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ASSEMBLIES OF THE MEMBER STATES OF WIPO

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MATTERS CONCERNING THE TREATY ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

Memorandum of the Secretariat

1. The Treaty on the International Registration of Audiovisual Works (“Film Register Treaty” or “FRT”) was adopted in Geneva on April 18, 1989. It entered into force on February 27, 1991. As of the date of this document, 13 States were party to the FRT.¹
2. Article 3(3) of the FRT provides that the International Registry established for the purpose of maintaining an International Register of audiovisual works shall be located in Austria “as long as a treaty to that effect between the Republic of Austria and the Organization is in force. Otherwise, it shall be located in Geneva.”

¹ Argentina, Austria, Brazil, Burkina Faso, Chile, Colombia, Czech Republic, France, Hungary, Mexico, Peru, Senegal and Slovakia.

3. On October 25, 1989, a treaty was concluded between the Organization and the Republic of Austria for locating the International Registry in Klosterneuburg, Austria (the “WIPO-Austria Treaty”).² In addition, on November 12, 1991, an Agreement was concluded between the Organization and the Republic of Austria concerning the headquarters of the International Registry (the “Headquarters Agreement”).³

4. Under the WIPO-Austria Treaty and in accordance with the Headquarters Agreement, the International Registry was established at Klosterneuburg on March 1, 1991. The level of adherence to the FRT proved, however, not to be satisfactory and, in consequence, few audiovisual works were registered on the International Register (in all, just under 400 audiovisual works were registered, those registrations coming from only two countries).⁴

5. In view of the low level of activity in the use of the International Register, the Assembly of the FRT Union, meeting in extraordinary session in May 1993, adopted the following decision:

“Until any further decision by the Assembly of the FRT Union,

“(a) the application of the treaty between the Republic of Austria and WIPO concerning the International Film Registry shall be suspended;

“(b) in 1993, no ordinary session of the Assembly of the FRT Union shall be convened, but from 1995 onwards, ordinary sessions shall be convened again;

...”

(document FRT/A/III/3, paragraph 19).

6. Following the suspension of the WIPO-Austria Treaty, the International Registry in Klosterneuburg was closed and re-located at the Headquarters of WIPO in Geneva. However, there has been no further activity recorded in respect of the International Register which, for all practical purposes, is defunct.

7. In view of the lack of activity under the Film Register Treaty and the lack of any ostensible reason why such activity would commence in the foreseeable future, it seems appropriate to clarify the legal situation with respect to the Film Register Treaty and the various arrangements that were made under it. Three issues arise for consideration in this regard:

(i) the status of the Assembly of the FRT Union;

(ii) the termination of the arrangements between WIPO and Austria; and

(iii) the financial arrangements with respect to the operation of the

International Registry.

² The text of the Treaty is set out in Appendix I to Annex III of document WO/GA/XI/1. The WIPO General Assembly approved the Treaty at its meeting in September 1989 (see document WO/GA/XI/4, paragraph 11).

³ The text of the Agreement is set out in the Annex to document WO/CC/XXVIII/3. The WIPO Coordination Committee approved the Agreement at its meeting in September 1991 (see document WO/CC/XXVIII/7, paragraph 8).

⁴ See document FRT/A/III/2, paragraph 7, for details.

The Assembly of the FRT Union

8. As indicated above, the Assembly of the FRT Union decided, in May 1993, that it should not meet in ordinary session in September 1993, but that ordinary sessions should resume again from 1995 onwards. In practice, the Assembly of the FRT Union was not convened in 1995 and has never been convened since (except for the (present) September 2000 meetings of the Assemblies of the Member States of WIPO). It would seem appropriate now to regularize the practice of not convening the Assembly of the FRT Union in ordinary session until such time as either the Director General considers, because of new developments in connection with the FRT or the International Register, that it is appropriate to convene the Assembly or a member of the FRT Union requests the Director General to convene the Assembly.

9. The Assembly of the FRT Union is invited to decide that it shall not be convened unless and until either

(i) the Director General considers, because of new developments in connection with the FRT or the International Register, that it is appropriate to convene the Assembly, or

(ii) a Member State of the FRT Union requests the Director General to convene the Assembly.

Termination of Arrangements between WIPO and Austria with regard to the International Registry

10. As indicated above, two agreements were concluded between WIPO and the Republic of Austria with respect to the International Registry: the WIPO-Austria Treaty and the Headquarters Agreement.

11. As also indicated above, the Assembly of the FRT Union decided in May 1993 to suspend the application of the WIPO-Austria Treaty. It appears appropriate now to proceed to the termination of the WIPO-Austria Treaty which, under Article 6(1), may be achieved "by common agreement of the Contracting Parties." The Government of the Republic of Austria has indicated that it will agree to such termination and, accordingly, the agreement of the Member States of WIPO is sought for this action.

12. The WIPO General Assembly is invited to agree to the termination of the Treaty between the World Intellectual Property Organization (WIPO) and the Republic of Austria on locating in Klosterneuburg (Republic of Austria) the International Registry of Audiovisual Works.

13. As far as the Headquarters Agreement is concerned, Article 21 of that Agreement provides that it shall cease to be in force if the International Registry is removed from the territory of the Republic of Austria. This having happened, the Headquarters Agreement is no longer in force and no further action is required.

Financial Arrangements with respect to the Operation of the International Registry

14. The activities established under the FRT were intended to be financially self-sufficient. Article 7 of the FRT (“Finances”) provides for the establishment of a budget for the FRT Union. Article 7(4) provides as follows:

“[*Self-Supporting Financing*] The amounts of fees due to the International Registry and the prices of its publications shall be so fixed that they, together with any other income, should be sufficient to cover the expenses connected with the administration of this Treaty.”

15. Because of the small number of adherences to the FRT and the low level of registration activity under the FRT, there was an excess of expenditure over income in respect of the FRT Union until the closure of the International Registry in Klosterneuburg of 12,712,000 Austrian schillings (approximately, 1,660,000 Swiss francs).⁵ Since that time, there has been no financial activity on account of the FRT Union.

16. The excess expenditure of approximately 1,660,000 Swiss francs referred to in the preceding paragraph was funded by advances from the Government of Austria made in accordance with the WIPO-Austria Treaty. Article 2 of that Treaty provides as follows:

“(1) The Republic of Austria shall, to the extent that the income of the Union established by the said Treaty (“the Union”) is expected to be insufficient to cover the financial obligations of that Union, advance the amounts needed to meet the said financial obligations.

“(2) a) The World Intellectual Property Organization shall, on behalf of the Union, reimburse to the Republic of Austria the amounts received by it as advances from the Republic of Austria under paragraph (1). The advances shall be free of interest. Reimbursements shall be effected in instalments. The amount of each instalment, and the time at which the payment of the instalment is to be effected, shall depend on the financial situation of the Union.

“b) The details of the transfer of the advances and the reimbursement of the advances shall be fixed by common agreement between the competent authorities of the Republic of Austria and the Director General of the World Intellectual Property Organization.”⁶

17. The Government of Austria has approached the Director General and requested that the Organization reimburse the advances (of approximately 1,660,000 Swiss francs) made by it. The Director General now seeks the authorization of the Member States of WIPO and of the Unions administered by WIPO to negotiate a settlement of this request that is reasonable and appropriate in view of all the circumstances of the matter and in view of the WIPO-Austria

⁵ See document FRT/A/III/2, paragraphs 8 to 10.

⁶ There is evidence to suggest that the reimbursement of the advances was to be contingent upon the realization of a profit (i.e., an excess of revenue over expenditure of the International Register). See document IRAW/DC/4 paragraph 4. The question of reimbursement is still under discussion between the WIPO Secretariat and the Government of the Republic of Austria.

Treaty, as well as to satisfy any payment that any such settlement might entail out of item 19 (“Miscellaneous and Unforeseen Activities”) of the Budget for the 2000-2001 biennium.

18. The Assemblies of the Member States of WIPO and the Unions administered by WIPO are invited to authorize the Director General to negotiate a settlement of the request by the Government of the Republic of Austria for reimbursement of the advances made by that Government under the WIPO-Austria Treaty and to authorize any payment that any such settlement might entail.

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