

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

COMMUNICATION BY THE EUROPEAN COMMISSION

The Director General of WIPO has received the following letter from Ambassador, R.E. Abbott, Deputy Head of Delegation, European Commission, Permanent Delegation to the International Organizations in Geneva:

“I am writing to you in connection with the Diplomatic Conference organised by the *World Intellectual Property Organisation* in Geneva next month concerning certain copyright and neighbouring rights questions.

“As you know, one of the issues for consideration at the Conference concerns the status and voting rights of the European Community in the Conference and eventual treaties under negotiation. In this connection the European Community and its Member States have recently communicated their position to the members of *WIPO* which participated in the meeting in May this year of the Assembly of the Berne Union. I attach a copy of this letter.

“I shall be grateful if you will ensure the distribution of this text as a document of the Conference”.

The text of the letter the copy of which is attached to Ambassador R.E. Abbott's letter is dated October 28, 1996, and which is signed by Ambassador Anne Anderson, Permanent Representative of Ireland and by Mr. Ian Wilkinson, Deputy Head, Chargé d'Affaires a.i., European Commission, Permanent Delegation to the International Organizations in Geneva, is as follows:

"Dear Ambassador,

"We are writing to you on behalf on the European Community and its Member States in connection with the WIPO Diplomatic Conference on certain copyright and neighbouring rights questions which will take place in Geneva from December 2 to 20, 1996.

"We would like, in particular, to follow up on some of the issues that were examined in the context of the Preparatory Committee for the Diplomatic Conference (Geneva, 20-22 May, 1996) and which have been reflected in the Basic Proposal for the Final Clauses of the treaties and the Draft Rules of Procedure of the Diplomatic Conference published by the WIPO International Bureau (documents CRNR/DC/3 and CRNR/DC/2, respectively).

"The issues in question concern the status of the European Community as a contracting party to the treaties and its voting rights both in the Assembly of the future treaties and in the Diplomatic Conference.

"First of all, we would like to confirm that the EC and its Member States welcome the Contracting Party status provided for the EC in the Basic Proposal for the Final Clauses as a practical and legally sound solution. The basis for this status resides in the existing state of Community competence. This competence stems from the authority which the member States have given to the institutions of the Community to adopt legislation having binding effect within their territories. A significant number of EC legislative measures have been adopted over recent years in the Copyright and Related Rights area (including the sui generis protection of databases). These legislative measures cover a number of the issues in the current negotiations in WIPO (included in annex to this letter is a list of this legislation and the references to the text as published in the *Official Journal of the European Communities**). To that extent that the provisions of the proposed agreements affect these legislative measures, or alter their scope, the European Community has, under the Treaties establishing the European Community, exclusive competence to enter into the agreements.

"As to the question of the voting rights of the European Community both under the Assembly of the future treaties and at the Diplomatic Conference, as well as the question of any conditions relating to the exercise of such voting rights, the European Community and its Member States would like to restate that no extra or additional vote for the EC is being requested. The idea is that the EC should be able to vote, in place of its Member States, on matters that are within its exclusive competence. This is the logical consequence of the EC having its own legal status under international law and

* The annex has not been attached to the copy of the letter received by the Director General.

having exclusive competence over a number of the issues which will be covered by the future treaties. In no case will the votes exercised by the Community and its Member States exceed the total number of its member States party to the treaties.

“As to the question of any conditions relating to the exercise of the vote by the EC, we consider that a recent relevant example regarding the status and voting rights granted to the European Community is the Marrakech Agreement establishing the World Trade Organisation applicable to the Agreement on Trade Related Aspects of Intellectual Property Rights - the so called TRIPS Agreement. There are no conditions applicable to the exercise of the Community’s right to vote on matters within its competence in the context of the WTO.

“On a related issue, we would also like to take this opportunity to explain a little further the position of the EC and its Member States with regard to the possibility of other intergovernmental organisations becoming contracting parties to the eventual treaties. We have no objections to such a provision being included. Our position is that it is inherent in contracting party status in an international treaty under traditional rules of international law that the party has exclusive competence and authority over some or all of the subject matter of the treaty in question with regard to certain nationals and with respect to a certain territory. An intergovernmental organisation should also have the authority to enter into international relations in the place of its Member States on the issue in question. Only on these grounds will any intergovernmental organisation have the necessary legal authority to warrant contracting party status. This is the reasoning which supported the position adopted during the recent meetings in Geneva and which will underline the position to be taken in the Diplomatic Conference in December this year”.

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