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# Copyright

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## Notifications Concerning Treaties

### WIPO Convention

#### Accession

#### GUINEA-BISSAU

The Government of Guinea-Bissau has deposited, on March 28, 1988, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

The said Convention will enter into force, with respect to Guinea-Bissau, on June 28, 1988.

WIPO Notification No. 141, of March 28, 1988.

## Activities of the International Bureau

### The World Intellectual Property Organization in 1987\*

#### Copyright and Neighboring Rights Activities

##### I. Information Concerning Intellectual Property

###### Objective

The objective is to increase and spread knowledge about the doctrine, legislation, frequency of use and practical administration of intellectual property.

###### Activities

The periodicals *Copyright* and *Le Droit d'auteur* and *Industrial Property* and *La Propriété industrielle* continued to be published each month.

*Collection of Intellectual Property Laws and Treaties*. WIPO continued to keep up to date its collection of the texts of intellectual property laws and regulations of all countries and of treaties dealing with intellectual property, both in their original languages and in English and French translations. The most important texts were published in the above-mentioned four periodicals.

##### II. Copyright Questions of Topical Interest

###### Objective

The objective is to look for solutions to specific questions of a legal nature, and of topical interest,

\* This article is the second part of a report on the main activities of WIPO in general, on the one hand, and in the fields of copyright and neighboring rights, on the other. Activities in the field of industrial property are covered in a corresponding report in the review *Industrial Property*.

The first part dealt with the activities of WIPO as such and with development cooperation activities in the fields of copyright and neighboring rights (see *Copyright*, 1988, pp. 114 to 131). The second part deals with other activities in those fields.

in the fields of copyright and neighboring rights. These questions are of topical interest because they are raised by recent changes in the social, economic or technological environment in which mankind lives.

###### Activities

In May, a *Committee of Governmental Experts on Dramatic, Choreographic and Musical Works*, convened by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), met in Paris.

Experts from the following 41 States attended the meeting: Bangladesh, Bolivia, Brazil, Burundi, Cameroon, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Guatemala, Guinea, Holy See, Hungary, India, Italy, Jordan, Kenya, Lebanon, Mexico, Morocco, Panama, Portugal, Saudi Arabia, Soviet Union, Spain, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, United Kingdom, United States of America, Yemen. A representative of the African National Congress (ANC) also attended the meeting as an observer.

Observers from one intergovernmental organization (Arab Educational, Cultural and Scientific Organization (ALECSO)) and 13 international non-governmental organizations (Broadcasting Organization of the Non-Aligned Countries (BONAC), European Broadcasting Union (EBU), International Bureau of Societies Administering Recording and Mechanical Reproduction Rights (BIEM), International Confederation of Free Trade Unions (ICFTU), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of Phonogram and Videogram Producers (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Secretariat for

Arts, Mass Media and Entertainment Trade Unions (ISETU), International Theatre Institute (ITI), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law) also participated in the meeting.

The purpose of the meeting was to discuss the various copyright issues arising in relation to dramatic, choreographic and musical works with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues.

Discussions were based on the Memorandum on Questions Concerning the Protection of Copyright and the Rights of Performers in Respect of Dramatic, Choreographic and Musical Works prepared by the Secretariats.

The participants expressed their approval, in general, of the principles and comments contained in the document and said that they would make comments only on specific issues.

In the course of the general debate, the question was raised about the nature of the principles suggested in the document and their relations to the obligations under the copyright conventions. The Secretariats stated that the principles, as proposed to, or emerging from the discussions of, the Committee of Experts, could not be binding on any country, since international obligations could only result from treaties and not from committees of experts. The Secretariats added that the purpose of the series of meetings, of which that meeting was one, was not to modify existing international obligations. The purpose of such meetings was: first, to create an international awareness of the topical issues of copyright law, particularly issues caused by technological development, and, second, that when countries wish to modernize their copyright legislation, they could do so in the light of what they had learned through participation in the exchange of views that took place between experts from a great number of countries on the basis of working documents prepared by the Secretariats.

After the general debate, the Committee discussed in detail the questions of the protection of dramatic and choreographic works including nine principles and covering the following subjects: creations to be protected as dramatic and choreographic works, special features of dramatic and choreographic works and performances of such works, the impact of the new technologies, the authors of dramatic and choreographic works, the status of theater directors, moral rights in dramatic and choreographic works, economic rights in dramatic and choreographic works (the right of rental and public lending, the right of public performance, the right of broadcasting, the questions of satellite broadcasting and cable distribution), the rights of

performers of dramatic and choreographic works, the rights of the producers of theatrical performances. Thereafter, the Committee discussed the questions of the protection of musical works including 12 principles and covering the following subjects: creations to be protected as musical works, new forms of musical composition, the use of computers and other equipment for the creation of musical works, adaptations and arrangements of musical works, translations of the texts of musical works, improvisations, aleatoric musical works, moral rights in musical works, economic rights in musical works (the right of reproduction in respect of sheet music, reprography, the right of reproduction in respect of sound recordings, piracy, home taping, the right of rental and public lending, "performing rights," satellite broadcasting and cable distribution, "synchronization right"), the rights of performers of musical works.

The Committee noted that the Secretariats would report on the results of the meeting to the next sessions of the Executive Committee of the Berne Convention and the Intergovernmental Committee established under the Universal Copyright Convention.

In June, the *Executive Committee of the Berne Union* (hereinafter referred to as "the Committee") held its twenty-seventh (10th extraordinary) session in Geneva. Seventeen of the Committee's 19 member States were represented: Canada, Chile, Czechoslovakia, France, German Democratic Republic, Hungary, India, Mexico, Morocco, Netherlands, Senegal, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Venezuela. Twenty-two other member States of the Berne Union were represented by observers: Argentina, Australia, Austria, Brazil, Bulgaria, Cameroon, Denmark, Finland, Germany (Federal Republic of), Guinea, Holy See, Israel, Italy, Japan, Lebanon, Luxembourg, Pakistan, Philippines, Poland, Spain, Uruguay, Zaire. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the delegations of five States not members of the Berne Union (Algeria, Colombia, Peru, Soviet Union, United States of America) also attended the Committee's meetings. Seven other States (China, Jamaica, Oman, Qatar, Republic of Korea, Saudi Arabia, United Arab Emirates), not party to either of the said copyright conventions, were represented by observers. In addition, seven intergovernmental organizations (Agency for Cultural and Technical Co-operation (AGECOOP), ALECSO, Council of Europe (CE), European Free Trade Association (EFTA), International Labour Organisation (ILO), League of Arab States (LAS), UNESCO) and 16 international non-governmental organizations (In-

ternational Alliance for Distribution by Cable (AID), International Association of Conference Interpreters (AIIC), ALAI, BIEM, CISAC, EBU, International Federation of Film Producers Associations (FIAPF), FIM, International Federation of Translators (FIT), ICFTU, International Federation of Journalists (IFJ), IFPI, International Copyright Society (INTERGU), IPA, ISETU, International Union of Architects (IUA)) were represented by observers.

The Committee took note of developments regarding acceptance of the Paris Act (1971) of the Berne Convention, including the deposit by Morocco of its instrument of ratification of the said Act; the developments towards the establishment of a copyright system in China; the reform of the law of copyright in the United Kingdom, one consequence of which would be to make it possible for that country to ratify the said Act, as well as the consideration by the competent legislative bodies of the United States of America of accession to the Convention.

The Committee was informed about the various celebrations of the centenary of the Berne Convention and about the discussions in, and the declaration adopted by, the Forum on the Collective Administration of Copyrights and Neighboring Rights held in Geneva in May 1986.

The Committee took note with appreciation of the report of the International Bureau on the subject of WIPO's Development Cooperation Program.

The Executive Committee of the Berne Union and the Intergovernmental Copyright Committee, in joint sessions, noted information concerning ratifications of and accessions to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention) and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention). The Committees were also informed about the activities by the Secretariats for the promotion of the adherence by further States to the Madrid Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties.

The Committees discussed a progress report about the meetings of the committees of governmental experts on various categories of works having already been convened or to be convened in the rest of the 1986-87 biennium, and representing the most important element of the activities in the fields of copyright and neighboring rights in the said period.

Whereas the discussions in the 1984-85 biennium concentrated on the new uses (mainly cable television, private copying, rental and lending, direct broadcast satellites) affecting the owners or other beneficiaries of copyright and the rights of performers, producers of phonograms and broadcasting organizations (hereinafter referred to as "neighboring rights"), the specific questions to be discussed in the 1986-87 biennium are grouped according to the main categories of works.

The Secretariats of WIPO and Unesco have to prepare, convene and service meetings of committees of governmental experts on the following eight categories of works: printed word, audiovisual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and choreographic works, musical works. For each meeting, the Secretariats would prepare a memorandum summarizing the various copyright and neighboring rights issues in relation to the category of work in question and propose certain "principles" which, together with the comments accompanying them, are intended to serve as guidance for governments when they have to deal with those issues.

The Committees noted and supported the intention of the Secretariats to make certain changes in the principles and comments, and submit a synthesis of the principles and comments to a committee of governmental experts to be convened in the 1988-89 biennium.

The Committees took note of a report on "Development of Law and Practice Connected With the Transmission by Cable of Television Programs," prepared by the Secretariats on the basis of answers received from governments to a circular letter. The Committees supported the plans of the Secretariats to continue to follow the developments of law and practice in the field and to report to the next sessions of the Committees in 1989.

The Committees noted and approved the proposal of the Secretariats that the work on guiding principles on "*droit de suite*" would be finalized—on the basis of the results of the meeting of the committee of governmental experts which discussed works of visual art—in the framework of the new committee of governmental experts to be convened in the 1988-89 program period to consider a synthesis of the principles and comments on them.

The Committees took note of a report on the "Development of Law and Practice Connected With the Protection of Computer Programs," prepared by the Secretariats on the basis of answers received from governments to a circular letter. The Committees supported the plans of the Secretariats to continue to follow the developments of law and practice in the field and to report to the next sessions of the Committees in 1989.

The Committees noted the results of the meetings of the Committee of Governmental Experts on Model Provisions for National Laws on Publishing Contracts for Literary Works and of the Committee of Governmental Experts on Model Provisions for National Laws on Employed Authors.

Finally, the Committees decided to hold their next joint sessions in Paris in 1989.

In July, the *Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)* (hereinafter referred to as "the Committee"), convened by ILO, Unesco and the International Bureau of WIPO, held its eleventh ordinary session in Geneva. Nine member States of the Committee (Austria, Czechoslovakia, Finland, Germany (Federal Republic of), Italy, Mexico, Norway, Sweden, United Kingdom) were represented. The government of one State party to the Rome Convention but not a member of the Committee (Denmark) and 15 States not party to the Rome Convention (Argentina, Australia, Bangladesh, Bulgaria, China, Côte d'Ivoire, Egypt, France, India, Japan, Lebanon, Netherlands, Spain, Turkey, United States of America) were represented as observers. Nine international non-governmental organizations (AID, BIEM, CISAC, EBU, FIA, FIAPF, FIM, IFPI, ISETU) attended the session as observers.

The Committee took note of the accessions of the Dominican Republic, France and Monaco to the Rome Convention.

Several delegations reported on the current situation in their countries with regard to the protection of the rights of performers, producers of phonograms and broadcasting organizations.

The Committee discussed and adopted a draft memorandum, prepared by the Secretariat, for the promotion of further accessions to the Rome Convention.

The Committee noted with appreciation the report on the activities of WIPO and Unesco in providing assistance and training to developing countries with a view to promoting the protection of performers, producers of phonograms and broadcasting organizations.

The Committee discussed a memorandum prepared by the Secretariat on the problems arising with regard to the Rome Convention through developments in law and practice concerning transmission by cable and by satellite. Several delegations reported on new laws which had been adopted or were under consideration in their countries.

The proposed program and budget of WIPO for 1988-89 was discussed, in particular the continued work on collective administration of copyrights and the rights of performers, producers of phonograms

and broadcasters, as well as the work, together with Unesco, on a synthesis of the principles concerning the question of the protection of those rights in connection with nine categories of works. For the synthesis of those principles, a new working document would be prepared by the International Bureau of WIPO and the Secretariat of Unesco and discussed by a Committee of Governmental Experts which would meet in the 1988-89 biennium.

In October, a *Committee of Governmental Experts on Works of Applied Art* convened by WIPO and Unesco met in Geneva.

Experts from the following 20 States attended the meeting: Australia, Canada, Denmark, Finland, France, Germany (Federal Republic of), Guinea, Hungary, India, Italy, Japan, Jordan, Mexico, Netherlands, Panama, Republic of Korea, Soviet Union, Sweden, United States of America, Uruguay. Observers from three intergovernmental organizations—namely the Commission of the European Communities (CEC), the Intergovernmental Bureau for Informatics (IBI) and LAS—and from five international non-governmental organizations—namely ALAI, ICFTU, ISETU, IUA and the World Crafts Council (WCC)—also participated in the meeting.

The purpose of the meeting was to discuss the various copyright issues arising in relation to works of applied art, with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues.

Discussions were based on the Memorandum on Questions Concerning the Protection of Works of Applied Art prepared by the Secretariats.

The usefulness of devising principles which would be proposed as a guide to national legislators in the establishment of rules providing adequate protection for the owners of the rights associated with works of applied art was emphasized.

The Committee discussed in detail the nine principles of the protection of works of applied art covering the following subjects: works of applied art/industrial designs in the border area of copyright and industrial property, the extent and the conditions of the protection of works of applied art/industrial designs, the use of computer systems for the creation of works of applied art, works of applied art created by employed authors, moral rights in works of applied art, economic rights in works of applied art (right of reproduction, right of adaptation, other economic rights), term of protection, the status of drawings and models on the basis of which copies of works of applied art can be prepared.

The Committee noted that the results of the meeting would be taken into account in the prepa-

ration of the working document for the meeting of a committee of experts, planned for the 1988-89 biennium, on a synthesis of the principles concerning the copyright protection of nine categories of works.

In December, a *Committee of Governmental Experts on the Printed Word* convened by WIPO and Unesco met in Geneva.

Experts from the following 32 States attended the meeting: Algeria, Brazil, Canada, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, India, Israel, Italy, Japan, Jordan, Kuwait, Lebanon, Mexico, Netherlands, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Soviet Union, Spain, Sweden, Switzerland, Turkey, United States of America, Uruguay, Yugoslavia. Observers from two intergovernmental organizations (CEC, Organization of African Unity (OAU)) and from 14 international non-governmental organizations (ALAI, BIEM, CISAC, EBU, International Federation of Newspaper Publishers (FIEJ), FIT, International Chamber of Commerce (ICC), IFJ, IFPI, INTERGU, IPA, IUA, Max Planck Institute, International Group of Scientific, Technical and Medical Publishers (STM)) also participated in the meeting.

The purpose of the meeting was to discuss the various copyright issues arising in relation to the "printed word" with a view to devising certain "principles" which, together with comments, could afford guidance to governments when they had to deal with those issues. (According to the program and the memorandum prepared by the Secretariats, the concept "printed word," covered all writings included or to be included in books, newspapers, magazines, in computer memories, electronic libraries, etc., irrespective of whether their content is *belles-lettres*, scientific, educational or other.)

Discussions were based on the Memorandum on Questions Concerning the Protection of Copyright in Respect of the Printed Word prepared by the Secretariats.

The fundamental importance of granting efficient protection for this category of works was underlined.

The Committee discussed in detail the 26 principles of the protection of copyright in respect of the printed word covering the following subjects: piracy, reprography, storage in and retrieval from computer systems of protected works, electronic publishing, electronic libraries, data bases, public lending right, the right to authorize translations, the right of translators, the protection of typographical arrangements.

The Committee noted that the results of the meeting would be taken into account in the prepa-

ration of the working document for the meeting of a committee of experts planned for the 1988-89 biennium on a synthesis of the principles concerning the copyright protection of nine categories of works.

#### *Recommendations of the WIPO Conference Concerning Piracy and Cable Television*

The WIPO Conference adopted, on October 1, 1985, two recommendations, one concerning piracy and one concerning cable television (document AB/XVI/23, paragraphs 128 and 132).

The one on piracy "recommends that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning (a) the extent, within its jurisdiction, of commercial piracy of works protected by copyright and neighboring rights, (b) measures adopted to combat piracy, and (c) the effect of the said measures."

The other "recommends that the Government of each member State provide information through the International Bureau to the next ordinary session (1987) of the Conference concerning the development, within its jurisdiction, of law and practice connected with the distribution of programs by cable."

On January 10, 1986, and on March 13, 1987, circular letters were sent to the member States of WIPO, requesting information in respect of the issues referred to in the above-mentioned paragraphs of the two recommendations.

*Piracy.* In response to the circular letters concerning piracy, replies had, by the end of June 1987, been received from the following States: Algeria, Australia, Austria, Brazil, Bulgaria, Canada, Chad, Finland, German Democratic Republic, India, Ireland, Japan, Mali, Mexico, Netherlands, Norway, Spain, Sweden, Thailand, Zimbabwe (20).

The replies generally underlined the seriousness of the problem of piracy and stated that measures had been taken or were under consideration to fight piracy.

*Cable Television.* In response to the circular letters concerning cable television, replies had, by the end of June 1987, been received from the following States: Algeria, Australia, Austria, Brazil, Bulgaria, Burundi, Canada, Finland, German Democratic Republic, Haiti, India, Ireland, Japan, Mexico, Monaco, Netherlands, Norway, Spain, Sweden, Switzerland, Thailand, Zimbabwe (22).

From the replies received and other information available to the International Bureau, the conclusion can be drawn that the copyright issues in rela-

tion to cable distribution of television programs have been and will continue to be the subject matter of important legislative activities in a number of countries.

#### *Commemoration of the Centenary of the Berne Convention*

In March, a WIPO official gave a lecture at the commemoration of the centenary of the Berne Convention which was organized in Lisbon by the Portuguese Academy of Sciences and was attended by Mr. Mario Soares, President of the Republic, and other government officials.

### **III. Cooperation with States and Organizations in Matters Concerning Copyright and Neighboring Rights**

#### **Objective**

The objective is to ensure that, through regular contacts between WIPO on the one hand and the governments of States and organizations on the other, there should be full awareness of what is being done and planned on either side in order mutually to inspire more and more useful activities, to combine forces whenever possible and to avoid unnecessary duplication.

#### **Activities**

WIPO continued to cooperate with States, with intergovernmental organizations and with international and national non-governmental organizations.

#### *States*

*Austria.* In February, the Director General had discussions with the Minister for Economic Affairs of Austria in Vienna.

*Bulgaria.* In March, an Agreement for cooperation in the field of intellectual property was signed in Geneva between the Government of the People's Republic of Bulgaria and the World Intellectual Property Organization. The term of the Agreement is five years.

*Iceland.* In August, a WIPO official had discussions with government officials on accession to the various treaties in the field of intellectual property administered by WIPO.

*Soviet Union.* In September, the Chairman of the Board of the Copyright Agency of the USSR (VAAP) visited WIPO headquarters and had discussions with the Director General on matters of mutual interest in the field of copyright.

*United States of America.* In November, a Roundtable of discussions on the adherence of the United States of America to the Berne Convention took place at WIPO headquarters. The Roundtable was chaired by the Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House of Representatives of the United States of America and included four other members of the United States House of Representatives, assisted by three members of the staff of the Subcommittee. Fourteen specialists from Austria, Finland, Germany (Federal Republic of), Hungary, Israel, Netherlands, Spain, Sweden, Switzerland, the United Kingdom and from two international non-governmental organizations (CISAC, EBU) and WIPO made statements giving an account of the experiences in countries on the application of the Berne Convention and responded to various questions put by the members of the Subcommittee.

#### *Intergovernmental Organizations*

*Council of Europe (CE).* In October, a WIPO official participated in a meeting of the Committee of Experts in the Media Fields of the Council of Europe in Strasbourg.

*Customs Co-operation Council (CCC).* In January and April, a WIPO official participated in an international Working Party of the Permanent Technical Committee of the CCC, which was held in Brussels.

*Organisation for Economic Co-operation and Development (OECD).* In February, officials of OECD visited WIPO headquarters and had discussions with WIPO officials on possible cooperation between WIPO and OECD.

*Organization of the Islamic Conference (OIC).* In May, a WIPO official visited Jeddah and held discussions with officials of the OIC in connection with the possible signing of a draft cooperation agreement between the two organizations.

During that mission, discussions were held with the Islamic Foundation for Science, Technology and Development (IFSTAD) and the Islamic Development Bank (IDB) in order to identify programs and areas of cooperation between WIPO and the two institutions.

### Other Organizations

In January and December, informal meetings with *non-governmental organizations* were organized by WIPO in Geneva. The activities of the 1986-87 biennium were reviewed and plans for the 1988-89 biennium were discussed.

It is desirable that, in the discussions of substantive intellectual property issues taking place in committees of experts or working groups convened by WIPO, non-governmental organizations whose members come predominantly or exclusively from developing countries play an increasing role. With this objective in mind, the Director General asked, by a circular of November 24, 1986, governments of developing countries (members of WIPO, the Paris or Berne Unions) to assist him in identifying non-governmental organizations, whether international or national, interested in matters of intellectual property, whose headquarters are in a developing country and which he would invite, depending on the subject matter to be discussed, to meetings organized by WIPO. So far, such organizations have been identified by the Governments of Argentina, Brazil, the Central African Republic, Colombia, India, Malawi, Mexico, Pakistan, Thailand, Togo, Trinidad and Tobago and Venezuela. Invitations were extended to eight WIPO-sponsored meetings held during 1987. Two were accepted: the Brazilian Association of Industrial Property (ABPI) was represented in the Committee of Experts on the Protection Against Counterfeiting, held in Geneva in May, and the Arab Society for the Protection of Industrial Property (ASPIP) was represented in the fourth session of the Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions, held in Geneva in November.

*American Intellectual Property Law Association (AIPLA)*. In May, a WIPO official attended a meeting of AIPLA in New York.

In October, a Deputy Director General of WIPO participated in the 1987 Annual Meeting of AIPLA in Washington and delivered a lecture.

*Center for European Policy Studies (CEPS)*. In February, a WIPO official participated in a meeting of CEPS in Brussels.

*German Association for Industrial Property and Copyright Law (GRUR)*. In June, a Deputy Director General participated in the annual meeting of GRUR in Mannheim (Federal Republic of Germany).

In October, a Deputy Director General of WIPO participated in a meeting of GRUR in Munich.

*International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)*. In July, a WIPO official participated in the sixth annual meeting of ATRIP, which took place in Cambridge (United Kingdom).

*International Chamber of Commerce (ICC)*. In March and October, a WIPO official attended meetings of the Commission on Intellectual and Industrial Property of the ICC in Paris.

*International Confederation of Societies of Authors and Composers (CISAC)*. In February, a WIPO official participated in a technical meeting of African authors' societies, organized by CISAC in Dakar.

In May, a WIPO official participated in a meeting of the Legal and Legislation Committee of CISAC in Warsaw.

*International Federation of Newspaper Publishers (FIEJ)*. In March, a WIPO official gave a lecture at a meeting of the Socio-Political Problems Committee of FIEJ in Brussels.

*International Film, Television Film and Documentary Market (MIFED)*. In October, a WIPO official participated in the International Forum on the Harmonization of the Copyright Protection of Audiovisual Works in Milan, organized by MIFED.

*International Literary and Artistic Association (ALAI)*. In January, a WIPO official participated in a meeting of the Executive Committee of ALAI in Paris.

In June, a WIPO official participated in "Study Days" on current copyright problems in the field of broadcasting, organized by ALAI in Sorrento (Italy).

*Law Association for Asia and the Western Pacific (LAWASIA)*. In June and July, a WIPO official attended a LAWASIA Conference which was held in Kuala Lumpur.

*Various*. In April, a WIPO official participated in a Conference on Markets, Technology and the Practice of Electronic Publishing held in Madrid.

In May, a WIPO official attended the Fourth Herchel Smith Annual Lecture at the University of London.

In September, a WIPO official attended, and gave a lecture at, the Fifth Nordic Copyright Conference in Reykjavik.

In December, a WIPO official participated in "Study Days" on the protection of copyright and neighboring rights in audiovisual works in Brussels, organized by the University of Brussels.

## WIPO Meetings

### Establishment of an International Register of Audiovisual Works

#### Preparatory Document for and Report of the Committee of Experts

First Session

(Geneva, March 7 to 11, 1988)

*Editor's Note:* What is published in the following on this Committee of Experts consists of the preparatory document that the International Bureau of WIPO has prepared (hereinafter referred to as "the memorandum") and the report on the discussions and conclusions of the Committee of Experts. The report has been completed by adding to it, in footnotes, the three amendments to the draft Treaty that the Delegation of Austria proposed in the course of the meeting of the Committee of Experts.

#### I. Preparatory Document Submitted by the International Bureau of WIPO\*

##### Introduction

1. The draft program and budget of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO, dated May 29, 1987, established by the Director General of WIPO and submitted to the September 1987 sessions of the Governing Bodies of WIPO and the Unions administered by WIPO, stated: "The efforts for creating an international register of audiovisual recordings will, because of lack of sufficient interest by the motion picture industry, not be pursued" (see document AB/XVIII/2, Annex A).

2. The history of the efforts of the International Bureau starting in 1984 and preceding the September 1987 session of the Governing Bodies is described in Annex I to this document.

3. Notwithstanding the not very encouraging history (between 1984 and 1987) of the efforts and the

negative recommendation of the Director General mentioned in paragraph 1, above, the competent Governing Bodies, when they met in September 1987, decided, after a thorough discussion, not to follow the recommendations of the Director General and instructed him to continue the efforts.

4. The discussions referred to in the preceding paragraph are summarized in the following terms in the report on the September 1987 session of the Governing Bodies (see document AB/XVIII/14, paragraphs 107 to 110):

"The Delegations of Italy, France, Austria, Argentina, Finland, the United Kingdom, Sweden, the United States of America and Spain said that, contrary to what is suggested in the 1988-89 draft program and budget (which proposed the discontinuation of the activity), efforts should continue to establish an international register of audiovisual works, and that the matter be part of the program for the 1988-89 biennium. The register should be voluntary and self-supporting; it should allow, thanks to the register being computerized, for particularly rapid and reliable information on the identification of the works, their owners or the owners of specific rights in those works. Such a register would also be useful in combating piracy. The Delegation of the United States of America said that its Government had been contacted by the American Film Marketing Association, which regarded the creation of such a register as a vital issue and gave its full and enthusiastic support, and that other important American motion picture producers were also very interested in the register and would use it; the United States Copyright Office was prepared to make a study of the potential advantages of such a register to the motion picture industry, which it would make available to interested governments through WIPO.

\* WIPO document IRAW/I/2.

"The Delegation of Austria said also that its Government favored the establishment of an international treaty which would provide that excerpts from the register would have the force of *prima facie* evidence.

"The Delegation of Brazil expressed the wish that the matter of the establishment of an international register of audiovisual works and the preparation of an international treaty on the subject be included in the program and budget.

"With regard to the possible conclusion of an international treaty providing that excerpts from the register would have the force of a rebuttable presumption susceptible of use as proof, the Delegation of Italy stated that for the time being the matter was to be considered premature. In that connection it might be useful to monitor the practical operation of the register and at the same time to ascertain the value that the courts would attach to excerpts used as evidence, in view of the fact that, in any event, the activity was one carried on by a specialized agency of the United Nations. The Delegation of Italy said moreover that the International Federation of Film Producers Associations was now prepared to make financing available for such a register."

5. The Director General's proposals in respect of the continuation of efforts to establish an international register of audiovisual works are reflected in the following terms in the same report (see document AB/XVIII/14, paragraph 111):

"The Director General said that, in 1985, he had prepared draft regulations and forms for, and a plan for financing of such a register, but that, notwithstanding numerous consultations with the interested circles, the latter failed to give a clear indication of their willingness to finance and use such a register. The Director General was ready to make a new attempt with the understanding, first, that a diplomatic conference for the adoption of a treaty would be convened, that treaty securing the nature of *prima facie* evidence to the register and, second, that the register would be financially self-supporting. An initial investment would, however, be necessary as it was unlikely that fees would be adequate for such a register to be self-supporting during its early years. It would therefore be necessary to have the interested circles advance the modest amount necessary to initiate the operation, which would also show the seriousness of their interest in this matter. The Director General said that this would constitute an amendment of the program."

6. The Governing Bodies concerned unani- mously adopted the proposals quoted above as included in the report (see document AB/XVIII/14, paragraph 173).

7. The Committee of Experts for which the present memorandum has been prepared, is being convened for the preparation of the diplomatic conference mentioned in paragraph 5. above.

### Establishment of an International Register

8. An international register of audiovisual works administered by the International Bureau (hereinafter referred to as "the international register") could, in theory, be established by a simple decision of the competent Governing Bodies (probably, the General Assembly of WIPO and/or the Assembly of the Berne Union). However, in practice, such a solution is hardly viable, since all along the discussions so far conducted the potential users of the international register—mainly the intellectual right owners in such works—seemed to consider a register useful only if the registration has some legal effects, namely, and as a minimum, the effect of *prima facie* (i.e. the effect of validity, albeit rebuttable validity) evidence of the data recorded in the register. Such legal effect cannot be guaranteed without a treaty that would oblige the Contracting States to give a legal effect to the registrations. Only a treaty can create obligations for a State. The idea has been advanced from time to time that the legal effect could be left to the discretion of each Contracting State. Under that idea, naturally, no treaty would be necessary. The promoters of that idea say that the decision of the Governing Bodies setting up the international register could either be completely silent on legal effects or could recommend to, or invite the States members of WIPO and/or of the Berne Union to, give the force of *prima facie* evidence to the register. Such a recommendation or invitation—just as much as silence on the matter—would, however, mean *no* legal obligation and any State could, if it so wishes, not give any evidentiary force to the international registrations. Consequently, and as already stated, basing an international registration system on a mere decision not containing any obligation for the States could not and would not guarantee any legal effect.

9. There seems to be also another reason that makes the conclusion of a treaty a legal necessity. Any registration system would have to be expressed in the form of rules governing the conduct of the International Bureau and the users of the register. Who should establish such rules? And who should,

in the light of experience and changing needs, amend such rules? To give the right of establishing and amending the rules to all States would not make much sense because a number of those States may be totally uninterested in a register. Only those States that are interested in the register should establish and amend the rules. There seems to be no other legally viable way of identifying the interested States than by uniting them in a "Union"—to use WIPO parlance—and such uniting requires the conclusion of a treaty to which the States interested in the system would have to become party.

10. It is, therefore, proposed that the Committee of Experts should examine and give its advice on a draft treaty and draft regulations (including draft forms<sup>1</sup>). The former constitutes Annex II, and the latter constitute Annex III, of the present document.

11. Past discussions seem to indicate that an international register would be acceptable to States only if no State would have to undertake any financial obligations vis-à-vis the International Bureau. The register, therefore, will have to be self-supporting, i.e. all the expenses of the International Bureau caused by the international register would be covered by the fees paid by the users for the use of the register. A self-supporting system is quite realistic. The International Bureau has great experience in this field. The international trademark registration system under the Madrid Agreement, the international patent application system under the Patent Cooperation Treaty and the international deposit system of industrial designs under the Hague Agreement are self-supporting systems administered by the International Bureau. However, full coverage of the expenses from fees can be expected only after an initial period of a few years, during which the system does not have enough users to produce the required revenues. During that initial phase, the financing would have to be secured, to the extent that fees do not cover all the expenses, from sources other than fees. It is proposed that those sources be the associations of potential users of the system. A financial plan for such initial financing is outlined in Annex IV.<sup>2</sup> A resolution of the diplomatic conference should approve the financial plan for initial financing and should make the starting of the operations of the international register conditioned on the obtaining, by the International Bureau, of the money necessary for the financing of the initial phase.

## ANNEX I

### The History of the Efforts to Establish an International Register of Audiovisual Works

1. The plan to examine the advantages and feasibility of an international register of audiovisual works emerged from the Resolution adopted by the participants in the 1981 WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings which requested WIPO, *inter alia*, to take initiatives for the purpose of a more effective implementation of existing legislation in the fight against piracy.

2. The program of the World Intellectual Property Organization (WIPO) for the 1984–85 biennium, adopted by the Governing Bodies of WIPO and the Unions administered by it in September/October 1983 (document AB/XIV/2, Annex A) stated that "the International Bureau would prepare, with the help of outside consultants, convene and service a meeting of a committee of governmental experts to advise it on the setting up, at the International Bureau of WIPO, of an international register of audiovisual recordings (cinematographic works, recordings of television programs, etc.), it being understood that the use of such register would be voluntary and that the provisions setting up the register would under no circumstances make recordal in the register a condition for protection of copyright or neighboring rights but would be merely intended as a means of facilitating proof of the existence of the audiovisual recording on the date on which the request for recordal was filed. The conclusions of the committee of governmental experts will be submitted to the Executive Committee or the Assembly of the Berne Union for possible further action."

3. In accordance with the program quoted above, the Director General of WIPO convened, in cooperation with the International Federation of Film Producers Associations (FIAPF), a Group of Consultants on the Advisability of Setting Up an International Register of Audiovisual Works. The Group of Consultants met at the headquarters of WIPO, in Geneva, from July 9 to 11, 1984.

4. A working document was prepared for that meeting by the International Bureau of WIPO on "Aspects of Setting Up an International Register of Audiovisual Works" (WIPO/FILMREG/I/2), as well as a document by FIAPF containing a "Plan of an International Film Documentation Center" (WIPO/FILMREG/I/3). Both documents are available on request.

5. The first document intended to survey the legal character and operation of existing national public registries of audiovisual works, with a view to considering whether any of the solutions worked out at the national level could be applied to the establishment of an international register in the same field. Underlying principles and main aspects of a system of international registration of audiovisual works were explained in the last part of that document.

6. The second document—the document by FIAPF—described briefly the main utilizations of such a

<sup>1</sup> Not published here.

<sup>2</sup> Not published here.

system. It stated, *inter alia*, as follows (paragraph 7): "in addition to the mission of serving as an international register, the voluntary registration could be used for two other practical, immediate purposes: (a) an International Documentation Center for the collective management of rights that cannot be handled separately and individually by producers; and (b) an International Documentation Center for the individual production, processing and sale of rights for each audiovisual work, for each medium and for each territory."

7. On the basis of the documents mentioned in paragraph 4. above, the Group of Consultants referred to in paragraph 3. above, discussed the following points: (a) the need for an international register of audiovisual works; (b) the contents of such a register; (c) the legal effect of registration; (d) the organization of the register.

8. The discussions on the need for an international register are summarized in the following terms in the report of the Group of Consultants:

"The consultants unanimously held that it was necessary and therefore highly desirable and urgent, to establish an international register of audiovisual works. They held that such a register was highly desirable because of the fact that the exploitation of many audiovisual works more and more took place not only in the country in which they were made but also in more and more other countries, that is, in different countries with different copyright laws and different practices of enforcing those laws, facts which frequently caused great difficulties for the owners of rights in the work to have their rights clearly indicated to others and respected by them. The consultants also found that for the purposes of the international licensing of the exploitation of the audiovisual works, and for the purposes of the international financing of such exploitation, the existing national registers were of limited usefulness.

"The consultants were of the opinion that an international register would

- (i) greatly increase the security of international transactions,
- (ii) be helpful in identifying right owners,
- (iii) efficiently further the repression of piracy,
- (iv) promote awareness of distinct rights relating to different forms of uses of the audiovisual work,
- (v) facilitate any collective administration of rights and
- (vi) make it much easier for right owners to refuse unjustified claims."

9. The views of the consultants about the possible contents of an international register are reflected in the same report, as follows:

"The register should reflect such data, voluntarily furnished by applicants for registration, which permit identification of the work and which constitute information on who claims what rights in which countries in the work or in connection with its making or exploitation. Naturally, the register should also reflect any changes that may occur in the data originally regis-

tered, such as changes in the title of the work and any changes in the identity of the alleged holders of rights. It could also reflect licenses (for distribution of copies, including videocassettes, for theatrical or television showing, etc.) given by the holders of rights as well as the existence of loans, insurances or liens. The register should be available also for reflecting any contestation of any of the allegations already registered in it.

"The registry should accept applications from any person or entity, the term 'application' being understood to cover applications for initial registration, as well as applications concerning alleged changes in, and possible contestations of, any of the registered data.

"It would be entirely left to the applicant what data he would include in his application and what documents, if any, he would attach to it. Applications would have to be made on forms put at the disposal of prospective applicants by the registry. These forms would mention the nature of the data usually found useful but it would not be required to furnish any of those data.

"The allegations made in the applications would not be examined by the registry. However, any application could be accompanied, according to the wish of the applicant, by certifications or supporting statements emanating from any source, for example from associations of film producers or from official agencies and registers. Such certifications and supporting statements could relate to the whole content of the application or some specified allegations contained in it. Documents that could be attached to any application would include contracts or excerpts of contracts whether they related to the assignment or licensing of rights or to the financing of the creation or exploitation of the work.

"A very limited number of data, essentially consisting of the title of the work (in several languages, where applicable), the name and address of the applicant, his alleged legal relation or interest in the registered work, and the object of the application would be published in a periodical gazette to which anybody could subscribe. Anybody could obtain from the registry a complete copy of the documents registered or an extract therefrom reflecting such of the registered data which the inquiring party is interested in.

"Both the filing of applications and the requests for information (whether in the form of copies or extracts) would be subject to payment of fees to the registry by the applicant or the inquiring party, respectively."

10. As far as the legal effect of registration is concerned, the report contains the following statements:

"Registration, or absence of it, would have no effect on the rights or obligations of anyone, particularly not on the existence or non-existence of copyright.

"It is nevertheless to be expected, particularly once the register would be widely used, that contracts concerning transactions in respect of audiovisual works would spontaneously stipulate that certain data concerning the audiovisual work and/or the contract should be registered in the registry, that associations of

film producers or other right holders would recommend to their members the use of the register, that courts would gradually accept uncontested registered facts as *prima facie* evidence and that it will become more and more difficult to successfully plead ignorance of facts which have been the subject of registration."

11. Finally, as regards the organization of the registry, the consultants expressed the following views:

"The registry should probably be established in Geneva, Switzerland, and be administered by WIPO, in cooperation with FIAPF. The Director General of WIPO has emphasized that this would require an authorization of the member States and a clear undertaking that the registry would be self-supporting, that is, wholly financed from the fees paid by applicants and inquiring parties, and that it would be without any subsidy whatsoever from WIPO's budget. He also emphasized that in order to cover the expenses of the registry during the initial period during which there would be no or only insufficient revenues in fees, an initial investment would be necessary which would have to come from sources other than WIPO's budget, such as contributions by prospective users' associations. It is to be hoped that, since the registry would be of public utility in that it would increase the security of the investments, frequently made with the help of public funds, in the making of audiovisual works expected to earn money abroad, tax incentives would encourage such contributions."

12. The program of WIPO for the 1986-87 biennium adopted by the Governing Bodies of WIPO and the Unions administered by it (document AB/XVI/2, Annex A, page 15) contained the following statement: "[t]he International Bureau, in cooperation with non-governmental organizations of producers of audiovisual recordings, will continue to study the possibilities of establishing an international register of audiovisual recordings, totally financed by fees paid by those who ask that certain facts be entered in the register and who consult such register. If there is sufficient interest and such financing is secured, the International Bureau will seek the authorization of the Executive Committee of the Berne Union to administer, or participate in the administration of, such register. It is to be noted that registration in the register would not constitute a condition of the existence or the exercise of copyright in the audiovisual recordings."

13. The International Bureau, through representatives of FIAPF and the Motion Picture Association of America (MPAA), tried to verify the extent of interest in the plan. It also proposed a financing scheme which is the same as what can be found in Annex IV<sup>1</sup> of this document. The Director General himself held meetings in Geneva on August 30, 1984, and in New York on October 22, 1984, and exchanged correspondence with such representatives. The International Bureau discussed in detail with, and transmitted in writing to, the representatives of FIAPF and MPAA the same kind of proposals (draft regulations

and draft forms<sup>2</sup>) as are contained in Annex III of this document. Official statements by the said associations expressing interest in the proposals and taking position on the question of financing were expected but were not forthcoming. This was the reason for which the activities were suspended and their discontinuation recommended (see paragraph I of the memorandum).

## ANNEX II

### Draft

### Treaty on the International Register of Audiovisual Works

#### CHAPTER I: SUBSTANTIVE PROVISIONS

##### *Article 1: Establishment of the Union*

The States party to the Treaty (hereinafter called "the Contracting States") constitute a Union for the international registration of audiovisual works (hereinafter referred to as "the Union").

##### *Article 2: The International Register*

(1) [*Establishment and Administration of the Register*] An International Register of Audiovisual Works (hereinafter referred to as "the Register") is hereby established and its administration is hereby entrusted to the International Bureau of the World Intellectual Property Organization (WIPO) (hereinafter referred to as "the International Bureau").

(2) [*Regulations*] The Regulations concerning the Register (hereinafter referred to as "the Regulations") are attached to this Treaty.

(3) [*Fees*] Any user of the Register shall pay a fee for any service rendered by the International Bureau under this Treaty.

##### *Article 3: Legal Effect of the Register*

The Contracting States undertake to recognize that the statements contained in the Register, unless contradicted by other statements contained in the same Register, shall have *prima facie* evidentiary value, that is, they shall be considered as true until the contrary is proved.

#### CHAPTER II: ADMINISTRATIVE PROVISIONS

##### *Article 4: Assembly*

(1) [*Composition and Expenses*] (a) The Union shall have an Assembly that shall consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

<sup>1</sup> Not published here.

<sup>2</sup> Not published here.

(c) The expenses of each delegation shall be borne by the Government which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each Contracting State, which shall be paid from the funds of the Union.

(2) [Tasks] (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Treaty;

(iii) give directions to the Director General of the World Intellectual Property Organization (hereinafter referred to as "the Director General" and "the Organization," respectively) concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) determine the program and adopt the budget of the Union, and approve its final accounts;

(vi) adopt the financial regulations of the Union;

(vii) establish such committees and working groups as it deems appropriate to facilitate the work of the Union and of its organs;

(viii) determine which States other than Contracting States and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) decide upon the establishment of any agency of the International Bureau in any place outside Geneva (Switzerland) for the purposes of receiving documents and payments under this Treaty and the Regulations with the same effect as if they had been received by the International Bureau in Geneva;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [Representation] A delegate may represent, and vote in the name of, one State only.

(4) [Vote] Each Contracting State shall have one vote.

(5) [Quorum] (a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of the decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6) [Majority] (a) Subject to Article 7(2)(b), and Article 9(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) [Sessions] (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either on the Director General's own initiative or at the request of one-fourth of the Contracting States.

(8) [Rules of Procedure] The Assembly shall adopt its own rules of procedure.

#### Article 5: International Bureau

(1) [Tasks] The International Bureau shall:

(i) perform the administrative tasks concerning the Union; in particular, it shall perform such tasks as are specially assigned to it under this Treaty or by the Assembly;

(ii) provide the secretariat of revision conferences, of the Assembly, of the committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

(3) [Meetings Other Than Sessions of the Assembly] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [Role of the International Bureau in the Assembly and Other Meetings]

(a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.

(b) The Director General or a staff member designated by him shall be *ex officio* secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [Revision Conferences] (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.

(b) The Director General may consult with intergovernmental and international non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(d) The Director General or a staff member designated by him shall be *ex officio* secretary of any revision conference.

#### *Article 6: Finances*

(1) [*Budget*] (a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) [*Coordination With Other Budgets*] The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) [*Sources of Income*] The budget of the Union shall be financed from the following sources:

(i) fees and other charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iii) voluntary donations, particularly by associations of right holders in audiovisual works;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) (a) [*Self-Supporting Financing*] The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they, together with any other income, should be sufficient to cover the expenses of the International Bureau connected with the administration of this Treaty.

(b) [*Continuation of Budget; Reserve Fund*] If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations. If the income exceeds the expenses, the difference shall be credited to a reserve fund.

(5) [*Working Capital Fund*] The Union shall have a working capital fund which shall be constituted from the income of the Union.

(6) [*Auditing of Accounts*] The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

#### *Article 7: Regulations*

(1) [*Adoption of Regulations*] The Regulations adopted at the same time as this Treaty are annexed to this Treaty.

(2) [*Amending the Regulations*] (a) The Assembly may amend the Regulations.

(b) Any amendment of the Regulations shall require two-thirds of the votes cast.

(3) [*Conflict Between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

### CHAPTER III: REVISION AND AMENDMENT

#### *Article 8: Revision of the Treaty*

(1) [*Revision Conferences*] This Treaty may be revised from time to time by conferences of the Contracting States.

(2) [*Convocation*] The convocation of any revision conference shall be decided by the Assembly.

(3) [*Provisions That Can Be Amended Also by the Assembly*] The provisions referred to in Article 9(1)(a) may be amended either by a revision conference or according to Article 9.

#### *Article 9: Amendment of Certain Provisions of the Treaty*

(1) [*Proposals*] (a) Proposals for the amendment to Articles 4(5) and (7), 5 and 6, may be initiated by any Contracting State or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2) [*Adoption*] (a) Amendments to the provisions referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

(3) [*Entry Into Force*] (a) Any amendment to the provisions referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly.

(c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

#### CHAPTER IV: FINAL PROVISIONS

##### *Article 10: Becoming Party to the Treaty*

(1) [*Ratification, Accession*] Any State party to the Berne Convention for the Protection of Literary and Artistic Works or member of the Organization may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) [*Deposit of Instrument*] Instruments of ratification or accession shall be deposited with the Director General.

##### *Article 11: Entry Into Force of the Treaty*

(1) [*Initial Entry Into Force*] This Treaty shall enter into force six months after five States have deposited their instruments of ratification or accession.

(2) [*States Not Covered by the Initial Entry Into Force*] Any State which is not among those referred to in paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

##### *Article 12: Reservations to the Treaty*

No reservations to this Treaty are permitted.

##### *Article 13: Denunciation of the Treaty*

(1) [*Notification*] Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) [*Effective Date*] Denunciation shall take effect one year after the day on which the Director General has received the notification.

(3) [*Moratorium on Denunciation*] The right of denouncing this Treaty provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes bound by this Treaty.

##### *Article 14: Signature and Languages of the Treaty*

(1) [*Original Texts*] This Treaty shall be signed in

a single original in the English and French languages, both texts being equally authentic.

(2) [*Official Texts*] Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Italian, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(3) [*Time Limit for Signature*] This Treaty shall remain open for signature at the International Bureau until December 31, [1989].

##### *Article 15: Depositary Functions*

(1) [*Keeping of the Original Texts*] The original of this Treaty shall be kept by the Director General.

(2) [*Certified Copies*] The Director General shall transmit two copies, certified by him, of this Treaty to the Governments of States entitled to sign this Treaty.

(3) [*Registration of the Treaty*] The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) [*Amendments*] The Director General shall transmit two copies, certified by him, of any amendment to this Treaty to the Governments of the Contracting States and, on request, to the Government of any other State.

##### *Article 16: Settlement of Disputes*

Any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

##### *Article 17: Notifications*

The Director General shall notify the Governments of the States entitled to sign this Treaty of:

- (i) signatures under Article 14;
- (ii) deposits of instruments of ratification or accession under Article 10(2);
- (iii) the date of entry into force of this Treaty under Article 11(1) and any amendment under Article 9(3);
- (iv) denunciations received under Article 13.

## ANNEX III

## Draft

Regulations of the International Register  
of Audiovisual Works*Rule 1: Definitions*

For the purposes of these Regulations.

(i) "International Register" means the International Register of Audiovisual Works administered by the World Intellectual Property Organization (WIPO).

(ii) "International Registry" means the service that manages the International Register.

(iii) "Initial application" means an application in which the registration of an audiovisual work is requested; and "initial registration" means a registration effected pursuant to an initial application.

(iv) "Subsequent application" means an application relating to an audiovisual work already registered and in which it is requested that the International Register reflect statements not yet covered in the International Register and/or observations relating to the existing contents of the International Register; and "subsequent registration" means a registration effected pursuant to a subsequent application.

(v) "Application" means both or either of the two kinds of applications mentioned in (iii) and (iv), above, and "registration" means both or either of the two kinds of registrations mentioned in (iii) and (iv), above, unless, in respect of either term, it clearly follows from the context in which the term is used that only one of the two kinds of applications or registrations may be meant.

*Rule 2: Subject Matter of Applications*

(1) The subject matter of an initial application shall be an audiovisual work.

(2) The concept of audiovisual work includes any fixation of a series of images with accompanying sounds susceptible of being copied and made visible and made concurrently audible. The preceding description is not necessarily exhaustive of the concept of audiovisual works. It is indifferent whether the audiovisual work is protected by copyright.

*Rule 3: Filing of Applications; Languages of Applications and Correspondence*

(1) Every communication whose contents are intended to be made part of the International Register shall be filed by using, and filling in by typewriter, the appropriate application form.

(2) Application forms shall be put at the disposal of any prospective applicant, free of charge, by the International Registry.

(3) An application shall relate to one audiovisual work only: in the case of a series, each episode or installment shall be considered as a separate work.

(4) The application shall indicate the interest of the applicant in the work or in its registration.

(5) All applications sent to or by the International Registry shall be in English. Titles of audiovisual works may be indicated in languages other than English and/or in a script other than the Latin script, provided that each title in a language other than English or in a script other than the Latin script shall be accompanied by a literal translation into English and/or a transliteration into Latin script, as the case may be.

*Rule 4: Examination of Applications*

(1) Subject to paragraphs (2) to (9), the International Registry shall not examine the completeness or the correctness of any application.

(2) If the International Registry happens to notice what it believes to be inadvertent omissions, contradictory statements, mistakes of transcription or other obvious errors in the application, it may invite the applicant to correct them. Any corrections by the applicant shall be accepted if they reach the International Registry within 30 days from the date of the invitation to correct.

(3) In the following cases, the International Registry shall reject the application:

(i) where the application does not indicate an interest of the applicant in the work or in its registration;

(ii) where the application is in a language other than English or where it relates to more than one audiovisual work;

(iii) where, in the opinion of the International Registry, the subject matter of the paper purporting to be an initial application is obviously not an audiovisual work;

(iv) where the initial application does not contain the title or one of the titles of the work;

(v) where the application does not contain the prescribed declaration of veracity or if the text of that declaration as appearing in the application form has been changed or stricken, or if the said declaration is not signed;

(vi) where the totality of the prescribed fee has not been received by the International Registry within the prescribed time limit.

(4) If the application is not made on the required form or is not filled in by typewriter, the International Registry may reject the application.

(5) If the paper purporting to be an application does not contain the name of the applicant or, unless it is known to the International Registry, the address of

the applicant, the application shall be considered as if it had not been made.

(6) Where in the paper purporting to be a subsequent application the applicant fails to indicate the registration number of the initial registration, the subsequent application shall be considered as if it had not been made.

(7) No application shall be rejected, or considered as if it had not been made, for any reason other than those mentioned in paragraphs (3) to (6). In particular, no application shall be rejected for the reason that it does not contain statements in respect of any matters mentioned in the application form other than the matters referred to in paragraph (3)(iii) and (iv) of this Rule.

*Rule 5: Registration Number and Date of Filing*

(1) The International Registry shall allot a number to each initial application ("registration number"). It shall mark that number on each page of that application as well as on any subsequent application relating to the work which is the subject matter of the initial registration.

(2) The International Registry shall allot a filing date to each application. The date shall be the date of receipt of the application by the International Registry if the complete fee payable in connection with the application is received not later than 10 days after the date of receipt of the application, whereas it shall be the date of receipt of the fee if the fee is received by the International Registry later than 10 days after the date of receipt of the application.

*Rule 6: Registration and Register*

(1) For each initial application, the International Registry shall open a file, shall place in it the original of that application, together with any documents attached to it, and shall inscribe on the file wrapper the registration number and the filing date of the initial application. The original of any subsequent application, together with any documents attached to it, as well as any original piece of substantive correspondence received, and the copy of any substantive correspondence sent, by the International Registry, pertaining to the initial application, shall be placed in the same file, and the nature of the paper, together with its filing date or date of receipt or sending, as the case may be, shall be inscribed on the file wrapper. Placing the applications and the said pieces of correspondence in the file wrapper, and inscribing the pertinent particulars thereof on the file wrapper, shall constitute the act of registration.

(2) The International Registry shall notify the applicant who submitted the initial application of the receipt of the initial application and of the receipt of

any subsequent application relating to the work which is the subject matter of the initial registration.

(3) The International Registry shall notify the party submitting a subsequent application of the receipt of the subsequent application.

(4) Any material identifying the work attached to the initial application or to any subsequent application shall be marked by the Registry with the registration number and shall be kept either in the file wrapper or, where its form would make keeping it in the file wrapper cumbersome or impossible, in a storage place of the International Registry.

(5) The papers contained in the file wrappers, the file wrappers, and the identifying materials kept in the file wrappers or in the said storage place, together, constitute the International Register.

(6) The International Registry may input into computer memory all or part of the contents of the International Register. In responding to inquiries, it may rely on that memory.

*Rule 7: Gazette*

(1) The International Registry shall publish a monthly gazette in which it shall indicate

- (a) in respect of the initial application:
  - (i) the registration number,
  - (ii) the title of the audiovisual work as it appears in the initial application,
  - (iii) the name of the applicant and the name of the city and the country taken from the address of the applicant,
  - (iv) the filing date of the initial application;
- (b) in respect of any subsequent application:
  - (i) a statement to the effect that a subsequent application has been filed in respect of a registered work, together with the data referred to in (a), above, concerning the initial registration,
  - (ii) if the applicant submitting the subsequent application is the same as the one who submitted the initial application, a statement to that effect; if the applicant submitting the subsequent application is other than the one who submitted the initial application, the name of the applicant submitting the subsequent application and the name of the city and the country taken from the address of that applicant,
  - (iii) the filing date of the subsequent application.

(2) The International Registry shall offer, against payment, both yearly subscriptions to the Gazette and single copies of the Gazette.

*Rule 8: Inquiries*

(1) The International Registry shall, upon request and against the payment of the prescribed fee, furnish

any of the following concerning any registration:

(i) a copy of the file wrapper, of any application, and of any document annexed to any application, or of certain pages of any such application or document,

(ii) a certificate by the International Registry answering questions asked by the inquiring party about the existence, in the International Register, of statements concerning specific matters in any application or annexed material or documents.

(2) The International Registry shall, upon request and against the payment of the prescribed fee, allow the inspection, in the presence of an official of the International Registry, of any material identifying the work which has been attached to any application.

(3) The International Registry shall, upon request and against the payment of the prescribed fee, promptly inform, in writing, the inquiring party, during a period for which the fee was paid, of the fact that a new subsequent application concerning a given international registration was received and registered during the said period ("Monitoring Service").

(4) Any copy, certificate or information furnished by the International Registry shall be accompanied by a warning to the effect that the International Registry declines any responsibility for the accuracy of the copy, certificate or information.

#### *Rule 9: Fees and Prices*

(1) The following fees shall be payable:

(i) for the filing of an initial application: [1000] Swiss francs,

(ii) for the filing of a subsequent application: [500] Swiss francs,

(iii) for the furnishing of copies under Rule 8(1)(i): [3] Swiss francs per page with a minimum of [50] Swiss francs.

(iv) for the furnishing of a certificate under Rule 8(1)(ii): [100] Swiss francs.

(v) for allowing an inspection under Rule 8(2): [200] Swiss francs,

(vi) for monitoring service under Rule 8(3): [200] Swiss francs per month or, where the monitoring is requested for a calendar year, [1000] Swiss francs.

(2) The Gazette shall be sold at the price of:

(i) [300] Swiss francs per yearly subscription,

(ii) [30] Swiss francs per monthly issue.

## II. Report of the Committee\*\*

### Introduction

1. Convened by the Director General of the World Intellectual Property Organization (WIPO) as part of the 1988-89 program of WIPO, the Committee of Experts on the Establishment of an International Register of Audiovisual Works (hereinafter referred to as "the Committee of Experts") held its first session in Geneva from March 7 to 11, 1988.

2. The following 36 States were represented at the session: Argentina, Austria, Brazil, Burundi, Canada, China, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Guinea, Hungary, India, Italy, Japan, Lebanon, Mexico, Morocco, Netherlands, Norway, Philippines, Portugal, Republic of Korea, Soviet Union, Spain, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America, Uruguay, Yemen, Zaire.

3. Observers from the following nine international non-governmental organizations participated in the meeting: Association for the International Collective Management of Audiovisual Works (AGICOA), International Association of Audio-Visual Writers and Directors (AIDAA), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Phonogram and Videogram Producers (IFPI), International Literary and Artistic Association (ALAI).

4. The list of participants is annexed to the report.

5. Dr. Arpad Bogsch, Director General of WIPO, opened the session and welcomed the participants.

6. The Committee of Experts unanimously elected Mrs. Karin Hökborg (Sweden) as Chairman and Mr. Omer Guilavogui (Guinea) and Mr. Victor Kukharsky (Soviet Union) as Vice-Chairmen. The International Bureau of WIPO (hereinafter referred to as "the International Bureau") acted as Secretariat of the Committee.

7. Discussions were based on a memorandum entitled "Establishment of an International Register of Audiovisual Works" (WIPO document IRAW/1/2, hereinafter referred to as "the memo-

\*\* WIPO document IRAW/1/4.

randum"). Hereinafter, the Register proposed in the memorandum is referred to as "the Register" or "the International Register." The memorandum contains the draft of a treaty and the draft of regulations under the treaty; hereinafter, they are referred to as "the Draft Treaty" and "the Draft Regulations," respectively.

### General Discussion

8. All the participants who took the floor in the general discussion (namely, the Delegations of Argentina, Austria, China, Egypt, Finland, France, German Democratic Republic, Guinea, Hungary, Italy, Morocco, Netherlands, Norway, Portugal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America and observers from CISAC, FIAD, FIAPF and IFPI), expressed their interest in the establishment of the International Register and supported the efforts made in that direction. It was generally underlined that such a register would be very useful in the fight against piracy and would serve valuable information purposes.

9. All participants who took the floor also commended WIPO for the convocation of the meeting which was considered to be, *inter alia*, an integral part of WIPO's intensive antipiracy program. The participants praised the high quality of the memorandum and said that it was an appropriate basis for discussions.

10. A number of participants stressed that the Register should be voluntary—that is, there should be no obligation by anyone to use it—that it should be financially self-supporting and, consequently, should not require any financial contributions from States. It was also emphasized that the use or non-use of the Register in respect of any audiovisual work should not, in any way, affect the acquisition, enjoyment or exercise of copyright and neighboring rights in that audiovisual work; in other words, that the Register should have no effect on copyright.

11. The Delegation of Austria expressed its particular interest in the establishment of the proposed Register and said that it would be honored if Vienna, the capital of its country, were to be selected as the seat of the Register.

12. The Delegation of the United States of America, while underlining its general support for the approach taken in the memorandum as to the establishment of the Register, stressed that, in its country, a national register of such works existed and that the International Register should comple-

ment and not adversely affect the operations of national registers.

13. The Delegation of Italy said that it had, at the meeting of the Governing Bodies (September 1987), expressed some reservations as to the establishment of a treaty on the matter but that, after having examined the memorandum, it considered that the proposed treaty, including the establishment of a Union, would be useful; the proposals in the memorandum, therefore, had its full support.

14. The Delegations of Finland, the Netherlands, Norway and Sweden, while supporting the efforts for creating an International Register, expressed some doubts whether the entries made in the Register should, under certain circumstances, have *prima facie* evidentiary value, some of them underlining that this applies particularly because the requests for entry of statements in the Register would be accepted without substantive examination as to the veracity of the statements of the applicants. All those Delegations, however, stated that they would study the question with an open mind.

15. The Delegation of France said that the proposed international system should take into account the existence of national registers—existing, for example in its country—and should in no way affect them. The Delegation of France, which also expressed its firm support for the proposed International Register said that establishing such a Register, without at the same time providing for any legal effects of statements contained therein, would create difficulties.

16. The Delegation of the Soviet Union, in addition to expressing its support for the proposed Register, underlined two essential basic functions of the Register, namely that it could be a source of information and could provide *prima facie* evidentiary value to registered statements. It also mentioned that the fees should be so fixed that even right holders from countries where films are not made on a commercial basis or where foreign exchange does not abound should be able to use the Register.

17. The Delegations of Switzerland and the United Kingdom, while recognizing that an international register might be useful for the fight against piracy, wondered whether a treaty was really a condition for the establishment of such a register.

18. An observer from FIAPF underlined the interest of his organization in the establishment of the Register in view of the useful purposes it would serve, in particular, in the present situation of mass use of audiovisual works facilitated by the new technologies and the resulting lack of certainty as to

the rights in the works and as to who owns those rights in which countries. The international nature of the Register was particularly important in view of the fact that audiovisual works were generally being exploited in several countries. The information value of the Register was also an essential element as it was important for owners of rights, users, investors and insurers to know which rights existed and were owned by whom in which countries. The Register would thus improve the security in business transactions. A Register would also be useful in the fight against piracy, which drained away the resources of the producers and made the money available for production more limited. To achieve those objectives, the Register should be established on the basis of a treaty administered by WIPO which would guarantee the *prima facie* evidentiary value of registration. The Register should be voluntary with a possibility to register titles and other information covering feature films, telefilms and videograms, *inter alia*, for the purpose of identifying authors and other holders of rights. The legal effects of statements in the Register as proposed in the memorandum were satisfactory; the mechanism proposed there was one possibility but there might be other solutions.

19. An observer from FIAD expressed the support of his organization for the establishment of the proposed Register, which was considered as valuable.

20. An observer from IFPI said that, in principle, his organization supported the establishment of the proposed Register with the suggested evidentiary value of the statements entered in the Register. The major problem was how to verify the veracity of the entries which were to be made in the Register; some procedure should be found for checking such entries. Consideration should also be given to the question of financing. As audiovisual works produced by the members of his organization were shorter and used only for a short time, a sliding scale for fees might be envisaged in respect of such works.

21. An observer from CISAC said that his organization was in the process of setting up a register to meet its particular needs; this register contained information provided by the member societies of the organization. The format of the register had been outlined and the first edition of the material contained in it was due in June–July 1988.

#### Discussion of the Draft Treaty

22. The participants engaged in an article-by-article discussion of the Draft Treaty.

23. *Article 1: Establishment of the Union.* Several questions were raised, and responded to, in relation to this Article. Thus, it was clarified that anyone, regardless of whether or not he was a national of a Contracting State, would be entitled to apply for entry of statements in the Register or could obtain information as to the Register's contents. On the other hand, it was made clear that the legal effects of the Register would apply only in the countries which were members of the Union.

24. The Delegation of the United States of America expressly stated its full support of the contents of Article 1.

25. *Article 2: The International Register.* The Delegation of Austria submitted a proposal (reproduced in document IRAW/I/3), *inter alia*, for the modification of Articles 2(1) and (3).<sup>1</sup> It explained that the main idea behind the first of the proposed amendments was to ensure that the administration of the Register would be carried out in close cooperation with persons who had expertise and knowledge of the professional aspects of the subject matter. The proposed amendment to Article 2(3) flowed from the suggestion made earlier that the seat of the Register should be located outside Geneva.

26. The Delegation of the United States of America reiterated that it was in principle in favor of the establishment of the International Register which should complement and not adversely affect the existing national register in its country. The Delegation expressed support for the idea of establishing Regulations governing the detailed aspects of the operations of the Register. The Delegation also supported the proposals in the memorandum to the effect that the Regulations should be attached to the Treaty and that users of the Register should pay a fee for any service, but said that the fees proposed were too high and should be reconsidered and cal-

<sup>1</sup> 1. Paragraph (1) of Article 2 should be modified as follows:

“(1) [*Establishment and Administration of the Register*] An International Register of Audiovisual Works (hereinafter referred to as “the Register”) is hereby established under the control of the Union. The administration of the Register is entrusted to the International Bureau of the World Intellectual Property Organization (WIPO) (hereinafter referred to as “the International Bureau”) in close cooperation, for technical reasons, with the International Federation of Film Producers Associations (FIAPF). The seat of the Register will be in ...”

2. Paragraph (3) of Article 2 should be modified as follows:

“(3) [*Fees*] Any user of the Register shall pay a fee to the Register for any service rendered by the Register under this Treaty.”

culated more closely on the basis of the actual costs.

27. The meaning of the words "for technical reasons" contained in the amendment proposed by the Delegation of Austria to Article 2(1) was questioned by the Delegation of Switzerland. That Delegation also said that, in its opinion, it would be preferable if the Register was located at the same place as the organization administering it in order to reduce costs and to make the administration more effective.

28. The Delegation of China underlined the importance of free and easy access to the Register and suggested that a provision to that effect should be included in the Treaty.

29. The Delegation of Hungary, referring to the proposal of the Delegation of Austria, expressed the view that it would be unusual to name a non-governmental organization in a treaty, and if any role is given to non-governmental organizations, such role should be the same for all interested non-governmental organizations. The Delegation of Italy expressed the same view and added that the collaboration of the interested international non-governmental organizations could be settled through the setting up of a consultative committee.

30. *Article 3: Legal Effects of the Register.* The Delegations of Finland and France said that an additional provision, placed for example between Articles 2 and 3 should, in a few words and in a general manner, define the purposes of the International Register.

31. The Delegation of France added that such a provision could also indicate, in general terms, those categories of legal acts—creating, transferring and restricting rights in audiovisual works—which could be registered in the International Register.

32. The Delegation of Finland added that it should be considered whether one of the important purposes of the Register, namely that it should help in the fight against piracy, should not be expressly stated in the Treaty.

33. The Delegation of Italy stated that the Treaty should at least indicate certain categories of information that would be appropriate subject matter for entry in the Register; the Regulations could then provide for the details. The Registry should not examine the veracity of the allegations made in the applications for registration. The Registry, however, could try to establish, for example by the use of computer, if any new application contains state-

ments that seemed to be, or were, in contradiction with the existing contents of the Register.

34. The Delegation of the Netherlands stated that its Government would not be ready to verify the accuracy of information in applications submitted by its nationals to the International Register; it was the task of the courts, in cases of controversy, to evaluate the data and facts submitted to them. The *prima facie* evidentiary effect provided for in Article 3 should, therefore, be studied further.

35. The *prima facie* evidentiary value of statements in the Register was strongly supported by the Delegation of the United States of America. However, the Delegation stressed the need for implementing national legislation which would impose substantial penalties for intentionally submitting false statements or documents in applications to the Register. According to that Delegation, a procedure for authentication by national authorities or by non-governmental organizations would not be sufficient to verify whether the contents of documents were true; where applicants present conflicting claims, the Register should register all of them.

36. The Delegation of France said that the great number of transactions and their complexity made it impossible for governments to guarantee that the statements submitted to the International Register by any person were complete and correct. Consequently, it should not be required that the applications submitted to the International Register bear the visa of a national authority. At the same time, some justification of the applications (for example, by excerpts from documents of national registers, by other documents or by contracts) would increase the credibility and the usefulness of the Register.

37. In response to a question by the Delegation of Switzerland about the relationship between Article 3 of the draft Treaty and Article 15 of the Berne Convention for the Protection of Literary and Artistic Works on the presumption of the authorship of the work, the Director General of WIPO stated that the Register would not in any way deal with copyright and would consequently not affect the application of Article 15 of the Berne Convention.

38. An observer from FIAPF said that there were essentially two solutions to the question of who should be allowed to ask for registration. One possibility would be that anyone would be entitled to apply; this possibility would carry with it the risk that even persons who did not have well-founded claims could apply for registration. The registration of claims that are not well founded would under-

mine the credibility of the Register and endanger its future. The other solution would be to require that any application for the initial registration in the Register bear a visa by a national authority, for instance, a national register of audiovisual works or by a private organization designated by the government. As far as subsequent applications were concerned, they should be accepted only if it is clear from the attached documents that the applicant of the subsequent application has obtained his right from the initial registrant or his successor in title; in other words, the fact that there was an "uninterrupted chain" of rights between the first applicant and any subsequent applicant should be verified by the Registry before registering any claim.

39. The need for a verification procedure was underlined also by the observer from IFPI. The Treaty could provide, for instance, for penalties for submission of false declarations. An additional problem was that the audiovisual works of particular importance to IFPI (mainly music videos) were popular only for a short time; the procedures in the Register must be speedy, as lengthy procedures allowed piracy to go on unhindered.

40. In response to the previous statement, the Director General of WIPO said that it was unlikely that any government would be ready to visa, or would be ready to authorize private organizations to visa, any application addressed to the International Register because any such system would engage the responsibility of the government. And even if the visa system were accepted, the question would remain what the International Register should do if it receives two or more applications, each of them duly visaed but containing contradictory statements.

41. An observer from CISAC asked who should be entitled to file applications; in many cases the producer is the owner of the rights in the work in question, but this is not always the case. Authors who were original owners of rights should also have the right to file applications.

42. An observer from AGICOA drew attention to the existing register of titles and rights of importance in the context of cable transmissions; if there were conflicting claims in this register, the court had to decide on the issue.

43. An observer from AIDAA said that there seemed to be a contradiction between the voluntary nature of the Register and a statement made earlier according to which the use of the Register could become a practical necessity.

44. *Article 4: Assembly.* The Delegation of Austria introduced its proposed amendments to this Article.<sup>2</sup> It said that the government of each member State of the Union, rather than the Union, should pay the travel costs of delegates to sessions of the Assembly since not paying the said travel costs would reduce the expenses of the Union.

45. The said proposal of the Delegation of Austria was supported by the Delegations of Italy and the Netherlands and an observer from FIAPF, while the Delegations of Argentina, Mexico and the United States of America said that it would be preferable not to take a position on this issue in the present session of the Committee.

46. The Delegation of the Netherlands asked whether the budget was intended to be biennial or yearly and was given the response that the former was the case and that draft Article 6(4)(a) would be examined whether it was in need of clarification.

47. The Delegation of Italy stated that the Assembly should meet in extraordinary session only if there was an urgent need and, also in that case, preferably at the time of the meeting of the General Assembly of WIPO. If a session was not held at the time of the meeting of the General Assembly, the expenses of one delegate from each Contracting State should be covered by the budget of the Union.

48. No observations were made in respect of Article 4(3) to (8).

49. *Article 5: International Bureau.* No observations were made as regards this Article.

50. *Article 6: Finances.* The Delegation of Austria introduced its proposed amendments to the Article (points 5 and 6 in document IRAW/I/3)<sup>3</sup> and explained that the proposal was a consequence

<sup>2</sup> 3. The clause "except for the travel expenses and the subsistence allowance of one delegate for each member country, which shall be paid from the funds of the Union" should be deleted from subparagraph (1)(c) of Article 4.

4. Point (ix) of subparagraph (2)(a) of Article should be deleted (and point (x) of the subparagraph should be renumbered accordingly).

<sup>3</sup> 5. The following point (i) should be added to paragraph (3) of Article 6 (and the other points of the paragraph should be renumbered accordingly):

"(i) the costs arising from the administration of the Union limited to its strict needs shall be paid back by the Register."

6. From point (i) (new point (ii)) of paragraph (3) of Article 6, the words "fees and other" and from subparagraph (4)(a) of the same Article the words "fees and" should be deleted.

of the proposal for a rewording of Article 2(1) according to which the Register could be located in a place other than Geneva.

51. The Delegation of France drew attention to the wording of Article 6(4)(b); if the budget was supposed to be biennial, the reference to the "budget of the previous year" should be changed accordingly.

52. An observer from IFPI said that the fees to be paid for the use of the Register would burden the members of the interested international non-governmental organizations, therefore, those organizations should also be consulted as regards the fee system and other major issues of the administration of the Register.

53. *Article 7: Regulations.* The procedure for revision of the Regulations was referred to by the Delegation of France which suggested that, in order to meet the need for quick changes in the Regulations, only the more important modifications should be made by the Assembly, while minor amendments could be made by the International Bureau. This proposal was supported by the observer from FIAPF. The Delegation of the United States of America said, on the other hand, that it would be difficult to determine which modifications were important and which were not and that, therefore, it would be better if the Assembly decided on amendments to the Regulations.

54. *Article 8: Revision of the Treaty; Article 9: Amendment of Certain Provisions of the Treaty; Article 10: Becoming Party to the Treaty.* No observations were made as regards these Articles.

55. *Article 11: Entry into Force of the Treaty.* The Delegation of the United Kingdom raised the question of the relationship between the two paragraphs of the Article and said that, under the suggested wording, the Treaty could, in certain situations, enter into force earlier for a State which was not covered by the initial entry into force than for one or more which were covered by this initial entry into force. The Director General of WIPO said that the draft paragraphs would be corrected accordingly.

56. *Article 12: Reservations to the Treaty; Article 13: Denunciation of the Treaty.* No observations were made as regards these Articles.

57. *Article 14: Signature and Languages of the Treaty.* The Delegation of Austria introduced its

proposed amendment to Article 14(3)<sup>4</sup> to the effect that the Treaty should remain open for signature until the end of 1995 rather than of 1989.

58. The Delegation of Morocco stated in relation to Article 14(2) that official texts should be established also in Arabic.

59. The Director General of WIPO said that Arabic would be included in the next draft.

60. *Article 15: Depositary Functions.* The Delegation of Argentina said that also amendments to the Treaty should be communicated to those States which would be entitled to sign it.

61. The Director General of WIPO stated that a provision to that effect would be included in the next draft.

62. *Article 16: Settlement of Disputes; Article 17: Notifications.* No observations were made as regards these Articles.

#### Discussion of the Draft Regulations

63. Before the rule-by-rule discussion of the Regulations, an observer from FIAPF asked and was authorized to make a general statement. He said that the credibility of the Register could only be guaranteed if data were registered in it after an appropriate verification on the basis of which a chain of subsequent transfers of rights or licenses could be established. The observer also urged that the Regulations and the forms to be used for applications should be flexible and simple, so that this use did not require legal expertise. In order to prevent the Regulations and the forms from becoming rapidly obsolete, they should either be general enough or a procedure should be offered for their easy and quick modification.

64. *Rule 1: Definitions.* The Delegation of Argentina raised the idea whether it would not be useful to define also the term "user."

65. *Rule 2: Subject Matter of Applications.* The Delegation of France said that certain cinematographic films and other works assimilated to cinematographic films were silent, that is, they were not accompanied by sound. It proposed that even such works should be registrable subject matter. Although these works were not audiovisual, the Rule

<sup>4</sup>7. In paragraph (3) of Article 14, the date December 31, (1989) should be replaced by the date December 31, (1995).

should state that, for the purposes of the Treaty, they would be considered as if they were audiovisual works.

66. In answer to questions by the Delegation of Switzerland and an observer from IFPI, the Director General of WIPO said that the last sentence of paragraph (2) of Rule 2 was intended to underline the lack of any connection between registration in the International Register and copyright protection.

67. *Rule 3: Filing of Applications; Languages of Applications and Correspondence.* There was a discussion about paragraph (3) in respect of the notion of "series" in which the Delegations of France, Italy and Mexico and an observer from FIAPF participated. It was agreed that the question of the registration of series and other audiovisual works consisting of installments or episodes should be further studied. It should be considered, *inter alia*, whether the installments and episodes were self-contained or could rather be considered parts of a complete work, whether the owners of rights and/or authors were the same or different persons in respect of the various installments or episodes, what was the length of each installment or episode, etc. All this could have effect on the fee system.

68. An observer from IFPI proposed that paragraph (3) should entitle bodies with existing registration systems to apply for the registration, in one act, of all the works contained in their separate registers, that is, without the need for a separate application for each work by the individual owners of rights or licenses concerned.

69. The Director General of WIPO referred to point 2 of Form A<sup>5</sup> which indicated that registration can be made by the agent of the applicant; on the basis of appropriate contractual arrangements, bodies administering existing registration systems could be considered as agents of applicants; in any case, however, each work would have to be the subject of a separate registration.

70. The Delegation of Guinea proposed that French should also be a language in which applications could be made. The Delegation of France supported this proposal.

71. The Delegation of Argentina expressed that its interpretation of the use of only one language was that it was necessary for savings and simplicity, and it said that, if more than one language would still be admitted, Spanish should be among them.

72. Observers from FIAPF and IFPI expressed the view that if, in addition to English, applications could also be made in other languages, the fees would have to be too high and it would be difficult for the Register to be self-supporting.

73. *Rule 4: Examination of Applications.* The Delegation of France suggested that a drafting change should be made in the structure of Rule 4. The statement contained in the present paragraph (1), according to which the International Registry does not examine the completeness or the correctness of any application except for the cases expressly mentioned in the Rule, should be put at the end of the Rule.

74. The Delegation of Switzerland said that the consequences of the fact that certain conditions laid down in the Regulations were not met should be reconsidered. It referred to paragraph (3) according to which series, episodes and installments must be registered separately, and to the fact that no consequences were provided in Rule 4 for cases where registration was not made in that way. The same Delegation pointed out that point (v) of paragraph (3) referred to "the prescribed declaration of veracity." No such declaration was prescribed in the Regulations themselves although a declaration of veracity was contained in Forms A and B; it suggested that the Regulations should be completed so as to contain a provision on such a declaration.

75. In answer to questions by the Delegations of the Netherlands and the United States of America, the Director General of WIPO said that the difference between the rejection of an application and considering an application as if it had not been made was only important from the viewpoint of the obligation to pay fees and that in both cases the applicant could submit a new application.

76. The Delegations of France, Italy and Spain, while emphasizing that the International Registry should not play the role of a judge concerning the correctness of applications, said that some method should be found to increase the credibility of any application.

77. The Delegation of the United States of America was of the opinion that the Draft Regulations appropriately determined in which cases applications should be rejected or considered as if they had not been made, and no further verification was needed. In the Copyright Register of the United States of America, a great number of registrations were made under similar conditions, that is, without any substantive examination of the veracity of the applications; conflicting claims were very rare and, when they occurred, they were generally set-

<sup>5</sup> It is recalled that the forms are not published here.

tled between the applicants concerned in a satisfactory way. Experience showed that conflicting claims, as a rule, resulted from legally unclear situations or from misunderstandings; pirates were not inclined to reveal their identity and address and therefore generally made no applications for appearing in a public register.

78. Observers from FIAPF took the floor several times and insisted that in the case of initial applications the rights of the applicant alleged in the application needed verification: the International Register should only accept an initial application if the applicant attached a document which was sufficient to offer at least *prima facie* evidence of its correctness. According to those observers, such a document should be issued, or at least provided with a "visa," by a government authority of the country or by any organization designated by the government as one entitled to issue or put a "visa" on such a document. Issuing, or putting a "visa" on, such a document would not involve any guarantee or responsibility on behalf of the government or the designated authority or organization; it would merely indicate the *prima facie* evidentiary value of the allegations in the application. In case of any transfer of rights or licensing, the subsequent application should only be accepted if the right of the transferor had been registered and he had signed the application. An observer from FIAD supported those proposals.

79. In answer to the proposals mentioned in the preceding paragraph, the Director General of WIPO pointed out that it was up to the applicants to make their registered claims as credible as possible because, under the Draft Regulations and the forms attached to them, all documents which might serve such a purpose could be attached to the application. He said that he doubted that any government would be ready to visa or otherwise certify an application submitted to the International Registry.

80. The Delegations of France, Norway, Spain and the United States of America said that there were registration systems in their countries, some of them with *prima facie* evidentiary value. The Delegation of Portugal said that in its country there was a register for videograms and a legislation was under preparation to extend registration to all audiovisual works. Applicants could use extracts or copies of documents concerning such registrations for the purpose of supporting their international applications but the governments of those countries would not be prepared to issue separate certificates or to provide any such documents with "visa" for the purposes of international applications.

81. The Delegations of Hungary, Italy, and the Soviet Union said that certain documents—such as authorizations for the production of films—which might be used to support applications for registration in the International Register existed in their countries; it would, however, have to be further studied whether their governments could undertake to issue any certificate on the basis of such documents or to provide documents with "visa."

82. The Delegations of the Netherlands, Sweden, Switzerland and the United Kingdom stated that their governments would not be prepared to undertake any obligation concerning issuing certificates or putting "visas" on documents for the purposes of applications for registration in the International Register. The Delegation of Sweden stated that it was highly unlikely for it to undertake any such obligation. The Delegation of Finland said that its government was not in a position to undertake any such obligations either but it would be prepared to examine the feasibility of such a system.

83. The Director General of WIPO stated that the declarations made by government delegations, as referred to in the preceding paragraphs, reflected the fact that the idea of issuing certificates or putting "visas" on documents by government authorities or other designated organizations was not workable. However, in the light of the discussion, and in order to find a workable solution, he proposed that the Regulations and the forms shall be modified in the following three respects:

(i) The Regulations should contain provisions to the effect that the forms to be used for *initial applications* will emphasize that the applicant has the right to, and would be well advised to, attach to the application supporting documents, that is, documents that are a strong beginning of evidence or a conclusive proof of the fact that the applicant is the person who has the rights in the work to be registered. The forms would cite examples of such documents, including in particular copies or extracts from national registers, whether government registers (like the United States Copyright Office) or other official or semi-official public registers or registers kept by appropriate associations. Other examples of such documents would be the texts, or extracts from the texts, of contracts between the authors and the producers, signed by them. The Regulations should also provide that where an application is accompanied by one or more such supporting documents, this fact, as well as the nature of the supporting document or documents, will be indicated in the Gazette as an integral part of the entry concerning the registration. The Director

General said that the absence of supporting documents, in any given case, would increase the vigilance of the users of the Register and the readers of the Gazette.

(ii) The Regulations should contain provisions to the effect that the forms to be used for *subsequent applications* will emphasize that the applicant has the right to, and would be well advised to, attach to the application supporting documents, that is, documents that are a strong beginning of evidence or a conclusive proof that the applicant has acquired the alleged rights from the person who is shown in the Register as the owner or authorized licensee. The forms would cite examples of such documents. They would include contracts or extracts of contracts and copies or excerpts from registers as indicated in connection with initial applications. The Regulations should also provide that where the application is accompanied by one or more such supporting documents, this fact, as well as the nature of the supporting document or documents, will be indicated in the Gazette as an integral part of the corresponding entry.

(iii) The Regulations should contain provisions to the effect that the Register should make serious efforts to discover, in respect of any subsequent application, whether its allegations are in contradiction with the initial or any earlier subsequent entry in the Register and that whenever such contradiction is discovered, the Register should immediately notify, in writing, all the interested parties and suspend any further action concerning the subsequent application. The period of such suspension—for example 30 days—would be specified in the Regulations. The registration of the subsequent application would be proceeded with only if the period of suspension expires without the interested parties coming to an agreement of what, if anything, should be registered.

84. The proposals by the Director General of WIPO reflected in the preceding paragraph were accepted by all participants. An observer from FIAPF said that although the proposals were less ambitious than what he had originally hoped for, they were acceptable to him as a compromise.

85. *Rule 5: Registration Number and Date of Filing; Rule 6: Registration and Register.* No comments were made concerning these Rules.

86. *Rule 7: Gazette.* The Director General of WIPO referred to his proposals reflected in paragraph 83, above, and said that Rule 7 would be completed accordingly.

87. *Rule 8: Inquiries.* No comments were made concerning this Rule.

88. *Rule 9: Fees and Prices.* The Delegations of Guinea, the German Democratic Republic, Italy, Lebanon, Mexico, the Soviet Union and the United States of America and observers from FIAPF and IFPI were of the opinion that the fees suggested in the Draft Regulations seemed to be too high and might discourage the use of the Register and that the fees should be further differentiated and better adapted to actual costs.

89. The Delegation of Switzerland suggested that the fees should be differentiated according to the length of the audiovisual works and special lump-sum arrangements should be offered for collective administration organizations.

90. The Delegation of the Soviet Union expressed the opinion that a sliding scale should be established which would take into account the length, the economic value, and the usual life span of audiovisual works.

91. An observer from IFPI also advocated the idea of sliding scales. He also suggested a reduction in fees for multiple applications made at one and the same time.

92. The Delegation of the United States of America said that in adapting fees to actual costs the amount of actual registration work to be done should be considered in respect of subsequent applications.

93. The Delegation of Italy pointed out that the economic value of old, but still protected, audiovisual works would be much smaller than that of newly produced works; therefore, in respect of such works, preferential fees would be justified.

94. The Delegations of Guinea, Lebanon and Mexico said that, in establishing fees, the special conditions prevailing in developing countries should also be considered.

95. The Delegation of the Soviet Union said that, in its country, a great number of films were produced and film producing companies were now becoming more independent in economic matters; the acquisition of foreign currency for the payment of fees was, however, sometimes not easy, and the high fees suggested in the Draft Regulations would make the use of the International Register difficult.

96. An observer from FIAPF stated that the question of fees was closely linked to the problems of pre-financing and of the indispensable self-supporting nature of the Register. Therefore, it would be premature to take a final stand concerning the fees, and the fee system would probably have to be revised several times after the Register had been established.

97. *Form A: "Initial Application"*<sup>6</sup> and *Optional Annex to Form A*. The Director General of WIPO said that in the note at the beginning of the form, in addition to the name and address of the applicant and to the title of the work, the interest of the applicant should also be mentioned as an item which should be obligatorily included in any application so as to be in keeping with paragraph (4) of Rule 3 of the Draft Regulations.

98. The Delegation of the United Kingdom said that, in the note at the beginning of the form, applicants should be warned—in keeping with subparagraph (3)(v) of Rule 4 of the Draft Regulations—that the declaration of veracity is a condition for accepting the application. This proposal was accepted.

99. The Delegation of Switzerland said that, for the sake of an easier use of the Regulations and of the application forms, reference should be made, wherever appropriate, in the application forms to the corresponding rules of the Regulations and in the Regulations to the corresponding items in the application forms. This proposal was accepted.

100. The Delegation of Switzerland and an observer from BIEM said that, in Form A, the right of reproduction, which was important from the viewpoint of combating piracy, should be mentioned separately. In answer to this proposal, the Director General of WIPO pointed out that item 9.4 of Form A covered the right of reproduction, which was explicitly mentioned in point (iv) of that item, but he agreed that that should be made clearer and the title of the item should be, for example, "Reproduction and Distribution of Copies of the Work for Other Uses."

101. There were no observations in respect of the *Optional Annex to Form A*.

102. *Form B: "Subsequent Application."*<sup>7</sup> The Director General of WIPO referred to his proposals reflected in paragraph 83, above, and said that in

Form B, it would be mentioned that subsequent applications, where they concern a transfer or license, should, normally, be signed also by the transferor or licensor; however, the lack of such signature would not be a cause for rejecting the application, it being understood that the fact that there is no such signature would be indicated in the Gazette.

### Continued Discussion of the Treaty

103. Following the conclusion of the discussion on the Regulations, the Delegation of Austria made a statement. The Delegation reiterated the great importance it attached to the establishment of the International Register and to the conclusion of a Treaty. In order to contribute to an early establishment of the Register, the Austrian Government would be prepared to undertake every effort to make the prefinancing of the Register possible and offered that the Register be located in Vienna. The details of the proposal for such arrangements could be worked out between its Government and the Director General of WIPO, for discussion among the interested States at a later stage. The Delegation withdrew its proposal to have a reference to FIAPF in the Treaty.

104. The delegations which took the floor in the following discussion, namely—in this order—the Delegations of Hungary, Italy, Lebanon, the Netherlands, Morocco, Argentina, the Soviet Union and the United States of America, expressed their appreciation of the proposal by the Delegation of Austria.

105. The Delegation of the United States of America thanked the Delegation of Austria for its generous offer and said that the matter was one that could be decided only by WIPO's Governing Bodies at their meeting in September 1988.

106. The Delegations of Italy, Lebanon, Morocco and the Soviet Union as well as the observer from IFPI asked about the financial aspects, in particular about the possible increase of the costs, of locating the Register in Vienna rather than in Geneva. The Delegation of Italy asked the Director General to give information about those questions.

107. The Director General of WIPO said, in response to the above-mentioned statements, that the cooperation with interested organizations could be institutionalized by setting up a Consultative Committee of all interested international non-governmental organizations. The costs of operating the Register in Vienna instead of in Geneva as well as all the political and practical aspects of the Austrian

<sup>6</sup> Not published here.

<sup>7</sup> Not published here.

proposal would be studied carefully and would be part of a report by him to the Governing Bodies of WIPO when they meet in September 1988.

108. The Delegation of Austria thanked the delegations which had spoken, as well as the Director General of WIPO, for the positive and constructive spirit in which its proposal had been received.

#### **Discussion of the Initial Financing and of a Tentative Yearly Budget of the International Register (Annex IV to the Memorandum)<sup>8</sup>**

109. The Delegation of the Netherlands proposed that the financing study to be made by the International Bureau of WIPO should analyze all possible modalities of financing and that it should clearly state whether the regular budgets of the Register would not increase due to the fact that the Register would be located in Vienna rather than in Geneva.

110. In reply, the Director General of WIPO said that the financial study would cover not only the Austrian proposal but also any other proposal that the International Bureau might receive in time as well as other possible offers and other possible modalities of financing.

#### **Additional Remarks**

111. At the end of the discussion on the memorandum, the Chairman opened the floor for any additional remarks.

112. During this discussion, the Delegations of China, Egypt, Finland, the German Democratic Republic, Hungary, Italy, Norway, Spain, Sweden, the United Kingdom and the United States of America expressed their appreciation for the generous offer of the Delegation of Austria to finance the establishment of the International Register and said that they would study this suggestion further in the light of, *inter alia*, the financial aspects involved.

113. The Delegation of Finland referred to its earlier statement to the effect that the purposes of the Treaty should be mentioned in it; the Delegation now suggested that these purposes should be included in a preamble to the Treaty.

114. In response, the Director General of WIPO stated that the main objectives of the Treaty would

be to enhance legal security, facilitate the international flow of audiovisual works, and to be a deterrent to piracy.

115. The Delegations of China and the United States of America expressly stated their agreement with these objectives.

116. The Delegation of Egypt specifically mentioned the need for fighting piracy.

117. The Delegations of France, Hungary, Italy, Norway and the United States of America reiterated their support for the establishment of an International Register and expressed the hope that a Treaty would be concluded in the near future.

118. The Delegations of Sweden and Switzerland specifically said that the discussions in the course of the meeting had led them to support the continuation of the work on the establishment of such a Register.

119. The Delegation of Finland stressed the desirability of a consultative committee of interested international non-governmental organizations. In response, the Director General of WIPO said that the next version of the Regulations would contain provisions for such a committee.

120. The Delegation of the United States of America underlined the importance of the Gazette, which would constitute a very valuable source of information.

121. The desirability of framing the Treaty in such a way as to assist in the development process and to encourage developing countries to adhere to it was particularly stressed by the Delegation of Lebanon.

122. The Delegation of the German Democratic Republic mentioned that the preamble to the Treaty should underline that the Treaty did not serve only commercial purposes and the fight against piracy, but also the promotion of cultural cooperation among nations and hence mutual understanding and peace.

123. The Delegations of Hungary, Italy and Spain said that there seemed to be unanimity in the meeting for the setting up of an International Register and suggested that a diplomatic conference should be held as soon as possible.

124. The Delegation of China said that the meeting had been useful and informative and had paved

<sup>8</sup> Not published here.

the way for future work so that a diplomatic conference could be held in the near future. The Delegation expressed its hope that there would be more countries represented at the diplomatic conference to ensure a wider base for the International Register.

125. The observers from FIAPF expressed their organization's wish to see the Register established as soon as possible and underlined the vital importance of reasonable fees for the services of the Register; they also said that the Regulations and forms for application should be drafted in such a way as to be easy to use for practitioners.

### Conclusions

126. The Chairman summarized the discussions and proposed the adoption of the following conclusions:

"The Committee of Experts on the Establishment of an International Register of Audiovisual Works (WIPO, Geneva, March 7 to 11, 1988) is of the opinion that the establishment of an International Register of Audiovisual Works to be administered by WIPO and based on a multilateral treaty open for all States members of WIPO is highly desirable and urgent. Such a Register would enhance cultural creative activity, increase legal security, facilitate the international flow of audiovisual works, and it would be a deterrent to piracy.

"The Committee of Experts recommends that a diplomatic conference for the adoption of the said Treaty should be convened as soon as possible. The draft of the Treaty and its accompanying Regulations should generally follow the drafts that the International Bureau has submitted to the Committee of Experts, taking into account the views expressed at the discussions of the Committee of Experts, including, in particular, the need for the establishment of a consultative committee of interested international non-governmental organizations.

"The Committee of Experts recommends that the International Bureau prepare a memorandum on the question of financing of the Register until the Register becomes self-supporting. The said memorandum should also deal with the generous offer of the Government of Austria to secure such financing provided the Register is located in Vienna. Any other offers for financing and other financing solutions should also be covered in the memorandum. The memorandum should be submitted to the September 1988 sessions of the competent Governing Bodies."

127. After statements, expressly accepting the proposed conclusions, made by the Delegations of Argentina, Austria, Finland, France, Guinea, Hungary, Italy, Morocco, the Netherlands, Norway, Portugal, the Republic of Korea, Spain and the United States of America, the Committee of Experts unanimously adopted the conclusions quoted in paragraph 126, above.

128. The Delegation of Switzerland stated that while it was ready to support the objectives expressed in the conclusions, it did not necessarily agree with all of the conclusions.

129. The Chairman said, and the Director General of WIPO agreed, that at least one further preparatory meeting would take place before the diplomatic conference.

130. In response to an observation by the Delegation of the Republic of Korea, the Director General of WIPO said that the next version of the Draft Treaty would include a provision to the effect that the Treaty would be open to any State member of WIPO: no reference would be made to the Berne Convention for the Protection of Literary and Artistic Works.

### Adoption of the Report and Closing of the Meeting

131. The Committee of Experts unanimously adopted this report and, after the usual thanks, the Chairman declared the meeting closed.

### LIST OF PARTICIPANTS

#### I. States

**Argentina:** D. Chuburu; C.B. Barrios Barón; R.R. Marini. **Austria:** J. Hörhan; E. Kubesch; C. Thun-Hohenstein; T. Wallentin; M. Wolkenstein. **Brazil:** P.R. de Almeida. **Burundi:** T. Nzikoruriho. **Canada:** J.S. Gero. **China:** Qiu Anman; Cai Hua; Zhou Guizhen. **Egypt:** W.Z. Kamil. **Finland:** T. Koskinen; M. Salokannel. **France:** G. Valter; N. Renaudin; S. Sayanoff-Levy; H. Ladsous. **German Democratic Republic:** H. Krökel. **Germany (Federal Republic of):** M. Fernau. **Guinea:** O. Guilavogui. **Hungary:** G. Pálos. **India:** A. Malhoira. **Italy:** G. Aversa; M. Fabiani; M. Ferrara-Santamaria. **Japan:** S. Kamogawa. **Lebanon:** H. Hamdan. **Mexico:** A. Fuchs; V. Blanco Labra. **Morocco:** A. Kandil; A. Bendaoud. **Netherlands:** J. Meijer-Van der Aa. **Norway:** J. Holland. **Philippines:** A.L. Catubig. **Portugal:** P. Tjipilica. **Republic of Korea:** M.-S. Ahn. **Soviet Union:** V. Kukharsky; R. Gorelik. **Spain:** M.A. Gutiérrez; E. de la Puente García; L. Martínez Garnica. **Sweden:** K. Hökborg. **Switzerland:** K. Govoni. **Thailand:** S. Devahastin. **Turkey:** A. Algan. **United Arab Emirates:** J. Al Fardan; A. Al-Gaizi; A.A. Abdulla Mohd. **United Kingdom:** C.B. Lambert; E.C. Robson; S. Mann. **United States of**

America: H.J. Winter; M. Peters; P. Behnke. Uruguay: R. González-Arenas. Yemen: M.S. Al-Qutaish. Zaire: L. M'Buze-Nsomi; N.M. Mantuba; M. Mutambula.

## II. International Non-Governmental Organizations

Association for the International Collective Management of Audiovisual Works (AGICOA): H.A. Warnier; L.R.E. Cattaneo. International Association of Audio-Visual Writers and Directors (AIDAA): M. Wehrlin; P.-H. Dumont. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEMI): A. Vacher-Desvernais. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler. International Copyright Society (INTERGU): J. Trescher. International Federation of Associations of Film Distributors (FIAD): G. Grégoire; M. Wehrlin. International Federation of Film Producers Associations (FIAPF): A. Brisson; A. Chaubeau; F. Gronich; L. Brennan; R. Ladouceur; J. Ro-

senfeld. International Federation of Phonogram and Videogram Producers (IFPI): E. Orf; E. Thompson. International Literary and Artistic Association (ALAI): J.-A. Ziegler.

## III. Secretariat

### World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); G. Ledakis (*Legal Counsel*); H. Olsson (*Director, Copyright and Public Information Department*); M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Legal Officer, Copyright Law Division*).

## IV. Officers

*Chairman*: K. Hökberg (Sweden). *Vice-Chairmen*: O. Guilavogui (Guinea); V. Kukharsky (Soviet Union). *Secretariat*: International Bureau of WIPO.

## Studies

### Software and Copyright: A Marriage of Inconvenience

Denis Borges BARBOSA\*













**The International Copyright of Computer Software  
History, Status and Developments\***

Manfred KINDERMANN\*\*



















































## **Correspondence**

### **Letter from Tunisia**

Nébila MEZGHANI\*













## Books and Articles

### Book Review

**Music and the New Technologies.** One volume of 207 pages. Maklu Publishers, Apeldoorn—Antwerp, 1988.

Each year, the International Association of Entertainment Lawyers (IAEL) holds a meeting during the MIDEM (*Marché international du disque et de l'édition musicale*) in Cannes. This work is a collection of the papers submitted on January 25 and 26, 1988, at the meeting, under the heading of "Music and the New Technologies."

The main topics covered by the book are soundtracks for films, cable and satellite, rentals of CD's and videograms, computers, sound sampling and cover versions. Papers were presented by the following authors: Robert E. Holmes and Keith Zajic, president and vice-president, respectively, of the Columbia Pictures Music Group (Burbank, California, United States of America); Robert Allan, partner in Denton Hall Burgin and Warren, solicitors (London, United Kingdom); Gérald Bigle, *avocat à la Cour* (Paris, France); Günther Poll, legal advisor (Munich, Federal Republic of Germany); Giorgio Mondini, partner in Studio Legale Mondini-Rusconi (Milan, Italy); Rob du Bois, head of Legal

Affairs, Bureau for Copyright in Musical Works (BUMA) (Amstelveen, Netherlands); Michael F. Flint, partner in Denton Hall Burgin and Warren, solicitors, (London, United Kingdom); Ewald Orf, member of the Legal Department, International Federation of Phonogram and Videogram Producers (IFPI) (London, United Kingdom); Alvin Deutsch, senior partner in Linden and Deutsch (New York, United States of America); Udo von Stein, legal adviser and partner in Kamin and Wilke (Hamburg, Federal Republic of Germany); Edward Engels, advocate and partner in Goudsmit and Branbergen Advocaten (Amsterdam, Netherlands); Claude E. Fielding, senior partner, and Richard Mc D. Bridge, partner in Bartlets de Reya, solicitors (London, United Kingdom); Remco Verkerke, a recent graduate from the University of Amsterdam, Netherlands, and André Schmidt, *avocat à la Cour* (Paris, France).

The interest of this book is that it reflects the views of expert legal practitioners on current problems linked to the new technologies and which are likely to affect the content of copyright and neighboring rights protection.

P.C.M.

## Calendar of Meetings

### WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1988

May 16 to 20 (Geneva)

**Permanent Committee for Development Cooperation Related to Industrial Property (Twelfth Session)**

The Committee will review and evaluate the activities undertaken under the Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1987) and make recommendations on the future orientation of the said Program. A one-day Symposium on Patent Information will be held on the second day of the session.

*Invitations:* States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 24 to 27 (Geneva)

**Consultative Meeting of Experts from Developing Countries on Legal Matters Relating to Intellectual Property in Respect of Integrated Circuits**

The Meeting will review and evaluate the comments received from governments on seven studies and analyses prepared by the International Bureau, in consultation with experts from developing countries, concerning legal matters relating to intellectual property in respect of integrated circuits.

*Invitations:* Developing countries members of WIPO or the Paris Union.

May 25 to June 1 (Geneva)

**Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Second Session)**

The Committee will review the progress made in carrying out the tasks of the Permanent Program on Industrial Property Information for the 1988-89 biennium. It will consider requests by PCIPI Working Groups for new tasks in the said Program. The Committee will also consider matters related to marks and designs documentation and information. One day will be devoted to the exchange of information in the field of automation of industrial property information.

*Invitations:* States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.

May 30 to June 1 (Geneva)

**Review Meeting on Intellectual Property in Respect of Integrated Circuits**

The Meeting will review the progress of the preparatory work for the diplomatic conference on the conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits.

*Invitations:* States members of WIPO or the Paris Union.

June 13 to 17 (Geneva)

**Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fifth Session)**

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions dealing with the following subjects: grace period for public disclosure of an invention before filing an application; requirements in respect of the granting of a filing date to a patent application; requirements in respect of the naming of the inventor and in respect of evidence to be furnished concerning the entitlement of the applicant; requirements in respect of the manner of claiming in patent applications; requirements in respect of unity of invention in patent applications; prior art effect of previously filed but yet unpublished patent applications; rights conferred by a patent; extension of patent protection of a process to the products obtained by that process—proof of infringement of a process patent; requirements in respect of manner of description of invention in patent applications; the right to a patent where several inventors have made the same invention; extent of protection and interpretation of patent claims; the duration of patent protection; maintenance fees; provisional protection of applicants; prior users' rights; restoration of the right to claim priority; and the exclusion from patent protection of certain kinds of inventions.

*Invitations:* States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

- June 27 to July 1 (Geneva)** **Committee of Governmental Experts for the Synthesis of Principles Concerning the Copyright Protection of Various Categories of Works** (convened jointly with Unesco)  
 The Committee will re-examine the principles of protection worked out for eight categories of works during the 1986-87 biennium (printed word, audiovisual works, phonograms, works of fine art, works of architecture, works of applied art, dramatic and choreographic works, musical works) and for photographic works in 1988.  
*Invitations:* States members of WIPO, Unesco or the United Nations and, as observers, certain organizations.
- September 12 to 19 (Geneva)** **IPC (International Patent Classification) Committee of Experts (Seventeenth Session)**  
 The Committee will adopt the final amendments, as well as the revised Guide, to the fourth edition of the International Patent Classification (IPC) and decide on the policy for the revision work during the next (sixth) revision period (1989-93).  
*Invitations:* States members of the IPC Union and, as observers, certain organizations.
- September 14 to 16 (Geneva)** **WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property**  
 The Forum will consider the impact of new technology on intellectual property law, with special emphasis on biotechnology, computer technology, the new technology for the recording of sounds and images, new broadcasting technology (for instance by direct broadcasting satellite) and new technology for transmission of programs by cable.  
*Invitations:* States members of WIPO, the Paris Union or the Berne Union, certain organizations and the general public.
- September 22 and 23 (Geneva)** **Permanent Committee on Industrial Property Information (PCIPI) (Second Session)**  
 The Committee will review the work done on the tasks of the program during the first nine months of 1988. It will start to work on the elaboration of a medium-term program for the PCIPI and of a global policy for, and the orientation of, the work of the PCIPI during the 1990-91 biennium.  
*Invitations:* States and organizations members of the Committee and, as observers, certain other States and organizations.
- September 26 to October 3 (Geneva)** **Governing Bodies of WIPO and of Some of the Unions Administered by WIPO (Nineteenth Series of Meetings)**  
 The WIPO General Assembly will consider the establishment of an International Register of Audiovisual Works. The WIPO Coordination Committee and the Executive Committees of the Paris and Berne Unions will, *inter alia*, review and evaluate activities undertaken since July 1987 and prepare the draft agendas of the 1989 ordinary sessions of the WIPO General Assembly and the Assemblies of the Paris and Berne Unions.  
*Invitations:* As members or observers (depending on the body), States members of WIPO, the Paris Union or the Berne Union and, as observers, certain organizations.
- October 24 to 28 (Geneva)** **Committee of Experts on Biotechnological Inventions and Industrial Property (Fourth Session)**  
 The Committee will examine possible solutions concerning industrial property protection of biotechnological inventions.  
*Invitations:* States members of WIPO or the United Nations and, as observers, certain organizations.
- November 28 to December 2 (Geneva)** **Committee of Experts on Model Provisions for Legislations in the Field of Copyright**  
 The Committee will work out standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.  
*Invitations:* States members of the Berne Union or WIPO and, as observers, certain organizations.
- December 5 to 9 (Geneva)** **Madrid Union: Preparatory Committee for the Diplomatic Conference for the Adoption of Protocols to the Madrid Agreement**  
 This Committee will make preparations for the diplomatic conference scheduled for 1989 (establishment of the list of States and organizations to be invited, the draft agenda, the draft rules of procedure, etc.).  
*Invitations:* States members of the Madrid Union and Denmark, Greece, Ireland and the United Kingdom.

- December 12 to 16 (Geneva)**      **Executive Coordination Committee of the PCIPI (Permanent Committee on Industrial Property Information) (Third Session)**  
 The Committee will review the progress made in carrying out tasks of the Permanent Program on Industrial Property Information for the 1988–89 biennium. It will consider the recommendations of the PCIPI Working Groups and review their mandates.  
*Invitations:* States and organizations members of the Executive Coordination Committee and, as observers, certain organizations.
- December 19 (Geneva)**      **Information Meeting for Non-Governmental Organizations on Intellectual Property**  
 Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.  
*Invitations:* International non-governmental organizations having observer status with WIPO.

## UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

### 1988

- October 17 (Geneva)**      **Consultative Committee (Thirty-eighth Session)**  
 The Committee will prepare the twenty-second ordinary session of the Council.  
*Invitations:* Member States of the Union.
- October 18 and 19 (Geneva)**      **Council (Twenty-second Ordinary Session)**  
 The Council will examine the accounts of the 1986–87 biennium, the reports on the activities of the Union in 1987 and the first part of 1988 and specify certain details of the work for 1988 and 1989.  
*Invitations:* Member States of the Union and, as observers, certain non-member States and intergovernmental organizations.

## Other Meetings in the Fields of Copyright and/or Neighboring Rights

### 1988

- June 12 to 17 (London)**      International Publishers Association (IPA): Congress
- July 24 to 27 (Washington)**      International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting
- October 6 and 7 (Munich)**      International Literary and Artistic Association (ALAI): Study Days
- November 14 to 20 (Buenos Aires)**      International Confederation of Societies of Authors and Composers (CISAC): Congress

### 1989

- September 26 to 30 (Quebec)**      International Literary and Artistic Association (ALAI): Congress

