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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

DIPLOMATIC CONFERENCE ON CERTAIN COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS

Geneva, December 2 to 20, 1996

AMENDMENT TO ARTICLE 3 OF DRAFT TREATY N° 1

proposed by the Delegation of Mexico

It is proposed that the words shown below in square brackets be deleted from the text of the Basic Proposal and that the words shown in underlined italics be added.

Article 3 Notion and Place of Publication

(1) When *by means of storage* literary or artistic works are made available to the public by wire or wireless means in such a way that members of the public may [access] *obtain tangible copies of* these works from a place and at a time individually chosen by them, [so that copies of these works are available,] Contracting Parties shall, under the conditions specified in Article 3(3) of the Berne Convention, consider such works to be published works.

(2) When applying Article 5(4) of the Berne Convention, Contracting Parties shall consider works referred to in paragraph (1) of the present Article to be published in the Contracting Party where the necessary arrangements have been made for availability of *tangible copies of* these works to members of the public.

Explanatory Note:

The present wording of Articles 3 and 10 makes no distinction between the acts of publication and communication.

A number of delegations and NGOs have expressed concern over the possibility that the present wording of Article 10 of Draft Treaty N° 1, Right of Communication, might limit access to information in teaching centers and for research purposes, and also in libraries, etc. Such access to information for the purposes mentioned does however have to be ensured through the act of publication and not that of communication; it is indeed through publication that originals or copies of works are obtained. It is for that reason that we propose the clarification in Article 3(1) of the idea of possible “storage” and “obtaining tangible copies,” which could be a means of overcoming the concerns mentioned without in any way altering either the sense or the intent of Article 3, the purpose of which in fact is to determine the place of publication.

As far as the place of publication is concerned, it is proposed that the concept of tangible copies be likewise incorporated in order to align the second paragraph on the amendments suggested for the first.

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