue that hitherto the Convention has not been concerned with any of the questions concerning joint authorship. The proposal that we are making comes within the sphere of the term of protection and has its proper place here even though the other questions concerning joint authorship are not resolved by international provisions.’

However, the proposal met with opposition, in particular from the British Delegation which, taking the English Act as its inspiration, proposed the following text:

‘In the case of works of joint authorship, copyright shall subsist during the life of the author who dies first and for 50 years after his death, or during the life of the author who dies last, whichever is the longer of the two periods.’

After discussion it was agreed, as a compromise measure, on a proposal by the French Delegation, to add to Article 7 a new Article 7bis in which the principle of calculating protection post mortem auctoris from the date of the death of the last surviving author is laid down as a general rule, but it is accepted, however, that a shorter term may apply where the legislation of the country of origin of the work recognizes only a shorter term of protection itself. Nevertheless, that shorter term may not be less than the duration of the period which ends with the death of the last surviving author. The text adopted was thus as follows:

Approved text

Article 7bis

(1) In the case of a work of joint authorship the term of protection shall be calculated according to the date of the death of the last surviving author.

(2) Authors who are nationals of the countries which grant a term of protection shorter than that mentioned in paragraph (1) cannot claim a longer term of protection in the other countries of the Union.

(3) In no case may the term of protection expire before the death of the last surviving author.

Article 9

The regulation of copyright in the periodical press attracted the attention of the Conference of Rome just as it had attracted the attention of the preceding Conferences.

The question assumed particular importance as some States had made use of the right
of reservation to avoid applying the rules adopted by the Berlin Act and had instead, in their own case, kept either the Berne Convention or the Paris Additional Act in force.

In the explanatory memorandum mentioned earlier on several occasions, the Italian authorities and the Berne Bureau made a point of informing the Conference of the position as it stood, in the following terms:

'Under the original Convention of 1886, even if they were literary or artistic works, articles published in newspapers or periodicals were only afforded protection if the authors or publishers expressly prohibited their reproduction, and articles of political discussion were not protected at all. This is still the rule applicable today in Greece, Norway and Sweden since, in their reservations, those countries declared that they wished to continue to be bound by Article 7 (now Article 9) of the 1886 Convention. Under the Additional Act of 1896, unconditional protection was granted to serial novels and short stories. As to other articles in newspapers or periodicals, their reproduction without authorization continued to have to be expressly forbidden; if not declared forbidden, their reproduction was permitted provided that the source was indicated. Pursuant to their reservations, Denmark and the Netherlands continue to be bound by the old Article 7, as revised by the Additional Act of 1896. Finally, the Berlin Conference in 1908 laid down first as a principle that serial novels, short stories and all other literary, scientific or artistic works published in newspapers or periodicals enjoy unconditional protection. As for newspaper articles, they may be reproduced by other newspapers provided that their reproduction is not expressly forbidden. Thus a newspaper article may never be reproduced in a book or pamphlet. No excerpts may be taken from periodicals; on the other hand, newspaper articles which are neither serial novels nor short stories may be excerpted if their reproduction has not been expressly forbidden.

'The latter provision has raised serious difficulties of interpretation. The unconditional protection granted in the first paragraph to any literary, scientific or artistic work published in a newspaper seems to be in contradiction to the restrictive protection enjoyed by newspaper articles under the second paragraph. It is the view of some well-qualified interpreters that the right to reproduce portions of another work does not apply to work of a scientific, technical or recreative nature and that, for work such as that, it is not necessary for reproduction to be expressly forbidden since the provision only concerns newspaper articles proper. It is difficult to find a basis for such a restrictive interpretation in the present text. It seems justified, in any event, that scientific and technical articles which appear with increasing frequency in specialist papers and even in the main daily press and which transcend the ephemeral interest of a political article, should not be freely available for reproduction even if no express prohibition is given in the newspaper. The same is true of articles of literary or artistic criticism. By thus granting all articles of lasting interest unconditional protection and bearing in mind, moreover, that any articles which are not literary and artistic works are immediately excluded from protection, the end result is bound to be that only articles of political discussion—this notion being understood in the widest sense—are actively subjected to the right to reproduce excerpts provided for in the second paragraph. This would correspond to the proposal made at Berlin by the majority of the Committee (see Berlin Records, p. 289). Furthermore, it would not seem possible to maintain the distinction made in Article 9 between newspapers and periodicals as no factors exist which might make it possible to establish this distinction clearly, and we all know that notions which are imprecise can be the cause of numerous proceedings. In particular, non-political papers, of which there are a large number, deserve to be treated in law on the same footing as periodicals.

'In short, the first and third paragraphs of Article 9 should stay, while the second paragraph would be amended so that a distinction is no longer made between newspapers and periodicals and so that all articles, not only on political issues but also on economic, religious and other topics of the same genre, may be reproduced from periodical to periodical if they do not bear a notice indicating that
reproduction is reserved. This solution would have the advantage of avoiding the difficulties of interpretation raised by the existing text and by the words 'of a scientific, technical or recreative nature' which were the subject, at Berlin, of a subsidiary proposal by the minority of the Committee (see Berlin Records, p. 290). Furthermore, the first part of it would probably make it easier for Denmark, Greece, the Netherlands, Norway and Sweden to abandon the reservations expressed by them in respect of Article 9. Indeed, all those countries have treated periodicals in the same way as newspapers in their national laws and have made the two categories of periodicals subject to the right to reproduce excerpts. On the other hand, there are other points on which the domestic regulations of some of these countries differ from those of the Convention. Thus, in Greece and Norway, all articles, including serial stories and tales, are subject to the right to reproduce extracts in the absence of any notice expressly forbidding this; in Sweden scientific memoranda, then all literary works and works of a more extensive nature are subject, under the same conditions, to the right to reproduce excerpts.

If the main proposal as formulated above were not to be favourably received, it would appear desirable to insert scientific and technical work (or studies) after serial stories and tales in the second paragraph.

This proposal was supported by the French Delegation which presented a similar amendment in which, however, the words 'and others of the same genre' were deleted. But objections were raised by the delegations of some States which had expressed reservations. Finally, it proved possible to establish the following compromise text on the basis of which most of the aforementioned delegations declared their intention to propose to the countries they represented that they withdraw their reservations.

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**Appendix**

The need to give notice of reservation has been restricted therefore (and even more so than in the original proposal put forward by the Italian authorities and the Berne Bureau) to
those articles which meet the following two conditions:

(1) that they are articles of topical interest, that is to say they are of the nature of those studies—often of limited extent—which concern a subject that attracts the public’s attention at a particular moment in time and of which the free reproduction in other periodicals, in the absence of any formal prohibition on the part of the author, is justified in the light of the practices and interests of the press and the interests of the public;

(2) that they deal with economic, political or religious questions, so that articles on literary, artistic or scientific subjects are excluded by preterition.

Moreover, by referring to articles without specifying ‘newspaper’ and by replacing the words ‘may be reproduced by another newspaper’ in the Berlin text by the words ‘may be reproduced by the press,’ it was intended that the new provision should apply not only to newspapers proper but also to periodicals.

We have already seen in Article 2bis that the new Convention has left it to national legislation to determine the conditions under which lectures, addresses, sermons and other works of the same nature which are delivered publicly may be reproduced by the press.

**Article 11bis (new)**

| (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by broadcasting. | of the author, nor to his right to obtain an equitable remuneration which, in the absence of agreement, shall be fixed by competent authority. |
| (2) The legislations of the countries of the Union shall determine the conditions under which the right mentioned in the preceding paragraph may be exercised, but the effect of those conditions shall apply only in the countries where they have been prescribed. This shall not in any circumstances be prejudicial to the moral rights |

With the recognition of the protection of the moral right, the introduction of this new text in the Convention represents without doubt the most important achievement of the Rome Conference.

The problem was presented to the Conference by the Italian authorities and the Berne Bureau in the preliminary proposals adopted as the Conference programme (see p. 176, above). At the first plenary session an ad hoc Sub-Committee was formed and was chaired by Mr. Giannini of the Italian Delegation.

From Mr. Giannini’s report (see p. 183 above) it can be seen that the adopted text represents a compromise between two opposing tendencies—that of completely assimilating the radio broadcasting right to the author’s other exclusive rights (a tendency defended especially by the British and French Delegations) and that of considering the matter subject to intervention on the part of the public authorities in order to protect the cultural and social interests linked to this specific new form of popular dissemination of intellectual works, particularly musical ones (a tendency defended especially by the Australian and New Zealand Delegations).

The discussions on this issue continued throughout the entire duration of the Conference, and it was only after a new proposal by the British Delegation and thanks to Mr. Giannini’s efforts that, in the closing days, agreement was finally reached on this text, the justification for and import of which are explained in the report made by the aforesaid Chairman of the Sub-Committee.

It only remains for me to add that, in the same proposal, the Italian authorities and the Berne Bureau had asked at the same time that one resolve the problem of the protection to be given to performing artists’ artistic creations or interpretations which have acquired a new economic value as a consequence of the radio
and the phonograph and, through the latter, even a sort of physical materialization capable of publication. The Italian authorities and Berne Bureau had also extended the problem of this new protection to the area covered by Article 13 in which precisely the adaptation of musical works to mechanical instruments is regulated.

However, the Committee considered that this new problem, which in general has not been settled to date by national legislation, had not yet matured sufficiently for the purposes of an international convention. The Committee therefore confined itself to expressing a formal wish that the countries of the Union consider this interesting question.

Article 13

The summary of the discussions prepared by the Berne Bureau to which we have referred several times, outlines the various proposals and the interesting debates held on the revision of this Article (see p. 261 below). However, the discussions did not lead to any agreement, and the Drafting Committee had to confine itself to proposing two purely formal textual amendments (see p. 187 above, the report by Mr. Pessoa de Queiroz, the Sub-Committee’s Chairman and rapporteur).

The first of these amendments involved the words ‘before the coming into force of this Convention’ in the third paragraph being replaced by ‘before the coming into force of the Convention signed at Berlin on November 13, 1908.’ The date of November 13, 1908, is the date ‘of the present Convention’ according to the Berlin text, whereas, had that phrase remained in the text of the Rome Convention, it would have had the effect of changing the date to June 1928—which has indeed become the date of the new Convention—and thereby altering the substance of the provision in question by extending its transitional effect by 20 years.

The second modification removed a doubt which might possibly arise with regard to the application of this provision to new accessions after 1908, by stating that ‘the provisions of paragraph (1) shall not not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of this Convention.

In connection with the protection of cinematographic works, which is already recognized in the Berlin Act, the Italian authorities and the Berne Bureau had made the following observation in the discussion programme mentioned earlier on several occasions:

‘The Congress of the International Literary and Artistic Association, which was held in Paris in 1925, had asked for cinematographic works to be protected without restriction, that is to say even if they did not meet the originality condition, set out in paragraph (2), for a cinematographic production to be considered a literary or artistic work. This wish goes too far in our view. A film which reproduces street scenes without any staging does not deserve any protection other than that which is afforded by the law to photographs. The protection enjoyed by other works of art should be reserved for cinematographic productions which meet the requirements of originality laid down in paragraph (2). In order to show clearly that the only requirement concerned here is that of the originality with which every work of

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| The provisions of paragraph I shall not not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the Convention signed at Berlin on November 13, 1908, and in the case of a country which has acceded to the Union since that date, or accedes in the future, before the date of its accession. | The provisions of paragraph (1) shall not not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of this Convention.
the mind must be endowed, we propose deleting, in paragraph (2), the words ‘personal and’ and adding to the present text a sentence worded as follows: ‘If this character is absent, the cinematographic production shall enjoy protection as a photographic work.’

'It remains obvious that a simple topical scene (happening in the street, etc.) may play an integral part in an original film within the meaning of Article 2. In such a case it enjoys the protection afforded by Article 14 and not just that which is conferred on photographs.’

Other proposals were presented at the Conference, notably by the French Delegation, which wanted this protection to be regulated in greater detail. However, the text which was adopted, as set out below, remained within the limits of the original proposal except for some formal improvements and an express reference to the exclusive right of cinematographic adaptation, which previously was apparent only from an extensive interpretation of the provisions of Article 12.

**Berlin text**

**Article 14**

Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction and public performance of their works by cinematography.

Cinematographic productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.

Without prejudice to the copyright in the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work.

The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

**Rome text**

**Article 14**

(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing the reproduction, adaptation and public performance of their works by cinematography.

(2) Cinematographic productions shall be protected as literary or artistic works if the author has given the work an original character. If this character is absent, the cinematographic production shall enjoy protection as a photographic work.

(3) Without prejudice to the rights of the author of the work reproduced or adapted, a cinematographic work shall be protected as an original work.

(4) The preceding provisions apply to reproduction or production effected by any other process analogous to cinematography.

**Article 18**

In the programme proposals referred to several times, a complete revision of this Article had been drafted by the Italian authorities and the Berne Bureau with a view to achieving a more precise and clearer definition of the vested interests to be respected. However, the Committee confined itself to approving an addition to the last paragraph to explain that the provisions of the Article apply equally in the event that, as a consequence of the abandonment of its ‘reservation,’ a country of the Union becomes subject to a provision of the Berlin Act which it has not accepted, as can be seen from the following text:

**Berlin text**

**Article 18, paragraph 4**

The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended by the application of Article 7.

**Rome text**

**Article 18, paragraph 4**

(4) The preceding provisions shall also apply in the case of new accessions to the Union, and to cases in which the term of protection is extended by the application of Article 7 or by abandonment of reservations.

**Article 23**

In recognition of the Berne Bureau’s increased needs and of the importance of the services it renders to the Union countries, the Committee unanimously approved raising its endowment from the 60,000 Swiss francs mentioned in this Article to 120,000 Swiss francs. In fact, by a circular from the Federal Council dated June 20, 1921, which was either tacitly or expressly accepted by the Union countries, the endowment had already been increased to

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1The amendments adopted are in italics.
100,000 Swiss francs in December 1921 (see p. 126 above, the Italian authorities' and the Bureau's explanatory memorandum on this Article).

In the same Article it is stated that the endowment may only be increased by a unanimous decision of one of the Conferences of revision and not, as worded in the text in force, ‘by the simple decision,’ in order to bring this provision into line with Article 13 of the Paris Union Convention for the Protection of Industrial Property as revised by the 1925 Conference of The Hague.

Finally, on a proposal by the Japanese Delegation, the fourth paragraph was amended so as to enable Union countries to change their classification in relation to the endowment at any time, on the understanding that the new classification may only take effect from the following financial year.

Article 25

Two amendments were written into this Article.

The first, in paragraph 3, sets a time limit for new accessions to take effect.

The second—of greater importance—considerably restricts the scope of the right of reservation introduced by this Article in the Berlin Act, which authorized the acceding country, on its accession, to choose to apply one or several provisions of the Acts prior to that one, namely the actual Berne Convention or the Paris Additional Act, instead of the corresponding provisions of the Berlin Act.

We should recall that this so-called 'right of reservation' system was sanctioned by the Berlin Act in favour of Union States or of new acceding States as a provisional measure. It was intended to facilitate, without too much strain, the gradual adoption of this new Convention which sought to unify the two preceding Acts of Berne and Paris, but at the same time it introduced a number of new rules. There is no doubt that this sort of 'safety valve' served to a certain extent to persuade Union States to accept the new Convention and to facilitate new accessions. But on the other hand, as Mr. Renault observed in his report on the Berlin Act, there was unification without unity. In the explanatory memorandum accompanying the proposals put forward by the Italian authorities and the Berne Bureau, stress is laid on the disadvantages resulting from this lack of a single right in the Convention. Moreover, favourable experience with the provisions of the Berlin Act and the fact that, in both Union and non-Union States, new legislation or case law are tending to draw gradually closer to these provisions makes it easier to abandon this system. The spirit of the Rome Conference was entirely in harmony with this.

Nevertheless, it was thought appropriate to tone down, as it were, this abandonment. As far as new accessions were concerned, it was thought that the right of reservation could be maintained with respect to the translation right. It is indeed understandable that States hitherto outside the Union, and in particular countries with very different languages and often different forms of civilization (occasionally at a lower level) from those of the Union countries might be somewhat distrustful of a system which grants the exclusive right of translation to the author throughout the normal duration of his right. On the face of it, this entitlement seems to hinder the spread of culture and, as regards the countries of the Far East, the assimilation of Western civilization, although, in actual fact, the contrary is true, as Mr. Renault showed in the above-mentioned report.

In any event, the Conference considered it advisable to maintain the right of reservation for translations. However, in order to prevent abuses, it was specified that the option concerns only translations into the language or languages of the country which makes the reservation, i.e. the language or languages which are in fact spoken and written in the country in question.

The third and fourth paragraphs of Article 25 were thus drawn up as follows:

Berlin text

ARTICLE 25, paragraph 3
Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this

Rome text\(^1\)

(3) Such accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this

\(^1\) The amendments adopted are in italics.
Convention. It may, however, contain an indication of the provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, which they may judge necessary to substitute, temporarily at least, for the corresponding provisions of this Convention.

The wording of this Article was amended at the request of the British and Japanese Delegations so as to determine the information which must be contained in the declarations of accession made on behalf of colonies, protectorates, etc., in conformity with the political circumstances of such countries in relation to the metropolitan State.

The new text was therefore worded as follows:

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Contracting countries shall have the right to accede to this Convention at any time for their colonies or foreign possessions. They may do this either by a general declaration comprising in the accession all their colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such declaration shall be notified in writing to the Government of the Swiss Confederation, which will communicate it to all the other countries of the Union.

Article 27

(1) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to be applicable to all or part of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply to the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation.

(2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall be applicable to all or part of its colonies, protectorates, territories under mandate or any other territories subject to its sovereignty or to its authority, or any territories under suzerainty, and the Convention shall thereupon apply to all the territories named in such notification.

Failing such notification, the Convention shall not apply to any such territories.

(3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

The first paragraph contains amendments purely of wording.

In the second paragraph the text is modified so as to drop the right of reservation in relation to the new Rome Act by maintaining only the right of Union countries to retain the benefit of the reservations they have previously formulated, on condition that they make a declaration to that effect at the time of the deposit of their ratifications. The importance of and justification for this amendment have already been explained in the comments on Article 25. The fact that several delegations have indicated their intention of proposing that the countries they represent
Appendix

withdraw the reservations formulated when ratifying the Berlin Act further underlines the import of the measure adopted in this regard.

A third paragraph was added establishing the following two rules:

(1) Union countries may always accede to the Rome Act even if they have not signed the Convention within the time limit indicated in the following Articles;

(2) In view of the fact that they continue to be members of the Union by virtue of the Berlin Act, those countries which accede later may, on acceding, still assert the right to retain the benefit of the reservations they have previously formulated.

Thus the text of Article 27 was worded as follows:

**Article 28**

Article 28 has been completely redrafted to replace the system of exchanging ratifications by that of depositing ratifications as adopted at the revision of The Hague of the Convention on Industrial Property. A time limit for deposits is laid down, to expire on July 1, 1931. But if, before this date, at least six countries have already deposited their ratifications, the Convention will come into force immediately between them.

Moreover, until August 1, 1931, countries outside the Union may accede to the Union by acceding either to the Berlin Act or to this Convention. However, from August 1, 1931, they may only adhere to this Act.

The text was therefore drafted as follows:

**Berlin text**

**Article 28**

(1) This Convention shall be ratified, and the ratifications deposited at Rome, not later than July 1, 1931.

(2) It shall enter into force, between the countries which have ratified it, one month after that date; however, if before that date it has been ratified by at least six countries of the Union, it shall enter into force between those countries one month after the notification to them by the Government of the Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications.
Appendix

Article 30 and ending of the Convention

In paragraph 2 merely formal amendments were introduced, and in the last part the Government of the Swiss Confederation was replaced by 'the Government of the country in whose territory the Convention is signed (Italy)' as depositary of the copy of the Convention; the wording of the text thus remains as follows:

Berlin text

Article 30
Paragraph 2 and ending
The same procedure shall be followed in the case of the States withdrawing the reservations made by them in accordance with Articles 25, 26 and 27.

Witness whereof the Plenipotentiaries concerned have signed this Convention and have affixed their seals thereto.

Done at Berlin, on November 13, 1908, in a single copy which shall be deposited in the archives of the Government of the Swiss Confederation and of which certified copies shall be sent to the contracting countries through diplomatic channels.

Rome text

Article 30
Paragraph 2 and ending
(2) The same procedure shall be followed in the case of the countries renouncing the reservations made or maintained by them in accordance with Articles 25 and 27.

Witness whereof the Plenipotentiaries concerned have signed this Convention.

Done at Rome, on June, 1928, in a single copy which shall be deposited in the archives of the Royal Government of Italy. A certified copy shall be sent to each country of the Union through diplomatic channels.

Resolutions

In keeping with an established practice at such Conferences, the Rome Conference approved a series of resolutions inviting national legislation to adopt, or at the very least to consider, the possibility of adopting certain provisions in the interest of copyright protection.

Those resolutions do not require special comment, as their interest is sufficiently clear from the text.

Conclusions

An unenquiring mind comparing the effort made by the Rome Conference with its visible, material results, might be inclined to think that the Conference was a failure, or something approaching it.

Indeed, the importance of the Conference—considered in terms of the proposals discussed and meetings held as well as the number of States represented—does not at first sight seem to be in direct relation to the small number of amendments actually adopted.

Briefly, disregarding the amendments of pure form or those which do not bear any direct relation to the extent of copyright protection, the proposals adopted amount to:

(1) the express mention, amongst protected works, of a category of works (speeches, sermons, addresses and other works of the same nature) which was very widely considered to be already included in the general expression 'production in the literary, scientific or artistic domain' used in the Article 2 in force (see new Article 2 and 2bis);

(2) the protection of moral rights (see new Article 6bis);

(3) a slight extension to the international rules on the term of protection so that, for works of joint authorship, the initial date of protection post mortem auctoris is fixed at the death of the last surviving author (see Article 7bis);

(4) a few improvements in the provisions on works published by the press through limitation of the mandatory declaration of reserved rights to articles on current economic, political or religious topics (see Article 19);

(5) more precise and more extensive rules on cinematographic works, affording protection to 'adaptations' and also to any original

(3) Until August 1, 1931, countries outside the Union may join it by acceding either to the Convention signed at Berlin on November 13, 1908, or to this Convention. On or after August 1, 1931, they may accede only to this Convention.

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new work even if it does not have a personal character and is not achieved by the arrangement of the acting form (see new Article 14);

(6) the recognition of the exclusive right of radio broadcasting, it being left to national legislation to regulate the exercise of this right (see new Article 11bis);

(7) finally, the limitation of the 'right of reservation': to the right of translation for new accessions and to those reservations already made for countries already belonging to the Union (see Articles 25 and 27).

Nevertheless, despite these seemingly modest achievements, I think the Rome Conference has had results of significant import.

In the first place, it has removed any danger of the Union being dissolved, and indeed has strengthened its foundations and authority.

Twenty years had elapsed following the last revision Conference, and during that interval one of the most formidable crises ever experienced by mankind had taken place. New representatives of old States, but States whose political or social structures had been greatly affected or influenced by this crisis, were meeting again in Rome, and with them the representatives of new States. Would they be able to draw close again and reach an understanding on the revision of this old Union treaty? Furthermore, was it not true that, during that long interval, substantial changes had occurred in the world's legal consciousness regarding the conception of social interests and the authority of the State which could endanger the preservation of the author's exclusive right as established by the Convention?

However, after the inevitable hesitancy of the first meetings, the representatives of the 34 States of the Union meeting in Rome quickly related to and understood one another; they worked together on the revision of the Convention with a great spirit of mutual understanding, and they succeeded in joining hands once again for the maintenance and confirmation of the fundamental precepts of this great international Union.

This in itself is a remarkable achievement. Moreover, the system of protection sanctioned by the Convention emerges from this Conference not only preserved but also strengthened, especially in relation to the new discovery of broadcasting, which has introduced such a dramatically different and new vehicle for the communication of thought. The application of the principle of the exclusive privilege to radio broadcasting, for which the French Delegation fought so valiantly with the aid of Mr. Maillard's persuasive eloquence—whatever may be the conditions governing the exercise of the privilege that national legislation adopts—represents a victory for copyright of considerable importance.

The international authority of the Berne Union thus emerges from this Conference preserved and strengthened; and the accession of new States, especially that of the United States of America, for which we have been hoping so long and which today seems really probable and close at hand, will be the symbol of it.

Even with regard to certain questions on which it has not been possible to reach agreement there is still a favourable result since, in the discussions which our diligent Office summarizes in the minutes appended to this report, the problems were posed and the objections and difficulties standing in the way of their solution were intelligent and enlightened. From this point of view, therefore, the Rome Conference will have been a preparatory Conference for the next one, which may perhaps be able to meet within a very short period in order to bring about agreement on solutions to the problems still outstanding.

Finally, Gentlemen, allow me to stress the great importance of the recognition of the moral rights of authors, which raises the international Convention to the level of the most recent legislative provisions of several States of the Union and really marks another turning point in the Union's history.

Unless the tiny share of responsibility that I have for this reform is clouding my judgement, I think I am right in saying that the recognition of the moral rights of authors is the statement of a principle whose importance and ethicality transcend even the limits of our Conference.

For all its modest appearance, Article 6bis sets against the materialistic currents which dominate present-day society that the right to respect for intellectual ideals in the name of which thousands of writers and artists, those
Appendix

Artisans of civilization’s real progress, work, suffer and struggle, indeed also fall, as men fall at their desks as well as on the battlefields, in the agonizing fatigue of the unattained ideal.

This modest Article 6bis thus affirms that ideals are immanent conditions of progress, and that the rights of the intellectual hierarchies which effect that progress must be respected.

By thus completing and ennobling all our work, this recognition of moral rights dispels any doubts which might still remain regarding the results achieved by the Rome Conference, and enables us to assert that this Conference too marks a new phase of substantial importance in the international protection of works of the mind.

Rome, June 1, 1928.

E. Piola Caselli
Vice-Chairman and Rapporteur-General of the Conference

I should particularly like to express my warm thanks to Professor Gariel, Senior Deputy Director of the Berne Bureau and Secretary-General of the Conference, and also to Mr. Linant de Bellefonds, Royal Adviser to the Egyptian Government and a member of the Egyptian Delegation, who were kind enough to assist me in the final revision of the text of this report.

Records of the Conference

Convened in Brussels June 5 to 26, 1948

General Report
on the Work of the Brussels Diplomatic Conference for the Revision of the Berne Convention

Presented by

Marcel Plaisant
Rapporteur-General
to the General Committee on June 25, 1948

and Approved in Plenary on June 26, 1948

Ladies and Gentlemen,

The importance of the Brussels Conference will have been the same as that of the Berlin and Rome Conferences. Thirty-five Union countries have participated in your deliberations. Bulgaria sent observers. The non-participating Union countries and participating non-Union countries were 18. And, finally, we benefited from the presence of Unesco.

You have held three meetings in plenary assembly, 27 General Committee meetings, 12 Drafting Committee meetings and, finally, for the organization of your work, the officers of the meeting, to which posts Belgian personalities were appointed, thought that it was more expedient to set up sub-committees to consider specific subjects: thus it was that the Applied Art Sub-Committee held three meetings under the chairmanship of Mr. Coppieters de Gibson, that the Sub-Committee on Broadcasting and Mechanical Instruments held eight meetings under the chairmanship of Mr. Bolla, and that the Sub-Committee on Photography and Cinematography held five meetings under the chairmanship of Mr. Julio Dantas.

Finally, it became clear in the course of the discussions that the complexity of the problems was so acute that the General Committee had to set up a further six Sub-Committees: for the coordination of texts, on Article 4(4), on Article 6bis, on Articles 11 and 11ter, on Article 14(3) and on Article 23. More than 80 supporting documents have been presented in the course of these discussions, and you are all witnesses to the sheer hard work that has been done by all representatives in the course of the General Committee or Special Sub-Committee meetings.

The text that is proposed to you for final voting will not be the subject of any observations on our part except to the limited extent that it has undergone amendment.

The title of the Convention includes the mention of the revision that has just taken place at Brussels, but also recalls the Berlin