

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**DIPLOMATIC CONFERENCE  
ON  
CERTAIN COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS**

**Geneva, December 2 to 20, 1996**

AMENDMENTS TO ARTICLES 2, 7, 9 AND 10 OF DRAFT TREATY N° 1

*proposed by the Delegation of Australia*

Article 2

The Delegation of Australia proposes that Article 2 be amended by substituting “Articles 2-6 of the Berne Convention” for “Articles 3-6 of the Berne Convention”.

The change is proposed to ensure that “literary and artistic works” as used in the Treaty (see, e.g. Articles 3(1), 7(1), 8(1), 9(1), 10 and 12(1)) have the same meaning as in the Berne Convention.

Article 7

The Delegation of Australia proposes that Article 7 be amended by:

- inserting at the beginning of paragraph (1) the words, “*Subject to paragraph (2)*”;
- and

- replacing paragraph (2) with the following paragraph:

*“Paragraph (1) shall not apply to indirect or temporary reproductions that have the sole purpose of making a work perceptible or which are of a purely transient or incidental character as part of a technical process”.*

## Article 9

The Delegation of Australia proposes that Article 9 be amended so that it reads as follows, the new wording being shown in bold underlined and the words proposed to be omitted from the Basic Proposal being contained within square brackets and italicized:

“(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the **commercial** rental of the original and copies of their works even after distribution of them by or pursuant to authorization by the author.

(2) Except in the case of computer programs [*, collections of data or other material in machine-readable form,*] and [*musical*] works embodied in phonograms, specific types of works may be excepted from the provisions of paragraph

(1) unless the **commercial** rental of such works has led to widespread copying that materially impairs the exclusive right of reproduction.

(3) Contracting Parties may provide in their national legislation that the provisions of paragraph (1) and paragraph (2) do not apply in respect of architectural works or in respect of works of applied art.

**(4) In respect of computer programs, paragraph (1) does not apply to rentals where the program itself is not the essential object of the rental”.**

## Article 10

The Delegation of Australia proposes that Article 10 be amended so that it reads as follows, the new wording being shown in bold underlined and the words proposed to be omitted from the Basic Proposal being contained within square brackets and italicized:

### **“Right of Communication and Making Available to the Public**

Without prejudice to [*the rights provided for in*] Articles 11(1)(ii), 11bis[(i)]**(1) and (2)**, 11ter(1)(ii), 14(1)[(i)]**(ii)** of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing:

- (a) any communication to the public of their works **by wire or wireless means;**  
**and** [*including*]

(b) the making available to the public of their works, by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them”.

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