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Copyright

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(INSERTS)

Editor's Note

INDONESIA

Act No. 6 of 1982 on Copyright (of April 12, 1982)	Text 1-01
Act on Revisions to Act No. 6 of 1982 on Copyright (No. 7, of September 19, 1987)	Text 1-02

JAPAN

Law on Exceptional Provisions for the Registration of Program Works (No. 65, of May 23, 1986)	Text 1-02
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UNITED KINGDOM

The Copyright (Sound Recordings) (Indonesia) Order 1988 (No. 797, of April 27, 1988)	Text 3-01
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Notifications Concerning Treaties

Satellites Convention

Accession

SOVIET UNION

The Secretary-General of the United Nations notified the Director General of the World Intellectual Property Organization that the Government of the Soviet Union deposited, on October 20, 1988, its instrument of accession to the Convention Relating to the Distribution of Programme-Carrying

Signals Transmitted by Satellite, adopted at Brussels on May 21, 1974.

The said Convention will enter into force, for the Soviet Union, three months after the date of deposit of its instrument of accession, that is on January 20, 1989.

WIPO Meetings

Governing Bodies of WIPO and the Unions Administered by WIPO

Nineteenth Series of Meetings

(Geneva, September 26 to October 3, 1988)

NOTE*

The Governing Bodies of WIPO and the Unions administered by WIPO held their nineteenth series of meetings in Geneva from September 26 to October 3, 1988. Delegations from 88 States, 13 inter-governmental organizations and 10 non-governmental international organizations participated in the meetings.

This year the following six Governing Bodies met in ordinary or extraordinary sessions:

WIPO General Assembly, tenth session (2nd extraordinary session);

WIPO Coordination Committee, twenty-fifth session (19th ordinary session);

Paris Union Assembly, thirteenth session (5th extraordinary session);

Paris Union Conference of Representatives, fifteenth session (7th extraordinary session);

Paris Union Executive Committee, twenty-fourth session (24th ordinary session);

Berne Union Executive Committee, twenty-ninth session (19th ordinary session).

The main agenda items and the main decisions covered the following points:

Activities from July 1, 1987, to June 30, 1988.

The reports on those activities were considered and noted. In their statements the delegations, without exception, made special reference to the activities of the International Bureau in the field of development cooperation for the benefit of developing countries in the period under review.

The delegations of developing countries which spoke expressed satisfaction with the assistance, which many delegations described, that their countries had received from WIPO under its development cooperation program and which had permitted them to develop their intellectual property systems appropriately. In particular, they highlighted

the benefits obtained from the development of human resources, advice on legislation, institution-building, computerization of administrative procedures, the provision of patent documentation and searches, and the encouragement of regional and subregional cooperation. They expressed the wish that the International Bureau would continue and increase its development cooperation activities. They also expressed appreciation of the support received from the donor countries, both industrialized and developing, and organizations, especially from the United Nations Development Programme (UNDP), and called for the continuation and expansion of such support.

The delegations of industrialized countries which spoke referred to the assistance which they extended to developing countries through WIPO and pledged its continuation and, where feasible, its expansion. Such assistance took the form, among others, of training either through study visits, special courses in the donor countries or on the job, the dispatch of experts or speakers as WIPO consultants and the provision of equipment and documentation.

Several delegations commended the International Bureau on the initiatives and activities carried out in relation to intellectual property issues of topical interest and in the field of industrial property information. They referred in particular to the activities concerning the protection of intellectual property rights in emerging technologies such as integrated circuits, biotechnological inventions and direct broadcasts by satellite, the harmonization of certain legal provisions for the protection of inventions, as well as the work undertaken in the framework of the Permanent Committee on Industrial Property Information (PCIPI).

The Director General drew the attention of the delegations to the special exhibition on the theme of intellectual property and peace, which was on display in the lobby of the WIPO building and was organized in accordance with the program of the current biennium.

* Prepared by the International Bureau.

Questions Concerning the Revision of the Paris Convention for the Protection of Industrial Property. The Assembly of the Paris Union was informed that the Fifth Consultative Meeting on the Revision of the Paris Convention was held in September 1988. In that meeting, 10 representatives from each of the following Groups participated: Group of Developing Countries, Group B (industrialized market economy countries), Group D (industrialized socialist countries), and a representative of China.

During that meeting, the Group of Developing Countries and Group D made proposals for amendments to Articles 1 (on the definition of industrial property), 5A (on compulsory licenses in respect of patents for inventions) and 5*quater* (on importation of products manufactured by a process patented in the importing country) of the Paris Convention; Group B neither accepted those proposals nor made any counterproposals.

During the meeting of the Assembly of the Paris Union, Group B undertook to make such counterproposals. Following a discussion on the developments during the Fifth Consultative Meeting, the Assembly of the Paris Union agreed on the following statement:

The Assembly, in the light of the commitment undertaken by Group B that it would communicate, through its Spokesman, by June 15, 1989, written counterproposals to the written and oral proposals in respect of Articles 1, 5A and 5*quater* made for or during the Fifth Consultative Meeting on the Revision of the Paris Convention (September 19 to 23, 1988), decided that the Sixth Consultative Meeting will take place from September 18 to 22, 1989, and that the continuation of the work of the revision of the Paris Convention, including the question of the continuation of the Diplomatic Conference, will be on the agenda of the next ordinary session of the Assembly of the Paris Union (September 25 to October 4, 1989).

It was understood that the said counterproposals need not be subscribed to by the totality of Group B and that their contents are not predetermined.

It was also understood that WIPO would bear the travel costs of up to 10 participants from the Group of Developing Countries and one participant from China in the Sixth Consultative Meeting.

Establishment of an International Register of Audiovisual Works. In its sessions held in September 1987, the competent Governing Bodies decided that WIPO would attempt the creation of an international register of audiovisual works and that a diplomatic conference for the adoption of a treaty

be convened during the 1988–89 biennium—a treaty that would secure the evidentiary value of the international register—and also that the register be self-supporting; at no time would States be required to pay contributions to the Union created by the treaty.

In his memorandum to the 1988 session of the General Assembly of WIPO, the Director General indicated that the Diplomatic Conference—which had already been decided upon in principle at the 1987 session of the Governing Bodies—was scheduled to take place during the first half of 1989 and would be preceded by a meeting of a Committee of Experts for the preparation of that Diplomatic Conference to be convened in November 1988. The Director General also reported to the Assembly on the various possibilities existing for the initial financing of the International Register either at the headquarters of WIPO in Geneva or, with the assistance of the Government of Austria, in Vienna.

The General Assembly approved the proposals by the Director General concerning the convocation of the Diplomatic Conference and of the Committee of Experts and, as far as the financing of the International Register is concerned, decided to await the outcome of the discussions between the Director General and the Government of Austria.

Staff Matters. The Coordination Committee gave favorable advice on the intent of the Director General to promote Mr. Rubén Beltrán (a national of Mexico) and Mr. Daniel Bouchez (a national of France) to grade D.1 and to appoint Mr. S. Ramaiah (a national of India) to the post of Director, Development Cooperation and External Relations Bureau for Asia and the Pacific (he will take up his duties on January 1, 1989).

LIST OF PARTICIPANTS**

I. States

Algeria^{1, 2, 3, 5}; A. Dahmouche.

Angola: M. Alberto.

Argentina^{1, 2, 3, 5}; L.H. Tellamanli; D. Chuburu; A. Trombetta; C. Barrios Baron.

Australia^{1, 2, 3, 5}; P.A.D. Smith; M.P.F. Smith.

** A list containing the titles and functions of the participants may be obtained from the International Bureau.

¹ WIPO General Assembly.

² WIPO Coordination Committee.

³ Paris Union Assembly.

⁴ Paris Union Conference of Representatives.

⁵ Paris Union Executive Committee.

⁶ Berne Union Executive Committee.

- Austria**^{1, 2, 3, 6}: W. Boehm; G. Mayer-Dolliner; C. Strohal; T. Baier.
- Bangladesh**²: M.I. Talukdar; M.M. Hossain.
- Belgium**^{1, 3}: D. Vanderghyest.
- Brazil**^{1, 2, 3, 5}: P.R. de Almeida.
- Bulgaria**^{1, 2, 3, 6}: K. Iliev; Y. Markova; I. Genov; G. Sarakimov; P. Petkova.
- Byelorussian SSR**: A. Sytchev.
- Cameroon**^{1, 2, 3, 6}: F.-X. Ngoubeyou; W. Eyambé.
- Canada**^{1, 2, 3, 6}: M. Leesti; J.S. Gero.
- Central African Republic**^{1, 3}: A. Goffi.
- Chile**^{1, 2, 6}: S. Monsalve; F. Morales; R. Sateler.
- China**^{1, 2, 3, 5}: Gao Lulin; Li Jizhong; Qiao Dexi; Bai Duanwen; Tao Junying; Zhang Zhaoqi.
- Colombia**^{1, 2}: A. Gamboa Alder.
- Costa Rica**¹: R. Trejos Flores.
- Côte d'Ivoire**^{1, 2, 3, 6}: A. Traoré; A. N'Takpé N'Cho.
- Cuba**^{1, 2, 3, 5}: M.A. Fernández Finalé; M. Jiménez Aday.
- Czechoslovakia**^{1, 2, 3, 5}: I. Wiszczor; J. Prošek.
- Democratic People's Republic of Korea**^{1, 3}: Tchêul Ri; Dok Hun Pak; Chol Su Kim.
- Denmark**^{1, 3}: P.L. Thoft; L. Østerborg; K. Gudmand.
- Ecuador**: R. Rivadeneira.
- Egypt**^{1, 2, 3, 5}: N. Elaraby; W.Z. Kamil; M. Omar; N. Gabr; A. Fathallah. S. Gamil.
- Finland**^{1, 3}: M. Enajarvi; J. Rainesalo; H. Wager; A. Vuorinen.
- France**^{1, 2, 3, 5}: J.-D. Levitte; J.-C. Combaldieu; M. Guerrini; M.-F. Carbon; N. Renaudin; S. Sayanoff-Levy; L. Fournier; H. Ladsous; J. de Souza.
- Gambia**: M.N. Bitaye.
- German Democratic Republic**^{1, 2, 3, 6}: J. Hemmerling; D. Schack; M. Moench; H. Krokell; K. Wendler.
- Germany (Federal Republic of)**^{1, 2, 3, 5}: A. Krieger; A. von Mühlendahl; E. Merz; W. Milzow; M. Fernau; P. Voss; E. Steup.
- Ghana**^{1, 3}: M. Abdullah.
- Greece**^{1, 3}: G. Koumantos; D. Boucouvalas.
- Guatemala**: J.L. Chea Urruela; V.A. Leon Gemmell; M. Juárez Martini.
- Guinea**^{1, 3}: O. Guilavogui; F. Youla.
- Holy See**^{1, 3}: O. Rouillet.
- Hungary**^{1, 2, 3, 5}: Gy. Pusztai; Gy. Boytha; J. Bobrowszky.
- India**^{1, 2, 6}: K. Sharma; J.D. Gupta; A. Malhotra.
- Indonesia**^{1, 2, 3, 5}: H.A. Wayarabi; I. Cotan.
- Iran (Islamic Republic of)**⁴: A. Hachemi; M. Mehdi; H. Jastani Banaki; H. Ronaghi.
- Iraq**^{1, 3}: A.M. Al-Kadhi.
- Ireland**^{1, 3}: S. Fitzpatrick.
- Israel**^{1, 3}: M. Gabay; R. Walden.
- Italy**^{1, 2, 3, 6}: M.G. Fortini; M.G. Del Gallo Rossoni; G. Aversa.
- Japan**^{1, 2, 3, 5}: F. Yoshida; T. Yoshida; T. Koda; Z. Kamimaga; Y. Oyama; S. Uemura; H. Somckawa; S. Takakura; M. Kitani; H. Ebisuda; K. Sato.
- Jordan**^{1, 3}: H. Al-Amad; F. Matalgah.
- Libya**^{1, 3}: I.A.-A. Omar; T.A.-G. Al Bishti; H. Markhus; H.A. Abdullatif.
- Luxembourg**^{1, 3}: F. Schlessen.
- Madagascar**³: P. Verdoux.
- Malawi**^{1, 3}: I.J. Mtambo; F.S.D. Kakatera.
- Mexico**^{1, 2, 3, 5, 6}: M. Tello; J. de Villafranca; A.L. Hill; A. Fuchs Ojeda.
- Mongolia**^{1, 3}: G. Lkhagvajav.
- Morocco**^{1, 2, 3, 6}: A. Kandil; A. Bendaoud.
- Netherlands**^{1, 2, 3, 6}: M.A.J. Engels; J.W.C. Zandvliet; J. Nicaise.
- New Zealand**^{1, 3}: A.H. Maccy.
- Nicaragua**²: G.-A. Vargas; O. Alcán Benavides; M. Castellón.
- Niger**^{1, 3}: A. Hassan.
- Norway**^{1, 3}: A.G. Gerhardsen; E. Liljegen.
- Pakistan**^{1, 2, 6}: A. Ezdi; M. Aslam Khan.
- Panama**: M. Saavedra Polo; L. Vallarino.
- Peru**: J. Stiglich.
- Philippines**^{1, 2, 3, 5}: D.P. Menez-Rosal; A.L. Catubig.
- Poland**^{1, 2, 3, 6}: J. Szomański; A. Towpik; T. Drozdowska.
- Portugal**^{1, 3}: J. Mota Maia; R. Serrão; M.H. Alves Paia.
- Republic of Korea**^{1, 2, 3, 5}: Hong Shik Park; Joon Kyu Kim; Tae-Chang Choi; Myung-Soo Ahn.
- Romania**^{1, 3}: G. Chirila.
- Rwanda**^{1, 3}: E. Gasasira.
- Senegal**^{1, 2, 3, 6}: A. Sène; S. Mademba-Sy; S.C. Konaté.

Somalia: I.H. Fiidow.

Soviet Union^{1, 2, 3, 5}: I.S. Nayashkov; N.V. Mironov; V.N. Roslov; A.I. Lobanov; B. Smirnov; V. Blatov.

Spain^{1, 2, 3, 5}: J. Delicado Montero-Ríos; E.J. Rua Benito; L. Martínez Garnica; E. de la Puente García; M. Pérez del Arco; F. Martínez Serrano; A.-C. Ortega.

Sudan^{1, 3}: A.M.A. Hassan; M.E. Abdel Moneim; O. El-Turabi.

Sweden^{1, 2, 3, 6}: S. Niklasson; U. Jansson; K. Hökborg; A. Larsson.

Switzerland^{1, 2, 3, 5, 6}: J.-L. Comte; R. Grossenbacher; Tran-Thi Thu-Lang; A. Bauty; D. du Pasquier.

Syria^{2, 4, 5}: N. Chaalan.

Thailand: S. Devahastin; K. Chatpaiboon.

Togo^{1, 3}: T.S. Kossi.

Tunisia^{1, 3}: Y. Mokaddem; H. Boufares; N.-E. Maatoug.

Turkey^{1, 2, 3, 5}: M. Çetin; A. Algan.

Ukrainian SSR: A. Ozadovski.

United Kingdom^{1, 2, 3, 6}: P.J. Cooper; V. Tarnofsky; A. Sugden; P.E. Redding; G.W. Hewitt; E.C. Robson; S.M. Mann.

United Republic of Tanzania^{1, 2, 3, 5}: E.E.E. Mtango; K.J. Suedi.

United States of America^{1, 2, 3, 5}: D.J. Quigg; M.K. Kirk; R. Oman; H.J. Winter; L.J. Schroeder; J.P. Richardson; D.R. Patterson.

Uruguay^{1, 2, 3, 6}: R. Gonzáles-Arenas.

Venezuela^{1, 2, 6}: O.R. de Rojas; L. Niño.

Viet Nam^{1, 3}: Tran Hoan; Le Dinh Can; Nguyen Xuan Nguyen; Ngo Dinh Kha.

Yemen: M.S. Al-Qutaish.

Yugoslavia^{1, 3}: R. Tešić; V. Suć.

Zambia^{1, 3}: M.-M. Kunkuta.

Zimbabwe^{1, 3}: N. Mvere; J. Mhondiwa.

II. Intergovernmental Organizations

United Nations (UN): E. Bonev. **International Labour Organisation (ILO):** C. Privat; C. Paoli-Pelvey. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** A. Garzon; A. Raffray; A. Guillot Pingue. **General Agreement on Tariffs and Trade (GATT):** A. Otten; A. Subramanian. **African Intellectual Property Organization (AIPO):** G. Meyo-M'Emanc. **African Regional Industrial Property Organization (ARIPO):** A.R. Zikonda. **Benelux Designs Office (BBDM):** P. Rome. **Benelux Trademark Office (BBM):** P. Rome. **Commission of the European Communities (CEC):** C. Bail; E. Nooteboom; H. W. Kunhardt. **European Patent Organisation (EPO):** P. Braendli; U.J.

Schatz. **Interim Committee for the Community Patent:** H.W. Kunhardt. **Organization of African Unity (OAU):** N. Hached; M.H. Tunis. **Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA):** R. Trejos; E. Abplanalp.

III. International Non-Governmental Organizations

European Association of Industries of Branded Products (AIM): G. Kunze. **European Broadcasting Union (EBU):** M. Burnett. **International Association for the Protection of Industrial Property (AIPPI):** G.E. Kirker. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM):** J.-A. Ziegler. **International Chamber of Commerce (ICC):** J.M.W. Buraas. **International Confederation of Free Trade Unions (ICFTU):** N. Beck; G. Ryder. **International Confederation of Societies of Authors and Composers (CISAC):** J.-A. Ziegler; N. Ndiaye. **International Federation of Film Producers Associations (FIAPF):** A. Brisson. **International Federation of Journalists (IFJ):** T. Hygum Jakobsen. **Licensing Executives Society (International) (LES):** C.G. Wickham.

IV. Officers

WIPO General Assembly

Chairman: J. de Villafranca (Mexico). **Vice-Chairmen:** J.H.A. Gariépy (Canada); J. Hemmerling (German Democratic Republic).

WIPO Coordination Committee

Chairman: Gao Lulin (China). **Vice-Chairmen:** J. Hemmerling (German Democratic Republic); F. Yoshida (Japan).

Paris Union Assembly

Chairman: I.S. Nayashkov (Soviet Union). **Vice-Chairmen:** P.L. Thoft (Denmark); M. Abdullah (Ghana).

Paris Union Conference of Representatives

Chairman: J. Oniwon (Nigeria). **Vice-Chairmen:** A. Hachemi (Iran (Islamic Republic of)); N. Chaalan (Syria).

Paris Union Executive Committee

Chairman: P.A.D. Smith (Australia). **Vice-Chairmen:** J. Prošek (Czechoslovakia); E.E.E. Mtango (United Republic of Tanzania).

Berne Union Executive Committee

Chairman: G. Aversa (Italy). **Vice-Chairmen:** Y. Markova (Bulgaria); A. Ezdi (Pakistan).

V. International Bureau of WIPO

A. Bogsch (*Director General*); L.E. Kostikov (*Deputy Director General*); A. Schäfers (*Deputy Director General*); S. Ali-khan (*Deputy Director General*); G. Ledakis (*Legal Counsel*); H. Olsson (*Director, Copyright and Public Information Department*); F. Curchod (*Director of the Office of the Director General*).

Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works

(Geneva, June 27 to July 1, 1988)

(Continued from November 1988 issue)

Editor's Note: In the October and November 1988 issues, the *preparatory document* of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works was published. That preparatory document consists of a memorandum prepared by the International Bureau of WIPO and the Secretariat of Unesco (hereinafter: the Secretariats) and an addendum to the memorandum (on photographic works). In this issue, the publication of the documents of the Committee of Governmental Experts is completed with the publication of the *report* of the Committee of Governmental Experts.

REPORT

adopted by the Committee

I. Introduction

1. In pursuance of the decisions adopted by the Governing Bodies of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and of the World Intellectual Property Organization (WIPO) responsible for establishing the programs of the two organizations (see, in particular, as far as Unesco is concerned, Approved Programme and Budget for 1988-89 (24C/5 Approved), paragraph 15115 and, as far as WIPO is concerned, document AB/XVIII/2, Annex A, item PRG.03(5) and document AB/XVIII/14, paragraph 173), the Directors General of Unesco and WIPO jointly convened a Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works at the headquarters of WIPO in Geneva from June 27 to July 1, 1988.

2. Experts from the following 40 States attended the meeting: Algeria, Argentina, Australia, Austria, Brazil, Cameroon, Canada, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Guatemala, Guinea, Hungary, India, Israel, Italy, Japan, Kuwait, Mexico, Morocco, Netherlands, Norway, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Soviet Union, Spain, Sweden, Switzer-

land, United Kingdom, United States of America, Uruguay, Yemen, Zaire.

3. The Palestine Liberation Organization (PLO) also attended the meeting as an observer.

4. Observers from six intergovernmental organizations, namely the General Agreement on Tariffs and Trade (GATT), the International Labour Office (ILO), the Arab Bureau of Education for the Gulf States (ABEGS), the Commission of the European Communities (CEC), the European Free Trade Association (EFTA), and the League of Arab States (LAS), and from 24 international non-governmental organizations, namely the Association for the International Collective Management of Audiovisual Works (AGICOA), the European Broadcasting Union (EBU), the European Tape Industry Council (ETIC), the International Alliance for Distribution by Cable (AID), the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), the International Catholic Organization for Cinema and Audiovisual (OCIC), the International Chamber of Commerce (ICC), the International Confederation of Free Trade Unions (ICFTU), the International Confederation of Societies of Authors and Composers (CISAC), the International Copyright Society (INTERGU), the International Federation of Actors (FIA), the International Federation of Associations of Film Distributors (FIAD), the International Federation of Film Producers Associations (FIAPF), the International Federation of Musicians (FIM), the International Federation of Newspaper Publishers (FIEJ), the International Federation of Phonogram and Videogram Producers (IFPI), the International Federation of Translators (FIT), the International Group of Scientific, Technical and Medical Publishers (STM), the International Literary and Artistic Association (ALAI), the International Publishers Association (IPA), the International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU/FIET), the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, the Union of Industrial and Employers' Confederations of Europe (UNICE), and the World Crafts Council (WCC) participated in the meeting.

5. The list of participants follows this report.

II. Opening of the Meeting

6. Mr. Henry Olsson, Director, Copyright and Public Information Department of WIPO, opened the meeting and welcomed the participants on behalf of WIPO. Mr. Evgueni Guerassimov, Legal Officer, Copyright Division of Unesco, greeted the participants on behalf of Unesco.

III. Election of the Chairman

7. Mr. Robert Dittrich (Austria) was unanimously elected Chairman of the meeting.

IV. Adoption of the Rules of Procedure

8. The Committee adopted the Rules of Procedure contained in document UNESCO/WIPO/CGE/SYN/2. It was decided that the Committee should elect two Vice-Chairmen and that the tasks of the Rapporteur should be fulfilled by the Secretariats. It was also agreed that, in accordance with the usual practice in meetings such as the present one, the report would be available only in English and French.

V. Election of the Other Officers

9. Messrs. György Boytha (Hungary) and Miguel Angel Emery (Argentina) were unanimously elected Vice-Chairmen of the meeting.

VI. Adoption of the Agenda

10. The provisional agenda of the meeting of the Committee, as appearing in document UNESCO/WIPO/CGE/SYN/1 Prov., was adopted.

VII. Examination of the Memorandum

11. Discussions were based on the memorandum on the evaluation and synthesis of principles on the protection of copyright and neighboring rights in respect of various categories of works prepared by the Secretariats (documents UNESCO/WIPO/CGE/SYN/3-I, II and III and UNESCO/WIPO/CGE/SYN/3-IAdd., IIAdd. and IIIAdd.).

General Discussion

12. At the invitation of the Chairman, a great number of delegations and observers made com-

ments on the question of the nature and legal force of the principles proposed in the memorandum. As a result of the discussion, there was general agreement that—in keeping with the terms of reference of the Committee as indicated in paragraph 9 of the Introduction to the memorandum—the principles should be considered as having no binding force on anyone; they were intended to serve as guidance for governments and legislators when they had to deal with various copyright and neighboring rights issues in relation to the categories of works concerned.

13. A great number of delegations and observers congratulated the Secretariats on the quality of the memorandum. They stressed that the principles and comments included in it were very useful guidance for national legislators. Nevertheless, several participants indicated that they did not necessarily agree with all the principles and comments and would make observations on them in the discussion later.

14. Some delegations said that there was a need to differentiate between principles that were based on the interpretation of the international copyright conventions and principles that went beyond the minimum obligations under those conventions. Another delegation mentioned that there was also a third category of principles, namely, those principles which dealt with the details of implementation; it added that it was questionable whether the latter category of principles could not be transformed into mere comments.

15. Some other delegations stressed that the differentiation between principles based on the interpretation of the international copyright conventions and other principles would be difficult to make. The interpretation of the conventions was a question for the States party to them and, in respect of that, the principles could only give some useful orientation. There were several borderline questions where it would be impossible to give a final answer, for the time being, as to whether there was a clear obligation under the international copyright conventions. It was also stated that the addressees of the principles were not only States party to the international copyright conventions but also those States that had not yet adhered to those conventions, and that fact should also be reflected in the way the principles were proposed.

16. Some delegations proposed that, in the new version of the principles, repetition should be avoided wherever possible.

17. Some other delegations stressed that certain features of the structure of the principles had fol-

lowed from the approach outlined in the terms of reference of the Committee. Separate sets of principles had had to be proposed on various categories of works which—although certain questions had only been dealt with in respect of the categories of works where they seemed most relevant—had necessarily led to certain repetitions. Those delegations were of the view that even if some parallel principles could be simplified by means of references, the Committee should not, and could not, change the approach in the present stage but should concentrate on the re-examination—and, where necessary, on the improvement—of the principles; any new approach—in the form of model provisions or guidelines covering all categories of works—could only be the subject of new programs according to the decisions of the competent governing bodies of Unesco and WIPO. They added that the principles and comments on them represented an excellent basis—a kind of comprehensive data bank of ideas—for any such future programs.

18. One delegation stated that it did not seem to be an appropriate solution that phonograms were dealt with as a separate category of works because, under the international copyright conventions, they were not considered literary or artistic works and that was, *inter alia*, the reason why the Rome Convention had had to be created. That nature of the protection of phonograms at the international level was not changed by the fact that the national laws of certain countries apply copyright protection for phonograms in a wider meaning of the word "copyright." Some other delegations and observers expressed the opposite view, namely, that it was right to cover phonograms as a separate category, precisely because that corresponded to the solutions followed by several national laws.

19. Some delegations stated that certain principles would have been desirable also in respect of computer programs.

20. Another delegation regretted that the principles did not cover the questions of the exercise of rights, particularly, copyright and neighboring rights contracts. It said that although at the present stage it would not be appropriate to try to work out separate principles in that respect, the future activities of Unesco and WIPO should extend to the questions of contracts in harmony with recent developments at the level of national laws. At least, the following aspects should be covered: the scope of rights transferred by contracts; guarantees for fair remuneration; the right of termination in case of non-utilization of the work; the limits of contracts on future works. The delegation suggested that the memorandum to be prepared on a new ver-

sion of the principles should suggest, at least, in the commentary, that those questions should be regulated by national laws. Several delegations and observers supported the idea that such general questions of contracts should be studied in the framework of future activities of Unesco and WIPO.

21. One delegation said that Unesco and WIPO activities should concentrate, first of all, on the most urgent questions that were relevant for the international conventions administered by them. The international copyright and neighboring rights conventions did not cover the problems of contracts; they left their regulation to national laws (except for certain questions concerning cinematographic works which, however, were closely connected to the copyright status of, and ownership of rights in, such works). While it would be interesting to compare national laws in relation to subjects not covered by the conventions, it seemed more appropriate to give priority to the great number of urgent questions related to the interpretation and implementation of the conventions (such as the problems of piracy and the ever newer waves of new technologies).

22. One delegation stated that the lengthy way in which the commentary dealt with the questions of the legal status of phonograms should be either synthesized or balanced by a more comprehensive explanation on the nature of the rights deserving protection and the reasons for such protection.

23. Another delegation, in answer to the statement mentioned in the preceding paragraph, said that it found the analysis of the legal nature of phonograms in the commentary excellent and it proposed that it should be retained as it was.

24. An observer from an international non-governmental organization said that, while the principles as such were broadly acceptable, he had to express reservations concerning the commentary, particularly as regards the description of the legal status of phonograms, and suggested that the commentary should be strictly limited to an explanation of the principles themselves.

25. An observer from another international non-governmental organization expressed strong reservations on the way in which the protection of performers was dealt with in the working document. In his view, there was a lack of comprehensive new approach in this respect and, consequently, the level of protection suggested for performers was not acceptable to his organization.

26. An observer from still another international non-governmental organization expressed his seri-

ous concern over a tendency, which he saw in the document, to protect beneficiaries of neighboring rights at the same level as authors which contradicted the balance of interests expressed in the international copyright conventions and in the Rome Convention.

27. At the end of the general discussion, a representative of the Secretariats referred to the statement contained in paragraph 9 of Part I of the working document (UNESCO/WIPO/CGE/SYN/3-I) to the effect that the principles would not have any binding effect on anyone but were merely intended to indicate reasonable solutions at the national level. He also said that certain elements were not included in the principles because they were not covered by the terms of reference, for instance the protection of computer programs or questions of contracts; such questions would, as far as WIPO is concerned, be considered in the future work on model provisions for national legislation. He, furthermore, said that the commentary to the principles contained in Part III of the working document was essentially an "*ad hoc* commentary" whose intention was only to reply to questions raised and concern expressed during previous meetings, and to explain the reasons for amendments made; its purpose was not to cover all the considerations in respect of the various principles. Those considerations had been discussed at previous meetings of committees of experts and the intention was not that a new discussion should take place of elements which had been discussed before. Finally, as regards the protection of performers, he referred to a statement recorded in paragraph 18 of the report of the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms in 1986, concerning the memorandum for that meeting, to the effect that "an observer from a non-governmental organization appreciated the fact that the document took into due consideration the legitimate interests of performers in respect of some forms of exploitation of performances which were not mentioned in the Rome Convention." Since that meeting, some changes had been made in the principles concerning the protection of performers, but those changes were intended to make the principles more favorable for performers.

Piracy

28. It was decided to discuss together the principles relating to piracy of audiovisual works, of phonograms and of the printed word (Principles AW1, PH1 and PW1).

29. In the course of the discussion of this item, a number of delegations made reference to adopted or planned amendments to their national laws providing for stringent measures against piracy. One delegation mentioned in this context the need for equal treatment of foreign and national right owners.

30. A great number of delegations expressed their full support for the contents of Principles AW1, PH1 and PW1 and said that they had comments to make only in respect of certain details.

31. Some delegations, as well as observers representing certain international non-governmental organizations, expressed the view that the principles should refer not only to violations of the right of reproduction, but also to unauthorized communication to the public of protected works and contributions, including the picking up and use of coded signals. In this context reference was made also to the need for measures against the unauthorized manufacture and marketing of decoders.

32. Certain delegations expressed reservations as regards the criterion "on a commercial scale" used in the principles and said that the cumulative negative effects of single acts of manufacture of copies could well be the same as the effects of copying carried out on a commercial scale. It was suggested by two delegations, and supported by some observers representing international non-governmental organizations, that the notion "for commercial purposes" should be used instead. The representative of another international non-governmental organization proposed, however, a certain caution in this respect: "commercial" purposes could exist in both a direct and an indirect way. Furthermore, as regards public authorities, for instance, one could question whether their activities are carried out for "commercial" purposes.

33. Some delegations suggested that, in the preparation of future model provisions, the "intention" referred to in the principles should be complemented by a presumption to the effect that certain circumstances, in the absence of proof to the contrary, would be considered as proof of intention.

34. The reference to "the new uses of literary and artistic works" appearing in paragraph (3)(b) of the principles under discussion should, in the view of some delegations, be clarified, and it was said that the reference should rather be to new possibilities for unauthorized use of protected works and contributions.

35. One delegation expressed some reservations as regards the mention of "packaging or the preparation of packaging" appearing in paragraph (1)(b) of the principles under discussion. In the view of that delegation, this notion would be appropriate in cases of trademark infringements, but not so much in cases of piracy, at least not in respect of piracy relating to the printed word.

36. One delegation stressed that, in its view, the use of the term "piracy" should be reserved for grave violations of the beneficiaries' rights involving the production of a considerable number of copies.

37. Another delegation suggested that, in Principle AW1, one should add the words "recognized in the country" to the reference to the rights of performers, producers of phonograms and broadcasting organizations, and that, in paragraph (2) of the same principle, piracy should be referred to as "theft" and not only as "a form of theft." Furthermore, that delegation suggested that, at the end of paragraph (3)(b) of the same principle, the words "literary and artistic works" should be replaced by "audiovisual works" and that in paragraph (3)(g) the word "sufficiently" before the word "effective" should be deleted.

38. Still another delegation stressed that because the principles were intended to serve as guidance for governments and legislators, it was precisely in the countries where such rights were not recognized that the principles would be useful.

39. An observer representing an international non-governmental organization stressed the importance of granting adequate protection also to performers and said that the notion of piracy should extend not only to unauthorized reproduction of recordings of performers' performances, but also to unauthorized recording and subsequent reproduction of performers' live performances ("bootlegging").

40. An observer from another international non-governmental organization mentioned, as a growing problem in the field of piracy, the exportation and importation of "master" copies of video recordings for the purpose of manufacturing unauthorized copies.

41. In relation to Principle PW1, an observer from an international non-governmental organization said that the reference to the authorization by the owners of copyright should be complemented by a similar reference to the authorization by the

owners of neighboring rights (the rights which publishers might have in their published editions).

Audiovisual Works and Phonograms

Private Copying ("Home Taping")

42. It was decided to discuss together the principles relating to private copying of audiovisual works and of phonograms (Principles AW2 to AW8 and PH3 to PH9).

43. One delegation proposed that "audiovisual works" should be defined in the principles.

44. Several delegations and observers expressed their general agreement on the principles on home taping both in respect of audiovisual works and phonograms. Many of them indicated, however, that they had comments concerning certain principles.

45. Certain delegations and observers stressed that widespread reproduction for private purposes unreasonably prejudiced the legitimate interests of authors, and that it was an obligation under Article 9(2) of the Berne Convention to mitigate that prejudice by means of a levy on blank tapes and cassettes and/or recording equipment.

46. Another delegation, supported by an observer from an international non-governmental organization, stated that home taping should rather be considered as a new way of using audiovisual works and phonograms and, instead of just referring to the obligation of mitigating prejudice, it was more appropriate to declare that it was an obligation to "associate the owners of rights to the exploitation that constitutes home taping." That delegation also proposed that in Principles AW2 and PH3, the reference to the prejudice of legitimate interests should be replaced by a reference to the rights of copyright owners.

47. Certain other delegations expressed disagreement or, at least, hesitation concerning the second sentence of Principles AW2 and PH3 which referred to the existence of such an obligation under the Berne Convention, stressing that home taping was a question that was up to the interpretation chosen by States party to the Berne Convention.

48. One delegation informed the Committee that its government had recently announced its intention to legitimize home taping and, at the same time, to introduce a royalty on blank audio tapes, the proceeds of which would be paid to copyright

owners in recognition of the use of their works. The delegation noted the essential features of that scheme and that its government did not presently envisage the introduction of a similar scheme in connection with audiovisual works.

49. Another delegation said that the question of whether the introduction of a levy was an obligation of States party to the Berne Convention or not should not be covered by a separate principle but—as in other cases where obligations under the international copyright and neighboring rights conventions were analyzed—it was enough to deal with it in the commentary.

50. One delegation and an observer from an international non-governmental organization suggested that, in Principles AW2 and PH3, reference should be made to the conflict of widespread home taping with the normal exploitation of audiovisual works and phonograms.

51. One delegation, supported by an observer from an international non-governmental organization, proposed that the scope of Principle PH3, and also other principles which were relevant in that respect, should be extended to phonograms where they were protected by copyright.

52. Another delegation said that it did not consider the differentiation between various branches of intellectual property necessary and fortunate. It referred to the law of its country which covered both traditional literary and artistic works and phonograms under the comprehensive notion of intellectual property. It proposed that Principles PH3 and PH9 should be merged; that proposal was supported by some observers from international non-governmental organizations.

53. One delegation stressed that, although it should be recognized that in certain countries the notion of copyright was extended to productions other than literary and artistic works covered by international copyright conventions, the wording of the relevant principles should also be in keeping with the laws of the countries following another approach strictly based on those conventions.

54. Another delegation suggested that, in the second sentence of Principles AW3 and PH4, in the phrase “should be paid by the manufacturers or importers” the word “only” should be inserted after the word “paid” to indicate that the intention was not to charge buyers themselves.

55. Several participants made comments on the last sentence of Principles AW3 and PH4.

56. Some delegations stressed that that sentence should not be considered to mean that free private copying was restricted to cases defined there, but only that such an entitlement of the buyers was a corollary of the payment of the levy.

57. One delegation, supported by some observers from international non-governmental organizations, stressed that the wording of the last sentence of Principles AW3 and PH4 should be made absolutely clear so as to avoid extending the principle to reproductions not intended to be covered; it should be stated that what was involved was reproduction for private and personal purposes only.

58. One delegation suggested that, in the second sentence of Principles AW4 and PH5, the word “certain” should be deleted before the words “educational purposes.”

59. Some delegations and observers stressed that the reference, in that sentence, to educational purposes should be considered to be restricted to cases where such exceptions were justified and allowed also in respect of other means of reproduction and that it should not be a basis for wholesale free reproduction for educational purposes.

60. An observer from an international non-governmental organization said that it would be desirable to delete the whole sentence because the uses mentioned in it should be subsidized by governments and not by the owners of rights.

61. Some delegations suggested that, in harmony with certain national laws, blank tapes and cassettes and/or equipment that normally was not used for home taping (such as professional tapes and equipment or dictaphones and cassettes for them) should be exempt from any charge.

62. Several delegations were of the view that Principles AW6 and PH7 were too rigid. The use of a certain percentage of the amounts of home taping levies for collective purposes for the benefit of the owners of rights concerned was justified, the more so because no perfect method could be used for distribution of such amounts to individual owners of rights. One delegation pointed out that the use of a part of the remuneration for such purposes was provided for by the national legislation of several countries and, in its view, it was in conformity with the Berne Convention.

63. One delegation, supported by some observers from international non-governmental organizations, denied that such amounts could not be distributed to individual owners of rights in a reason-

able manner. Appropriate sampling methods were available for that purpose.

64. Some delegations expressed the opinion that the application of the principle of national treatment was not necessarily an obligation in respect of the charges on blank tapes and cassettes and/or on recording equipment and, therefore, opposed Principles AW7 and PH8. They stated that the principle of national treatment was introduced when the differences between national laws were less significant and there was a realistic hope that a fuller convergence of national solutions would take place relatively soon. Nevertheless, when certain cases had been identified where the differences were more important or there was no hope for more or less similar provisions at the national level in the foreseeable future, exceptions were introduced to the principle of national treatment (in the Berne Convention, such exceptions had been introduced in respect of the term of protection, of the protection of works of applied art and of the *droit de suite*). In the present situation, where home taping levies had only been introduced in a small number of countries, it would seem understandable that the countries concerned did not apply national treatment, for the time being, but made payments to foreigners conditional on reciprocity.

65. Some other delegations and several observers strongly opposed the idea of putting aside the principle of national treatment in respect of home taping levies. They stated that the international conventions made the application of national treatment a fundamental obligation of States party to them and that exceptions to it were only allowed in cases determined in a strict and exhaustive manner. Neglecting such a clear and obvious obligation would contribute to a general decline in the protection of copyright and neighboring rights throughout the world. It was stressed that the solution was not to set aside one of the most fundamental provisions of the conventions but, instead, to promote the introduction of appropriate provisions in countries where such provisions did not yet exist.

66. Some observers from international non-governmental organizations proposed that, in respect of performers and producers of phonograms, the words "to the extent that" should be deleted from the beginning of Principle AW8 because the prejudice of the interests of such owners of rights was always present in case of widespread home taping. An observer from another international non-governmental organization stressed that broadcasting organizations should be dealt with in the same way, in Principles AW8 and PH9, as performers and producers of phonograms were.

67. An observer from an intergovernmental organization informed the Committee of the recent publication, by its organization, of a document on various copyright questions, intended for the harmonization of national laws of the member States of his organization. The document stated that no levy was justified in respect of audiovisual works because such works were copied mainly for "time shifting." As far as phonograms were concerned, levy systems existed in various member States and were under consideration in other member States. Concerning analogue recording, however, his organization did not intend to propose any harmonization of national laws, for two reasons; first, because analogue recordings would be gradually replaced by digital recordings and, second, because the existing levy systems did not concern the common market of the member States. It was, however, the intention of his organization to propose the obligatory introduction of technical measures to prevent unlimited perfect reproduction of digital recordings. No technical measures existed yet that had been tested and found acceptable, but the parameters of such future measures were outlined; any such measures should make reproductions from original copies possible but they should prevent the use of secondary copies thus made as masters for further copying. Such a solution would make the levy system unnecessary.

68. Some delegations stated that, in their countries, the introduction of a levy on audiovisual works was not considered justified, at least for the time being.

69. One delegation opposed the introduction of home taping levies. So far as videograms were concerned, the levy was inadequate compensation for home taping and copying of videograms—which, in any event, took place on a very small scale—and should therefore be prohibited. As to home taping of television broadcasts, that was usually for "time shifting" purposes and such use did not unreasonably prejudice the interests of owners of rights. A levy in respect of the home taping of phonograms would alleviate an injustice which owners of rights suffered but at the expense of creating a new injustice because the levy would inevitably be paid by some people who did not record copyright material. The creation of that new injustice was too high a price to pay for the levy.

70. Several other delegations and several observers from international non-governmental organizations stated that they did not consider the argument about "time shifting" to be correct. "Time shifting" might exist, but it became an ever more general practice that a number of recordings of audiovisual

works were kept for a longer period—in the form of a kind of home video library—and copies were exchanged and circulated among friends and acquaintances. The percentage of copies kept might justify a smaller levy but a levy was needed also in respect of video home taping.

71. In the view of some delegations, “time shifting” was a relevant use as such.

72. One delegation and an observer from an international non-governmental organization said that the obligatory introduction of a technical device to prevent chain copying would be a good solution but it did not make a levy unnecessary (although the levy might be determined at a relatively lower level) because home taping would still remain possible to a certain—more or less significant—extent.

73. The latter observer said that the technology for preventing copying of video recordings already existed and was in use; and recent surveys had shown an increase in home copying of video recordings for purposes other than for time shifting. Similar solutions were being sought to protect audio recordings.

74. Several delegations and observers expressed doubts as to whether technical devices would offer a workable solution to the question of home taping. No device existed in practice yet that would be really satisfactory for such purposes and it was highly probable that any technical measures could be circumvented sooner or later which would be made in private homes and, therefore, would be uncontrollable. In addition, a great number of perfect copies could be produced even without any countermeasures by means of using the same original copy exchanged or lent between friends and acquaintances.

Rental

75. It was decided to discuss together the principles relating to the rental of audiovisual works and of phonograms (Principles AW9 and AW10 and PH10 to PH13).

76. In the course of the discussion, a number of delegations made reference to the contents of their national laws, or to adopted or planned amendments to such laws, in respect of rental.

77. Several delegations and observers expressed their full support for the recognition of a right of

rental, as suggested in the principles under discussion.

78. One delegation stated that in its country the exhaustion of rights applied in the sense that once a copy of the work was sold with the authorization of the copyright owner, he had no longer the right to authorize the rental of that copy. To recognize a rental right in respect of, for instance, audiovisual works or phonograms would imply a discrimination of literary works contained in books. Therefore, that delegation was opposed to the proposed principles on rental. Another delegation stated that in its country, too, the exhaustion of rights was recognized and that, for the time being, there were no plans to introduce such a right.

79. One delegation referred to a bill introduced in the parliament of its country in which an exclusive right of rental of audiovisual works and phonograms, valid for the ordinary term of copyright protection, was proposed. Such exclusive right in respect of rental of phonograms would probably be granted to the producers because this would make the practical handling of the right easier and would avoid conflicting interests from different groups of owners of rights.

80. Some delegations and observers said that the exclusive right in respect of rental of phonograms should be recognized not only in favor of the owners of copyright in works included in the phonograms, but also in favor of other owners of rights involved, for instance performing artists. One of these delegations specifically mentioned the danger that phonograms rented to the public might become a source for making pirate copies.

81. One delegation expressed the view that “time shifting” itself was a relevant use of audiovisual works.

82. In respect of Principle AW10, some other delegations and observers felt that the wording of that principle was too negative towards collective administration, which, in their view, could be very useful if exercised efficiently. One of these delegations suggested the inclusion, at the end of the first sentence of the principle, of the following words: “when this is not the best means to protect the legitimate interests of authors of works included in the carriers of audiovisual works.” This suggestion was supported by an observer representing an international non-governmental organization.

83. One delegation and an observer from an international non-governmental organization suggested that, in the principles relating to audiovisual

works, a principle should be included corresponding to Principle PH13 on the rights of performers; they also questioned whether performers should have only a right to remuneration, as suggested in Principle PH13.

84. One delegation proposed that, in principles where reference was made to neighboring rights, it should be made clear that such a reference only covered cases where such rights were recognized in the country concerned, and it also should be stated that the recognition and exercise of such rights should be carried out with due respect to the right of authors concerned.

85. One delegation drew attention to the fact that some videograms were manufactured for sale for private and individual use while others were manufactured for use in commercial rental activities. That delegation considered that the recognition of the right of rental was only justified in the latter case.

86. An observer from an international intergovernmental organization stated that there was a proposal to introduce in the member States of his organization a right of rental in respect of both videograms and phonograms for all right owners.

87. An observer representing an international non-governmental organization stated that his organization disagreed with Principles AW10 and PH11, since there would be no reason why national legislation should interfere with collective administration. That observer also declared that his organization was in favor of a general "right of destination," that is a right for the author to determine the further use of copies of his works. In this context the observer stated his organization's disappointment that the proposed principles did not contain an exclusive right of the author to authorize the public lending of copies of his work.

Satellite Broadcasting. Cable Distribution. Cable Distribution of Programs Transmitted by Fixed Service Satellites

88. It was agreed that because of a close interrelation between the subjects mentioned in the above title, they should be discussed jointly in respect of both audiovisual works and phonograms. (Principles AW11 to AW38 and PH14 to PH46.)

89. Several delegations and observers stated that they were in agreement, in general, with the principles on those subjects but that they wished to make comments concerning some of those principles.

90. A great number of delegations and observers expressly stated their full agreement with Principles AW11, AW12, PH14 and PH15.

91. One delegation, supported by an observer from an international non-governmental organization, proposed that, in Principles AW11 and PH14 and in all the other principles where protection of the so-called neighboring rights was mentioned, it should be made clear, on the one hand, that those principles were applicable in respect of neighboring rights only to the extent that such rights were recognized in the countries concerned and, on the other hand, that the protection of such rights should be granted in full respect of the rights of authors.

92. One delegation suggested that Principles AW12 and PH15 should be completed to determine the scope of responsibility of the originating organizations. It should be stated that the responsibility of such organizations should be recognized with regard to the entire public to which the program was communicated in all countries of the "footprint" where that public could be found, irrespective of the means of communication and reception.

93. Another delegation proposed that that responsibility of the originating organization should be recognized for the entire process of communication to the public of the footprint countries.

94. Some delegations and observers referred jointly to the proposals mentioned in the preceding two paragraphs as two versions of nearly the same solution, and expressed their support for them.

95. An observer from an international non-governmental organization opposed the proposals in the preceding three paragraphs. She stated that remuneration was a question of negotiation on the basis of the author's right in the originating country.

96. Some delegations and observers expressed their full support for Principles AW13, AW14, PH16 and PH17. Some other delegations and observers stated that they still did not have a final position concerning the question covered by those principles. A greater number of other delegations and observers expressed their opposition or serious doubts concerning the principles mentioned above.

97. Those who opposed the principles mentioned in the preceding paragraph, or expressed their serious doubts concerning them, stated that they were in favor of what was called traditional interpreta-

tion of the definition of broadcasting according to which only the transmission from the originating country was relevant and, consequently, broadcasting was an act in respect of which only the law of the country of emission should be applied. Those participants insisted that the records of the various diplomatic conferences at which the Berne Convention was revised reflected that there was no basis for any other position. They stressed that the application of what was called the footprint theory would raise various practical problems. Mainly four such problems were emphasized, namely the difficulty of defining "footprint," the problems of comparison of various laws, the impossibility or serious difficulty of enforcing decisions in countries other than the country of emission, and the impossibility of carrying out broadcasts where the authorization by various owners of rights was needed which could always conflict, and when only one refusal from one footprint country would prevent the whole direct broadcasting by satellite.

98. The participants mentioned in the preceding paragraph considered that it was not probable that broadcasters would, as countries of emission, choose countries where no adequate copyright and neighboring rights protection existed and, when they still chose such countries, the appropriate solution would be to force the countries concerned to adhere to the appropriate international conventions. Those participants were of the view that the problems of non-voluntary licenses could be solved on bases other than the footprint theory; such a solution could follow from Article 11^{bis}(2) of the Berne Convention under which non-voluntary licenses could only be applied in countries where they had been prescribed, and it could also be considered that broadcasting by satellites was not an act covered by Article 11^{bis} of the Berne Convention, and, consequently, instead those provisions were applicable which covered communication to the public, in general, which did not allow non-voluntary licenses. Finally, those participants also stated that they did not think that the footprint theory was needed in order to take into account the entire footprint when calculating fees to be paid to owners of rights.

99. As far as the definition of the country of emission was concerned, three possibilities were mentioned: the country of the headquarters of the broadcasting organization, the country of the actual emission, and the country of the owner or operator of the satellite. Some participants who supported what was called the emission theory were in favor of choosing the country of the headquarters, while certain other participants were in favor of choosing the country of the actual emission of signals.

100. Those participants who supported the so-called footprint theory stressed that there was no basis in the text of the international copyright and neighboring rights conventions to consider broadcasting as a mere emission; broadcasting was clearly defined as communication to the public and such communication did not only take place at the point of emission but it also included the up-leg and down-leg phases of transmission and was only completed in the footprint where the program was made available to the public. The law of the country should be applied where the use of the work took place; in the case of direct broadcasting satellites, the use might take place in various countries, hence the need for Principles AW14 and PH17.

101. Concerning the practical problems of the application of the so-called footprint theory, the following arguments were made. The problem of the definition of the footprint could be solved without major problems as described in paragraph 39 of Part III of the memorandum. The comparison of laws could not raise substantial difficulties if it was made on the basis of Alternative B of Principles AW14 and PH17. As far as the authorization of broadcasts was concerned, it could be settled appropriately; it was normal that in case of collective administration, the societies of the country of emission represented the repertory of the societies of other countries; where a right was administered by an individual owner of right, in general, there was one owner with whom the broadcasting organization should negotiate; where, however, the owner in the footprint was a person other than the owner in the country of emission, it was not a mere practical problem but the essence of copyright and neighboring rights protection that the rights of that owner should be respected, the more so because the program was actually communicated to the public of the footprint.

102. It was stressed that the adoption of the so-called emission theory would create an unjustified lack of balance of interests between the countries of emission which were, in general, richer developed countries and the footprint countries to which, as a rule, those countries belonged that were less rich and less developed, because it would follow from the emission theory that only the rights and interests of the owners of rights of the countries of emission could be exercised appropriately and the rights and the interests of the owners of rights in the footprint countries would be neglected. Therefore, the adoption of the so-called footprint theory was in the interest of developing countries.

103. Those who were in favor of the so-called footprint theory also stated that the suggestion that

the problems of non-voluntary licenses could be solved on the basis of Article 11^{bis}(2) of the Berne Convention, even if the emission theory was accepted, was not correct because such a solution would necessarily involve taking into account the law of the countries of the footprint and that would contradict the emission theory. It was also stated that there was a contradiction in the suggestion that the public of the footprint countries could also be taken into account on the basis of the emission theory when negotiating fees, because it was considered, under that theory, that the use of the works and other contributions took only place in the country of emission.

104. One delegation proposed that a new principle should be outlined for promoting the appropriate practice of authors societies. It should be stated that the society of the country of emission should be in the position to grant authorization to the broadcasting organization but only on the basis of an agreement with the societies of the footprint countries. Some delegations supported that proposal. An observer from an international non-governmental organization opposed it, and said that that question should be left to the societies themselves.

105. In respect of Alternatives A and B in Principles AW14 and PH17, the majority of those who found the so-called footprint theory acceptable were in favor of Alternative B. One delegation stated that both alternatives were acceptable to it.

106. Several delegations and observers stressed that the differentiation between direct broadcasting satellites and fixed service satellites was becoming ever more difficult and it would be more appropriate to simply differentiate between broadcasting satellites and telecommunication satellites. Some delegations and observers referred to Principle AW19 and PH22 which, in a certain way, solved the problems emerging from the convergence between direct broadcasting satellites and fixed service satellites.

107. Some delegations and observers expressed their support for Principles AW15 and PH18.

108. An observer from an international non-governmental organization stressed that the definition of broadcasting under the ITU Convention and Radio Regulations should be applied and regretted that the principles proposed in the memorandum did not correspond to that definition. She accepted that, for copyright purposes, program services distributed via fixed service satellites and intended for direct reception by the general public should be treated in the same manner as direct broadcasting

services, that is as broadcasts. Unfortunately, the principles did not achieve their intention of distinguishing pure program transport. Where fixed service satellite transmissions did not qualify as broadcasts and were therefore not subject to copyright, broadcasting or cable distribution of such transmissions was subject to the author's control under the Berne Convention: there was not one act of broadcasting or communication to the public composed of several different phases.

109. Some delegations and observers supported the idea of separate and joint responsibility expressed in Principles AW16 and PH19. Some of them, however, were of the view that there was a need for a differentiation between primary and secondary responsibility. Opinions were divided as to which organization should be primarily responsible.

110. An observer from an international non-governmental organization opposed such separate and joint responsibility. She suggested that, if proved necessary (which would not be in areas where countries were all members of the Berne Union), national legislators were free to introduce subsidiary copyright liability on the part of service providers. Pure program transport should be expressly excluded.

111. As regards Principles AW17, AW18, PH20 and PH21, some delegations and observers said that what had been stated concerning direct broadcasting satellites applied also here, *mutatis mutandis*.

112. One delegation stressed the importance of the Satellites Convention in respect of the protection of programme-carrying signals transmitted through satellites.

113. Another delegation stated that the copyright and neighboring rights questions of coded satellite transmissions should be further studied.

114. As regards the principles on simultaneous and unchanged cable distribution of broadcast programs, some delegations stated that they maintained their reservations concerning the application of those principles in the case of the so-called "service zones" and "must carry" programs.

115. One delegation said that a non-voluntary license system for simultaneous, unchanged and complete retransmission by cable of broadcast programs, as it existed in the national legislation of its country, must remain possible. That applies *mutatis mutandis* to other comparable principles.

116. It was proposed that the principles on cable retransmissions and cable-originated programs should be more clearly separated.

117. One delegation suggested that, in Principles AW21 and PH24, it should be made clearer that, when authorization was given to a broadcaster, it was a subrogation of right by the original owner of rights.

118. Concerning Principles AW23 and PH26, it was stated that what was involved was the so-called extended collective administration system and it was proposed that the wording of the principles should be made clearer in that respect. An observer from an international non-governmental organization opposed the recognition and promotion of such systems.

119. Some delegations and observers were of the view that the conditions of arbitration mentioned in Principles AW24 and PH27 were not determined correctly. Arbitration should be restricted to cases where there was an actual abuse of a monopolistic position. Some observers from international non-governmental organizations opposed those principles in general.

120. An observer from a non-governmental organization suggested that, in Principle AW29, the words "at least" should appear in the same way as in Principle PH33.

121. Some delegations and observers stated that Principles AW33 and PH41 went too far when suggesting the recognition of an exclusive right to broadcasters taking into account that, in respect of other copyright owners, compulsory licenses were allowed. An observer from an international non-governmental organization stated that those principles were justified because the number of broadcasters was relatively small and thus, certain reasons for compulsory licensing which existed in respect of copyright owners did not exist in respect of broadcasters.

122. Concerning the principles on cable distribution of programs transmitted by fixed service satellites, it was stated that the comments made in respect of the principles on fixed service satellites and cable distribution applied *mutatis mutandis*.

Secondary Uses of Phonograms for Broadcasting or for Other Communication to the Public

123. One delegation suggested that in the text of Principle PH2, it should be stated that the right of

remuneration existed only in respect of lawfully published phonograms and that the beneficiaries of the remuneration should only be performers and phonogram producers which enjoyed protection under the law. An observer representing an international non-governmental organization said that the reference as regards phonograms giving rise to remuneration should be to lawfully reproduced phonograms rather than to lawfully published ones.

124. An observer representing an international non-governmental organization said that it should be clearly stated that the right of remuneration in Principle PH2 went beyond the minimum provided for in the Rome Convention.

125. An observer representing another international non-governmental organization suggested that the words "at least" should be deleted in the reference to the right enjoyed, while an observer representing still another international non-governmental organization said that those words should be retained because they reflected the fact that many countries provided for an exclusive right and not only for a right to remuneration.

Works of Architecture

126. Some delegations said, in relation to Principle WA1, that their national laws did not make a distinction between "works of architecture" and "works relative to architecture."

127. As regards Principle WA1(1), one delegation suggested that the reference to "buildings" should be replaced by a reference to "original expressions embodied in buildings" which notion should be used also in other contexts where the mere notion of "building" appeared. That view was supported by another delegation which suggested that reference should be made to the original elements included in a building or a structure. Still another delegation suggested that it should be clarified that the notion of "building" included also other fixed structures.

128. One delegation said that, in its country, the copyright law was under revision. So far, it was not being contemplated to grant copyright protection to "buildings," but only to plans and artistic ideas. Therefore, the delegation expressed reservation as to Principle WA1.

129. Another delegation, while expressing its approval of Principle WA2, said that it should be made clear in the principle that the copyright protection did not extend to functionally dictated as-

pects and that reproduction of such aspects did not amount to infringement of copyright.

130. In relation to Principles WA2 and WA3, one delegation stated that the construction of a building on the basis of a plan amounted to a reproduction of the work of architecture; another act of reproduction was when a new building was being constructed on the basis of the pattern of an existing one; those acts of reproduction were subject to the authors' authorization.

131. As regards Principle WA3(3), one delegation suggested that, in addition to construction, also the continuation of a construction should be referred to.

132. Concerning Principle WA3(2), one delegation stated that the notion of "similar" seemed insufficient, and that reference should instead be made to "substantial similarity." That view was supported by some other delegations.

133. Principle WA4 on the exclusive right of alteration gave rise to several comments. One delegation expressed the view that the principle, as drafted, represented an unclear balancing of the various interests involved and said that the principle would, in fact, imply a form of moral right. One delegation considered the right included in the principle as going too far.

134. Several delegations proposed that Principle WA4 should be merged with the principles on moral rights, because there was obviously an overlap between them. One of those delegations expressed the view that, to that effect, in Principle WA6(1) a reference should be made to Principle WA4. One delegation, supported by another delegation, suggested that the exclusive right in respect of alteration should be limited in the sense that the author should not be able to unreasonably refuse alterations which were of a practical or technical nature.

135. Concerning Principle WA6(3) on the right of the author to dissociate himself from a work altered without his consent, one delegation proposed that it should apply only if the alteration were a significant one. That view was supported by another delegation.

136. Some delegations expressed reservations concerning Principle WA7 as being too broadly worded. In the view of one delegation, the following words should be added, at the end of the principle: "or where the taking of the picture is part of a map produced by an aircraft or a satellite"; in such

cases, the taking of the picture should be allowed without authorization even if it was done for commercial purposes.

137. One delegation stated that the limitation of the author's rights provided for in Principle WA7 made it possible to produce, for instance, postcards or souvenirs of buildings and to sell them in great quantities without the author receiving any remuneration. Reference was in this context also made to the difference between use made of the external image of buildings outside or inside the normal context of the building.

138. An observer representing an international non-governmental organization said that Principle WA7 took away much of the rights of authors of works of architecture; one should, at least, in cases of uses for commercial purposes, provide for a right of remuneration for the authors.

Works of Fine Art

139. Several delegations and observers representing international non-governmental organizations stated that they, in general, agreed with the principles on works of fine art and only had comments concerning certain principles.

140. Some delegations informed the Committee of certain aspects of the protection of works of fine art under their national laws.

141. In answer to a question raised by a delegation, a representative of the Secretariats stated that the list of works of fine art included in Principle FA1(1) was only of an illustrative nature.

142. One delegation proposed that, in Principle FA2(1), in the phrase "used for the creation of works of fine art," the word "for" should be replaced by the words "in connection with" and, in the phrase "such systems should be considered as technical means," the word "generally" should be inserted after the word "should"; the same changes should be made in Principles MW2 and AA3. The purpose of the proposal was to reflect the different ways in which computer systems could be used in connection with creation of works and to express the possible differences in the copyright status of works thus created.

143. The same delegation suggested that, in the second sentence of Principle FA3 ("programmers ... can be recognized as coauthors (or single authors, as the case may be) only if they contribute to the work by such a creative effort"), the words

"only if" should be replaced by the words "of the work or of a contribution to it only to the extent that"; the same change should be made in Principles MW3 and AA4.

144. One delegation proposed that in Principle FA4(1)—and in other principles where that expression appeared—the expression "physical object constituting works of fine art" should be replaced by the expression "physical object embodying works of fine art." Several delegations supported that proposal. An observer from an international non-governmental organization opposed in Principle FA4(2) the phrase "with the exception mentioned in Principle FA6(2)."

145. Still another delegation proposed that, in the first lines of Principle FA6(1), the words "at least" should be inserted to express that the rights enumerated there were only suggested as minimum standards. That proposal was supported by other delegations.

146. Several delegations and observers representing international non-governmental organizations suggested that points (a) and (b) of Principle FA6(1) should be combined and a more general wording should be used reflecting that any mode of reproduction was covered.

147. One delegation was of the view that the reference to identical copies contained in Principle FA6(1)(a) ("in every respect identical") was too narrow and should be replaced by a reference to substantial similarity. Some other delegations supported that comment.

148. Various comments were made concerning Principle FA6(2).

149. Several delegations and an observer from an international non-governmental organization proposed that the scope of the exception included in Principle FA6(2) should be restricted to the right of exhibition rather than being extended to all uses mentioned in point (e) of Principle FA6(1).

150. One delegation suggested that the exclusive right to authorize the exhibition of the work should not be transferred to the proprietor because, in that case, the author himself would not retain the right to exhibit the work. It should be stated instead that the transfer of the property of the original embodiment of the work implied the right of the new proprietor to exhibit it but the author should have the right to use the same for exhibition in certain cases (for example, for an exhibition covering his works only) and that the proprietor should not be allowed

to refuse to make the original available for such purposes except for valid reasons. The delegation also suggested that a right to reasonable remuneration should be recognized for the author when the proprietor exhibited the work for commercial gain.

151. Some delegations stated that one of the proposals of the delegation mentioned in the previous paragraph was equal to the recognition of the so-called "right to access." Some delegations supported the recognition of such a right. Some other delegations were of the view that further study was needed in that respect. Still another delegation opposed the recognition of such a right.

152. One delegation proposed that, in Principle FA6(3), reference should be made to taking pictures of works of fine art permanently located in private places where they were not the main subject of the picture, in the same way as in Principle WA7.

153. Some delegations stated that their national laws did not recognize the *droit de suite* and reserved their position concerning Principle FA7. Some other delegations informed the Committee that in their countries, the *droit de suite* was recognized or its recognition was under consideration and it was considered an indispensable element of the protection of the rights of the authors of works of fine art.

Dramatic and Choreographic Works

154. Several delegations and observers stated that, generally, they agreed on the principles on dramatic and choreographic works but had some comments to make.

155. Some delegations raised the question of the criterion of fixation indicated as a condition of protection of dramatic and choreographic works, in Principle DC1(3), and considered that such a criterion did not seem to be an appropriate borderline as regards the question of protection.

156. Another delegation was of the opinion that performances of dramatic and choreographic works could be performed not only on stage but also in other places and gave examples. It expressed doubts as to whether it was correct to refer to that element in the definition contained in Principle DC1(1). An observer from an international non-governmental organization shared that view.

157. Several delegations referred to the situation under their national laws and expressed their pref-

erence for Alternative A or for Alternative B in Principle DC2(2). Certain delegations also added that the status of theater directors depended on the nature of their contributions.

158. Some delegations and observers considered that it was sufficient to protect theater directors as performers and not to grant them protection also as authors. They were of the view that those and only those stage productions should be protected as derivative works which were of an original nature and which had been authorized as such by the authors concerned.

159. Some delegations suggested to merge Alternatives A and B into one principle according to which theater directors were to be considered either as adaptors (or, in certain cases, as coauthors) when they contributed to the dramatic and choreographic works in an original manner or as performers when such contribution was not present.

160. Other delegations were in favor, on the contrary, of retaining both alternatives in order to reflect all the possible choices for the protection of theater directors.

161. An observer from an international non-governmental organization pointed out that theater directors should not be considered as coauthors and should not be compared to film directors; a theater director was the creator of his stage production.

162. Some delegations were of the opinion that the rental right concerning copies of the musical part of a dramatico-musical or choreographic work recognized in Principle DC4(1)(b) should cover not only reproduction in the form of sheet music and of sound recordings, but also in the form of an audiovisual fixation.

163. Certain delegations expressed reservations concerning the recognition of any such rental rights.

164. Some delegations suggested that the words "as a rule" should be deleted from Principle DC5(1) because they might be misleading. Another delegation opposed the deletion of those words. Still another delegation was in favor of deleting the whole paragraph.

165. Several delegations and observers supported the ideas expressed in square brackets in the second sentence of Principle DC5(1) concerning the need for authors' participation in subsidies. They said that that point should be emphasized and the square brackets should be deleted.

166. One delegation stressed that the scope of Principle DC6 according to which non-voluntary licenses, as a rule, should not be applied instead of the exclusive right of the authors to authorize the broadcasting of their dramatic and choreographic works, should be extended to other categories of works.

167. One delegation expressed the idea of bringing together Principle DC2 and Principle DC7, as theater directors could, generally, be protected as performers and as Principle DC7 covered the rights of performers of dramatic and choreographic works.

168. Another delegation expressed some doubts whether it was right to speak in Principle DC7(b) about a distortion of the performance itself and said that it would seem more appropriate to refer to the distortion of the fixation of the performance.

169. One delegation proposed that it should be stated in Principle DC8 that the exclusive rights provided for performers of dramatic and choreographic works should not affect the protection of authors of the works performed.

170. Another delegation expressed the view that Principle DC9(1)(b) should be worded in a wider manner so as to cover not only excerpts of a performance but also short performances in case of reporting current events.

171. An observer from an international non-governmental organization said that the rights proposed for performers should be in harmony with the Rome Convention in order to keep the balance established between neighboring rights owners.

Musical Works

172. Several delegations and observers representing international non-governmental organizations who took the floor expressed their support for the principles concerning musical works, some of them indicated, however, that they had comments on certain principles.

173. One delegation said that the criterion of fixation which is used in the definition of musical works was not an appropriate demarcation line for separating copyright protection from no protection at all. That opinion was supported by other delegations and an observer from an international non-governmental organization.

174. Some delegations and observers from international non-governmental organizations were of

the view that, in Principle MW1(3), it was not necessary to specify the nature of recordings and suggested the deletion of the word "sound."

175. One delegation suggested that the nature of sounds should be qualified in Principle MW1(1). Other delegations opposed that suggestion; one of them said that Principle MW1 was in harmony with the old concept according to which music was the combination of sounds and time.

176. Some delegations suggested that further studies should be carried out on an urgent basis in respect of the copyright and neighboring rights implications of digital sampling of sound recordings and live performances. An observer from an international non-governmental organization supported that suggestion.

177. One delegation expressed the view that, as far as adaptations and arrangements of musical works were concerned, it should be made clear that the protection of adaptations or arrangements was also depending on an authorization given by the owners of copyright in the original musical works.

178. Several participants made comments on the principles related to improvisations and aleatoric musical works and some delegations referred to their national laws in that respect.

179. Some delegations and an observer from an international non-governmental organization agreed with Principles MW5 and MW6. One delegation reserved its position concerning Principle MW6, because that question had not been studied in detail in its country.

180. An observer from an international non-governmental organization rejected Principles MW5 and MW6 because he considered that performers did not contribute to the basic structure of the musical work. He added that even the possibility of qualifying the performer as a coauthor could not be accepted by his organization.

181. An observer from another international non-governmental organization said that her statement concerning the rights of performers of dramatic and choreographic works (see paragraph 171 above) was also relevant concerning the rights of performers of musical works.

182. Some delegations made comments regarding various points included in Principle MW8 on the economic rights of authors of musical works.

183. One delegation suggested to extend the right of rental mentioned in Principle MW8(1)(b) to all

kinds of recordings. It added that that proposal should also be applied to Principle MW8(1)(f).

184. Another delegation mentioned that such a right of rental of copies of works reproduced in the form of sheet music did not exist in its country.

185. As regards Principle MW9, an observer from an international non-governmental organization said that, in certain specific cases, a non-voluntary licensing system could be the best solution to secure to authors and producers of phonograms a proper level of remuneration for the use of works included in sound recordings. She also suggested some changes in the wording of Principle MW9(1), and proposed that reference should be made to the stage of development of the phonogram industries rather than to the protection thereof. Furthermore, in Principle MW9(2), in respect of remuneration of authors where compulsory licenses applied, she proposed to delete the reference to the international practice and to refer instead to the level "which ensures that authors will obtain equitable remuneration having regard to the relevant economic circumstances and of the stage of development of the phonographic industry of the country concerned."

186. Several delegations and an observer representing an international non-governmental organization expressed their agreement with the proposals mentioned in the preceding paragraph.

187. Some delegations said that what they had stated in respect of the right of rental concerning other categories of works, applied here, *mutatis mutandis*. One delegation opposed the introduction of rental right for the reasons to which it referred in the discussion on principles on other categories of works.

188. A number of delegations and some observers from international non-governmental organizations were in favor of the encouragement of collective administration of performing rights by authors' societies, and emphasized that, as indicated in Principle MW10(2), such societies should be exempted from antitrust restrictions under competition law. One delegation said that such collective administration should be applied also in respect of other rights.

189. Some other delegations and an observer from an international non-governmental organization expressed their disagreement with Principle MW10(2).

190. One delegation and some observers from international non-governmental organizations said

that Principle MW10(2) should suggest exemption of societies from antitrust restrictions under competition law only in respect of their establishment and existence, but not in respect of their operations. Some other delegations agreed with that view. Another delegation stated that, in its view, societies should only be exempted from antitrust restrictions if their activities were appropriately regulated, for example, by a copyright tribunal.

191. An observer from an international non-governmental organization proposed that Principle MW10(2) should be extended to other rights and to other categories of works.

192. Some delegations were of the opinion that paragraphs (4) and (5) of Principle MW10 were too detailed and that, therefore, they should be transferred to the comments. One delegation suggested to delete only subparagraphs (a) to (d) of paragraph (4), while certain other delegations were in favor of retaining paragraphs (4) and (5) as proposed.

Works of Applied Art

193. Several delegations and observers said that they, in general, agreed with the principles on works of applied art and that only had comments on certain questions.

194. Some delegations made statements about the present or contemplated contents of their national laws as regards the protection of works of applied art.

195. A number of delegations made observations concerning the definitions contained in Principle AA1. One of those delegations asked whether there was any real difference in substance between the notion of "industrial designs," as contained in paragraph (1), and the same notion contained in paragraph (3) of the principle, and suggested that one single simplified definition should be provided. This view was supported by another delegation.

196. One delegation said that it had difficulties in accepting the drafting of Principle AA1 because it could give the impression that the utilitarian function was an element of the definition of works of applied art. Therefore, that delegation suggested the deletion of the reference to this function. Another delegation, however, opposed this deletion and said that the usefulness of the article was a necessary element of the definition of works of applied art.

197. In relation to Principle AA1, still another delegation referred to the two different elements involved in works of applied art, namely, to the utilitarian function, on the one hand, and to the aesthetic function, on the other hand, and stated that copyright law did not offer any protection for the former function.

198. One delegation regretted that paragraph (2) of the previous version of Principle AA2 had been deleted; that paragraph said that works of applied art and industrial designs that were original artistic creations should, preferably, be protected at least by copyright. It would, according to that delegation, be important to note that such artistic creations should not, because they were used in industrial contexts, be deprived from protection.

199. Another delegation said that simultaneous copyright and industrial design protection should be avoided; copyright protection should apply, for instance, when the protection under design law had lapsed. Furthermore, it expressed the idea that the definition of "design" should be redrafted so as to reflect the various positions which existed.

200. As regards Principle AA7(1), one delegation proposed that the words "at least" should be inserted in the first line between the words "have" and "the." The same delegation also said that the reference to identical copies contained in Principle AA7(1)(a) ("in every respect identical") was too narrow and should be replaced by a reference to substantial similarity. Those comments were supported by some other delegations.

201. Some delegations stated their reservation concerning moral rights provided for in Principles AA5 and AA6.

202. One delegation expressed satisfaction that the previously suggested principles on employed authors of works of applied art had disappeared.

203. The same delegation also referred to the link between the exclusive right of adaptation provided for in Principle AA8(2) and the moral rights in Principles AA5 and AA6, and suggested that those principles be merged.

The Printed Word

204. Several delegations and observers representing international non-governmental organizations said that they, in general, agreed with the principles on the printed word and that they had comments only on certain questions.

205. Some delegations stated that the principles on the printed word did not necessarily reflect what could be applied in all countries; as far as developing countries were concerned, their needs, in respect of education and of preservation and development of their national culture, would determine the degree of acceptance of the principles.

206. One delegation said that, in considering the limitations in respect of copyright in the printed word, also the interest of the public in access to culture should be taken into account.

207. An observer representing an international non-governmental organization stated that it should be made clear that newspaper publishers owned the copyright in all works created under an employment contract.

208. One delegation opposed that statement and said that copyright should always be enjoyed by the physical persons who had created the work.

209. A number of delegations and observers representing international non-governmental organizations expressed their general agreement with the principles concerning reprography (Principles PW2 to PW8).

210. One delegation stated that, in its country, reprography existed mainly in the framework of documentation centers and that, while the principles under discussion were not directly applicable in its country, it was important to protect authors sufficiently when this new technology was used.

211. Another delegation stated that its country had introduced a legal license for photocopying for private and other personal uses. That system was working very well for the owners of rights. Thus, the unconditioned opposition against legal licenses in the principles was an unjust judgment on a well-functioning beneficial system.

212. Some delegations expressed the view that, in some respects, the statements in Principle PW3 on limitations went too far. Reference was, in this respect, made particularly to item (b)(iii) of that principle, concerning works whose market is particularly vulnerable, and to item (b)(iv) concerning cases when copies were made of entire works or of self-contained parts of works. One delegation stated its agreement with item (b)(iii) but said that the contents of item (b)(iv) was not acceptable.

213. One delegation suggested the deletion of the words "a reasonable degree of" before the words "effective protection" in Principle PW3(a). That

delegation, supported by an observer representing an international non-governmental organization, also suggested that the notion "normal exploitation" appearing in Principle PW3(b) should be made clear and should be interpreted in view of changing circumstances including new forms of licensed uses. As regards Principle PW3(b) and (c), that delegation suggested that account should be taken of both authors' and publishers' interests under the cumulative criteria indicated in points (b) and (c) because they were in fact interdependent.

214. A number of delegations stated that what they had said in respect of exemption from anti-trust restrictions, in the context of collective administration of musical works, applied also in respect of Principle PW5(2)(a). One delegation said that, in certain respects, public authorities could have an important role in relation to collecting societies, for instance in guaranteeing that they were truly representative.

215. As regards Principle PW4, one delegation suggested that, after the words "technological developments," at the end of the second sentence, the phrase "for licensing practices or opportunities" should be inserted.

216. Some delegations and observers representing international non-governmental organizations referred to Principle PW5(1) on collective administration of exclusive rights and on the conditions for the introduction of non-voluntary licenses and said that the principle was acceptable. One delegation mentioned, however, that, at least in certain cases, the extent of copying for private purposes was difficult to assess. Another delegation said that non-voluntary licensing should be relied upon only in exceptional circumstances.

217. One delegation, supported by another delegation, stated expressly its reservation as to the introduction of a levy as mentioned in Principle PW8.

218. An observer from an international non-governmental organization, referring to paragraph 212 of the memorandum (UNESCO/WIPO/CGE/SYN/3-III), stressed the need for quickening the pace of an international cooperation between collective administration organizations.

219. A great number of comments were made on the principles concerning storage in and retrieval from computer systems of protected works and on electronic publishing and electronic libraries (Principles PW9 to PW15).

220. Some delegations stated that it would be premature to take any position on those principles and that those questions should be studied and discussed further in the future.

221. One delegation specifically referred to the possibility that the author could regulate, by contract, the conditions for use of his work when it was entered into a computer system.

222. Another delegation stated that the principles under discussion were acceptable to it and should, in fact, be "generalized" to cover all types of works.

223. A number of delegations and an observer from an international non-governmental organization referred specifically to Principle PW9(2) on the possibility of considering the display on a screen as covered by the right of reproduction. Some of those delegations and the observer said that the theory was an interesting and important one, and that it should be studied further, particularly as regards its applicability to other categories of works and other forms of communication. Those delegations were in favor of retaining the references to the so-called reproduction theory in brackets. Other delegations were of the view that any principles would be premature in that respect.

224. As regards the rental right referred to in Principle PW11, one delegation was of the view that it should be studied further, particularly in relation to the public lending right. Another delegation expressed its reservation as regards the contents of that principle.

225. One delegation referred to Principle PW12 and said that it contained a number of new and interesting elements which required further study.

226. Concerning Principle PW14, some delegations suggested that the brackets around the words "by broadcasting" should be deleted. One delegation pointed out the problems which might emerge in the application of Principle PW14 if the reproduction right, on the one side, and the broadcasting right and the right of public performance, on the other side, were in different hands.

227. One delegation stated that summaries of works stored in computer systems could harm the utilization of the work and that, therefore, as a rule, such summaries should be prepared by the author or by someone else authorized by him.

228. Also in respect of the principles on data bases (Principle PW16 to PW20), a number of comments were made.

229. Some delegations said that, while the principles under discussion contained interesting ideas, it would be premature to take any position on them now and that they should be studied and discussed further in the future.

230. One delegation stated that Principles PW17 to PW20 on a special *sui generis* protection of data bases were not acceptable to it; such a protection, even in the form of a "safety net," would reinforce some outdated notion of originality and could lead to a decrease of copyright protection for data bases and thereby to a dilution of the importance of the principle of national treatment, something which would be particularly dangerous in the context of the new "information age." Some other delegations agreed with those views or said, generally, that the *sui generis* system was not acceptable to them.

231. Another delegation pointed out that there should be a definition as to what amounted to copying of computer data bases.

232. As regards the public lending right (Principles PW21 and PW22), a number of delegations stated that they considered the principles on this issue as premature and reserved their position concerning those principles. Some of those delegations said that they did not consider the public lending right as covered by the obligations under the Berne Convention and that the remuneration granted for public lending was to be seen as a support for national culture. It was pointed out that, where the right existed outside copyright, the principle of national treatment did not apply.

233. One delegation strongly supported Principles PW21 and PW22. As regards the application of the principle of national treatment, the delegation referred to its statement in the context of "home taping."

234. One delegation regretted that the printed word, being the basis of human culture, had been less favorably dealt with than, for example, the neighboring rights of the phonogram producers. In view of the fact that it had been proposed to introduce an exclusive rental right for phonograms, an invention of modern times, it was not more than right that authors of the printed word should, at least, enjoy a public lending right.

235. Some delegations said that, while a public lending right system did not yet exist in their countries, the question of introducing it was under consideration.

236. An observer from an international non-governmental organization stated that the public lend-

ing right was a copyright institution because the payments involved were due to authors in proportion with the use of their works. He supported Principles PW21 and PW22 and proposed the deletion of the brackets.

237. One delegation and an observer from an international non-governmental organization expressed their agreement with the principles concerning the protection of typographical arrangements of published editions. Another delegation mentioned that the need to adopt such a right had been recognized in its country but that the details of future legislation had to be worked out and that further study at the international level would still be useful.

238. The observer mentioned in the preceding paragraph suggested that such a protection was important for countries whose publishers published in a world language, for example, in English and in Spanish, which were particularly vulnerable to overseas piracy; for countries which sought to encourage their export trade in specialized works; and for countries which sought to encourage new editors' works in the public domain.

239. Some delegations considered a principle on this subject matter as not necessary or as premature and suggested that it should be further studied. One delegation stressed the importance of avoiding any dilution of the protection of publishers both as authors and as successors of authors, and of directly addressing under current copyright laws, some of the problems that had led to the justification of *sui generis* right.

240. Certain delegations stressed that, if such a right was introduced, it should be a type of neighboring rights.

Photographic Works

241. A number of delegations expressed their general agreement on the principles concerning photographic works. At the same time, they made several comments concerning certain principles.

242. As for the creations to be protected as photographic works, certain delegations considered that the definition contained in Principle PHW1 was not quite complete. It should, for example, cover some pictures, such as holograms, which are not visible except when exposed to certain further effects.

243. Certain delegations stated that, since there were a number of materials sensitive to different

kinds of radiation, the brackets enclosing the words "or other radiation" in Principle PHW1(1) should be removed.

244. Some delegations said that the statement in brackets contained in Principle PHW1(2) went too far. One of those delegations proposed its deletion. One delegation was in favor of retaining that statement in brackets.

245. Several delegations stated that only original photographic works should enjoy copyright protection. One of those delegations added that there might be some photographs (for example, those made in booths) whose originality was questionable. In its country, the latter photographs were protected only 25 years after their making, while original photographic works were protected for 50 years after the author's death. Another delegation stressed that the principles under discussion concerned only photographic "works," and not any other photographs. In its opinion, originality was the dividing line between the former and the latter.

246. With regard to the legal regime in case of photographs extracted from cinematographic works, some delegations were in favor of Alternative A contained in Principle PHW2, considering that the extracted photographs represent photographic works and should be protected as such. However, one of those delegations stated that both alternatives should be kept.

247. Some other delegations favored Alternative B.

248. Some delegations were of the opinion that still pictures taken in the course of production of cinematographic works should be protected as photographic works and could not be considered as having been "extracted" from cinematographic works. The "extraction," for example, for mechanical enlargement of "frames" from a film constituted a use which should be governed by the same rules as those applicable to cinematographic films. There also could be cases where a new work was created on the basis of an "extraction," for example, a poster; in that case, the authorization from the owner of the copyright in the film concerned should be obtained on the basis of his right of adaptation.

249. Some delegations stated that extracted photographs constituted a part of the cinematographic works from which they were taken and, therefore, should enjoy the same protection as the cinematographic works themselves.

250. Some other delegations said that it was rather difficult for them to give preference to any of the alternatives contained in Principle PHW2 and suggested that they should be further elaborated.

251. One delegation informed the participants that, in its country, the protection of photographic works was presently subject to such formalities as obligatory indication of the author's name, the date and the place of making of such a work. This provision was strongly criticized by authors and, therefore, the abolition of the formalities was under discussion.

252. Different opinions were expressed on the question of ownership of copyright in case of photographic works created on commission.

253. A number of delegations were in favor of the solution envisaged in Alternative A. Some of them declared that this alternative was in conformity with the spirit of the Berne Convention. Certain delegations were of the opinion that the person who commissioned the work should have an exclusive license to use that work for the purposes for which it had been commissioned, and proposed to delete the words "a non-exclusive" which were enclosed in brackets.

254. Some other delegations and an observer from an international non-governmental organization said that they accepted Alternative B as corresponding to the legal situation in their countries. One of those delegations questioned the necessity of establishing a particular regime in that context.

255. One delegation said that reference to moral rights in Principle PHW7 was a simple restatement of the minimum standard under the Berne Convention and wondered whether it was desirable to retain it in respect of photographic works.

256. Referring to the economic rights in photographic works, one delegation, supported by some other delegations, expressed the view that the provisions contained in Principle PHW8(1)(g) were already covered by the provision contained in subparagraph (a) of the same principle. It suggested, at the same time, that the incidental inclusion of a photographic work in a cinematographic work or its use as a background did not constitute infringement of the right of reproduction.

257. One delegation informed the participants that, in its country, the right to authorize the public exhibition of photographic works contained in Principle PHW8(1)(c) had been recognized since June 1988.

258. Another delegation suggested that instead of having two alternatives there was a need for two principles. The first principle should state that photographs taken during the making of the film should be protected as such independently of the copyright in the film, and the second principle should state essentially what was included in Alternative B.

259. Still another delegation reserved its position with regard to the same provisions, since the right of public exhibition of any category of works was recognized under the law of its country only if a copy of a work had not yet been sold. The same delegation stated, with regard to Principle PHW8(1)(g), that the inclusion of a photographic work in an amateur film or video recording for purely personal purposes should be free.

260. Alternatives A, B and C on the role of the ownership of the original copies of photographic works contained in Principle PHW9 received more or less support in the course of the discussions. Some delegations that favored Alternative B proposed that the transferees' rights be limited to the purpose of the transfer.

261. With regard to the terms of protection of photographic works, many delegations stated that in their countries, photographic works enjoyed the same term of protection as other works; this term was, in many of those countries 50 years either after the author's death or after the first publication of the work or after making of the negative.

262. One delegation opposed the term of protection provided under Principle PHW10. In its opinion, it would be preferable to stick to the corresponding provisions of the Berne Convention because of the difference in the creative efforts necessary for production of photographic works.

VIII. Closing Remarks

263. At the end of the discussion on the draft principles, the Chairman opened the floor for closing remarks of a general nature.

264. One delegation, supported by another delegation, stated that in its country, and also in a number of other countries, phonograms enjoyed protection under copyright law; it urged the International Bureau of WIPO to take this fact into account in the preparation of future model provisions on copyright, by providing alternatives covering that solution.

265. Another delegation said that, in its view, phonograms were not protected as works under the Berne Convention but protected under the Rome Convention, and, although every State was free to choose the system of protection which it wanted, no State party to the Berne Convention could be obliged to recognize the copyright protection of phonograms in its national law. Copyright protection for phonograms in one country could lead to the situation that phonograms originated in that country would not enjoy protection in another country under the Berne Convention where such protection was not granted.

266. One delegation said that it was most desirable that the principles as redrafted on the basis of the discussion in the Committee be taken into account in the work on model provisions for copyright legislations.

267. A representative of the Secretariats said that the result of the meeting of this Committee would be reported to the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their meetings in 1989. As far as WIPO was concerned, the result of the discussion on the principles would be considered in the future work on the model provisions for national legislation.

268. The Committee noted that information.

IX. Adoption of the Report and Closing of the Meeting

269. The Chairman having had to leave the meeting during the closing session, Mr. Miguel-Angel Emery (Argentina), one of the two Vice-Chairmen of the Committee, chaired the second part of the closing session as acting Chairman.

270. The Committee unanimously adopted this report and after the usual thanks, the acting Chairman declared the meeting closed.

LIST OF PARTICIPANTS

I. States

Algeria: S. Abada; N. Beloufa. Argentina: A.G. Trombetta; M.A. Emery. Australia: R. Burns. Austria: R. Dittrich. Brazil: P.R. de Almeida. Cameroon: E. Ndjiki-Nya. Canada: J. Daniel. Czechoslovakia: J. Kordac; N. Puchalová; D. Ilík. Denmark: J. Norup-Nielsen. Egypt: A. Fahalla. Finland: J. Lieder; S. Lahtinen; P. Lieder; A.-H. Lilja;

H. Wager. France: A. Kerever; R. Lecat; S. Sayanoff-Levy; L.A.G. Fournier; H. Raymondoud. German Democratic Republic: A.-A. Wandtke. Germany (Federal Republic of): M. Möller. Guatemala: M. Juarez Martini. Guinea: K. Konde. Hungary: Gy. Boytha. India: A. Malhotra. Israel: Y. Tsur; V. Hazan. Italy: G. Aversa; M. Fabiani. Japan: M. Kilani. Kuwait: M.M. Mansour; S. Al Nurf. Mexico: A. Loredó Hill; A. Fuchs. Morocco: A. Kandil. Netherlands: L.M.A. Verschuur-de-Sonnville. Norway: H.M. Sonneland. Paraguay: L. González Arias. Philippines: D.M. Rosal. Poland: H. Walkus-Gieralt. Portugal: J.A. Lourenço. Republic of Korea: Young Koo Cho; Jeong-Sul Kim; Tae-Chang Choi. Soviet Union: M. Voronkova. Spain: E. de la Puente Garcia; L. Martínez Garnica. Sweden: A. Mörner; B. Rosén. Switzerland: R. Grossenbacher; F. Probst; A. Bauty. United Kingdom: V. Tarnofsky. United States of America: R. Oman; L. Flacks; R.C. Owens; N. Alterman; J. Baumgarten; M.D. Goldberg; E.H. Smith. Uruguay: R. González-Arenas. Yemen: M.S. Al-Qaish. Zaire: N.M. Mantuba.

II. Observers

Palestine Liberation Organization (PLO): M. Al-Daher.

III. Intergovernmental Organizations

General Agreement on Tariffs and Trade (GATT): A. Otten; A. Subramanian. International Labour Office (ILO): C. Privat. Arab Bureau of Education for the Gulf States (ABEGS): A.R. Al Sadhan. Commission of the European Communities (CEC): B. Posner. European Free Trade Association (EFTA): L. Olafsdottir. League of Arab States (LAS): M. Triki; N. Chakroun.

IV. International Non-Governmental Organizations

Association for the International Collective Management of Audiovisual Works (AGICOA): L.R.E. Cattaneo; M. Chrusciel. European Broadcasting Union (EBU): W. Rumphorst; M. Burnett. European Tape Industry Council (ETIC): W. Andriessen. International Alliance for Distribution by Cable (AID): G. Morcau; P.A.C. Kokken. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): A. Vacher-Desvernais. International Catholic Organization for Cinema and Audiovisual (OCIC): D.-R. van Espen. International Chamber of Commerce (ICC): J.M.W. Buraas. International Confederation of Free Trade Unions (ICFTU): J.W. Wilson. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler; R. Abrahams; A. Delgado; T. Desurmont; N. Ndiaye. International Copyright Society (INTERGU): M. Karbaum. International Federation of Actors (FIA): R. Rembe. International Federation of Associations of Film Distributors (FIAD): G. Grégoire. International Federation of Film Producers Associations (FIAPF): A. Brisson; A. Chaubau. International Federation of Musicians (FIM): Y. Burckhardt. International Federation of Newspaper Publishers (FIEJ): B.E. Lindskog; D. Seligsohn. International Federation of Phonogram and Videogram Producers (IFPI):

I.D. Thomas; G. Davies; D. De Freitas; E. Thompson. International Federation of Translators (FIT); J. Pienkos. International Group of Scientific, Technical and Medical Publishers (STM); P. Nijhoff Asser. International Literary and Artistic Association (ALAI); H. Cohen Jehoram. International Publishers Association (IPA); J.-A. Koulchoumow; C. Clark; S. Wagner. International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU/FIET); J.W. Wilson. Max Planck Institute for Foreign and International Patent, Copyright and Competition Law; A. Dietz. Union of Industrial and Employers' Confederations of Europe (UNICE); M. Kindermann. World Crafts Council (WCC); J. Vedel-Rieper.

V. Secretariat

United Nations Educational, Scientific and Cultural Organization (UNESCO)

E. Guerassimov (*Legal Officer, Copyright Division*).

World Intellectual Property Organization (WIPO)

H. Olsson (*Director, Copyright and Public Information Department*); M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Legal Officer, Copyright Law Division*).

Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property

(Geneva, September 14 to 16, 1988)

NOTE*

The Forum examined the interrelationship of advanced or new technologies and the law of intellectual property, and dealt, in particular, with the following technologies: biotechnology; computer technology (including microchips, computer programs and the use of computers in creating, storing or recording information, sounds and images); new techniques of reproduction and communication (especially, reprography and the transmission of audio and visual programs by satellite and by cable).

The discussions in the Forum were preceded by two keynote speeches, one delivered by a leading scientist in the field of biotechnology and the other delivered by a business personality from the communications industry. Each of the keynote speeches was followed by presentations, made by 20 panelists, who were divided into five panels. Each panel was led by a moderator, a member of the staff of the International Bureau of WIPO, and each panel dealt with one of the topics or with one of the subjects mentioned in connection with the topics referred to. The panelists were leading legal specialists and included government officials, professors and practitioners in the various fields of intellectual property.

The keynote speakers and the panelists came from the following countries: Argentina, Austria,

Brazil, Cameroon, Costa Rica, Czechoslovakia, France, Germany (Federal Republic of), Hungary, India, Italy, Japan, Norway, Soviet Union, Tunisia, United Kingdom, United States of America.

The Forum was attended by nearly 300 persons. They included participants designated by governments, officials from developing countries who had taken part or would be taking part in seminars and training courses organized by WIPO just before or after the Forum, representatives of international and national non-governmental organizations and members of the public.

As pointed out by the Director General of WIPO in his message to the Forum, the meaningfulness and the viability of intellectual property are conditioned by its response to the changing demands of society and to the role of advanced or new technologies in meeting those demands.

The Forum provided an opportunity to improve understanding of the complex matters involved. It enabled participants from governments to become aware of what was occurring and was being planned in the various countries and, in particular, to have the benefit of the views of business leaders, scientists, researchers and legal specialists.

The discussions in the Forum thus assisted the participants in identifying the issues and in providing information to enable them to formulate appropriate policies, both at the national and at the international levels, in connection with the intellectual property aspects of the emerging technologies and technological means.

* Prepared by the International Bureau.

The papers presented at the Worldwide Forum by the keynote speakers and the panelists will be published by the International Bureau of WIPO. In addition, the International Bureau of WIPO will organize in 1989 three regional fora—one each in Africa, in Asia and the Pacific and in Latin America—on the same theme as the Worldwide Forum.

LIST OF PARTICIPANTS

I. Keynote Speakers

A.M. Boronin, Director, Institute of Biochemistry and Physiology of Microorganisms, USSR Academy of Sciences, Moscow, Soviet Union

Karel Vuursteen, General Manager, Österreichische Philips Industrie GmbH, Vienna, Austria (the speech of Mr. Vuursteen was presented on his behalf by Mr. Herbert Nessler, Head of Marketing, Philips Data Systems, Vienna, Austria)

II. Panelists

Paulo Roberto de Almeida, Premier secrétaire, Mission permanente du Brésil, Genève

Ashok Bhojwani, Head, Software Group, Manufacturers' Association for Information Technology; Managing Director, TSG Consultants Private Limited, New Delhi, India

Abdallah Chakroun, Secretary General, Arab States Broadcasting Union (ASBU), Tunis, Tunisia

Charles Clark, Copyright Adviser, The Publishers Association, London, United Kingdom

Carlos Corrales, Abogado-Notario, San José, Costa Rica

Walter Dillenz, Head, Legal Department, and Deputy Director Manager, Gesellschaft der Autoren, Komponisten und Musikverleger (AKM), Vienna, Austria

Yves Epacka, Directeur général, Société camerounaise du droit d'auteur (SOCADRA), Douala, Cameroun

Mario Fabiani, Conseiller juridique, Société italienne des auteurs et éditeurs (SIAE), Rome, Italie

Hans Goldrian, Executive Director, Patent Operations, Siemens AG, Munich, Federal Republic of Germany

Ernest Gutmann, Conseil en brevets d'invention, S.C. Ernest Gutmann-Yves Plasseraud, Paris, France

Miroslav Jelinek, Director of the Legal Department, Association for the Protection of Performers (OSVU), Prague, Czechoslovakia

Ronald Sheldon Laurie, Attorney-at-Law, Irell and Manella, Menlo Park, California, United States of America

William Lesser, Associate Professor of Marketing, Department of Agricultural Economics, Cornell University, Ithaca, New York, United States of America

Ralph Oman, Register of Copyrights and Assistant Librarian of Congress for Copyright Services, Washington, D.C., United States of America

Koichi Ono, Director of Patents and Licensing, Research and Development Division, Kyowa Hakko Kogyo Co., Ltd., Tokyo, Japan

György Palós, Director, Legal Department, Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), Budapest, Hungary

Suryanarayan Ramachandran, Secretary, Department of Biotechnology, Ministry of Science and Technology, Government of India, New Delhi, India

John-Willy Rudolph, Secretary, International Forum for Reproduction Rights Organizations (IFRRO), Oslo, Norway

Carlos Alberto Villalba, Secretario General, Instituto Interamericano de Derecho de Autor, Buenos Aires, Argentina

Alexander E. Umnov, Head of Laboratory, USSR Ministry of Electronic Industries, Moscow, Soviet Union

III. Participants Designated by Governments

Afghanistan: A.M. Shoogufan. **Argentina:** H. Retondo; A.G. Trombetta. **Australia:** P.A.D. Smith; V.A. Ingram; M. Smith. **Bangladesh:** M. Talukdar; M. Hossain. **Bulgaria:** T. Lekova; S. Stefanova; M. Popov. **Cameroon:** W. Eyambé. **Canada:** M.T. Betts; J.I. Butler. **Costa Rica:** M.I. Vargas Rodriguez; J. Rhenan Segura. **Côte d'Ivoire:** A. N'Takpé N'Cho. **Denmark:** J. Norup-Nielsen. **Dominican Republic:** J. Santiago Pérez. **Egypt:** M. Saada; A. Fathalla; N. Gabr; S. Gamil. **Finland:** M. Salokannel; T. Koskinen. **France:** L. Guénot; R. Lecat; P. Dupuis; D. Garidou; L. Fournier; N. Renaudin; H. Ladsous. **Gabon:** M. Nzicngui. **German Democratic Republic:** S. Schroeter; E. Behrendt. **Germany (Federal Republic of):** E. Merz; B. Schmidt. **Ghana:** J.A. Larkai; M. Abdullah. **Guatemala:** M. Juarez Martini. **India:** A. Malhotra. **Italy:** G. Aversa; R. Boros. **Japan:** M. Kitani. **Jordan:** J.H. Al-Shamayleh. **Kenya:** H.B.N. Gicheru. **Liberia:** H.D. Williamson. **Mauritania:** H. Ould Ahmed. **Mexico:** A. Fuchs; V. Blanco Labra. **Morocco:** A. Bendaoud. **Netherlands:** L. Verschuur-de-Sonnville; G.A. Wildschut. **New Zealand:** A. Macey. **Pakistan:** A.A. Zia. **Poland:** A. Towpik; A. Wilk; A. Olszewska. **Republic of Korea:** Tae Chang Choi. **Soviet Union:** S. Safronov. **Spain:** E.J. Rua Benito; J.-D. Vila Robert; P. Pérez Sánchez. **Sudan:** O.I. Hamal El Turabi. **Sweden:** K. Hökborg. **Switzerland:** R. Grossenbacher; D. du Pasquier. **Thailand:** S. Kanchanalai; P. Larpkesorn; S. Devahastin; Y. Phuangrach; S. Tسانawijitwongs; D. Tangsanga; P. Siripanuwat; B. Limschoon. **Trinidad and Tobago:** J.-E. George. **Tunisia:** K. Khiari. **Turkey:** A. Algan. **United Kingdom:** V. Tarnofsky. **United Republic of Tanzania:** K.J. Suedi. **United States of America:** M.K. Kirk; R. Owens. **Uruguay:** R. González Arenas. **Venezuela:** A.R. Taylhardat; L.A. Niño. **Viet Nam:** Ngo Dinh Kha. **Yemen:** M.S. Al-Quataish.

IV. Participants from Developing Countries Taking Part in the Orientation Seminar on General Aspects of Industrial Property and in the Forum

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Argentina: M.V. Fouchet; L.A. Herrera Diaz. **Benin:** F.M. Adande. **Bolivia:** J.M. Castro Velásquez. **Brazil:** A.L. Balousier Ancora da Luz; J.C.S. Kubrusly; C.P. Pereira; R.S. de Siqueira; V.R. Soares Marques. **Cameroon:** Koho. **China:** Feng Chao; Xu Yunrui. **Congo:** G.G. Ellaly; G. Oyoukou. **Costa Rica:** L. Alfaro Rojas; J. Moiso Greñas. **Côte d'Ivoire:**

S. Scri Gbaza. Cuba: R. Sampedro Vázquez. Egypt: A.A.F.M. El-Sanhoury; A.E.S.H. Eweida; M.H. Madbooly. Ethiopia: J. Hassen. Gabon: B. Mayoba. Guatemala: C.E. Meza Cartagena. Guinea: A. Diallo. India: D.K. Roychoudhury; H.D. Thakur. Indonesia: Y.P. Simorangkir. Jordan: M.A.R. Khraisat. Kenya: P.V. Omondi-Mbago. Kuwait: E. Al-Awadi. Lebanon: N. Assaad. Madagascar: V. Julien. Malaysia: A. Mat Isa; M.S. Sallch. Mali: C. Molinier. Mauritius: E.G. Lapierre; V. Ramsoondur. Mexico: J.A. Dorantes Hernández; D. Fernández Alvarez; L. Hernández Trillo; M. Navarrete Martínez. Morocco: M. Ibn Abdeljalil; A. Jallaoui. Nepal: J. Vinod. Nicaragua: J.F. Ramírez Vargas. Panama: M. Espino de Harris; A. del C. López. Paraguay: J.C. Moreno Acosta. Peru: J.L.R. Murga Bonilla. Philippines: T.T.C. Acosta; E.F. Mendoza; E.V. Pascual; G. Salvado. Republic of Korea: Kong-Il Lee. Singapore: S.W. Lee. Sudan: S.T. Freigoun. Trinidad and Tobago: A. Ramparsad. Tunisia: A. Boubaker; M. Helioui. Uruguay: M.Z. Lima de Cabrera; G. Road d'Imperio. Venezuela: F.J. Astudillo Gómez; M.J. Grimaldi Gruber; G.J. Herrera Rodríguez; I. Septien Chávaz. Yugoslavia: S. Popović. Zaire: Kusha-A-Bolesa; Nwankatu wa Nwankatu Mata. Zambia: O.M.M. Banda. Zimbabwe: W. Nyauchi.

Participants Designated by Organizations

African Intellectual Property Organization (AIPO): J. Tchoukcu. African Regional Industrial Property Organization (ARIPO): C.J. Kiige. Central American Institute for Research and Industrial Technology (ICAITI): N.J. Roma Batres de Carcamo. Nutrition Institute for Central America and Panama (INCAP): L.G. Elias. Subregional Multisectorial Institute for Applied Technology and Project Planning and Evaluation (ISTA): F.O. Meye.

V. Participants from Developing Countries Taking Part in the WIPO/Hungary Training Course on Copyright and Neighboring Rights and in the Forum

Participants Designated by Governments

Benin: A.P. Dazogbo. Burkina Faso: A.R. Palenfo. Cameroon: B. Fodjo. China: Gu Fan; Suo Laijun. Congo: V. Bilando. Ethiopia: A. Bekele. Ghana: A.N. Adjatey. Guinea: P. Koivogui. Haiti: M.F. Debrosse-Vaval. India: N.D. Grover. Kuwait: F. Al-Freih. Malawi: C.F. Kamlongera. Mali: M.M. Diakite. Mauritius: E. Rivière. Morocco: A. El Moutaouakkil. Niger: H. Abdou. Nigeria: S.B. Aiyegbusi. Republic of Korea: Kee Ju Na. Thailand: P. Deepadung.

Participants Designated by Organizations

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): F.S. Shabayta.

VI. Intergovernmental Organizations

United Nations Conference on Trade and Development (UNCTAD) (United Nations (UN)): P. Bifani; K. Makhetya.

General Agreement on Tariffs and Trade (GATT): A. Otten; A. Subramanian. Commission of the European Communities (CEC): J. Reinbothe; B. Czarnota; A. Staines; A. Saint-Rémy; L. Ferrao. Council of Europe (CE): A. de Salas. Customs Co-operation Council (CCC): J. Morrin. European Organization for Nuclear Research (CERN): M. de Aires Carvalho Soares. European Patent Organisation (EPO): L. Gruszow. International Centre for Public Enterprises in Developing Countries (ICPE): R. Macus. International Labour Organisation (ILO): C. Paoli-Pelvey. International Union for the Protection of New Varieties of Plants (UPOV): B.W.A. Greengrass; A. Heitz. League of Arab States (LAS): M. Triki; N. Chakroun. Organisation for Economic Co-operation and Development (OECD): D. Hurley; B. Phillips; E. Dohlmán. United Nations Educational, Scientific and Cultural Organization (UNESCO): A. Raffray. World Health Organization (WHO): S.H. Mandil; T.S.R. Topping; D.N. Berg. World Meteorological Organization (WMO): P.R. Dupertuis.

VII. Non-Governmental Organizations

Association for the International Collective Management of Audiovisual Works (AGICOA): H.A. Warnier; L. Cattaneo; M. Chrusciel. Association of Plant Breeders of the European Economic Community (COMASSO): J. Winter. Committee of National Institutes of Patent Agents (CNIPA): H.-E. Boehmer; W. von Willich. European Broadcasting Union (EBU): W. Rumphorst. Inter-American Association of Industrial Property (ASIPI): E. Zampini-Davies. Inter-American Copyright Institute (IIDA): D. Lipszyc. International Association of Broadcasting (IAB): A. Ruiz de Assin; J.C. Muller. International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL): T.M. Clucas; D. Gunary. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): A. Vacher-Desvernais. International Chamber of Commerce (ICC): J.M.W. Buraas. International Confederation of Free Trade Unions (ICFTU): G. Ryder; I. Robadey; J. Wilson. International Confederation of Societies of Authors and Composers (CISAC): J.-A. Ziegler; G. Messinger; R. Abrahams; J. Corbet; J. Verhagen. International Council for Film, Television and Audiovisual Communication (IFTC): P. Chesnais. International Federation of Associations of Films Distributors (FIAD): G. Grégoire. International Federation of Film Producers Associations (FIAPF): A. Chauveau; J.-J. Ferrier. International Federation of Industrial Property Attorneys (FICPI): K. Raffnsøe. International Federation of Journalists (IFJ): T. Hygum Jakobsen; S.O. Gronlund. International Federation of Pharmaceutical Manufacturers Associations (IFPMA): K.-F. Gross. International Federation of Phonogram and Videogram Producers (IFPI): D. De Freitas; E. Thompson. International Federation of the Seed Trade (FIS): A. Menamkat. International Literary and Artistic Association (ALAI): D. Gaudel. International Organization for Standardization (ISO): J.-O. Chabot. International Publishers Association (IPA): J.-A. Koutchoumow; S. Wagner. International Radio and Television Organization (OIRT): V. Kroupa. Latin-American Federation of Performers (LAFP): A. Millé. Max Planck Institute for Foreign and International Patent, Copyright and Competition Law: P. Katzenberger; R. Moufang. Music Publishers Associations: C. Smit. Société suisse des auteurs: P.-H. Dumont. Union of Finnish Writers: P. Lieder. Université radiophonique et télévisuelle internationale (URTI): J. Matthey-Doret. World Academy of Art and Science (WAAS): F. Bidault. World Confederation of Labour (WCL): B. Robel.

VIII. Other Participants

M.P. Bhatnagar (*India*), F.N. Blakemore (*United Kingdom*), A. Boukhors (*France*), L. Briggs (*United Kingdom*), L. Canal (*Switzerland*), P.-A. Chopard (*Switzerland*), W. Duchemin (*France*), A.G. Gonzalez Rossi (*France*), P. Jeanray (*Belgium*), Z. Kucera (*Switzerland*), M. Lantos (*Hungary*), P. Le Bé (*Switzerland*), M. Leroy (*Belgium*), J. Limebeer (*United Kingdom*), C. Martos (*Switzerland*), A.P. Meijboom (*Netherlands*), C.A. Norton (*Switzerland*), E. Parragh (*Hungary*), F. Petracco (*Switzerland*), G. Roussel (*Canada*).

J.-P. Savoye (*Switzerland*), H. Schwamm (*Switzerland*), H. Ullrich (*Federal Republic of Germany*).

IX. International Bureau of the World Intellectual Property Organization (WIPO)

A. Schäfers (*Deputy Director General*); S. Alikhan (*Deputy Director General*); G.A. Ledakis (*Legal Counsel*); C. Fernández-Ballesteros (*Director, Developing Countries (Copyright) Division*); M. Ficsor (*Director, Copyright Law Division*); L. Baeumer (*Director, Industrial Property Division*); F. Gurry (*Head, Industrial Property Law Section*).

Studies

Contractual Agreements in Respect of Cable Television in Belgium and the Netherlands

Jan CORBET*

Correspondence

Letter from Japan

Yukifusa OYAMA*

Activities of Other Organizations

Council of Europe

Committee of Legal Experts in the Media Field

(Strasbourg, October 18 to 21, 1988)

The Committee of Legal Experts in the Media Field of the Council of Europe met in Strasbourg from October 18 to 21, 1988.

Experts designated by the governments of 14 States, members of the Council of Europe, participated. WIPO was represented by Mr. Henry Olsson, Director, Copyright and Public Information Department.

The Committee discussed the question of the legal protection of press agencies' products but decided to take no further action for the moment. It also discussed the elaboration of a recommendation on copyright questions in relation to reprography. It decided to continue the discussions on this matter in 1989, taking into account also the results of the WIPO Committee of Experts on Model Provisions for Legislation in the Field of Copyright, to be held in Geneva in February–March 1989.

The Committee considered the reports of a working party on fixed satellite services and par-

ticularly some provisionally formulated principles on the copyright questions in this context. The Committee decided that this matter should be further discussed in the working party.

The Committee considered the elaboration of an Additional Protocol to the European Agreement on the Protection of Television Broadcasts, of 1960. According to the present text, no State may, as from January 1, 1990, remain or become party to the Agreement unless it is also party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). Presently, four States are party to the Agreement but not to the Rome Convention. The Committee decided to propose the establishment of an Additional Protocol fixing a new deadline of January 1, 1995.

Finally, the Committee heard a progress report by the Secretariat on the work in the mass media sector of the Council of Europe.

International Literary and Artistic Association (ALAI)

Study Days, Executive Committee and General Assembly

(Munich, October 5 to 9, 1988)

At the invitation of the National Group of ALAI in the Federal Republic of Germany, the International Literary and Artistic Association (ALAI) held Study Days in Munich at the headquarters of the European Patent Office from October 5 to 9, 1988. They were chaired by Professor Georges Koumantos (Greece), President of ALAI, and were attended by some 180 participants. WIPO was represented by Mr. Mihály Ficsor, Director, Copyright Law Division.

In the framework of the Study Days, two topics were discussed. The first one was the economic importance of copyright; the discussions were based on a paper entitled "Some Reflections on the Economic Importance of Copyright," presented by Professor Herman Cohen Jehoram (Netherlands). The title of the second topic was "Issues Involving the Distribution of Exemplars of Protected Works (*Droit de destination*—Distribution Right—Exhaustion)." It was discussed on the basis of four papers by Professor Frank Gotzen (Belgium), Mr. Thierry Desurmont (France), Mr. Lars Ederstahl (Sweden) and Professor John M. Kernochan

(United States of America) which were followed by country reports. The results of the discussions were summarized by Dr. Adolf Dietz (Federal Republic of Germany) in a general report.

On the occasion of the Study Days, the Executive Committee of ALAI met three times on October 5, 7 and 9. Besides noting and discussing the reports of Professor André Françon (Secretary General of ALAI) on past and planned activities of ALAI and of Mrs. Denise Gaudel (Treasurer of ALAI) on the finances thereof, the Executive Committee discussed the preparation of the next ALAI Congress to be held in Quebec in September 1989. The Executive Committee also discussed a draft resolution on the *droit de destination* and the right of distribution but postponed the final decision to the next meeting of the Committee.

On October 7, 1988, ALAI held its General Assembly. The Assembly noted reports of the Secretary General—on past and planned activities of the Association, as well as of the Treasurer on its finances.

Calendar of Meetings

WIPO Meetings

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

1989

- February 20 to March 3 (Geneva)** **Committee of Experts on Model Provisions for Legislation in the Field of Copyright (First Session)**
 The Committee will consider proposed 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.
- April 3 to 7 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Eighth Session)**
 The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (March 1987) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.
- April 10 to 21 (Geneva)** **Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works**
 The Diplomatic Conference will negotiate and should adopt a Treaty on the international registration of audiovisual works and Regulations under that Treaty.
Invitations: States members of WIPO and, as observers, States members of the United Nations and certain organizations.
- May 8 to 26 (Washington, D.C.)** **Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits**
 The Diplomatic Conference will negotiate and adopt a Treaty on the protection of layout-designs of integrated circuits.
Invitations: to be announced in December 1988.
- May 29 to June 2 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Thirteenth Session)**
 The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1988) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.
- June 12 to 28 (Madrid)** **Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks**
 The Diplomatic Conference will negotiate and adopt two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks. One of the Protocols is intended to make applicable, with certain changes, the Madrid Agreement in respect of countries not yet party to that Agreement; the other Protocol concerns the complementary use of the Madrid Agreement and the (future) Regulation on the Community Trade Mark.
Invitations: to be announced in December 1988.

UPOV Meetings

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

1989

April 14 (Geneva)

Consultative Committee (Thirty-ninth Session)

The Committee will mainly discuss the outcome of the twenty-fourth session (April 10 to 13) of the Administrative and Legal Committee and prepare the meeting with international organizations.

Invitations: Member States of UPOV.

October 16 (Geneva)

Consultative Committee (Fortieth Session)

The Committee will prepare the twenty-third ordinary session of the Council.

Invitations: Member States of UPOV.

October 17 and 18 (Geneva)

Council (Twenty-third Ordinary Session)

The Council will examine the program and budget for the 1990-91 biennium, the reports on the activities of UPOV in 1988 and the first part of 1989.

Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

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

Non-Governmental Organizations

1989

September 26 to 30 (Quebec)

International Literary and Artistic Association (ALAI): Congress