

This article your delegate considers satisfactory. It reserves power to each country's Legislature to control within its own national area the exercise of the right. That was the provision contended for by New Zealand throughout the Conference. Power is thus given to adopt a compulsory-license system, or any other system; and in this connection comparison with Article 13 and consequent English legislation is instructive. The principle of compensation was never contested by New Zealand, as that country does not contemplate turning highwayman, but wishes only to secure itself against monopolies.

Herewith are copies of the reports of the various committees; of the New Zealand delegate's speeches; of the speeches made at the final plenary; and of other matters relating to Article 11 *bis*. A perusal of them is recommended for a proper understanding of the arguments advanced, the position taken up by your delegate, and the viewpoint of other nations. They certainly will be of use to the New Zealand delegate at future Conferences, when, undoubtedly, efforts will be made to reduce national control over this important branch of copyright.

2. *Mechanical Music—Public Performances.*

Public performance of this class is generally accomplished by gramophone amplified. By Article 13 the exclusive right is conferred upon authors of musical works to authorize the public performance of the said works by means of these instruments, but reservations or conditions relating to the application of this article may be determined by the domestic legislation of each country in so far as it is concerned.

In relation to Article 13, it is to be noted:—

- (a) The only works protected by this article are "musical" ones. All others, such as lectures, readings, and speeches, delivered through the gramophone, are unprotected by the convention.
- (b) The reservation has been used in Britain and other countries for purposes of acquiring the right to make records by compulsory license.
- (c) It is competent to the Legislature to authorize compulsory license or other system of acquiring public performance rights of gramophone records.

3. *Direct Performance.*

Article 11 of the Rome Convention repeats Article 11 of the Berlin Convention, 1908, and affords copyright protection for public performances of dramatic, dramatico-musical, and musical works. It is to be noted—

- (a) Other public performances, such as lectures, readings, and speeches, are unprotected by the convention.
- (b) There is no express reservation to each country to deal with direct public performance rights under this article as there is under the Broadcasting Article 11 *bis* and the Mechanical Music Article 13.

It will no doubt, therefore, be claimed by the Performing Rights Association that the New Zealand Legislature is not entitled to control in any way the exclusive right of the author conferred by this article.

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

- (1) That if the exclusive right conferred by Article 11 is or may be so exercised as to become an abuse, then the New Zealand Legislature can control it.
- (2) That what constitutes an abuse is a question exclusively for the Legislature, subject to its acting honestly and reasonably.
- (3) That the New Zealand Legislature may provide for compulsory license or other scheme upon payment of a royalty, percentage on door or other receipts, or other compensation to the copyright-holder, to be assessed in such manner as the Legislature thinks fit.

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

Some countries hold that power is inherent in the State to suppress or otherwise deal with abuses, as, for instance, those arising out of monopolistic or trade conditions. In some countries legislation is not necessary—the power is what we call a common-law power; in others, legislation is requisite. All these countries, however, hold that an international Convention cannot interfere with this power, whether exercised through the Judiciary or Legislature.

On the 11th May, 1928, in the early days of the Conference, a proposal standing in the name of Australia and New Zealand was moved by the New Zealand delegate as follows: "While recognizing the rights given by Articles 11 and 11 *bis*, the countries of the Union do not relinquish the power to take measures against any abuse which may arise in the exercise of the said rights." (C.D.A. 2, 28, forwarded herewith, and the New Zealand delegate's speech in support).

The leader of the Conference (M. Giannini, of the Italian Delegation) opposed the proposal on the ground that, as every country's Legislature and Judicature have inherent power to deal with abuses, the proposal was not necessary or proper for inclusion in a convention. The proposal was rejected.

Adopting M. Giannini's view, it follows that determination of whether an abuse arises or may arise must be left to the Legislature or Judicature of each country to determine, and necessarily a very wide latitude in determining must be given to each country. So much for propositions (1) and (2).