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WIPO GENERAL ASSEMBLY

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Geneva, September 23 to October 2, 1996

MATTERS CONCERNING THE DRAFT TREATY FOR THE SETTLEMENT OF DISPUTES BETWEEN STATES IN THE FIELD OF INTELLECTUAL PROPERTY

Memorandum of the Director General

1. At their sessions in October 1989, the Governing Bodies of WIPO decided to establish a Committee of Experts on the Settlement of Intellectual Property Disputes between States (hereinafter referred to as the "Committee of Experts") to examine whether the preparation of a new treaty on the matter should start and, if so, with what content. The Committee of Experts has held eight sessions; the first and second in 1990 and one in every year thereafter.
2. At its session in September-October 1995, the WIPO General Assembly approved the following proposals of the Director General: (i) that the Committee of Experts meet again, in the first part of 1996, (ii) that the results and recommendations of that session be the subject of a report of the Director General to be submitted, at the 1996 series of meetings of the WIPO Governing Bodies, either to the WIPO General Assembly, if it is convened in extraordinary session during that series of meetings or, if it is not so convened, to the WIPO Coordination Committee at its session during that series of meetings and (iii) that the decision, whether a Diplomatic Conference for the Conclusion of a Treaty on the Settlement of Disputes between States in the Field of Intellectual Property should be convened and, if so, when, be taken by the WIPO General Assembly at that extraordinary session in 1996 if it is so

held, otherwise, by the WIPO Coordination Committee at its 1996 session (see documents WO/GA/XVI/2, paragraph 5, and WO/GA/XVI/7, paragraph 34). Since the WIPO General Assembly will meet in extraordinary session in September 1996, the decision on the convocation of a diplomatic conference can be made in that session, and can be made on the basis of the results and recommendations of the eighth (the July 1996) session of the Committee of Experts. The present document is the report of the Director General submitted pursuant to the decision of the WIPO General Assembly referred to in item (ii), above.

3. The Committee of Experts held its eighth session in July 1996. At that session, the Committee of Experts considered, in particular, the following four issues: the relationship between the dispute settlement system of the proposed Treaty and other dispute settlement systems; the scope of participation in the panel procedure for entities not party to or bound by the source treaty under which the dispute arises; the relationship between the number of contracting parties required for a quorum, for the adoption by the Assembly and for the acceptance by contracting parties of amendments to the proposed Treaty and for the entry into force of the proposed Treaty; whether a contracting party may seek, through the procedures established by the proposed Treaty, a declaration or opinion as to whether an obligation exists or has been breached by that party.

4. As concerns future work, the Acting Chairman of the Committee of Experts concluded that a sizable majority of the delegations were in favor of avoiding further work by the Committee of Experts on the draft Treaty. He noted that there did not appear to be a similar majority in size but a majority nevertheless that the diplomatic conference should be held in a period near the end of 1997 or in the first half of 1998. He added that the three delegations which had opposed the convening of a diplomatic conference in that period had not suggested any date at all for when the diplomatic conference should take place. The Acting Chairman concluded that under the circumstances, the most practical approach would be for the Committee of Experts not to make a recommendation on the date of the diplomatic conference but to leave it to the WIPO General Assembly at its September-October 1996 session to decide, in the light of the views expressed in the present session of the Committee of Experts and in that session of the WIPO General Assembly, when the diplomatic conference should take place. (See document SD/CE/VIII/7, paragraph 93.)

5. It should be noted that the Preparatory Meeting has held two sessions, in May 1993 and in February 1994, and approved the text of the proposed Rules of Procedure of the diplomatic conference (see documents SD/PM/3 and 6).

6. In view of the above, it is proposed that the WIPO General Assembly decide whether a Diplomatic Conference for the Conclusion of a Treaty on the Settlement of Dispute between States in the Field of Intellectual Property should be convened and if so, whether it should be held in the period near the end of 1997 and the first half of 1998 or otherwise.

7. Should a decision to hold such a diplomatic conference be taken, it is further proposed that the WIPO General Assembly decide that:

(i) the International Bureau should prepare a document containing a new text of the draft Treaty and a new text of the draft Regulations as well as a new text of the Notes; the said texts should be the texts presented to the Committee of Experts at its seventh session

modified to incorporate the conclusions that had been reached in the course of that session and the eighth session;

(ii) the document referred to in item (i), above, should constitute the basis of the discussions in the diplomatic conference and the texts of the draft Treaty and draft Regulations contained in that document should constitute the “basic proposal” referred to in Rule 29 of the Proposed Rules of Procedure (document SD/PM/6, Annex II);

(iii) in addition, the International Bureau should update the following documents and reissue them as background information to be made available at the diplomatic conference: “Treaties in the Field of Intellectual property and Provisions on Dispute Settlement Therein; Provisions on Dispute Settlement in GATT and WTO Instruments” (document SD/CE/VII/4); “Provisions on the Status of Intergovernmental Organizations Set Forth in Treaties and Rules of Procedure of Diplomatic Conferences in the Field of Intellectual Property” (document SD/CE/VII/5); “Provisions in Selected Treaties Concerning the Relationship Between Different Dispute Settlement Systems” (document SD/CE/VII/6);

(iv) the Director General should, if the WIPO General Assembly decides that the diplomatic conference be held in the first part of 1998, include provision for the diplomatic conference in the draft program and budget for the biennium 1998-99 and present proposals to the ordinary session of the WIPO General Assembly in September–October 1997 on the venue and other organizational questions of the diplomatic conference, including the financing of the participation in the diplomatic conference of delegates from developing countries and countries in transition.

8. The WIPO General Assembly is invited to pronounce itself on the proposals contained in paragraphs 6 and 7 above.

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