NOTES

1. I shall mention here such questions as the protection of scientific discoveries used in creativity related to inventions and in innovative processes (compare in particular the Geneva Agreement of 3 March 1978 on the subject of the international registration of scientific discoveries, the reports of the national groups of the AIPPI in connection with Question 61 – "Protection of Scientific Discoveries" – *Journal of the AIPPI*, 1983/I, p. 149 and ff., F.-K. Beier, J. Straus, *Der Schutz wissenschaftlicher Forschungsergebnisse*, 1982, pp. 53 ff.), the patent protection of inventions in the field of biotechnology (compare, e.g., the reports of the national groups of the AIPPI in connection with Question 82 – "Patent Protection for Biological Inventions" – *Journal of the AIPPI*, 1984/IV, pp. 285 ff.) and the protection of the products of nuclear conversions. Of course, the abovementioned questions tend to a rather different view of the traditional concept of technology and the subsequent definition of an invention as the object of patent protection.

2. Ratzke, *Handbuch der Neuen Medien*, 1982.

3. Ratzke, *op. cit.*, p. 14.

4. By information process I also understand the distribution of works, irrespective of whether they serve scientific or aesthetic aims.

5. See Katzenburger, "Urheberrecht und Dokumentation", *GRUR*, 1973, pp. 629 ff., and Kolle, "Reprographic under Urheberrecht", *GRUR Int.*, 1975, pp. 210 ff.

6. See Troller, *Kurzlehrbuch des Immaterialgütterrechts*, 1973, p. 1.

7. Troller, *op. cit.*, pp. 11 ff. In my exposition I shall not include the third group distinguished by Troller, namely legally protected signs of producers (the name of a firm) and of goods (trademarks, original names, etc.), as these signs are not the products of man's intellectual, creative activity but the result of his economic endeavours. However, their protection belongs to the field of laws on non-material goods.

8. The term "aesthetic works" used by Troller occasionally causes misgivings (see Koller, *Der urheberrechtliche Schutz der Rechenprogramme*, 1967, pp. 50 f., Ulmer, *Urheber- und Verlagsrecht*, 3rd ed., 1980, pp. 123 f.). In my opinion these misgivings lie in a misunderstanding; particularly inaccurate is the accusation that Troller makes legal protection dependent on the aesthetic value of the work, which, of course, is so highly subjective and changeable that a lawyer cannot take it into consideration. Troller uses the adjective "aesthetic" only to stress that works protected by copyright have a direct influence on the receiver and that their function depends on such an influence. He is generalizing from the concept of the beauty and aesthetic value of works.

9. The same observations were earlier formulated by Jugezolen, *Spór o istnienie świata* (The Dispute over the Existence of the Works), Vol. II, 1948, p. 242. Analysing intentional creative acts comprising a creative process, he distinguished amongst them those which apart from the intention of creating intentional objects tend to make those objects permanent and to give them inter-subjective objectivity, and those which treat the objects created as patterns according to which something else is to be created. To this category belong, for example, inventions, practical designs, models, etc.

10. There will be more about the elements of contents and form in connection with works enjoying copyright, principally with reference to the protection of computer programmes and to the copyright system of legal protection. For the moment, however, I shall note that the "absence" of form in the case of technical works is the principal reason why the people may inde-

pendently of each other produce the same invention, which in the case of aesthetic works, in connection with their form, is a rare phenomenon.

11. Dietz, "Das Problem des Rechtsschutzes von Computerprogrammen in Deutschland und Frankreich. Die kategoriale Herausforderung des Urheberrechts", *B.J.E.*, 1983, pp. 37 ff.

12. Troller, Lecture to the Executive Committee of the ALAI in 1983.

13. Schramm, *Grundlagenforschung auf dem Gebiet des gewerblichen Rechtsschutzes und Urheberrechts*, 1954, pp. 37 ff.

14. Kopff, "Die Schutzsysteme im Immaterialgütterrecht", *GRUR Int.*, 1983, pp. 351 ff.

15. The need for subjective novelty is one of the conditions of copyright protection, which does not exclude the protection of works that are apparently similar so long as they are subjectively new (see Kopff, *op. cit.*). Patent law, on the other hand, does not limit itself to a demand for subjective novelty, for it protects only objectively new inventions. In copyright, as I mentioned in note 10, subjective novelty only is required, with regard amongst other things to the conviction that the independent production of two apparently similar works is rather improbable. This view is expressed in Kummer's theory concerning the statistical uniqueness of a work (compare Kummer, *Das urheberrechtlich schützbare Werk*, 1968).

16. Works as non-material goods should be distinguished from the physical manifestations (e.g., books, musical scores, paintings, plans and designs) in which they were recorded and thanks to which they usually exist and sometimes come into being at all (e.g., works of fine art).

17. Ingarden, *O poznawaniu dzieła literackiego, Studia z estetyki* (On the Recognition of a Literary Work, a Study in Aesthetics), Vol. I, 1957, p. 9. The work is arranged in the author's acts of consciousness, but its recording is usually connected with the production of a physical object.

18. Similarly Ulmer, *op. cit.*, p. 13.

19. Ulmer, *op. cit.*, p. 119.

20. Troller, *op. cit.*, pp. 74 ff.

21. By artistic works I understand all works that are not scientific ones, irrespective of the field of creativity to which they belong (literature, music, painting, etc.).

22. Kopff, *Dzieło sztuk plastycznych i jego twórca w świetle przepisów prawa autorskiego* (Work of Fine Art and Its Author in the Light of Copyright Regulations), 1961, pp. 10 ff., and by the same author, "Die abhängigen Urheberrechte im Lichte der Theorie über Schichtenaufbau des Werkes", in *Homo creator, Festschrift für Alois Troller*, 1976, pp. 135 ff.

23. Kohler, *Das literarische und artistische Kunstwerk und sein Autorschutz*, 1982.

24. I took the relationship of the concepts of form and content from Jugezolen, *Spór o istnienie świata* (Dispute over the Existence of the Works), Vol. II, 1946, pp. 319 ff.

25. Mention should be made here of the apprehensions often voiced about the consequences of a legal monopoly of the results of scientific work. On the subject of the need to protect scientific achievements, compare Beier and Straus, *Der Schutz wissenschaftlicher Forschungsergebnisse*, 1982, and the Geneva Convention of 3 March 1978, on the subject of the international registration of scientific discoveries.

26. This concept is sometimes accused of not taking into consideration the phenomenon of the "unity" of a work. In my opinion, this accusation lies in a misunderstanding; for it is obvious that a work constitutes a certain whole and only as that whole can be an object of cognition. Thus, the theory of the levels of composition of a work is only of value as a model facilitating the explanation of legal structures. Compare Kopff, "Die abhängigen Urheberrechte . . .", in *Homo creator*, pp. 135 ff.

27. Ulmer, *op. cit.*, p. 121.
28. Ulmer, *op. cit.*, p. 139.
29. Troller, *op. cit.*, p. 77.
30. Hubmann, *Urheber- und Verlagsrecht*, 1978, pp. 29 ff.
31. Hubmann, *op. cit.*, p. 34.
32. The description of internal and external form and of what they contain in the formulation of Hubmann is not essentially different from that which I have adopted. As concerns the level of contents, on the other hand, Hubmann does not finally oppose this factor of artistic works (he does not operate at all using Kohler's concept of the "imagined" picture) *(Imaginäres Bild)* with the contents of scientific works and fundamentally expresses the view that the contents of scientific works may enjoy copyright protection with regard to the conscious choice and conception of the theme. Such results of a scientist's activity I would be inclined to include in the realm of internal form (e.g., the simplification of observed phenomena, the choice of characteristic features, etc.).
33. I am thinking here about, amongst other things, computer music and graphics.
34. We would be faced with the necessity of broadening these limits only if computer programmes were deemed to constitute a different category of intellectual production than works, in other words that neither their contents nor their form bore features of originality.
35. From this very rich literature I shall mention here only the following works: Ulmer, *Elektronische Datenbanken und Urheberrecht*, 1971, Kohler, *Der urheberrechtliche Schutz der Rechenprogramme*, 1968, Betten, *Zum Rechtschutz von Computerprogrammen, Mitt. d. Deutschen Patentanwülte*, 1983, pp. 62 ff., Gotzen, "Copyright and the Computer", *Copyright*, 1977, pp. 15 ff., Kindermann, *Special Protection System for Computer Programmes – A Comparative Study*, 7 II c, 1976, pp. 301 ff., Kolle, "Computer Software Protection – Present Situation and Future Prospects", *Copyright*, 1977, pp. 70 ff., Ulmer and Kolle, "Der Urheberrechtsschutz von Computerprogrammen", *GRUR Int.*, 1982, pp. 489 ff. As far as computer art is concerned special attention is deserved by the following works: Kummer, *Das urheberrechtslich schützbare Werk*, 1968, Kummer, "Die Entgrenzung der Kunst und das Urheberrecht", in *Homo creator . . .*, 1976, pp. 89 ff., Ulmer,"Der urheberrechtliche Werkbegriff und die moderne Kunst", *GRUR*, 1968, pp. 527 ff., Weissthanner, *Urheberrechtliche Probleme Neuer Musik*, 1974. The questions of encoding (input) and the obtaining of coded information (output) are discussed by, among others, Kolle and Ulmer, "Einspeicherung geschützter Werke in automatische Information- und Dokumentationssysteme", *GRUR Int.*, 1976, pp. 198 ff., Ulmer, "Problems arising from the Use of Electronic Computers and Related Facilities for Storage and Retrieval of Copyright Work", *Copyright*, 1979, pp. 200 ff.
36. The new "reality" which is to appear thanks to the application of an invention concerns either a new product (so-called constructional inventions) or new methods of production (so-called technological inventions).
37. Compare Ingarden's work, *op. cit.*
38. Compare Kopff, "Die Schutzsystem . . ." and by the same author *Konstrukcje cywilistycine w prawie wynalazczowici* (Civil Law Structures of Inventions Law), 1978.
39. Compare *Model Provisions on the Protection of Computer Software*, document of the WIPO AGOP/NGO/IV of 24 October 1977.
40. Compare the document *Committee of Experts on the Legal Protection of Computer Software* (LPCS) II/2 produced during the second session of the committee in Geneva on 13-17 June 1983.
41. Such a view is taken by, e.g., Betten, *op. cit.*, pp. 62 ff.
42. I am entirely in agreement with Dietz (*op. cit.*, pp. 305 ff.) that the

protection of computer programmes should be of shorter duration than that of other works. Also, the project for a model law by the WIPO of 1977 anticipates in Article 7 a shorter period of protection (25 years from the production of the programme or 20 years from the date of its being sold, made available, put on the market or applied).

43. Ulmer and Kolle, "Der Urheberschutz von Computerprogrammen", *GRUR Int.*, 1982, pp. 489 ff., Kolle and Ulmer, "Einspeicherung geschützter Werke in automatische Informations- und Dokumentationssysteme", *GRUR Int.*, 1976, pp. 108 ff., Ulmer, *Elektronische Datenbanken und Urheberrecht*, 1971.

44. Ulmer and Kolle, *op. cit.*, p. 494.

45. Literary works are, or may be, both artistic and scientific works. Thus, this is an entirely different qualifying condition to that which is used to divide works into the two categories being discussed here.

46. Compare more closely Wittmer, *Der Schutz von Computersoftware – Urheberrecht oder Sonderrecht*, 1981, in particular p. 120.

47. It must, however, be recorded that Ulmer (*Urheber- und Verlagsrecht*, pp. 119 ff.) and Kolle (*op. cit.*, p. 497), and others including Kohler (*op. cit.*, pp. 50 ff.) are opposed in principle to the distinction in works made between content and form, considering such a division to be of little use. Ulmer stresses that in the case of certain works, e.g., musical and lyrical works or works of abstract art, it is impossible to make such a division, for the work constitutes an indivisible (integral) whole. Thus he considers that instead of speaking of the form and content of a work one should, bearing in mind the needs of the law, speak of elements bearing the stamp of individual creativity and those elements devoid of such a stamp and thus constituting public property (*op. cit.*, pp. 122 ff.). I, however, am of the opinion that accepting this view does not facilitate legal evaluations and that it is particularly deficient in relation to scientific works, amongst which, in both my and Ulmer's opinion, computer programmes should be included.

48. Such a standpoint is also taken by the project for a model law by the WIPO. It declares in § 4 that "The rights under this law shall not extend to the concept on which the computer software is based".

49. To support their viewpoint Ulmer and Kolle (*op. cit.*, p. 497) cite the WIPO's project for a model law, which states in § 5 of Statutes 4 and 5 that: "The proprietor shall have the right to prevent any person from: . . . using the computer program to produce the same or a substantially similar computer program or a program description of the computer program or of a substantially similar computer program (IV), using the program description to produce the same or a substantially similar program description or to produce a corresponding computer program (V)."

50. Kohler, *op. cit.*, compare especially pp. 49 ff.

51. Hubmann, *op. cit.*, pp. 33 ff.

52. Hubmann, *op. cit.*, pp. 86 f.

53. Compare more closely Kopff, "Die abhängigen Urheberrechte . . .", p. 140. I took the concept of "indefinable places" from Ingarden.

54. The object of copyright is only "artistic" works, and not just any kind, for example those devoid of the stamp of personal creativity. This criterion also facilitates the distinction between artistic productions from "free expressions" such as for example acrobatic or sporting demonstrations, conjurers' performances and so on, at whose base there does not lie a fundamental or schematic work demanding to be completed in undefinable places.

55. But compare Hubmann, "Rezension zu Troller Immaterialgüterrecht Bd. I", *GRUR Int.*, 1960, p. 80.

56. Hubmann, *Urheber- und Verlagsrecht*, p. 91.

57. Troller, reading to the sitting of the Executive Committee of ALAI in January 1983. I take the quotation from Dietz, *op. cit.*, p. 310.

58. Munro, *The Arts and Their Interrelations,* 1949, compare particularly pp. 114-120.

59. I do not believe a more exact description is necessary in a copyright law of the concept of the computer programme. Such a regulation was included in 1980 in Article 101 of the United States Copyright Act of 1976 and read as follows: "A computer program is a set of statements or instructions to be used directly or indirectly in a computer or in order to bring about a certain result."

60. The concept of the triple-layered composition of the work and the similar division into internal and external form is particularly useful with regard to scientific works; for the realm of internal form facilitates the inclusion among works legally protected of many elements of a work which other authors include amongst the components of the contents, in their understanding partially enjoying protection and partially being the object of "personal property".

61. By apparently similar works I understand those which do not differ to such an extent that from the point of view of copyright they may be considered to be separate works, though they may not be identical. Differences that do exist – constituting a lack of identicalness – have, however, no significance. This is the case for example with the replacement of certain words with their synonyms.

62. Kolle, report in the name of the Federal Republic of Germany national group of the AIPPI, *Annuaire,* 1984/IV, pp. 6 ff.

63. Kolle, *op. cit.,* p. 14.

64. Kolle, *op. cit.,* pp. 7 f.

65. See also Kolle, *op. cit.,* p. 7

66. Compare the much-quoted report by Kolle.

67. The report of the Argentinian group, *op. cit.,* pp. 19 ff. In the report support is declared for the copyright protection of algorithms and it is stated that a new Argentinian law on copyright, in accordance with current judicial practice, embraces the protection of computer programmes.

68. The report by F. Schönherr, *op. cit.,* p. 23. In the report it is emphasized that in Austria, despite the absence till now of judicial pronouncements on the question of the protection of computer programmes, their protection by copyright is a general tendency expressed in science.

69. The report by Rosenoer, Vanderperre, Debetencourt and Van Reepinghen, *op. cit.,* pp. 24 ff.

70. The report by G. A. Macklin, *op. cit.,* pp. 44 ff. In the report it is stated that according to a long-awaited government report on amendments to copyright law, copyright protection is provided for computer programmes, with a short duration in comparison to other works, calculated from the date the programme is recorded.

71. The report by G. Brock-Nannestad, M. Marstrand-Jörgensen, K. Raffnsoe and F. Wittrup, *op. cit.,* pp. 50 ff.

72. The report by the Spanish group, *op. cit.,* pp. 54 ff. This group declared itself to be opposed to the concept of the promulgation of a separate law on the protection of computer programmes on the assumption that this role may be fulfilled by copyright law supplemented with the relevant regulations.

73. The report by the United States group, *op. cit.,* pp. 66 ff.

74. The report by S. Henriksson, V. Tirpi, K. Heinonen, R. Kennethwrede, K. Pirila, J. Borgström, *op. cit.,* pp. 71 ff. The authors of the report declared themselves to be in favour of the regulations of copyright law being supplemented with the mention of computer programmes, but asserted that basically this law in its present form from 1980 already permits the copyright protection of computer programmes.

75. The report by M. de Beamont, *op. cit.,* pp. 77 ff. The report, however,

calls attention to the fact that the copyright principle of the permanent link between the author and the work requires modification in the case of computer programmes. In the opinion of the author of the report, the possibility should be allowed of the authors (programmers) drawing up appropriate contracts with their employers concerning the transfer of rights related to property.

76. The report by the British group, *op. cit.*, pp. 85 ff. The authors of the report recommend the supplementing of certain regulations in the current copyright act of 1956. They also declare their support for a shorter period of protection for computer programmes, suggesting a period of 20 years from the production of the programme.

77. The report by A. Bogsch, J. Gödölle, B. Kende, M. Lantos, G. Palos and E. Szuhay, *op. cit.*, pp. 90 ff. The authors declare support for a *sui generis* system of copyright, without however defining more exactly on what this system should rest. They also emphasize that it is necessary to investigate the effectiveness of protection offered on the basis of current copyright law, the more so because judicial practice is moving in this direction.

78. The report by the Irish group, *op. cit.*, pp. 96 ff. The authors of the report consider the appropriate supplementing of copyright laws with the definition of a programme to be advisable; they propose, as a pattern, to use the legislation of the United States.

79. The report by L. Sordelli, P. Berra, A. Brevi, F. Collenza, D. Dominghetti, G. Faggioi, C. Falcetti, V. Giugni, A. Jarach, R. Rapisardi and P. Sasso, *op. cit.*, pp. 100 ff. The authors of the report suggest that § 2 of the copyright act of 1941, incorporating a sample listing of works, be supplemented with the mention of computer programmes.

80. The report by J. Bull and M. Lünd, *op. cit.*, pp. 114 ff. The authors, however, see the need to apply certain of the regulations of the copyright law to the particular problem of computer programmes.

81. The report by H. R. Furstner, J. E. Galam, D. W. F. Verkade and J. E. Vos, *op. cit.*, pp. 116 ff. In the opinion of the authors of the report, copyright protection should be supplemented by, *inter alia*, patent protection, regulations in laws on unfair competition, case law, etc. This is a postulate I have supported in the text of the present work.

82. The report by M. du Vall, *op. cit.*, pp. 125 ff.

83. The report by K. Rybarik, *op. cit.*, pp. 148 ff. The author takes the standpoint that the regulations of copyright law should be applied to the needs of the protection of computer programmes, and only when this measure fails to produce a separate law.

84. The report by the Japanese group, *op. cit.*, pp. 109 ff. This group declares itself in favour of the promulgation of a separate law on the protection of computer programmes.

85. The report by the Portuguese group, *op. cit.*, pp. 132 ff.

86. The report by J. Adrian, K. Dinse, and K.-J. Eckner, *op. cit.*, pp. 137 ff. The authors of the report justify their standpoint above all on doctrinal views and on the position taken by jurisdiction, according to which computer programmes constitute separate achievements of a scientific-technical nature. I, of course, do not share this view.

87. The report by the Chinese group, *op. cit.*, pp. 48 ff.

88. The reports were produced in accordance with guidelines published in the AIPPI's *Journal*, 1984/II. The responses to the guidelines were published in the AIPPI *Journal*, 1984/III, pp. 153 ff., the reports themselves, as I have mentioned, in the *Journal*, 1984/IV.

89. This view was taken by the national groups of West Germany, Belgium, Denmark (although supplementing of the convention was postulated to eliminate possible doubts), Spain, Finland (with the same postulation as in the Danish group), Great Britain, Hungary (though it was said that the ultimate view would depend on the adoption in international copyright law of a con-

cept close to that of inventions in the course of employment), Italy (although on condition of changes in Articles 2, 3 and 9 of the Berne Convention and Article I of the VIth Universal Copyright Convention), Norway (who postulated the express mention of computer programmes in the conventions), the Netherlands and Poland.

90. Article 2 (1) of the Berne Convention and Article 1 of the Universal Copyright Convention.

91. It should be stressed that in internal legislation in relation to foreigners enjoying convention protection, it is inadmissible to limit rights below the minimum defined by the convention, irrespective of the state of advancement of the act.

92. For it is a question not only of the author but also of his legal successor.

93. The same in Kolle, *op. cit.*, p. 13.

94. Kummer, *op. cit.*, pp. 189 ff. Compare also Weissthanner, *Urheberrechtliche Probleme neuer Musik*, 1974.

95. Kummer, *op. cit.*, pp. 195 f.

96. Steinbuch, *Automat und Mensch*, 1965, p. 401.

97. Kummer, *op. cit.*, p. 193.

98. The doubts are also shared by Ulmer, *Urheber- und Verlagsrecht*, p. 128. Compare in particular his statement that "M. E. können wir . . . das Urteil über die Schutzfähigkeit nicht dem Autor selbst überlassen". I, of course, share this view.

99. For the author always makes the decision whether to distribute the work (droit de rester inédit).

100. Compare, *inter alia*, Ulmer, "Der urheberrechtliche Werkbegriff und die moderne Kunst – Rezensionsabhandlung", *GRUR*, 1968, pp. 527 ff. Also Tetzner, "Zufall und schöpferische Leistung", *UFITA*, 1943, pp. 249 ff., takes the view that creativity in the understanding of copyright, as opposed to the field of inventions, must be conscious and free of chance. Compare also Herschel, "Urhebergriff und Kausalität", *UFITA*, 1972, pp. 17 ff.

101. Schmieder, "Geistige Schöpfung als Auswahl und Bekenntnis", *UFITA*, 1969, pp. 107 ff.

102. I cannot accept the need for this condition, placing excessive emphasis on the concept of statistical uniqueness, for objective novelty does not constitute a condition for protection under copyright law.

103. I would be more inclined to speak of direct perceptional accessibility, in connection with the concept taken from Troller of "a work in itself".

104. Schmieder, *op. cit.*, p. 113. An identical view on the question of presentation, in which a work may be expressed, is taken by Heim, *Die statistische Einmaligkeit im Urheberrecht* de lege lata *und* de lege ferenda, 1971, compare in particular pp. 44 ff.

105. Ulmer, *Urheber- und Verlagsrecht*, p. 128.

106. I shall not touch on the problem, still not sufficiently clarified, as to whether we should consider a whole series of, for example, print-outs of computer graphics as one work, or whether each print-out should be considered to be a work, usually distinguished by details. This problem is touched on, but not solved, by Kummer, *op. cit.*, pp. 196 f. I believe that in examination of this question it may be useful to apply the concept of apparently similar objects. Neither can a consideration be avoided of the role of the original and of successive versions of the same work, in other words the age-old problem of wood-cuts, copperplate engravings and so on.

107. Whether and to what extent they may also enjoy protection arising from the regulations of other laws (e.g., that concerning unfair competition or patent law) no longer belongs to a lecture on copyright and so I do not elaborate on this subject, making only a few observations, as I have in the course of the lecture.

108. The realm of copyright gained in the course of inheritance is variously

conceived on the basis of particular laws. Some of them, for example the law on copyright and the rights of relatives current in the Federal Republic of Germany (FRG), declare that the heir becomes the subject of copyright in full, not excluding personal rights (Ulmer, *Urheber- und Verlagsrecht*, 1982, p. 356), whereas other laws, for example the Polish Copyright Act of 1952, divides the inheritance of economic rights from the right to claim moral rights *post mortem autoris* (compare Grzybowski, Kopff and Serda, *Zagadnienia prawa autorskiego* (Questions of Copyright), 1973, pp. 169 ff. and pp. 256 ff.).

109. Rehbinder, *Das Urheberrecht im Arbeitsverhältnis*, 1983, p. 7.

110. Certain authors, e.g., Rehbinder, "Recht am Arbeitsergebnis und Urheberrecht", *UFITA*, 1973, p. 145, express the view that moral rights can also be transferred to other persons.

111. Rehbinder, *op. cit.*, p. 7.

112. Within this system, however, there appear also certain differences. The laws of Great Britain and of Ireland, for example, restrict the substance of the prime copyright of an employer in the case of the press to the use of works in publications, and sometimes, as is the case on the basis of the laws of Great Britain, Ireland and the Netherlands, do not permit contracts to be drawn up on the grounds of which the possibility is excluded of copyright coming into being for the benefit of the author-employee.

113. In this system should be included the decided majority of West European countries, and in my opinion also the Socialist countries with the exception of Poland (compare Barta, "Das Arbeitnehmerer Urheberrecht im sozialistischen Europa", in Rehbinder, *op. cit.*, pp. 35 ff. and Barta, "Le droit de l'auteur et la créativité d'employée", *RIDA*, 1983, pp. 69 ff.). The exclusion of Poland from this system is decided, in my opinion, by Article 7, § 1, which declares: "Copyright serves the author, if a specific regulation does not decree otherwise." Such specific regulations are Article 10 concerning collective works, over which the publisher enjoys copyright, Article 12, according to which copyright over: (1) an artistic model for industry, (2) a design, plan or drawing, technical or architectural, intended for industry or the building trade, (3) a work intended for advertisement or propaganda in the field of economics, is enjoyed by the unit of collectivized economy for whom the author completed the work or on whose instructions the work was completed, and Article 13 concerning filmed works. It should be stated that the project for a new law on copyright does not include a regulation equivalent to Article 7, § 1, and that in relation to the works mentioned in Article 12, the unit of collectivized economy is granted rights to the exclusive use of the work within the limits defined by its planned aims.

114. The various theoretical concepts of the protection of the moral rights of a dead author are discussed exhaustively by Grzybowski, *Ochrona osobista stosunku autora ds dzieła po śmierci twórcy* (Protection of the Author's Relationship to the Work after his Death), 1933. Compare also Dietz, *Das droit moral des Urhebers im neuen französischen und deutschen Urheberrecht*, 1968, pp. 140 ff.

115. Compare H. O. de Boor, *Vom Wesen des Urheberrechts*, 1933, p. 34 and Ulmer, *op. cit.*, p. 113.

116. Compare Kopff, *Dzieło sztuk plastycznych i jego twórca w świetle przepisów prawa autorskiego* (Work of Fine Art and Its Author in the Light of Copyright Regulations), 1961, pp. 113 ff. I believe in particular that the sphere of economic rights despite any difficulties, may be distinguished from the sphere of moral interests. To this end, however, it is necessary to take into consideration the typical interests and values of the average person, not the extremely individualized attitudes of particular individuals, and to bear in mind society's legal awareness. For if we ignored these factors and sought to base legal structures on individually felt interests, then it would be impossible to build any sort of sensible legal system at all, nor even to divide laws into

moral ones and ones related to economic rights, be it in any area of law. This is shown simply by the principle of *pretium affectiones*, which, although it takes into consideration a particular affection for things (e.g., family photographs) which is a sign of the owner's personal attitude to them, does not alter the fact that that thing is the object of property law (possessions). To this exposition I shall add that I am particularly of the opinion that despite the use of the traditional term "personal goods", it is basically a question of the protection of values socially recognized as important. In the case of protection serving the author these are values that relate not only to an actual work, but also to the position of the author as creative artist. Thus the dissimilarity of the object of copyright relating to economic rights in the form of a work and moral rights (socially recognized values connected with creativity) argues firmly for a dualistic structure for copyright. I do not, however, develop this subject, touching on the general problem of personal rights, in this lecture.

117. For these reasons the authors of the project for a new copyright law in Poland decided to base this project on a dualistic system.

118. Rehbinder, *op. cit.*, p. 6.

119. Saito, "Der Arbeitsgeber als Urheber oder Inhaber des Urheberrechts – Ein Bericht aus Japan", in Rehbinder, *op. cit.*, pp. 101 ff.

120. It is from this point of view that it is discussed and criticized by Rehbinder, *op. cit.*, pp. 9 ff., and in the work "Recht am Arbeitsergebnis und Urheberrecht", *UFITA*, 1973, pp. 125 ff., particularly pp. 143 ff.

121. Despite this it is considered that free works should be reported to the employer to allow him to make use of them should this be indicated, in agreement with the principles of the labour law, by the principle of loyalty. This viewpoint, particularly in the face of the lack of court jurisdiction, raises many practical doubts.

122. The express issue of a licence should be talked of when the employment contract contains a provision entitling the employer to make use of the work.

123. Yet the employer may withhold the expenses sustained in connection with the production of the work by an employer, and if the work was produced in working hours, also an appropriate part of the bonus.

124. Rehbinder, *op. cit.*, pp. 16 f. and "Recht am Arbeitsergebnis" by the same author, *UFITA*, 1973, pp. 142 f.

125. Rehbinder, *op. cit.*, p. 17, points out that the definition of profits significantly exceeding a bonus paid on the basis of an employment contract is in practice very difficult and so successfully brought claims are highly problematical.

126. Rehbinder, *op. cit.*, p. 18.

127. Rehbinder, *op. cit.*, p. 19.

128. For example, Article 24, § 3, of the Polish Civil Code declares that protection under the Code does not infringe "rights granted in other regulations, particularly in copyright law and invention law". Thus, the author decides on which legal basis to base his claim.

129. Alternatively here the concept may be considered of there arising for the benefit of the employer either copyright law or a special exclusive right to make use of the work within his statutory activity.

130. By organizational assistance I understand, *inter alia*, the securing of the co-operation of other persons, for example film editors, light and sound operators, scientific and technical advisers, serving the director with expert advice, etc.

131. Difficulties of proof never restrain the promulgation of regulations which for social reasons are considered necessary.

132. Rehbinder, *op. cit.*, p. 6.

133. Rehbinder, *op. cit.*, p. 7.

134. The annual *Journal* of the AIPPI, 1984/I, pp. 6 ff. Compare in particular the report by the Hungarian group, pp. 90 ff.

135. Model Provisions on the Protection of Computer Software, document of the WIPO AGOP/NGO/IV of 24 October 1977, Article 2 (1) of this law declares that: "The rights under this law in respect of computer software belong to the person who created such software; however, where the software was created by an employee in the course of performing his duties as employee, the said rights shall, unless otherwise agreed, belong to the employer".

136. This was discussed in the course of the lecture devoted to the object of copyright.

137. I believe that unlike an inventor, who essentially requires only the protection of authorship rights (droit de paternité) over the work, an author should enjoy full copyright protection of moral rights, perhaps with a certain limitation of the right to decide whether to publish a work (droit de rester inédit) with regard to the necessity of respecting the employer's economic rights.

138. But compare Denis de Freitas, "Copyright and Freedom of Expression", *Copyright Bulletin*, No. 3, 1984, pp. 17 ff.

139. This is essentially realised by Denis de Freitas, *op. cit.*, p. 20.

140. Compare, e.g., Article 4*ter* (2), of the Berne Convention in the Stockholm edition of 1967 and the Paris edition of 1971 concerning the institution of droit de suite. Compare also Nordemann, Vinck and Hertin, *Internationales Urheberrecht und Leistungsschutzrecht* . . . 1977, pp. 114 ff. In the dispute over the extent of the application of Article 14*ter* (2), I share the viewpoint taken by the abovementioned authors and also essentially shared by Ulmer, "Das Folgerecht im internationalen Urheberrecht", *GRUR*, 1974, pp. 593 ff.

141. Compare §§ 53 and 54 of the Federal Republic of Germany statute on copyright law and the neighbouring rights.

142. Ulmer, *Urheber- und Verlagsrecht*, 1980, p. 297.

143. From the rich literature on this subject I would recommend the following items: Kolle, "Reprographie und Urheberrecht", *GRUR Int.*, 1975, pp. 201 ff., Katzenberger, "Urheberrecht und Dokumentation", *GRUR Int.*, 1973, pp. 629 ff., Kolle and Ulmer, "Einspeicherung geschützter Werke in automatische Informations- und Dokumentationssysteme", *GRUR Int.*, 1976, pp. 108 ff., Reimer, "Das Recht der öffentliche Wiedergabe unter Berücksichtigung der technischen Entwicklung", *GRUR Int.*, 1979, pp. 86 ff., Schricker, *Grundfragen der künftigen Medienordnung – Thema der Arbeitssitzung des Instituts für Urheber- und Medien Recht, Fil und Recht*, 1984, pp. 63 ff., Katzenberger, "Urheberrechtsfragen der elektronischen Textkommunikation", *GRUR Int.*, 1983, pp. 895 ff., Rumphorst, "Kabelverbreitung von Fernsehprogrammen", *Festschrift für Georg Roeber*, 1982, pp. 329 ff., Reinshagen, "Urheberrechtliche Fragen des Satelliten Fernsehens", *UFITA*, 1973, pp. 77 ff., R. Vöth, *Aktuelle Entwicklung der Mediempolitik, Film und Recht*, 1980, pp. 460 ff., G. Davies, "Legal Problems Deriving from the Use of Videograms", *Copyright*, 1979, pp. 257 ff., Kerever, "Cable Distributions and Copyright in French Law and in the International Conventions", *Copyright*, 1977, pp. 48 ff., "Ulmer Die Entscheidungen zur Kabelübertragung von Rundfunksendungen im Lichte urheberrechtlicher Grundsätze", *GRUR Int.*, 1981, pp. 372 ff., Rumphorst, "Cable Distribution of Broadcasts", *Copyright*, 1983, pp. 301 ff., Brinkmann, "Die Vermietung von Videokaseten aus urheberrechtlicher Sicht", *NJW*, 1983, pp. 599 ff., *Cable Television – Media and Copyright Law Aspects*, Symposium of the ALAI, Amsterdam, 1982, and the national reports included by J. Arnolds (the Netherlands), J. Corbert (Belgium), T. Doi (Japan), M. Fabiani (Italy), B. A. Jennings (Great Britain), A. Kerever (France), F. Kübler (FRG), P. E. Mutino (USA), W. R. Cornish (Great Britain), F. Gotzen (Belgium), G. Karnell (Scandinavian countries), D. Ladd (USA), D. Reimer (FRG), J. H. Spoor and G. J. H. M. Mom (the Netherlands), H. J. Stern (Switzerland)

and M. W. Walter (Austria) and the general report by H. Cohen Jehorem and the ALAI's resolution.

144. Compare, e.g., the draft for a law on changes of copyright in the Federal Republic of Germany (Gesetzentwurf der Bundesregierung – Entwurf eines Gesetzes zur Anderung von Vorschriften auf dem Gebiet des Urheberrechts, Drucksache 10/837) and the standpoint of the Bundesrat.

145. Compare Ulmer, *Urheber- und Verlagsrecht,* 1980, p. 299.

146. Compare, e.g., the Polish Copyright Law (Art. 22).

147. Such an interpretation of Article 22 of the Copyright Law is accepted, *inter alia,* in Polish legal literature. Compare Grzybowski, Kopff and Serda, *Zagadnienia prawa autorskiego* (Questions of Copyright), 1973, p. 153.

148. Compare §§ 45-55, and in particular § 53 of the law on copyright and the neighbouring rights.

149. Ulmer, *op. cit.,* p. 300.

150. The standpoint is justified by the fact that the person interested in making copies does not usually have the necessary equipment at his disposal and so must instruct other persons to make them.

151. This will be discussed in connection with legislative proposals.

152. Ulmer, *op. cit.,* p. 301.

153. The construction of a building according to someone else's plans, even if already published, requires on the basis of every copyright law the permission of the author, unless the plans were issued with the aim of their being generally applied (compare, e.g., Article 20, pt. 6, of the Polish Copyright Law).

154. This system for the remuneration of authors will be discussed in the lecture devoted to the remuneration of authors.

155. Compare in particular Article 107 of the current American Copyright Law.

156. They find expression, *inter alia,* in the so-called rights of reprinting which are of fundamental significance for the press. Compare, e.g., M. Löffler, *Presserecht,* 1969.

157. The possibility of copying works whose editions have sold out serves to satisfy the needs of public libraries and is permissible if they have no other way of completing their collections. Such reproductions in general do not clash with the interests of authors and publishers, for it is usually possible to make them only several years after the edition has sold out. Then, however, one may justifiably ask whether the work has not been reprinted.

158. Thus, the limits of permissible public use are transgressed by anyone who takes any payment, even if this is not as much as the expenses he has incurred. And one must also speak of transgression of the aforementioned limits in the cases of the obtention of indirect profits, e.g., by the owner of a café who, thanks to showing films recorded on video-cassettes or music recorded on tapes, makes his establishment more attractive.

159. Ulmer, *op. cit.,* p. 307.

160. Compare Kolle, "Reprographie und Urheberrecht", *GRUR Int.,* 1975, p. 204, and Schricker, *Grundfragen der künftigen Medienordnung . . .,* pp. 63 ff.

161. I shall discuss the problem of the remuneration of authors and the way of assuring the financial participation of subjects distributing works in the next lecture. At present I shall concentrate only on questions connected directly with permissible public and private use.

162. Compare Kolle, *op. cit.,* p. 204, and the other literature mentioned in note 143.

163. Schricker, *op. cit.,* pp. 65 ff.

164. Kolle, *op. cit.,* p. 204.

165. Kolle, *op. cit.,* p. 205. The same conclusion is reached by the standpoint taken by Katzenberger, "Urheberrecht und Dokumentation", *GRUR Int.,* 1973, p. 640. This author writes in connection with reprography that the

aim of the reform of copyright law should be above all to stress the authors' right to remuneration and the publishers' to compensation with the simultaneous opening of possibilities for the broad use of all reprographic methods.

166. There are however different provisions in the project "New Technology and the Law of Copyright, Reprography and Computers", 15 *UCLA L. Rev.*, p. 973, in which it is proposed to introduce fixed duties on reprographic equipment. This project did not create particularly lively interest.

167. The same in Kolle, *op. cit.*, p. 206.

168. A more detailed discussion of this problem with regard to the differences that exist on the basis of particular laws would not be to the purpose of my lecture. Anyone seeking to acquaint himself further with such problems I should direct to Kolle's work, *op. cit.*, pp. 209 ff.

169. Compare the decree of 20 June 1974 concerning the implementation of Articles 16*b* and 17 of the copyright statute.

170. Compare Bergström, "Die neue Schwedische Gesetzgebung über das Urheberrecht", *GRUR Int.*, 1962, p. 364 and p. 368.

171. Compare *Upphoysrätt I Fotokopiering och bandingspelning särskilt inom undervisningsverksamhet – Utrednin g och förslag . . .*, 1974 (Nordisk utredningsserie 21/73).

172. Compare Ulmer, *op. cit.*, p. 307, and the project mentioned in note 144.

173. Compare the amendment to the copyright law of 1980.

174. Compare II *Vorentwurf des Bundesgesetzes betreffend das Urheberrecht nebst Erläuterungen*, 1974.

175. I am thinking here about, e.g., electronically recorded records (so-called compact disc).

176. This is mentioned by Ulmer, *op. cit.*, p. 308.

177. Supplement to § 54 (3) of the project for a law on changes of copyright (compare note 141).

178. Giving receivers access to works is sometimes divided into reproductions of a unique nature, including, e.g., performances, exhibitions, screenings, and radio and television broadcasts, and permanent reproductions, by which is understood the recording and distribution of a work. Compare Ritterman, *Komentarz do ustawy o prawie autorskim* (Commentary on the Copyright), 1937, pp. 12 ff. Using such a division, I am speaking at present of reproductions of a permanent nature.

179. Compare, *inter alia*, Ulmer, *Elektronische Datenbanken und Urheberrecht*, 1971, pp. 32 ff., Katzenberger, *op. cit.*, p. 632.

180. For more on this theme compare Ulmer and Kolle, "Der Urheberschutz von Computerprogrammen", *GRUR Int.*, 1982, pp. 498 ff. and Ulmer, *Elektronische Datenbanken und Urheberrecht*, 1971, pp. 32 ff.

181. On the subject of the possibilities of obtaining information stored in computer memories located in information centres by the use of home computers and televisions connected to them compare Ratzke, *Handbuch der Neuen Medien*, 1982, pp. 177 ff., in particular pp. 181 f.

182. Ulmer, *op. cit.*, p. 34 ff.

183. Ulmer, *op. cit.*, p. 35, however takes the standpoint that, taking into consideration convention regulations, an evaluation of this situation should be left to the decisions of national legislators.

184. The situation under discussion is of particular significance with regard to scientific and technical literature.

185. Ulmer, *op. cit.*, p. 36.

186. Yet it has to be said that authors and publishers often fail to have their rights observed in connection with the publication of abstracts. For authors are more often concerned with the propagation of their name and their scientific achievements, publishers on the other hand with publicizing the work in the hope of winning buyers.

187. Of course, alongside the question of the rights of the author of the original there also appears here the problem of the rights of the author of the adaptation.

188. This sort of situation, however, is most rarely encountered, for the abstract is always linked to the contents of the original, and so as a rule is not an independent (original) work.

189. Ulmer, *op. cit.*, pp. 44 f. Compare also Katzenberger, *op. cit.*, pp. 631 ff.

190. But compare the project for a new copyright law in Poland.

191. Compare, *inter alia*, § 31 (1) of the FRG law, which declares that the author may grant another person the exclusive or non-exclusive right to make use of a work in any way or in specified ways. Such ways may include the right to duplicate a work *(Vervielfältigungsrecht)*, its distribution *(Verbreitungsrecht)*, its exhibition *(Ausstellungsrecht)*, its delivery, performance and presentation *(Vortrags- und Vorführungsrecht)*, its broadcast *(Senderecht)*, its recording in visual or aural form *(Recht der Wiedergabe durch Bild oder Tonträger)*, and the distribution by broadcast of the work with the aid of loudspeakers and screens *(Recht der Wiedergabe von Funksendungen)*.

192. Compare, *inter alia*, Kälin, "Die Vergütung für Kabelweitersendung in der Schweiz", *GRUR Int.*, 1984, pp. 267 ff., Lutz, *Die Schranken des Urheberrechts nach Schweizerischen Recht*, 1964, Brem, *Der urheberrechtliche Vergütungsanspruch*, 1975. I shall add that the problem of cascade transmission looks exactly the same with regard to satellite transmission. The essence of such transmission is that in the course of the broadcast of the programme a ground station is essential to process and distribute the signals received from the satellite. The programme transmitted by the ground broadcasting station may be received either by an aerial, or with the aid of a cable network, which adds to the whole information chain one more link in the form of the organization with cable transmission. The distribution by the ground station is also different depending on the area of reception, on whether it is a question of distributional satellites such as OTS or ECS with greater broadcasting power and a broader range of wave-lengths emitted, or of point-to-point satellites which can reach only one, previously defined ground station. I shall, however, not discuss in more detail the question of satellite television, for it would require a broader exposition overstepping the limits of copyright. I shall add only that there is already a very rich literature devoted to this subject.

193. Compare Lutz, *op. cit.*, pp. 133 f.

194. The receivers of a programme pay indirectly, in paying their subscription. For more detail compare Kälin, *op. cit.*, p. 269, Troller, *Anspruch des Urhebers auf Entgelt für den privaten Werkgenuss*, 1951, p. 227, Hubmann, *Urheber- und Verlagsrecht*, 1978, p. 53.

195. The reception of programmes with the aid of cable television is of particular significance for subscribers living in mountainous country. For then there appear so-called "shadow zones", when the broadcasting aerial cannot be "seen" by the receiving aerial. I believe that the importance of cable television will diminish with the development of direct satellite television, which allows the reception of programmes emitted by satellite with the aid of parabolic home aerials equipped with the appropriate amplifier and frequency converter for the signal. For technical questions compare Ratzke, *op. cit.*, pp. 113 ff. and pp. 151 ff.

196. Compare Kälin, *op. cit.*, pp. 268 f. and the works by Hubmann (pp. 52 f.) and Troller (p. 56) mentioned in note 194, Brem (p. 86) and Lutz (pp. 208 f.) mentioned in note 192 and Hubmann, *Das Recht des schöpferischen Geistes*, 1954, p. 107.

197. Compare, *inter alia*, Reimer, "Das Recht der öffentlichen Wiedergabe unter Berücksichtigung der technischen Entwicklung", *GRUR*, 1979, pp. 86 ff.,

Vieweg, "Die Volversorgung mit Fehrsehrundfunk und das Urheberrecht", *UFITA,* 1980, pp. 49 ff., Hubmann, "Kabelfernsehen und das Urheberrecht", in *Labelfernsehprojekte,* 1980, pp. 23 ff., Spoendlin, *Zur Rechtsnatur und Bemessung des urheberrechtlichen Vergütung, FS 100 Jahre URG,* 1983, p. 388, Rumphorst, *La distribution par câble d'œuvres radiodiffusées, Droit d'auteur,* 1983, pp. 295 ff., Troller, *Immaterialgüterrecht,* Vol. II, 1971, p. 783, the same author, *Das Urheberrecht und die Gerechtigkeit:* The ALAI, however, expressed itself otherwise with regard to cable television; compare the resolution taken at the conclusion of the symposium in Amsterdam in 1982, ALAI, *Cable Television, Media and Copyright Law Aspects,* 1983, pp. 235 ff. The view was expressed here that irrespective of the circle of receivers, the technological means used, etc., each distributor should be obliged to pay the authors an appropriate remuneration.

198. A review of jurisdiction in Switzerland, the Federal Republic of Germany, Austria, Great Britain and the USA is included in the work by Kälin, *op. cit.,* pp. 271 ff.

199. Of course, a boat or sailing ship is considered to be part of the territory to which it belongs.

200. I shall omit here the problem of indirect payment for recordings on video cassettes, to be possibly included in the selling price of cassettes, tapes and video recorders, etc. For it is possible that authors' claims have already been satisfied in this form, which a court should also clarify in the course of proceedings.

201. I shall add that in the affair discussed a verdict has not yet been reached.

202. Compare Troller, "Das Urheberrecht und die Gerechtigkeit", *UFITA,* 1972, pp. 1 ff.

203. It is not of course the only stimulant, for as is rightly stressed factors of ambition also play a very significant part. For each author wants either his name to be known or his work to enrich science or culture in forming an integral part of it.

204. The structural differences arise above all with the variability of the object. A more detailed discussion of these questions would overstep the limits of this lecture. I may recommend the work by Recht, "Das Urheberrecht als eine neue Form von Eigentum", *UFITA,* 1970, pp. 1 ff., and the literature mentioned in it.

205. Troller, *op. cit.,* pp. 15 f. The author does not declare himself in favour of a solution to the problem of remuneration for authors in the form of, e.g., grants, allowances or subsidies, but merely presents the problem, which in his opinion is considerably more important than one or another form of the limitation of the exclusive rights of the author. He believes that the problem should be mutually discussed by lawyers, authors and representatives of users, in search of a social sense of rightness. A decided opponent of a departure from the contract system of remuneration is Denis de Freitas, "Copyright and Freedom of Expression", *Copyright Bulletin,* 1984, No. 3, pp. 17 ff. The author believes that any system of remuneration other than that negotiated on the basis of a contract threatens the creative freedom of the author.

206. Troller, *op. cit.,* pp. 15 ff.

207. Troller, *op. cit.,* pp. 12 ff.

208. Regulations concerning the institution of droit de suite are to be found in the statutes of Algeria, Belgium, Brazil, Cameroon, Chile, the Congo, Costa Rica, Czechoslovakia, Ecuador, France, the Federal Republic of Germany, Guinea, Hungary, Italy, the Ivory Coast, Luxembourg, Mali, Peru, the Philippines, Portugal, Senegal, Tunisia, Turkey, Uruguay, Yugoslavia and also in the Berne Convention (Paris edition, Art. 14*ter*). For literature on this issue compare Katzenberger, *Das Folgerecht im deutschen und ausländischen Urheberrecht,* 1970.

209. Compare Troller, "Angebot und Nachfrage als urheberrechtliches Problem", *UFITA*, 1956, pp. 217 ff.

210. Compare, *inter alia*, Article 40, § 51, of the Polish Copyright Law and Kopff, *Prawne i ekonomiczne podstawy autorskiego i wynalazczego prawa do wynagrodzenia* (Legal and Economic Principles of Remuneration in Copyright and Invention Law), Studia Cywilistyczne, Vol. III, 1963, pp. 3 ff.

211. Compare Troller, the work mentioned above in note 204.

212. In the interests of authors and of society, such contracts could be subjected to particular regulations defining above all the rights and obligations of the parties, including the principles of calculating the level of remuneration.

213. These principles include, e.g., the size of the work, its type, the price and number of copies sold.

214. Social need is expressed in the size and number of editions, the number of broadcasts, etc. It should however be remembered that the success of a work does not always testify to its aesthetic or artistic value, only to the fact that its receivers liked it. Thus it is possible to say that the disadvantage of the system under discussion is the weak relationship between the remuneration and the value of the work. It is another question, however, whether in applying a system in accordance with a social sense of rightness it would be possible fully to take into account the value of the work. One may suppose that with regard to the subjectivity and changeability of criteria used to evaluate the value of a work, this is an unattainable aim.

215. When speaking of reprography I am thinking of all methods involving the mechanical copying of works, e.g., microfilm, blueprinting (blueprints and diazotype), diffusion (photocopying), xerography (electrostatics), thermography (using infra-red radiation). On the subject of these methods, for more detail, compare Ratzke, *Handbuch der neuen Medien*, 1980, pp. 300 ff.

216. The same view is expressed by Kolle, "Reprographie und Urheberrecht", *GRUR Int.*, 1975, p. 213.

217. I shall add that the effectiveness of non-legal means had also been considered. In the USA, for example, attempts were made to limit the practice of reprography by the use of an atypical format for printed matter, in the hope that it would make it more difficult to copy them. These attempts, however, did not have the required results. Compare Melichar, "Das Fotokopieren urheberrechtlich geschützter Werke", *GEMA Nachrichten*, 1975, p. 29. Amongst non-legal means which could be called economic means one should include the project for the subsidization of the most painfully affected publishers and authors, be it from State funds or from means transferred by the producers of reprographic equipment and the owners of periodicals including announcements and advertisements. Compare Kolle, Katzenberger and Peter, "Reprographische Vervielfältigung und Urheberrecht", *GRUR*, 1975, p. 469. I shall not, however, discuss these means, not only because of their ineffectiveness, but above all with regard to the subject of these lectures, which are dedicated to the problem of copyright.

218. Kolle, *op. cit.*, p. 209, Barta, "The Use of Reprographic Techniques in the Light of the Regulations of Copyright", in Barta, Gawlik, Trafas and Traple, "Zagadnienia dokumentacji i informacji w świetle prawa autorskiego" (Problems of Documentation and Information in the Light of Copyright), *ZNUJ*, Works in Inventions and the Protection of Intellectual Property, f. 35, 1984, p. 80.

219. In these works an important role was played by the precedential case of *Williams and Wilkinson* v. *The United States*, which ended in defeat for the plaintiffs despite a favourable report by commissioner Davis. The course of the trial is discussed by amongst others Arntz, "Reprographie und Urheberrecht", *UFITA*, 1977, pp. 33 ff. Also of great significance were the studies by the National Commission of New Technological Uses of Copyrighted Works, more exactly defining the concept of "fair use" with relation to reprography.

220. Such an accusation, to the project for the law, is made by Kolle, *op. cit.*, pp. 209 f. I share his view entirely.

221. Particular great reservations are, in my opinion, aroused by the overly liberal conception of private use and the insufficiently defined criterion of "fair use".

222. "II Vorentwurf einer Expertenkommission zur Reform des schweizerischen Urheberrechtsgesetzes", *UFITA*, 1973, pp. 220 ff.

223. For explanations of the II Swiss project compare note 222, p. 274.

224. This is anticipated in the Danish and Swedish projects.

225. Exceptions from the principle of payment are, however, provided for libraries and archives when the making of reprographic copies permits the preservation of valuable originals, completes missing parts of books, etc. Reservations concerning the marked privileges enjoyed by libraries and archives, particularly in connection with payment for the borrowing of books, are, however, occasionally expressed. Compare Kolle, *op. cit.*, p. 212.

226. Gesetzentwurf der Bundesregierung – Entwurf eines Gesetzes zur Änderung von Vorschriften auf dem Gebiet des Urheberrechts, Deutscher Bundestag, 10 Wahlperiode, Drucksache 10/837.

227. Equally with the producer, as joint debtor, the importer of such equipment and materials is obliged to pay remuneration. However, in the interests of export, the producer is exempt from such an obligation if, considering the circumstances, it may be expected that in all probability the equipment and materials will not be used in the territory of the Federal Republic of Germany.

228. According to these guidelines one should take into consideration the type and area of use of the equipment (e.g., a photocopier), tests to determine its average use, the type of institution in which it is installed, etc.

229. It is a question here, of course, of the possibility of recording, not of actual recordings, the extent of which cannot be determined. Thus, duties should be collected from the sale of "pure" materials, as yet unrecorded.

230. This obligation has, however, been restricted to materials used in making recordings. It lies with enterprises selling such materials in the Territory of Austria.

231. By user I understand the owner, hirer or person entitled to use the reprographic equipment on the basis of a leasing contract.

232. For it is obvious that, e.g., libraries, scientific institutions and information centres considerably more frequently make reprographic copies of works protected by copyright than do, e.g., enterprises and government departments, who generally copy departmental journals, circulars and materials connected with their activities.

233. However, they sometimes also act as *negotiorum gestores* in relation to authors who are not their members.

234. But compare the different viewpoint of the ALAI expressed in the resolution published in the materials from the symposium in Amsterdam in 1982 (*Cable Television – Media and Copyright Law Aspects*, 1983, pp. 235 f.).

235. This is how, for example, the organization of public showings of films recorded on video cassettes should be evaluated. This practice is fairly frequently encountered.