

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Fourth Session

Geneva, April 11, 12 and 14, 2000

REPORT

prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the Standing Committee) held its fourth session in Geneva on April 11, 12 and 14, 2000.
2. The following States members of WIPO and/or the Berne Union for the Protection of Literary and Artistic Works were represented at the meeting: Albania, Algeria, Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Denmark, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guinea, Haiti, Hungary, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Kazakhstan, Kenya, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Thailand, Togo, Tunisia, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Zimbabwe.
3. The European Community also participated in the meeting in a member capacity.
4. Iran (Islamic Republic of) participated in the meeting as an observer.
5. The following intergovernmental organizations took part in the meeting in an observer capacity: International Labour Organization (ILO), United Nations Educational, Scientific

and Cultural Organization (UNESCO), World Trade Organization (WTO), African Intellectual Property Organization (OAPI) and Organization of the Islamic Conference (OIC).

6. Representatives of the following international non-governmental organizations took part in the meeting as observers: *Asociación Argentina de Intérpretes (AADI)*, Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO), American Film Marketing Association (AFMA), International Association for the Protection of Industrial Property (AIPPI), International Literary and Artistic Association (ALAI), Agency for the Protection of Programs (APP), European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTIS GEIE), Central and Eastern European Copyright Alliance (CEECA), International Confederation of Societies of Authors and Composers (CISAC), Copyright Research and Information Center (CRIC), Actors, Interpreting Artists Committee (CSAI), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (FIJ), Ibero-Latin-American Federation of Performers (FILAIE), International Federation of Musicians (FIM), International Federation of Translators (FIT), International Association of Broadcasting (IAB), International Federation of the Phonographic Industry (IFPI), International Intellectual Property Alliance (IIPA), International Publishers Association (IPA), International Video Federation (IVF), *Organización Iberoamericana de Derechos de Autor-Latinautor Inc.*, Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), North American Broadcasters Association (NABA), National Association of Commercial Broadcasters in Japan (NAB-Japan), European Audiovisual Observatory, Pearle* Performing Arts Employers Associations League Europe, Union of Industrial and Employers' Confederations of Europe (UNICE), Union Network International - Media and Entertainment International (UNI-MEI), Union of National Radio and Television Organizations of Africa (URTNA).

7. The session was opened by Mr. Shozo Uemura, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

8. The list of participants (Annex) is attached to this Report.

ELECTION OF OFFICERS

9. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chair, and Mr. Carlos Teysera Rouco (Uruguay) and Mr. Shen Rengan (China) as Vice-Chair.

ADOPTION OF THE AGENDA

10. The Standing Committee unanimously adopted the agenda (document SCCR/4/1).

PROTECTION OF AUDIOVISUAL PERFORMANCES

11. The Chairman recalled that the Standing Committee, in accordance with its Conclusions drawn at its third session (documents SCCR/3/11, paragraph 129), was convened to this special session to discuss remaining substantive issues and to assess the progress of work with a view to a possible diplomatic conference to be held in December 2000. He suggested that the discussions start with presentations of the new documents (SCCR/4/2, SCCR/4/3 and SCCR/4/4), followed by reports of the regional consultation meetings held on April 10, 2000. After that, he would suggest a discussion of remaining issues and subsequently, assessing progress of work with possible preparation of conclusions.

PRESENTATION OF NEW DOCUMENTS

12. The Delegation of the European Community stated that the European Community and its member States believed that the time for a diplomatic conference had come. In this respect, the Delegation referred to their latest submission (document SCCR/4/2). The Rome Convention needed to be updated and, while the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) provided a level playing field of protection for some groups of rightholders, that should now also be available for audiovisual performers. A diplomatic conference had been postponed at least three times, despite the 1996 Resolution which set the time limit to 1998, and it should now be held in December 2000. No really new issues had been under discussion for quite some time, and success could be reached with political will and commitment. The international instrument should be a protocol to the WPPT with membership in the WPPT being a condition for joining it. With such a simple and flexible structure, the instrument would be straightforward with no need for elaborate administrative and final clauses. As to the contents of the protocol, it should build upon the WPPT as much as possible, and only contain the modifications absolutely necessary to accommodate the differences between sound and audiovisual performances. The key to success was simplicity, flexibility for the contracting parties and avoidance of imposing strict rules or models without clear needs to do so. The latest proposals of the United States of America on national treatment and the transfer of rights would have to be analyzed to see if they would really comply with those key elements. The diplomatic conference should focus on the main objective to improve on the rights of audiovisual performers.

13. The Delegation of the United States of America explained that, under its revised proposal on national treatment (document SCCR/4/3), three categories of rights concerning audiovisual performances protected by the treaty would be accorded national treatment: (1) under paragraph 1(i), the exclusive rights provided by the treaty would be accorded national treatment; (2) under subparagraph (ii), rights derived from exclusive rights in the treaty would also be accorded national treatment—this would include, for example, private copying royalties; and (3) subparagraph (iii) created reciprocal national treatment between contracting parties whose systems provided additional rights or protection concerning the subject matter of the treaty. Thus, if one contracting party provided rights or protection for the audiovisual performances of its own nationals above and beyond those required by the treaty, it should provide such additional protection for the nationals of those other contracting parties that also provided equivalent protection for their nationals. The second paragraph in that proposal allowed contracting parties to decline national treatment for rights of remuneration or mandatory collective administration of exclusive rights regarding performances covered by the treaty, and further provided that contracting parties should ensure that if benefits were collected on behalf of foreign nationals, then distributions of those

benefits must be made to such foreign nationals. That proposal was intended to be responsive to concerns about the domestic economic impact of broad national treatment provisions.

14. Regarding the flow of rights between audiovisual performers and producers, a number of approaches existed, including: 1) a rebuttable presumption of transfer with or without a possibility to opt out; 2) a presumption of legitimation along the lines of Article 14*bis*(2) of the Berne Convention with or without possibilities to opt out or to opt in; and 3) choice of law and rules concerning recognition by one country of transfers made by contract or operation of law in another country. It had become clear that a sufficient number of countries believed that that issue had to be addressed in order that the treaty or instrument could gain the same global consensus and support as the WCT and the WPPT. The analytic paper on transfer (document SCCR/4/4) listed eight elements that appeared necessary for a provision that could achieve a wide consensus, it reviewed the current proposals, and it attempted to summarize the advantages and disadvantages of each approach. The Delegation's own proposal on this issue continued to be supported by its entire domestic audiovisual industry, including performers and producers. It was a rebuttable presumption of transfer, limited to economic rights other than remuneration rights, giving performers the ability to negotiate meaningfully with respect to their rights, and preserving systems based on statutory rights of remuneration. All the international conventions that addressed audiovisual works recognized the special nature of such works which resulted from the efforts of multiple contributors, whether by an approach such as Article 14*bis*(2) of the Berne Convention or Article 19 of the Rome Convention. The Delegation remained open to alternative approaches that addressed this issue in a substantive way.

15. The Delegation of Japan, pointing at the comparative table distributed as a room document, recalled that Japan's proposal (document SCCR/3/8) included a footnote concerning moral rights that was missing in the comparative table.

REPORTS OF REGIONAL CONSULTATIONS

16. The Delegation of Uganda, speaking on behalf of the African Group, underlined that the instrument for the protection of audiovisual performances should be a protocol to the WPPT. The membership to the protocol should be conditional on adherence to the WPPT. A diplomatic conference should be convened for December 2000. A provision on transfer of rights seemed to undermine the aim of improving protection of performers. The Group took note of the views of major film producing countries. The Group was open for further considerations in this respect.

17. The Delegation of Slovakia, speaking on behalf of the Group of Central European and Baltic States in the consultation of which Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Romania, Slovenia and Slovakia had been represented, reiterated the Group's willingness to modernize the protection of audiovisual performances and expressed its support for a diplomatic conference to be held in December 2000 to establish a protocol to the WPPT. It further confirmed that the Group maintained its previously expressed position (document SCCR/3/10), and it questioned the revised proposal of the United States of America on application in time, which it found unfavorable to the performers.

18. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, reported that the Group had no objection to a diplomatic conference to be convened for

December 2000, or earlier. The Group had sympathy for a protocol rather than a treaty, but it was premature to have any concrete position on national treatment. Regarding transfer of rights, there should be a common guideline, but also some margin of freedom for implementation. The Group had no position whether the assembly of the instrument should be shared with that of the WPPT, but it expressed its general interest in streamlining the organizational structures within WIPO. To be party to the WPPT should preferably not be a condition for adherence to the new instrument.

19. The Delegation of Peru, speaking on behalf of the Latin American and Caribbean Group, declared that various issues were still under internal discussion. The Group favored holding a diplomatic conference not later than December 2000.

20. The Delegation of China, while in agreement with the position of the African Group, the Group of Central European and Baltic States and the Latin American and Caribbean Group, concerning the convening of the diplomatic conference, stated that the matter should be resolved without further delay. It further pointed out that upon conclusion of the diplomatic conference, consideration should immediately be given to expressions of folklore, a topic of particular importance to developing countries, and the protection of databases, as well as broadcasting organizations, those subjects that had been awaiting consideration for too long.

21. The Delegation of Switzerland supported that a diplomatic conference should be held in December 2000. The new instrument could be an annex or a protocol to the WPPT, as simple and straightforward as possible, based on the consensus enshrined in the WPPT, and taking into account the specificity of the audiovisual sector.

NATURE OF THE INSTRUMENT

22. The Chairman highlighted the question whether the Committee could recommend a protocol to the WPPT, which had been suggested by many delegations, or a separate treaty, which has also some support. The nature of the instrument had an impact on the final and administrative clauses, because if the option of a protocol to the WPPT were chosen, certain clauses of that Treaty could be re-used. If there were to be an assembly for the instrument, it could be separate, or it could be a joint assembly for the WPPT and the instrument. He invited the Secretariat to present an analysis of the choices that had to be made.

23. The Secretariat recalled that the administrative and final clauses of the WIPO administered Treaties were generally in a standard form. The choice between a protocol and a treaty was, more than a question of a name, a question of the decisions that the member States might wish to take on certain issues. There was no invariable meaning of the term protocol in international law. Three issues had to be clarified in order to prepare draft administrative and final clauses for the international instrument: (1) would it be necessary to be party to the WPPT to become party to the instrument, that is, would there be a conditional relationship between them. For instance, it was not a condition to be a party to the Madrid Agreement in order to join the Madrid Protocol. In contrast, it was indeed a condition for becoming party to the Protocol to the 1960 Act of the Hague Agreement that the State be party to the Agreement; (2) what would be the administrative organ, that is, whether it should be an assembly shared between the WPPT and the instrument, for example, if there would be sufficient similarity of subject matter to justify joint meetings, or it should be separate assemblies as was the case with most WIPO administered Treaties which were separate and

independent. He recalled the current constitutional reform under consideration by the member States, which aimed at a streamlining of the WIPO administrative organs; (3) as regards the remaining provisions concerning issues like entry into force, depositary functions, etc., whether those were to be repeated, and, if so, whether this should be done by adopting such provisions in full or by reference to the WPPT.

24. The Delegation of the Islamic Republic of Iran asked for clarification regarding a conditional relationship between a possible protocol and the WPPT. The question would be whether a State could perform its obligations under a protocol without being party to the treaty. If there were a strong linkage between the instrument and the WPPT, the instrument could be a Protocol, but it would be necessary to take a look at the content of the instrument in order to determine its nature.

25. The Secretariat recalled that these decisions were up to the member States to make.

26. The Delegation of Canada asked the Secretariat to clarify whether differences in definitions or terminology in a protocol compared to the underlying treaty could have implications for the interpretation of the latter. This could be relevant for moral rights or the definition of performers, as examples.

27. The Secretariat recalled that whether a protocol or an independent treaty, generally the latter in time would prevail between Contracting States that were bound by the same instruments.

28. The Delegation of Singapore asked the Secretariat if it would be possible to have some variances between a protocol and the underlying treaty. If yes, it would only be a question of terminology, but if not, there would be logic in having a separate treaty. It also asked if there were examples in international law where the nature of such instruments had been dealt with differently.

29. The Secretariat stated that the only common ground was that a protocol was, in a certain way, a supplement or an amendment to a treaty. It was up to the States to decide the exact nature of the instrument, because the question was more the substantial relationship than what the instrument should be called.

30. The Delegation of the European Community noted that the nature of the instrument depended on what the Committee could agree on in substance, and it agreed that there was no common definition of a protocol in international law. When proposing a protocol, the Delegation did not intend to amend the WPPT, but to propose an annex to it, a *lex specialis* on the protection of audiovisual performances. There was no conflict between the WPPT and the proposed protocol, and, for instance, there was no need for a “without prejudice” clause because the protocol was confined to its own subject matter. Treaty language proposals concerning administrative and final clauses had been made by various countries and regional groups. In the view of the Delegation, there had to be a conditional relationship between the protocol and the WPPT as regards ability to become party to the protocol, and the protocol did not need a separate assembly. An example in this respect was the various revisions of the Berne Convention under only one Assembly. Not all remaining clauses had to be repeated, because the WPPT should obviously be valid. In this way, the option of having a protocol was more pragmatic and less time consuming than that of having a treaty.

31. The Delegation of Cameroon mentioned that, in order to make progress in the discussions, a working party might be set up to examine the contents of the instrument.
32. The Delegation of the United States of America continued to believe that, for many of the reasons given by the Delegation of the European Community for wanting a protocol, the instrument should be a separate treaty. However, it also believed that it was possible to draw very heavily on the experience gained in the WCT and WPPT, in order to have very close, but not identical, administrative and final clauses in the new treaty. The nature of the instrument, as well as its linkage to the WPPT, should be determined after settling the substance of the instrument, as it would be premature to make final decisions on many of the questions raised at the present point in time.
33. The Delegation of Switzerland emphasized that the Committee should aim for a protocol or an annex to the WPPT. It supported the views of other delegations that the instrument would not change anything as regards the substance of the WPPT, but would add protection for a new category of rightholders and for a new subject of protection. A single assembly should be sufficient for the two instruments. As regards the conditions to become party to the protocol, the Delegation questioned whether Article 9 of the proposal of the European Community was drafted correctly if that Delegation meant that a condition to become party to the protocol should be that the State had to be party to the WPPT. As regards to the final clauses, it should be sufficient to refer to the final clauses of the WPPT.
34. The Delegation of Japan stated that the instrument should be a protocol to the WPPT, as foreseen in the Resolution of 1996, at the time of the adoption of the WPPT. Many issues of a protocol could be solved by applying provisions of the WPPT, of course, taking into account the differences between audio and audiovisual performances.
35. The Chairman concluded that it was up to the States to analyze this issue further. The Committee might have to rely on, for instance, the drafting of alternative clauses for accommodating the future procedure. He presumed that the delegations which had taken the floor on this very political issue had done it on the hypothesis that there would be a continuous process in that respect.

NATIONAL TREATMENT AND TRANSFER OF RIGHTS

36. The Chairman opened the floor for discussion on the remaining substantial issues: national treatment and contractual arrangements and transfer of rights. He suggested that the Committee discuss both issues simultaneously, and recognized that the issue of national treatment could only be decided finally after the contents of the instrument had been agreed on. Delegations could also raise other substantial issues or questions that they wished to discuss.
37. The Delegation of India agreed with the United States of America that a provision on transfer of rights would be inevitable, and it should not be applicable to remuneration rights or moral rights. Such a provision should apply to a particular audiovisual production taking into account their increasingly complex character, such as co-productions, co-financial arrangements, multinational casts and multinational filming locations. In any case, the transfer of rights from performers to producers should be done in such a way that the interests of performers were not affected.

38. The Delegation of the United States of America, in answer to the questions that had been put forward by the Delegation of Singapore, clarified its proposal concerning national treatment in Article 4(1)(ii) and (iii). As to which remuneration rights would exist that were not derived from exclusive rights, it noted that some countries did not regard private copying royalties as a remuneration for exploitation or transfer of performers rights. They rather considered those royalties a compensation for non-commercial private copying that was expressly permitted under their domestic law. Still, these royalties were clearly related to the right of reproduction. Regarding national treatment based on reciprocity under paragraph (1)(iii) of its proposal, it noted that some countries, such as its own, considered rental rights to be an element of the distribution right, while other countries had established it as a separate right, distinct from other rights. Supposing there would be no provisions on rental right in the final treaty, then, under paragraph (1)(iii), a country that nonetheless provided a rental right would have to provide national treatment to other countries that also provided an exclusive rental right, or a right of remuneration for rental. The provision had to be seen in connection with its proposed Article 4(2), under which there could only be collected money in respect of performances for which a performer was going to be paid.

39. In answer to the question from the Delegation of Slovakia regarding the application in time, the Delegation of the United States of America responded that there were three parts in its proposal: (1) the treaty should not prejudice rights previously acquired before the date of coming into force of the treaty, as under Article 20 of the Rome Convention; (2) the provisions on moral rights should apply to existing works in respect of any violation that may occur after the coming into force of the treaty; and (3) the economic rights should not apply retroactively because in many countries they would not already exist, and retroactive application could therefore lead to uncertainty and to the inability to distribute or exploit existing works. Retroactive protection would not be necessary, due to the longstanding copyright protection of audiovisual works. The case of sound recordings was different, because in some countries they were not protected as such.

40. The Delegation of Japan pointed out that it was necessary to ensure certainty and to take into account different national legal provisions on contractual arrangements. Thus, some provisions on transfer of rights had to be included. They should be flexible enough that contracting parties could comply with them on the basis of their national provisions on contractual arrangements. Therefore, the proposal of the Delegation was based on Article 14*bis* of the Berne Convention, with a possibility for countries to opt out, and subject to rebuttal by contracts. It also proposed an exception for the contracting parties' nationals. It was not so complicated since there was only a distinction between their own nationals and the other nationals. National treatment should apply only to the exclusive rights specifically granted under the Protocol, in accordance with the established principles for related rights.

41. The Delegation of the Russian Federation noted that national treatment to a great extent was related to the right of communication to the public, that is, that would be an exclusive or a remuneration right. The latter one was preferable. The issue of transfer of rights should be left to domestic legislation. It asked the Delegation of the United States of America to clarify the meaning of the last sentence of its proposed Article 4(2) concerning national treatment.

42. The Delegation of the United States of America responded that the meaning of that sentence was that if a country provided a right of remuneration or an equivalent payment of royalties to performers in respect of collectively administered rights and that country chose not to provide the benefit of those rights under national treatment, then collecting agencies

should not collect money in respect of use of those performances for which rightholders would not get paid.

43. The Delegation of Cameroon stated that clauses on transfer of economic rights should take into account that transfer of economic rights could paralyze the moral rights, and moral rights could in certain situations, because they could not be transferred, block the exercise of economic rights. The different traditions in different legal systems concerning conditions and limitations on agreements between performers and producers had to be taken into account, including the rule of destination which prevented the producer from making a use of the performance that would be alien to the object of the transfer.

44. The Delegation of Australia asked if the Delegation of the United States of America could explain the statement that the transfer provision should be applicable to a particular audiovisual production, and that it would not be desirable nor necessary to extend the provision to the inclusion of performances in other audiovisual productions.

45. The Delegation of the United States of America answered that according to Article 12 of its proposal, if a fixation were to be used in a creation of a new audiovisual work, the rights would not be transferred, and they would remain with the performer with respect to all uses of that fixation other than the particular work for which the performer had agreed to have the fixation made.

ADOPTION OF RECOMMENDATION

46. Based on a proposal submitted by the Chairman, and following informal consultations, the Standing Committee adopted the following:

RECOMMENDATIONS

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its third session, from November 16 to 20, 1999, recommended that the present special session of the Standing Committee should be convened to discuss remaining issues and to assess progress of work with a view to a possible diplomatic conference in December 2000, which would consider an international instrument on the protection of audiovisual performances,

considering that the work at the end of the present session of the Standing Committee is sufficiently advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows the diplomatic conference to be held and negotiation to take place at that level,

unanimously agreed on the following recommendations:

1. Administrative and Final Provisions

the Preparatory Committee for the WIPO Diplomatic Conference on the Protection of Audiovisual Performances, meeting in Geneva on April 12 and 14, 2000, should request the International Bureau to prepare a basic proposal for administrative and final provisions of the international instrument, containing alternative solutions for a protocol to the WIPO Performances and Phonograms Treaty and for a separate treaty building on the provisions of the WIPO Performances and Phonograms Treaty,

2. Basic Proposal

the basic proposal for the substantive provisions of the international instrument for the diplomatic conference will be prepared by the Chairman of the session of the Standing Committee. The Chairman will be assisted by the WIPO International Bureau,

the draft texts should be published and circulated by the WIPO International Bureau to the States, intergovernmental and non-governmental organizations to be invited to the diplomatic conference by August 1, 2000,

3. Regional Consultations

the International Bureau should organize regional consultation meetings, in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean and in certain countries of Europe and Asia, during the months of September, October and November, and regional consultations meetings at the location of the diplomatic conference on December 5 and 6, 2000,

4. Diplomatic Conference

The diplomatic conference should be held from December 7 to 20, 2000.

47. The Delegation of South Africa, speaking on behalf of the African Group, introduced a proposal which the Group had adopted during its consultations regarding transfer of rights. The proposal will be issued as a document of the Standing Committee.

48. The Secretariat clarified that it was the intention to arrange regional consultations separately for the countries of Central Asia, Caucasus, and Eastern Europe and for the countries of Central Europe and the Baltic States. Several delegations stressed that the basic proposal should reflect the different levels of agreement and disagreement on the various issues. There were also calls for the basic proposal to be circulated, if possible, before the date indicated in the Recommendation, to which the Chairman remarked that circulation would take place as early as possible and, if necessary, in stages, so the treaty language text might be circulated before the explanatory notes.

49. The Delegation of Peru, speaking on behalf of the Latin American and Caribbean Group, announced that the Group had produced an agreed text to replace document SCCR/2/2. With regard to Article X.5, on the Right of Broadcasting and Communication to

the Public, and Article XII, on Contractual Arrangements Concerning the Rights of Performers, of the original proposal contained in document SCCR/2/2, the members of the Group reserved the right to take a position at a later stage.

COMMENTS FROM NON-GOVERNMENTAL ORGANIZATIONS

50. An observer from the International Federation of Actors (FIA) stated that performers should be given a broad range of exclusive rights, including exclusive rights of broadcasting and communication to the public. FIA believed that moral rights in the instrument were critical in the digital environment and should be applied retrospectively, as should economic rights. FIA reiterated its opposition to the inclusion of a presumption of transfer of rights in the instrument as it would be entirely unfair to performers who were already in a weak bargaining position. The limited application of Article 14*bis* of the Berne Convention and the entirely different object of that Convention precluded its application *mutatis mutandis*. Different countries had different systems and it should not be impossible to allow for recognition of contracts made under different systems.

51. An observer from the Copyright Research and Information Center (CRIC), speaking on behalf of the Japan Council of Performers' Organizations (GEIDANKYO), stated that audiovisual performers needed economic and moral rights to assure their protection in the digital information society. GEIDANKYO retained its position, as it had expressed during the last session of this meeting in November 1999, regarding contractual arrangements and urged governments to work for a simple and flexible solution with real global protection for audiovisual performers.

52. An observer from the International Federation of Musicians (FIM) said that the concept of legal certainty regarding the presumption of transfer of rights was inaccurate, because it encouraged employers not to have written contracts. The best legal certainty would come from a written contract. He informed the Standing Committee that the American Federation of Musicians had expressed its opposition to any mechanism of presumption. The instrument should grant exclusive rights of rebroadcasting and cable distribution with the possibility of using the provisions of Article 11*bis*(2) of the Berne Convention.

53. An observer from the *Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants* (ARTIS GEIE) supported a protocol to the WPPT that improved the rights of performers in audiovisual performances and, particularly, acknowledged their moral rights. Performers should benefit from fair remuneration, proportional to the use of their performances. Single lump sum payments were not acceptable.

54. An observer from the *Fédération internationale des associations de producteurs de films* (FIAPF) stated that an international treaty could be truly economically effective only if it included a presumption for the producers' acquisition of rights. The choice between rebuttable or irrebutable presumption had to be left to national legislation. The issue of application in time was very delicate, and exploitation of a work produced before the entry into force should not be abusively prohibited.

55. An observer from the Ibero-Latin-American Federation of Performers (FILAIIE) fully supported that the instrument should aim at the protection of performers' and not producers' rights. The only effective protection was the granting of rights of remuneration for collective

management. He opposed the proposal of the United States of America regarding national treatment and expressed concern about the fate of moral rights in the treaty.

56. An observer from the International Association of Broadcasting (IAB), stressed the need to make the promotion of the rights of broadcasting organizations into a priority issue for the Standing Committee in 2001. He also pointed to the risks of adopting a protocol or treaty for the protection of performers that did not acknowledge the peculiarities and realities of the production and compilation of audiovisual material; that could have undesirable consequences, especially on developing countries, for the audiovisual industry and the actual performers of such countries, and the ultimate consequence of developed countries being favored at the expense of developing countries.

57. An observer from the Association of European Performers' Organisations (AEPO) remarked that a protocol should aim at enhancing the performers' rights. Some proposals on moral rights constituted a total distortion of the concept of those rights. He opposed having presumptions on transfer of rights, because of the effects in countries that did not have a tradition for written contracts. National treatment should be similar to the rules of the WPPT.

58. The Delegation of Canada stated that the Canadian branch of the American Federation of Musicians had been informed of, and had not opposed, the Canadian proposals regarding the recognition of transfers of rights in foreign audiovisual works.

FUTURE WORK

59. The Standing Committee decided to invite governments to submit, before January 31, 2001, proposals in treaty language concerning the protection of broadcasting organizations. The next session of the Standing Committee would take place in the beginning of 2001, at dates to be determined by the International Bureau.

ADOPTION OF THE REPORT AND CLOSING OF THE SESSION

60. The Standing Committee unanimously adopted this report.

61. The Chairman closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique français/
in French alphabetical order)

AFRIQUE DU SUD/SOUTH AFRICA

Coenraad VISSER, Professor of Mercantile Law, University of South Africa, Pretoria

Bongiwe QWABE (Ms.), First Secretary, Permanent Mission, Geneva

ALBANIE/ALBANIA

Genti BENDO, First Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Hakim TAOUSAR, directeur général, Office national du droit d'auteur et des droits voisins (ONDA), Alger

ALLEMAGNE/GERMANY

Ulrich HIMMELMANN, Supervision of Copyright Collecting Societies, German Patent and Trademark Office, Munich

Karl FLITTNER, First Counsellor, Permanent Mission, Geneva

ANDORRE/ANDORRA

Eusebi NOMEN, Adviser to the Head of Government for Intellectual Property Rights, Andorra la Vella

ARGENTINE/ARGENTINA

Marta GABRIELONI (Sra.), Consejero, Misión Permanente, Ginebra

Gustavo SÁENZ PAZ, Asociación Argentina de Intérpretes (AADI), Buenos Aires

Pablo Maria PUIGGARI, Director Ejecutivo, Asociación de Teledifusoras Argentinas (ATA), Buenos Aires

Edmundo RÉBORA, Asesor, Asociación Radiodifusoras Privadas Argentinas (ARPA), Buenos Aires

AUSTRALIE/AUSTRALIA

Christopher C. CRESWELL, Consultant, Intellectual Property Branch, Attorney-General's Department, Canberra

AUTRICHE/AUSTRIA

Günter AUER, Chief Public Prosecutor, Federal Ministry of Justice, Vienna

BANGLADESH

Mohammad MANIRUDDIN, Registrar of Copyrights, Copyright Office, National Library Bhaban, Dhaka

BELGIQUE/BELGIUM

Alain TACQ, conseiller adjoint (juriste), Service droit commercial et droit d'auteur, Ministère de la justice, Bruxelles

BRÉSIL/BRAZIL

Francisco PESSANHA CANNABRAVA, Secretary, Permanent Mission, Geneva

Samuel Barichello CONCEIÇÃO, Coordenador de Intercâmbio Audiovisual, Ministério da Cultura, Brasília

BULGARIE/BULGARIA

Emil LOSEV, Director, Copyright and Related Rights Division, Ministry of Culture, Sofia

BURKINA FASO

Asseta TOURÉ (Mme), directrice, Bureau burkinabé du droit d'auteur (BBDA), Ministère de la culture et des arts, Ouagadougou

CAMEROUN/CAMEROON

Christophe SEUNA, chef, Cellule juridique, Ministère de la culture, Yaoundé

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CHINE/CHINA

SHEN Rengan, Deputy Commissioner, National Copyright Administration of China (NCAC), Beijing

ZHAO Xiuling (Ms.), Deputy Director, Copyright Division, National Copyright Administration of China (NCAC), Beijing

HAN Li (Mrs.), First Secretary, Permanent Mission, Geneva

GUO Yajun (Ms.), Vice Secretary General, Chinese Federation for Literature and Art Confederation (CFLAC), Beijing

COLOMBIE/COLOMBIA

Juan Carlos MONROY RODRÍGUEZ, Asesor del Director General, Dirección General del Derecho de Autor, Santa Fe de Bogotá

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DANEMARK/DENMARK

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ÉGYPTE/EGYPT

Ismail SIDDIK RASHED, Judiciary Consultant to the Minister of Culture, Ministry of Culture, Cairo

EL SALVADOR

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ÉQUATEUR/ECUADOR

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FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

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FINLANDE/FINLAND

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HONGRIE/HUNGARY

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KAZAKHSTAN

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MALTE/MALTA

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MALAISIE/MALAYSIA

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SLOVAQUIE/SLOVAKIA

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SUÈDE/SWEDEN

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Christine LAGER (Ms.), Deputy Director, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

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TADJIKISTAN/TAJIKISTAN

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THAÏLANDE/THAILAND

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TOGO

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TUNISIE/TUNISIA

Mohamed Salah DJEBBI, secrétaire général, Organisme tunisien de protection des droits d'auteurs (OTPDA), Tunis

UKRAINE

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Carlos TEYSERA ROUCO, Presidente, Consejo de Derecho de Autor, Ministerio de Educación y Cultura, Montevideo

Gustavo VIGNOLI, Secretario General del Consejo de Derecho de Autor, Ministerio de Educación y Cultura, Montevideo

Guzmán FERNÁNDEZ LOPEZ, Representante de la Cámara Uruguaya de los Productores de Fonogramas ante el Consejo de Derechos de Autor, Montevideo

VENEZUELA

David VIVAS, Attaché, Misión Permanente, Ginebra

ZIMBABWE

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COMMUNAUTÉ EUROPÉENNE (CE)/EUROPEAN COMMUNITY (EC)

Jörg REINBOTHE, chef d'Unité, Direction générale « Markt/E/3 », Bruxelles

Egidio GUERRERI, administrateur, Direction générale « Markt/E/3 », Bruxelles

Keith MELLOR, chef de Division, Secrétariat du Conseil de l'Union européenne, Bruxelles

Roger KAMPF, premier secrétaire, Délégation permanente, Genève

II. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL
LABOUR ORGANIZATION (ILO)

John MYERS, Industry Specialist, Media and Entertainment, Sectoral Activities Department, Geneva

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET
LA CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION (UNESCO)

Salah ABADA, directeur, Section de la créativité et du droit d'auteur, Division de la créativité, des industries culturelles et du droit d'auteur (Secteur de la culture), Paris

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Hassane YACOUBA KAFFA, chef, Service de la propriété littéraire et artistique, Yaoundé

ORGANISATION DE LA CONFÉRENCE ISLAMIQUE (OCI)/ORGANIZATION OF THE ISLAMIC CONFERENCE (OIC)

Jafar OLIA, Deputy Observer, Permanent Delegation, Geneva

III. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Agence pour la protection des programmes (APP)/Agency for the Protection of Programs (APP): Cyril FABRE (chargé de mission, Genève)

American Film Marketing Association (AFMA): Lawrence SAFIR (Chairman (AFMA Europe), London)

Asociación Argentina de Intérpretes (AADI): Luís Tomas GENTIL (Asesor Legal, Buenos Aires)

Asociación Internacional de Radiodifusión (AIR)/International Association of Broadcasting (IAB): Andrés LERENA (Presidente, Comité Permanente de Derecho de Autor, Montevideo); Luiz E. BORGERTH (Presidente de Honor y Miembro del Consejo Directivo, Rio de Janeiro); Andrés Enrique TORRES (Delegado (Miembro del Comité), Montevideo); Simone Lahorgue NUNES (Sra.) (Rio de Janeiro)

Association des organisations européennes d'artistes interprètes (AEPO)/Association of European Performers' Organisations (AEPO): Xavier BLANC (secrétaire général, Bruxelles); Cecilia DE MOOR (Mme) (Bruxelles)

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT): Tom RIVERS (Legal Adviser, London)

Association internationale pour la protection de la propriété industrielle (AIPPI)/International Association for the Protection of Industrial Property (AIPPI): Gunnar W.G. KARNELL (President, Copyright Committee; Member, Executive Committee, Stockholm)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI): Herman COHEN JEHORAM (Vice-President, Amsterdam)

Central and Eastern European Copyright Alliance (CEECA): Jerzy Andrzej BADOWSKI (Member, Executive Board, Warsaw)

Comité de Actores y Artistas Intérpretes (CSAI): Julian GRIMAU MUÑOZ (Director General, Comité de Dirección, Madrid); Abel MARTÍN VILLAREJO (Asesor Jurídico y Experto, Madrid)

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC): Antonio DELGADO (Presidente de la Comisión, Madrid); Debora ABRAMOWICZ (Mme) (coordinatrice juridique et des affaires européennes, Paris)

Copyright Research and Information Center (CRIC): Masashi TANANO (Managing Director, Center for Performers' Rights Administration (CPRA) (GEIDANKYO), Tokyo); Samuel Shu MASUYAMA (Manager, Legal Department, Center for Performers' Rights Administration (CPRA) (GEIDANKYO), Tokyo); Takashi KAMIDE (Adviser, Federation of Music Producers Japan, Tokyo); Masahiro MOTOYAMA (Fellowship, Japan Copyright Institute (JCI), Tokyo)

Federación Ibero-latinoamericana de Artistas Intérpretes o Ejecutantes (FILAIE): Luis COBOS PAVOW (Présidente, Madrid); Miguel PEREZ SOLIS (Asesor Jurídico, Madrid)

Fédération européenne des sociétés de gestion collective des producteurs pour la copie privée audiovisuelle (EUROCOPYA)/European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA): Nicole LA BOUVERIE (Mrs.) (President, Paris); Alexander BIRNSTIEL (Legal Counsel, Att. Nörr Stiefenhofer Lutz, Munich); Yvon THIEC (Delegate, Brussels)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Maria MARTIN-PRATT (Ms.) (Director, Legal Policy, London); Lauri RECHARDT (Legal Adviser, London)

Fédération internationale de la vidéo (IVF)/International Video Federation (IVF):

Charlotte LUND THOMSEN (Ms.) (Director General, Brussels); Jared JUSSIM (Executive Vice President, Intellectual Property, Sony Pictures Entertainment, Inc., Culver City, California); Frances SEGHERS (Ms.) (Senior Vice President, Sony Entertainment, EC Affairs, Brussels)

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA):

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Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD): Gilbert GRÉGOIRE (président, Paris)

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): Valérie LEPINE-KARNIK (Mme) (adjointe au directeur général, Paris); Alessandra SILVESTRO (Mrs.) (Vice President, Legal Affairs, Time Warner Europe, Brussels)

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (FIJ): Mike HOLDGRNESS (N.U.J. (UK and IE), Bruxelles)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM): John MORTON (President, Longfield); Jean VINCENT (secrétaire général, Paris); Håkan Gilbert HILLERSTRÖM (Lawyer, Svenska Musiker Förbundet, Stockholm); Lillemor SVENSSON (Mrs.) (Sveriges Yrkesmusiker Förbund, Stockholm); Raimo VIKSTRÖM (Vice-President, Finnish Musicians' Union, Helsinki); Tilo GERLACH (Legal Adviser, Deutsche Orchestervereinigung (DOV), Germany); Hans KOSTERMAN (Secretary (NORMA), Amsterdam); Binnert SNIJDER (Legal Adviser (NORMA), Amsterdam); Noëlle IMBERT (Mme) (secrétaire nationale, SNAM, Paris)

Fédération internationale des traducteurs (FIT)/International Federation of Translators (FIT): João ESTEVES-FERREIRA (Counsel Member, FIT Secretariat, Montréal)

Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE): François PARROT (secrétaire général, Bruxelles); Francesca GRECO (Mme) (directeur, Bruxelles); Hubert TILLIET (directeur juridique, ADAMI-ARTIS, Paris); Anne-Claire VIALA (Mlle) (conseillère juridique, ADAMI-ARTIS, Paris)

Institut Max-Planck de droit étranger et international en matière de brevets, de droit d'auteur et de la concurrence (MPI)/Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI): Silke VON LEWINSKI (Ms.) (Head, International Law Department, Munich)

International Intellectual Property Alliance (IIPA): David SWEENEY (General Counsel Europe, Brussels); Scott MARTIN (Senior Vice-President, Paramount Pictures, Los Angeles); Dean Scott MARKS (Legal Advisor, Intellectual Property, Time Warner, Burbank)

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North American Broadcasters Association (NABA): Tony SCAPILLATI (Executive Director, Canadian Broadcasters Rights Agency, Inc., Ottawa)

Observatoire européen de l'audiovisuel/European Audiovisual Observatory: Susanne NIKOLTCHEV (Mrs.) (Legal Expert, Strasbourg)

Organización Iberoamericana de Derechos de Autor-Latinautor Inc.: Carlos Alberto FERNÁNDEZ BALLESTEROS (Secretario General, Montevideo)

Pearle* Performing Arts Employers Associations League Europe: Anne-Marie BALET (Mme) (déléguée/secrétaire générale, Union des théâtres romands (UTR), Lausanne)

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Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU):
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Union internationale des confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of Industrial and Employers' Confederations of Europe (UNICE):
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Union internationale des éditeurs (UIE)/International Publishers Association (IPA):
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Union Network International - Media and Entertainment International (UNI-MEI):
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Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA): Madjiguene MBAYE-MBENGUE (Mme) (conseiller juridique, Dakar); Hezekiel OIRA (Head, Legal Department, Kenya Broadcasting Corporation, Nairobi)

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Vice-présidents/Vice-Chairmen: Carlos TEYSERA ROUCO (Uruguay)
SHEN Rengan (Chine/China)

Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

V. SECRETARIAT DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
SECRETARIAT OF THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION (WIPO)

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