

Nevertheless, at the end of the first paragraph the application of the provisions of Articles 11^{bis} and 13 has been reserved. Consequently, the Reporter-General felt required to recall by express mention the possibility of what might be termed small reservations in national legislations in this respect. Delegates of Norway, Sweden, Denmark, Finland, Switzerland, and Hungary evoked limited exceptions in favour of religious ceremonies, military music, and the requirements of teaching and popular festivals. These allusions are of a transient character and in no way impinge upon the legal principle involved.

The second paragraph establishes equivalent rights in so far as translations are concerned, and the third paragraph reproduces the former text.

During the course of the debates on Article 11, mention was made of a possible codification of the right of presentation. This right will henceforth figure in a clear-cut inscription in the text of the Convention.

The Rome Conference had meritoriously created, by Article 11^{bis}, the exclusive right of an author to communicate his work by radio-diffusion. Elliptical in principle, the text of the Convention resembled the state of an invention still only in the initial stages of development. The Programme, taking account of the prodigious development in the field of radio, proposed a new Article splitting up the right according to the ultimate manner of its exploitation. It was accordingly necessary to provide for plain emissions, relayed emissions, emissions made after recordings, communications by loud-speaker, and, finally, television, whilst seeking also to provide for such improvements or extensions of which this final means might still be capable.

The Committee presided over by M. Bolla produced a report which served as a basis of discussion in the plenary Commission.

The French proposal, which spoke of the exclusive rights of authors to authorize the radio-diffusion of their works or the communication to the public by any other means serving to diffuse signs, sounds, and images, was retained from the beginning of the discussion as being the most far-seeing in a domain where technology might yet reveal surprises. It now forms the first part of paragraph (1). The author still has the right of all public communication by all secondary means—means for which two processes are known: wireless relays and radio distribution. This right was consigned to the second part of paragraph (1). Finally, the author is further entitled to enjoy a third right: the right of public communication by loud-speaker or by any similar instrument transmitting signs, sounds, or images of the radio-diffused work. This right forms the third part of paragraph (1). It is a living right, and also a virtual right over whoever seeks to ponder upon the infinite possibility of invention. If loud-speakers are mentioned and if television is included within the scope of paragraph (1), they nevertheless give rise immediately to further rights. Each time there is use of apparatus and transmission occurs by such means, the question of authorization may arise.

Paragraph (1) in its three heads is indivisible from paragraph (2), which reserves to national legislation the regulation of the conditions of exercise of these rights. Exceptions of a free character can be envisaged in the cause of religion, patriotism, or culture. These ultimate conditions are set in a fairly wide framework: they cannot in any case affect moral right, nor the right of the author to receive a just remuneration fixed by the competent authority in the absence of agreement. Each country may take such steps as it considers proper to avoid possible abuses, the role of the State being to check excesses, no matter where they originate.

Disagreement reached its highest level when it was sought to resolve the respective rights of authors and of stations exploiting performances received and recorded at one stage, but relayed or held back for re-emission after an indefinite period. This results in either conflict or confluence of the rights of reproduction and of presentation. It was also impossible to ignore the unquestionable technical considerations which have an ever-increasing importance in these matters, and it was difficult to draw the line between an ephemeral recording of a performance and a lasting recording in which rights of high potential may subsist. Not without difficulty did the Conference succeed in reaching unanimity upon the text of the third paragraph which reassumes the form of a proposal put forward by Benelux: "Except where otherwise provided, permission granted in accordance with the first paragraph of this Article shall not imply permission to record the radio-diffused work by means of instruments recording sounds or images."

The second sentence of paragraph (3) reserves to national legislation in the following terms, the regulation of the right of ephemeral recordings made solely with the object of an early performance: "It shall, however, be a matter for national legislation to determine the regulations for ephemeral recordings made by a broadcasting body by means of its own facilities and used for its own emissions. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by legislation."

It would thus be legitimate for national Legislatures to declare whether an authorization to broadcast does or does not carry with it the right to make a record with a view to further broadcasting, provided the recording is carried out by the actual broadcasting organization itself by its own resources and for its own use, and provided that the recording is of a purely ephemeral character. National Legislatures have the right to define what constitutes ephemeral recordings and to determine, in a general manner, their juridical limits: for instance, in so far as concerns their ultimate preservation in official archives by reason of the exceptional documentary character of the recordings. If a national Legislature does not make use of the right conferred upon it by the final sentence of