

paragraph (3) of Article 11^{bis}, then it is the agreement concluded between the author and the broadcasting organization which will determine whether the authorization to broadcast does or does not carry with it the right of recording, and, if so, whether such right is implied solely for ephemeral recordings or also for other recordings. If the interpretation of the contract does not disclose agreement between the parties on the point, the presumption is that the first sentence of paragraph (3) of Article 11 will become applicable—the authorization to broadcast not implying the right of recording, even ephemerally.

If it were permitted to impose sub-titles to these two sentences of the third paragraph the significance of which would be appreciated, the first would come under the heading of contractual liberty and the second of oriented legislative freedom. In this form, Article 11^{bis} represents a compromise reached at the end of a long debate where all interests, whatever they were, were clearly shown and recognized.

Article 11^{ter}, establishing the right of public recitation, was adopted in the form in which it was proposed by the Programme. By "recitation" must be understood the reading or uttering of a literary work which does not assume the character of dramatic presentation.

Indirect appropriations, such as adaptations, arrangements, and transformations, found, in the Berlin text of Article 12 as confirmed at Rome, protection to the benefit of the original author, but this was not clearly expressed. The Programme sought to remedy this defect by proposing a text which would establish the right of the original author by referring to Article 2, paragraph (2), in such a manner that the respective domains of the first creator and of the person adapting the work were precisely defined. The very precise text proposed by France appeared to secure the support of the greatest number of delegates. It was summarized by one delegate in the following terms: "an exclusive authorization granted by the author for the transformation of his work; and a non-exclusive right in connection with this transformation, since the author of the transformation clearly has his rights in the transformation, but nevertheless the subsisting right of the original author must continue to exist concurrently with the right of the author of the transformation." The Programme had hoped to systematize the right of authors of musical works as regards the recording of such works, together with new forms of so doing. The French delegation had supported and reinforced the Programme in this respect; it sought to distinguish the recording, the putting into circulation of instruments for mechanical reproduction, and the use of these instruments in broadcasting or any other performance. The Article as adopted has assumed the most modest of forms, but it nevertheless contains substantial guarantees.

According to the first paragraph of the new Article 13, the author enjoys the exclusive right of authorizing the recording of works by instruments capable of reproducing them mechanically, in place of the term "adaptation," which was somewhat vague and which was also capable of being amphibological. Under the second subheading of the paragraph, the author enjoys the same right in respect of public performance by means of these instruments of the works thus recorded. The right of putting into circulation of records or apparatus has not been specified by the Conference, but the Conference instructed its Reporter-General to recall that the author may stipulate by contract that the putting into circulation of apparatus or recordings is capable of giving right to claim for royalty or like payment. It is one of those attributes of copyright which it is fitting to mention here, in an exergual sense, as being the source of an actual right.

Paragraph (2), which is devoted to the reservations relating to the application of rights arising from national legislation, reproduces the original paragraph, but with the addition of an important amendment which was inserted only after long and conflicting discussion. It is here specified that the reservations "shall not, in any circumstances, be prejudicial to the author's right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority." It is considered that a text of this nature is incompatible with a system of compulsory licences. In any case, it strengthens the position of an author *vis-à-vis* record-manufacturers in negotiations regarding their respective rights.

According to conjectures arising from the Programme and the proposals of delegations, it might have been expected that Article 14 would have included detailed regulations, and would have embodied a discrimination as regards cinematographic films. Divergences of view disclosed by the discussions forced the Conference to content itself with a more restrained text which is nevertheless still valuable. The first paragraph clearly gives rise to two rights for the benefit of an author:—

- (1) The adaptation and cinematographic reproduction of works, to which is added the putting into circulation of the reproduced works, which is capable of giving rise to a separate right; and
- (2) The public presentation and performance of the works thus adapted or reproduced.

Paragraph (2) is drafted thus: "Without prejudice to the rights of the author of the work adapted or reproduced, a cinematographic work shall be protected as an original work." This text should be interpreted in the sense that no discrimination is called for in the production of films, and that the Convention abstains from imposing any criterion upon their value as artistic creations. The British delegate asked that a note be taken of his declaration, supported by France, and according to which the time had come, in view of the perfecting of the film industry, to treat cinematographic productions on a footing of equality, without any discrimination as regards their nature or the term of their protection.