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## Introduction

*Imagine* an international instrument that does not merely oblige contracting parties to confer rights on copyright holders (permitting only optional, narrowly circumscribed, exceptions) but also mandates limitations. *Imagine*, too, that such an instrument requires parties to permit use of material that has been taken from existing works, irrespective of the purpose of so doing, but only on the condition that the use is in accordance with fair practice. *Imagine* that such a mandatory limitation allows the reuse of transformed versions of works, including parodies, and even the whole of a protected work. *Imagine*, indeed, a regime of global mandatory fair use. Surely such a fantasy, or ‘thought experiment’, is a pointless, ‘academic’ exercise, given the political economy of international copyright and the dominant place within it occupied by the so-called three-step test, which has long been thought to cast a cloud over the legitimacy of the US fair use defence?<sup>1</sup> Yes and no. Yes, it is pointless to imagine, but no, this is not because it is impossible to achieve; it is pointless to imagine because there is no need to imagine it. *It already exists.*<sup>2</sup> This is precisely the effect of Article 10(1) of the Berne Convention.<sup>3</sup>

<sup>1</sup> For continuing discussion, see Justin Hughes, ‘Fair Use and Its Politics – at Home and Abroad’ in Ruth L Okediji (ed.), *Copyright Law in an Age of Exceptions and Limitations* (Cambridge University Press 2017), ch. 8, 234–74.

<sup>2</sup> See also S Ricketson, *WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment* (2003) SCCR 9/7, 13: ‘It is possible, therefore, that Article 10(1) could cover much of the ground that is covered by “fair use” provisions in such national laws as that of the United States of America (USA)’ and Graham Greenleaf and David Lindsay, *Public Rights: Copyright’s Public Domain* (Cambridge University Press 2018), 363: ‘there is scope for greater use of the flexibility allowed by international copyright law for national laws to introduce relatively broad quotation exceptions . . . which can extend to some transformative uses.’ Cf. Ruth L Okediji, ‘Towards an International Fair Use Doctrine’ (2000) 39 *Colum J Transnat’l L* 75, 89, arguing that the US conception of fair use is not reflected in international copyright law. Interestingly, in her review of exceptions under Berne, Article 10 is mentioned only in passing – see 99–105 and fn. 133 and 149. Okediji later observes at 113: ‘Other exceptions contained in the Berne Convention, such as the right under Article 10 to quote from a protected work, also reinforce core values, such as freedom of speech, that inform the scope of the American fair use doctrine.’

<sup>3</sup> Berne Convention on the Protection of Literary and Artistic Works 1886 (rev. Paris 1971) (‘Berne’). For the current text of Berne, see <https://wipolex.wipo.int/en/treaties/textdetails/12214> (accessed 20 January 2020).

This much-neglected provision already mandates global fair use.<sup>4</sup> This is a proposition that will seem shocking to some, on both sides of copyright's polarised political spectrum. To so-called 'maximalists', global mandatory fair use is unthinkable because US fair use is itself legally dubious, in the light of the international requirement that exceptions must be confined to certain, special cases. Section 107 of the US Copyright Act 1976 is only maintainable because there is a body of jurisprudence that transforms the open norm of 'fair use' into a series of reasonably clearly understood and well-defined instances. Adoption of such an open norm by other jurisdictions, without such jurisprudence, fails to offer certainty as to the limited scope of the limitation that international law appears to demand. At the opposite end, that of the 'copy-left' movement, the proposition cannot be correct, because, were it so, the international *acquis* would not be as appalling as it is taken to be.

However, while the 'copy-left' movement may be right to highlight the limitations the Berne Convention imposes on the room left to adapt copyright to the digital environment, not every aspect of the Convention should be regarded as a source of dismay. Article 10(1) is just such a provision. On its face, it requires contracting parties to permit quotation from a work, and is subject to a series of conditions, the most important of which is that such quotation be in accordance with 'fair practice'. Importantly, such 'quotation' must be permitted whatever the purpose of the use, as long as the material taken is proportionate to the purpose of its user. We suggest that the term 'quotation', understood in terms of its ordinary use across the entire cultural sphere, describes a broad range of practices of reuse of copyright-protected material, including in some situations the whole of that material. For sure, the 'fair quotation' exception does not encompass every act that currently falls within the US 'fair use' doctrine – in particular, private copying and certain technological uses.<sup>5</sup> However, it does require that many transformative expressive uses be permitted if the use is fair, proportionate and appropriately attributed.

In this book, we explain and justify the proposition that Article 10(1) of Berne constitutes a global mandatory fair use provision. It is global because of the reach of Berne *qua* Berne and *qua* the Agreement on Trade Related Aspects of Intellectual

<sup>4</sup> This was recognised by one of its key proponents, the Swedish judge Torwald Hesser. He explained the proposal expanded the quotation to 'general application, but restates it in terms compatible with the American doctrine of fair use': see Torwald Hesser, 'Intellectual Property Conference of Stockholm, 1967: The Official Program for Revising the Substantive Copyright Provisions of the Berne Convention. The Fifth Annual Jean Geiringer Memorial Lecture on International Copyright Law' (1967) 14 *Bull Copyright Soc'y* 267, 275, fn. 22. For discussion as to why it has been neglected, see Lionel Bently and Tanya Aplin, 'Whatever Became of Global, Mandatory, Fair Use? A Case Study in Dysfunctional Pluralism' in Susy Frankel (ed.), *Is Intellectual Property Pluralism Functional?* (Edward Elgar 2019), ch. 1.

<sup>5</sup> In turn, therefore, these additional limitations do need to be justified under other parts of the Berne Convention, especially Article 9(2), as well as Article 13 of the Agreement on Trade Related Aspects of Intellectual Property Rights 1994 ('TRIPS') and Article 10(2) of the WIPO Copyright Treaty 1996 ('WCT').

Property Rights (“TRIPS”).<sup>6</sup> It creates a mandatory exception because of the clear language of the provision and its *travaux*. It relates to ‘use’ that is not limited by type of work, type of act, or purpose. Finally, it is ‘fair’ use because the conditions of Article 10(1) and 10(3) Berne, namely, the work having been lawfully made available to the public, attribution, proportionality and fair practice, must be satisfied. In particular, the requirement of ‘fair practice’ embraces a range of normative considerations relating to economic and moral harm, distributive justice, and freedom of expression.

We begin in Chapter 2 with the history of Article 10(1) of Berne. This chapter details the evolution of the quotation exception, from its proposal at the 1928 Rome Revision, its incorporation at the 1948 Brussels Revision and key changes made at the 1967 Stockholm Revision, whereby the restriction on ‘short’ quotations was removed and the exception was extended to all types of works, without any restrictions on the purpose of the quotation. We note that the key to success at Stockholm (compared to prior initiatives) was the abandonment of proposed limitations as to the subject matter, extent or purpose of the re-use in favour of a notion of ‘fair practice’. Chapter 3 considers a series of issues relating to the nature of Article 10(1) Berne. First, we examine the mandatory character of Article 10(1), an argument based primarily on the language of the provision and supported by the *travaux* to the 1967 Stockholm Conference. Second, we consider the place of Article 10(1) within the Berne Convention and its relationship to subsequent international treaties, the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”) and the WIPO Copyright Treaty 1996 (“WCT”), in particular, discussing the types of works and types of rights to which the quotation exception is applicable. Finally, this chapter addresses the reasons why the ‘three-step test’ is not applicable to the quotation exception, which largely stem from the status of Article 10(1) Berne as a mandatory obligation.

The following chapters offer a detailed exploration of Article 10(1) Berne. Chapter 4 examines some of the necessary requirements for Article 10(1) to apply. We start by demonstrating that quotation is not restricted by purpose, as shown by the *travaux* to the Stockholm Revision of Berne. We next consider how the requirement of ‘made available to the public’ should be understood and how the attribution requirement in Article 10(3) Berne may be satisfied. Finally, we explain that proportionality is an assessment that occurs before evaluating the condition of ‘fair practice’, which we argue should do the bulk of the work in assessing the permissibility of a quotation. We argue that the proportionality requirement is one of asking whether the length of the quotation is suitable for the purpose for which it is being used and whether a shorter quotation would have been as effective in achieving this purpose.

Chapter 5 examines in detail the meaning of ‘quotation’. Drawing on a wide range of sources, legal and cultural, we suggest that ‘quotation’ is a broad concept, and, most importantly is not limited in ways that some have assumed. In particular, we

<sup>6</sup> A copy of this may be found at [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm) (accessed 20 January 2020).

emphasise that the conception of quotation in the Berne Convention is not limited by the established conventions associated with textual or print quotation, in particular notions of ‘dialogue’. Freed from this preconception, it becomes clear that ‘quotation’ describes a broad range of reuses of materials, and should not be restrictively understood nor limited by length, type of work, its unaltered nature or the purpose for which it is used. Rather, the key constraint on what Berne requires be permitted is the condition of ‘fair practice’. Thus, in Chapter 6 we put forward a detailed understanding of ‘fair practice’ which reflects a pluralistic range of considerations encompassing harm to the author, distributive justice concerns and freedom of expression. Informed by these normative understandings of ‘fairness’, we argue that ‘fair practice’ requires an assessment of the nature or purpose of the quotation; the type of expressive use that is involved; the nature of the work that has been quoted; the size of the quotation and its proportion in relation to the source work; and harm to the market for the source work and the integrity interests of the author of the source work.

We then move to Chapter 7 to discuss the considerable significance of our interpretation of Article 10(1) Berne. In particular, we argue that Article 10(1) provides a fresh lens through which to view national copyright exceptions and has the potential to displace the dominance of the three-step test in this arena. We illustrate this point by reference to the US fair use exception and show how, according to Article 10(1), the open-ended, multi-factorial, royalty-free nature of US fair use may be justified as a matter of international copyright law. At the same time, however, to comply with Article 10(1), the US fair use exception may need to pay greater attention to the unpublished status of works that are used and the moral rights of authors. A second consequence is the need to amend national legislation that has not properly implemented the quotation exception. We demonstrate how specific quotation exceptions in several (mainly) civil law jurisdictions are contrary to Article 10(1), either by restricting the types of purposes of the quotation or imposing a quantitative limit of ‘short’ quotations. The fair dealing exceptions in common law jurisdictions are also problematic to the extent that they restrict quotation to the purposes of criticism or review. A third consequence is on judicial interpretation of quotation exceptions and we illustrate how the EU and UK quotation exceptions should be interpreted by the CJEU and national courts in light of Article 10(1), noting the flaws in the recent CJEU decisions in *Spiegel Online* and *Pelham*.<sup>7</sup> A fourth implication is that Article 10(1) Berne, rather than the three-step test, provides an international legal basis for the parody exception<sup>8</sup> that exists in many national laws and, as such, may require the scope and requirements of this type of exception to be revisited. Finally, we observe the potential for our interpretation of Article 10(1) to animate changes to industry guidelines or the development of codes of best practice. Existing guidelines on quotation usage tend to be risk averse,

<sup>7</sup> Case C-516/17 *Spiegel Online GmbH v. Volker Beck* EU:C:2019:625 (CJEU, Grand Chamber) and Case C-476/17 *Pelham GmbH v. Hütter* EU:C:2019:624 (CJEU, Grand Chamber).

<sup>8</sup> Contrast Sabine Jacques, *The Parody Exception in Copyright Law* (Oxford University Press 2019), ch. 2.

whereas Article 10(1) Berne, properly understood, provides the basis for less restrictive practices by user groups.

In short, we argue that national and regional copyright exceptions should be systematically revisited and interpreted in light of Article 10(1) Berne. Once this is done, we can expect changes to our legal frameworks and different sorts of permitted uses of copyright material to emerge as a result. Until now, global mandatory fair use has been a latent international legal norm: in this book, we expose its force and potential to shape permitted uses of copyright material.

## 2

## The History of Article 10(1) Berne

In this chapter, we explore the history of Article 10(1) Berne, in order to enable the reader to understand the key stages in its evolution that inform or confirm our interpretation of the character and breadth of the provision.<sup>1</sup> As we will see, several important features of Article 10(1) Berne, including the meaning, length and purpose of ‘quotation’, were explored as part of the *travaux* to the Stockholm Revision of the Berne Convention. These *travaux* offer valuable guidance to clarify the meaning of the text (where its meaning is unclear) and to confirm a meaning deduced in the normal way from the ordinary meaning of the text, viewed in its context and in light of its object and purpose.<sup>2</sup> Moreover, it is also useful to see those *travaux* in the context of three earlier discussions of the right of quotation: in 1885 in Berne, in 1928 at Rome and in 1948 at Brussels. As those involved in the Stockholm Revision would have been cognisant of the previous attempts to introduce a quotation exception, inferences can also be drawn from differences between the Stockholm text and those proposed in Rome and Brussels.

## I BERNE (1884–1886)

As agreed in 1886, the Berne Convention contained no express right of quotation. In part, this was unnecessary, as no provision was made as to a right of reproduction.<sup>3</sup> However, a clause was included that clarified that Members could permit the

<sup>1</sup> Some of the *travaux* are recorded in two volumes: WIPO, *Records of the Intellectual Property Conference of Stockholm, June 11 to July 14, 1967*, vol. I and II (WIPO, 1971; hereafter ‘Records’). Other documents are retained at the World Intellectual Property Organization, referenced under its former acronym ‘BIRPI’. We have sourced these documents from series BT209 at the National Archive, Kew, England (hereafter ‘TNA’). These are designated ‘TNA: BT 209/...’.

<sup>2</sup> Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969, Article 32.

<sup>3</sup> *Documents de la Conférence réunis A Bruxelles du 5 au 26 Juin 1948* (BIRPI 1951), 244. In turn, many commentators have argued that the presence of the exception/limitations meant the Convention implicitly recognised a reproduction right: see, for example, Mihály Ficsor, *Guide to the Copyright and Related Rights Treaties Administered by WIPO* (WIPO 2003); Jane Ginsburg, ‘Achieving Balance in International Copyright Law’ (Review of J Reinbothe and Silke von Lewinski, *The WIPO Copyright Treaties* 1996) (2003) 26 *Columbia Journal of Law and the Arts* 201, 203.

inclusion of extracts from works in collections, particularly for educational purposes. Article 8, as adopted, read:

As regards the freedom of including excerpts from literary or artistic works for use in publications destined for teaching or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them, is not affected by this Convention.<sup>4</sup>

This itself was a considerably diluted provision from the mandatory exception that had been sponsored by the German delegation in 1884,<sup>5</sup> with flexibility having been specifically extended to maximise the possibility of Great Britain adhering to Berne – a hope that came to be fulfilled.<sup>6</sup> At the conference in 1885, when the desirability of the German proposal was being discussed, the question had also arisen as to the treatment of quotations. According to the Report of that Conference:

In the discussion that took place on the subject of this Article, it was asked whether it covered the right of quotation, and the Spanish Delegation in particular wished to know whether such quotations as were necessary in commentaries, critical studies or other scientific or literary works were authorized under the Article concerned. The French Delegation said that, in spite of the lack of legal provisions concerning the right of quotation in the legislation of its country, that right had always been recognized by case law. The delegations of the other countries, several of which did have legal provisions on the subject, endorsed the above statement with respect to their countries.<sup>7</sup>

<sup>4</sup> Convention Concerning the Creation of an International Union for the Protection of Literary and Artistic Works of 9 September 1886, Article 8.

<sup>5</sup> The Draft of a Convention respecting the Formation of a General Union for the Protection of the Rights of Authors, as adopted at the 1884 conference, can be found, in French and English, in *Correspondence Respecting the Formation of an International Copyright Union*, Parliamentary Papers, C.-4606, 19 (in French) and 22 (in English). Although mandatory, the freedom Article 8 of the draft convention secured to publish ‘extracts, fragments or entire passages from literary or artistic work. . . provided that this publication is specifically destined and adapted for instruction, or is of a scientific character’ was limited to material ‘appearing for the first time in another country of the Union’.

One feature of Article 8 of the 1884 draft was that there was no limitation on the size or significance of the ‘extracts, fragments or entire passages’. Following its modification in 1885, the British delegates reported: ‘We regarded the article on this head which appeared in the draft project of last year as being extremely dangerous, and providing a facile means for wholesale appropriation. We therefore proposed its omission with the view of leaving the matter to be settled by the law of each state. We ultimately consented to the insertion of the existing article VIII, which carries out our views on the subject.’ No. 58, Inclosure 1, Messrs Adams and Bergne to the Marquis of Salisbury, 25 September 1885, in *Correspondence*, 54.

<sup>6</sup> Lionel Bently and Brad Sherman, ‘Great Britain and the Signing of the Berne Convention in 1886’ (2001) 48 *J Copyright Soc’y USA* 311–40 (describing the change in the British position).

<sup>7</sup> Records of the Second International Conference for the Protection of Literary and Artistic Works found at companion website to Sam Ricketson and Jane C Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd ed., Oxford University Press 2006) at <https://global.oup.com/booksites/content/9780198259466/> (accessed 10 June 2020), 103–49 at 132; *Actes de la 2ème Conférence internationale pour la protection des oeuvres littéraires et artistiques réunie à Berne du 7 au 18 Septembre 1885* (International Office, Berne, 1885), 47.

The report is thus clear that the right to quote was recognised universally in the laws of Members of the Berne Union. However, the report does not indicate conclusively, as some have suggested, that the right of quotation was encompassed within the freedom left to Members by Article 8.<sup>8</sup> The responses to the Spanish question do not suggest a conclusion as to whether quotation was unaffected because it fell *within* Article 8. Rather, it is simply made clear that all Members regarded the right as unaffected, either because it was encompassed by Article 8 or simply because it fell outside the Convention.

## II ROME (1928)

The topic was revisited at the 1928 Rome Revision Conference.<sup>9</sup> The Italian administration and Berne office proposed to distinguish the right to quote, which was to be obligatory, from the freedom of Members to make compilations of extracts recognised in Article 8:<sup>10</sup>

Art 10 (1) It is permitted to make analyses or short textual quotations of published literary works for critical, polemical or educational purposes.

(2) With regard to the faculty of lawfully borrowing from literary or artistic works, the matter is left to the laws of the countries of the Union and, if it is more favourable to the author, that of the particular arrangements concluded or to be concluded between them.

(3) All borrowings recognised as legal must correspond to the original text and be accompanied by an exact indication of the source (title of the work, name of the author if known).<sup>11</sup>

The explanatory text elaborated that ‘le droit d’emprunt’ – the ‘right to borrow’ – was then regulated in the legislation of the countries of the Union in such an inconsistent manner that it was impossible to contemplate a uniform provision. However,

<sup>8</sup> According to Ficsor, ‘an agreement was reached that, on the basis of that provision, quotations would also be allowed’: Ficsor, *Guide to the Copyright and Related Rights Treaties Administered by WIPO* (2003), 61, [BC-10.1]. Ginsburg, ‘Achieving Balance’, 203, fn. 12, also suggests that ‘a quotation exception has existed in some form in the Berne Convention since the original 1886 text’.

<sup>9</sup> Union Internationale pour La Protection des Oeuvres Littéraire et Artistique, *Actes de la Conférence Réunie A Rome Du 7 Mai au 2 Juin 1928* (Berne: Bureau de L’Union, 1929). In advance, the Bureau had prepared a study of ‘Les Emprunts Licite’ (1924), *Le Droit D’Auteur* 37, 52, 67, 77, 87.

<sup>10</sup> *Conférence de Rome. Propositions avec exposés des motifs préparées par L’administration Italienne et Le Bureau International de Berne* (February 1927) (Berne: Bureau International de L’Union, 1927) in BT 209/741, pp 16–17 and *Actes*, 61 ff, pp. 74–5.

<sup>11</sup> Article 10(1) Il est permis de faire dans un but critique, de polémique ou d’enseignement des analyses ou courtes citations textuelles d’oeuvres littéraire publiées

(2) En ce qui concerne le faculté de faire licitement d’autres emprunts à des oeuvres littéraires ou artistiques, est réservé l’effet de la législation de, pays de l’Union, et, s’il est plus favorable à l’auteur, celui des arrangements particuliers conclus ou à conclure entre eux.

(3) Tous les emprunts reconnus licites doivent être conformes au texte original et accompagnés de l’indication exacte de la source (titre de l’oeuvre, nom de l’auteur s’il est connu).



where the law of borrowing was universally recognised, as is the case for short quotes for the purpose of criticism, controversy or teaching, the development of a uniform rule ‘seems appropriate’. Moreover, the proposal indicated it was desirable to insert in the Convention an obligation on any borrower not to alter the text of the original and to indicate the source from which it drew. This was explicitly linked to the moral rights of the author (which ‘are nowadays more and more respected’), though the condition was not limited to situations where an alteration would be capable of damaging the writer’s literary reputation.<sup>12</sup> The requirement to indicate the source was said to be one of ‘pure and simple equity’.

In response, the French proposed a substantial reworking of the Italian/Berne text based on a text approved at the Lugano meeting of ALAI in June 1927:<sup>13</sup>

- (1) In any work of a critical, polemical or teaching nature, it is lawful to include analyses or short textual quotations of any literary, scientific or artistic production, provided, however, that the production analysed or cited has been already published.
- (2) For chrestomathies, anthologies and all teaching works, it is lawful to borrow from literary, artistic or scientific works already published, provided that the total of borrowings made from a single work does not exceed three pages of the first edition of this work, or in any case not more than half of this work, if it is a scientific or literary work; a page or a quarter at most of the work, if it is a musical work; in the latter case, the work can never be inserted into another musical composition.  
 All borrowings recognised as legal must be in full conformity with the original text and be accompanied by the exact indication of the source (title of the work, names of the author and of the publisher if they are known).
- (3) The total or partial reproduction of works of plastic and graphic art is only lawful if it takes place, by the process of graphic arts, in publications of a critical or scientific or educational nature, and if these works have already been delivered to the public.

<sup>12</sup> A German-proposed qualification would have modified the condition so that it required the borrowing ‘conform to the original work, provided that the purpose of the borrowing does not warrant modification’: *Conférence de Rome. Propositions quelques-unes avec exposés des motifs présentées par L’administrations Allemande, Autrichienne, Britannique, Française et Suisse* (Juillet 1927) (Berne: Bureau International de L’Union, 1927) 4 in BT 209/741.

<sup>13</sup> *Propositions et Contre-Propositions et Observations*, 16; in *Actes*, 100. The ALAI text is set out in ‘Voeux se rapportant aux dispositions de la Convention de Berne’, (1927–1935) in *Documents* (1951) 433, 447. Note also the discussion of the right of citation at ALAI in (1926) (Nov) *Le Droit D’Auteur* 127–8.

The domestic law of copyright in France was, at this stage, largely judge-made, and the Cour de Cassation (Criminal Chamber) had, in a judgment on 10 March 1926, admitted the potential legality of ‘artistic quotation’ in a case relating to three small reproductions of works by Auguste Rodin. The case is discussed in H. Desbois, *Le Droit D’Auteur* (3rd ed., 1978), [249]. Desbois notes that the reproductions were small, illustrating a work describing the development of French art, inseparable from the text and unlikely to compete with authorised reproductions.

- (4) The Contracting States may subject the exercise of the right defined in paragraphs 2 and 3 of the present article the payment of a royalty.

A few points are worth observing about the French/ALAI proposal, which, in general, foreshadows the peculiarly narrow view of the legitimacy of quotation that has been pushed by a large number of French writers over recent decades. Like the Bureau/Italian proposal, the quotation right was identified as applying only to 'textual quotations' but, in contrast, extended to quotation *from* works of all kinds, not just literary works. However, while broadened in this manner, the French proposal narrowed the quotation right by reference to not the purpose of use but the type of text *in which* the quote was deployed.<sup>14</sup> Second, with respect to the use of borrowings in compilations, the French proposed quantitative limits and some absolute rules. It proposed that musical borrowings were not to be allowed in other music, and artistic works were only to be reproduced in publications if they had already been permitted to appear in such publications. Third, the French proposed to allow Members of the Union to require that remuneration be paid for borrowings that went beyond the narrow exception for short quotations.

In contrast with the French, the Swiss proposed expanding the Italian formulation of the quotation right, explaining that the limitation to literary works was unacceptable and that quotation should be permitted for musical and artistic works.<sup>15</sup> It proposed that the first paragraph of the Italian/Bureau provision be replaced with the following text:

Art 10 (1) It is permitted to make analyses or short textual quotations from published literary or musical works for critical, polemical or educational purposes. It is permitted, for the same purposes, to reproduce published works of figurative art or photography; this reproduction can only take place, however, insofar as it is necessary to explain the text.

The Dutch limited its response to the Italian/Bureau proposal to the second clause on compilations. It said it would be desirable to arrive at a regulation fixing exactly the quantity of borrowings that, in relation to each work, would be allowed for the benefit of anthologies or other collections intended to serve a teaching or scientific purpose. At the same time, the Dutch response acknowledged the difficulty with arriving at such quantitative stipulation, noting that this would be necessary to allow the possibility of quoting an entire poem, while nevertheless seeking to fix exactly the maximum extent of such a taking.<sup>16</sup>

<sup>14</sup> As we will see in Chapter 5, pp. 110–113, it remains a point of contention how far quotation is limited to the quotation in a later work of authorship, and how far the ordinary meaning of the term permits the freestanding reuse of works or parts thereof.

<sup>15</sup> *Propositions et Contre-Propositions et Observations*, 20–21; *Actes*, 104.

<sup>16</sup> *Nouvelle Proposition des Administrations Norvégienne et Suédoise et Observations du Gouvernement Néerlandais* (Mars 1928), 5; *Actes*, 109.