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# Copyright

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World Intellectual Property Organization (WIPO)

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### WIPO 1991

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## WIPO Meetings

### International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961)

Intergovernmental Committee

Thirteenth Ordinary Session

(Paris, June 19 to 21, 1991)

#### REPORT

adopted by the Committee

#### Introduction

1. The Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) (hereinafter referred to as "the Committee"), convened in accordance with paragraph 6 of Article 32 of that Convention and Rule 10 of the Rules of Procedure of the Committee, held its thirteenth ordinary session at Unesco headquarters in Paris from June 19 to 21, 1991.

2. The 12 member States of the Committee (Brazil, Chile, Colombia, Denmark, Finland, France, Germany, Mexico, Niger, Philippines, United Kingdom and Uruguay) were represented. The governments of nine States party to the Rome Convention but not members of the Committee (Austria, Czechoslovakia, Dominican Republic, Ecuador, El Salvador, Italy, Japan, Norway and Panama) and 31 States not party to the Rome Convention (Argentina, Australia, Bolivia, Bulgaria, Comoros, Côte d'Ivoire, Egypt, Greece, Guinea, Holy See, Hungary, India, Israel, Jamaica, Lebanon, Libya, Madagascar, Namibia, Nigeria, Poland, Portugal, Rwanda, Senegal, Soviet Union, Spain, Sudan, Syria, Thailand, United Republic of Tanzania, United States of America and Venezuela) were represented by observers.

3. Two intergovernmental organizations, the Commission of the European Communities (CEC) and the Council of Europe (CE), and nine international non-governmental organizations: Interna-

tional Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Music Council (IMC), International Publishers Association (IPA), attended the session as observers.

4. The list of participants is annexed to this report.

#### Opening of the Session

5. In the absence of Mr. N. Steinitz (United Kingdom), outgoing Chairman, Mr. J.M. Morfin Patraca (Mexico), Vice-Chairman of the Committee, opened the session in accordance with the provisions of Rule 9(1) of the Rules of Procedure of the Committee.

6. Ms. Milagros del Corral welcomed the participants on behalf of the Director-General of Unesco. The representative of the Director-General of ILO and the representative of the Director General of WIPO also greeted the participants and thanked Unesco for hosting the session.

#### Election of Officers

7. Following a proposal made by the delegation of Mexico and seconded by the delegation of

France, Mr. H. Wager (Finland), Mr. H. Castro Moreno (Colombia) and Mr. I. Diawara (Niger) were unanimously elected Chairman and Vice-Chairmen respectively.

#### Adoption of the Agenda

8. The provisional agenda (OIT/UNESCO/OMPI/ICR.13/1 Prov.) was adopted unanimously by the Committee, with the addition of an item concerning a request for the admission of an inter-governmental organization as an observer.

#### Request for Observer Status

9. The Committee, after considering the request submitted by the CEC to be invited to be represented at the Committee's sessions as an observer, decided to grant observer status to that organization.

#### States Party to the Rome Convention: State of Accessions, Ratifications and Acceptances

10. The discussions were based on document OIT/UNESCO/OMPI/ICR.13/2.

11. The observer from Japan recalled that his country had just acceded to the Rome Convention and informed the Committee that two amendments had been made to his country's copyright legislation in order to bring it into line with the provisions of the Rome Convention, and to increase the term of protection from 30 to 50 years and grant national treatment to foreign owners in connection with phonogram rental rights. He also stated that questions relating to the protection of works created by means of computer, computer-assisted translations and private copying of phonograms and videograms were currently being studied. Lastly, he expressed his thanks to the Secretariats of the three organizations for the assistance his country had received from them in connection with its accession to the Convention.

12. The observer from Australia informed the Committee that in 1989 a law protecting the rights of performers had been adopted and that an implementing regulation concerning these right holders was being prepared. As soon as the regulation came into force, his country would proceed to accede to the Rome Convention in the near future.

13. The delegate of Mexico said that a reform of national copyright legislation was under way in his

country with a view to bringing it into line with the provisions of the Rome Convention and to extending the term of protection to 50 years for the three categories of right holders concerned. He added that it would be desirable for the Secretariat to address an appeal to States not yet party to the Convention to accede to it as soon as possible. The delegate added that the national society of music performers proposed to organize a three-day meeting of representatives of societies administering performers' rights in Mexico City at a date to be determined later.

14. The observer from Israel informed the Committee that the new law adopted by his country's parliament now made it possible for Israel to consider accession to the Rome Convention.

15. The delegate of Colombia informed the Committee, in reference to the revision of his country's Constitution, that the principles relating to copyright protection had been maintained. Moreover, national legislation, which was currently being amended, included provisions which would strengthen penal sanctions against piracy.

16. The delegate of Germany drew the Committee's attention to the fact that, since the reunification of Germany, the Rome Convention and the national legislation of the Federal Republic of Germany applied throughout the newly constituted territory.

17. The observer from Spain said that her government had deposited an instrument of accession to the Rome Convention with the Secretary-General of the United Nations.

#### List of States not Party to the Rome Convention but Party to the International Copyright Instruments Mentioned in Article 24 of that Convention

18. The discussions were based on document OIT/UNESCO/OMPI/ICR.13/3.

19. The representative of the Director General of WIPO informed the Committee that since the preparation of the document, Guinea-Bissau had deposited its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works on April 18, 1991. The Convention would enter into force for that State on July 22, 1991.

20. The observer from Italy pointed out that the number of States party to the Rome Convention

was not high in comparison with those party to the copyright conventions. He suggested that the international non-governmental organizations should make more sustained efforts to encourage the governments of States not party to the Rome Convention to consider accession.

21. The observer from the CEC, after thanking the Committee for having granted his organization observer status, described recent developments within it concerning a proposed decision submitted to the Council of the European Communities which would oblige member States of the European Communities which had not already done so to accede to the Rome Convention before December 31, 1992. He added that a draft directive had been drawn up concerning rental rights and public lending rights in the field of copyright and neighboring rights, as well as certain other aspects of neighboring rights. Lastly, he stated that a number of improvements might be made to the text of the Convention at a later stage, but stressed that priority should be given to achieving wider accession before examining such improvements.

**States Party to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonograms Convention) and Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention): State of Accessions, Ratifications and Acceptances**

22. Discussions were based on document OIT/UNESCO/OMPI/ICR.13/4.

23. The observer from Greece reported to the Committee that a law that had entered into force on April 22, 1991 made it possible for his country to ratify the Satellites Convention.

**Report on the Three Organizations' Activities to Provide Assistance and Training for Developing Countries with a View to Promoting the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

24. Discussions were based on document OIT/UNESCO/OMPI/ICR.13/5.

25. The representatives of the Director-General of Unesco and of the Director General of WIPO introduced the annexes to the document which concerned the activities of their respective organizations. The representative of the Director-General of ILO informed the Committee that, in the ab-

sence of assistance and training activities for developing countries, her organization had just published a study on the remuneration received by performers and producers of phonograms for the dissemination and public communication of phonograms. Two studies dealing with the status of performers had been undertaken by her organization on the basis of a recommendation of Unesco on the subject. She added that a tripartite meeting on the conditions of employment of performers was scheduled to be held in May 1992 under the aegis of ILO.

26. All the speakers thanked the Secretariat for its efforts to organize assistance, training and information activities for developing countries in the field of neighboring rights.

27. The observer from the United Republic of Tanzania stressed the importance of regional seminars on neighboring rights, and requested Unesco's support for cultural industries in order to broaden the distribution of intellectual works. He also suggested that correspondence courses in copyright and neighboring rights be organized.

28. With regard to training activities, the delegate of the United Kingdom and the observer from FIA emphasized the importance of addressing questions of copyright and neighboring rights together. The observer from FIA added that special attention should be devoted to neighboring rights in order to establish a fair balance between them and copyright.

29. The observers from Australia and Japan informed the secretariat that their countries were prepared to cooperate in training activities for developing countries. The observer from Australia expressed satisfaction that Unesco was holding an information seminar on copyright and neighboring rights for journalists, and suggested that Unesco contact member States interested in participating in the creation of a data bank on legislation, and legal doctrines and precedents involving copyright and neighboring rights.

30. The observer from Guinea thanked Unesco, WIPO and CISAC for offering assistance in organizing training seminars in his country.

31. The observer from Jamaica expressed his gratitude to WIPO for its assistance in framing his country's copyright legislation, and added that an administrative infrastructure was now needed.

32. The delegates of Brazil, Chile, Colombia, Mexico and Uruguay submitted a recommendation

calling for an increase in the means made available to Unesco in order to expand its assistance and training activities for developing countries, and seeking to promote the protection of the three categories of beneficiaries covered by the Rome Convention.

33. Following discussion, the recommendation, as attached to this report in Annex I, was adopted unanimously by the Committee.

**Information About, and Comments on, the Implementation of the Rome Convention Received by the Secretariat from the States Party to the Rome, Berne and Universal Conventions as well as from the International Non-Governmental Organizations Concerned**

34. The discussions were based on document OIT/UNESCO/OMPI/ICR.13/6.

35. The observer from FIM pointed out that performers were accorded less protection than other categories of owners of neighboring rights, the number of countries which had granted protection to producers of phonograms being approximately twice as many as those whose legislation afforded protection to performers. He stressed the role of the State in bringing about an equitable balance between the three categories concerned. For that reason and in view of the development of new technologies, he proposed that the possibilities of improving the protection established by the Rome Convention in respect of neighboring rights in general and the rights of performers in particular should be explored. In the light of that situation, he suggested that a working group be set up to examine such aspects before the Committee's next session.

36. A representative of the Secretariat stated that having regard to the progress of work on the preparation of the programs and budgets of the organizations concerned, it was not possible to accept that suggestion for the next biennium.

37. The delegate of France and the observer from Australia expressed their countries' regret at not having been able to submit, at the appropriate time, the comments requested by the Secretariat in its survey on the implementation at the national level of the Rome Convention. They nonetheless stated their intention to provide the relevant information at a later date.

38. The delegate of Mexico was pleased to note the importance of the findings of the survey re-

flected in document OIT/UNESCO/OMPI/ICR.13/6, and proposed that greater efforts should be made by the Secretariat to obtain as many replies as possible. He stated that it would be desirable for the item to remain on the agenda of the next session and for the Secretariat, in the meantime, to communicate to member States all the information on the subject that had been brought to its notice.

39. The delegate of Colombia stated that it would seem sensible to define the notion of neighboring rights more precisely and considered that exclusive rights should also be recognized for performers. He wondered whether it was possible to envisage the preparation of different instruments for each category of owners of neighboring rights.

40. The observer from IFPI stressed the importance of the new technologies, in particular digital recording, satellite broadcasting and cable distribution which gave direct access to recordings of original quality without acquisition in the form of purchase, rental, etc., of phonograms. These developments added a new dimension to uses previously considered as secondary and this new situation needed to be taken into account in the updating of the protection of neighboring rights. He supported the proposals made by some delegations for an examination of ways of improving protection of the three categories of beneficiaries under the Rome Convention. He hoped that this item would also be included in the agenda of the Committee's next session.

41. The observer from FIAPF said that, given the insufficient number of States party to the Rome Convention, any changes to the current system of protection of neighboring rights would be likely to discourage new accessions. Where audiovisual works were concerned, technological developments since the adoption of the Convention did not warrant any modification.

42. The Chairman, summing up the discussion, noted the wish expressed by several delegations for information to continue to be collected on the implementation of the Convention, so as to enable States that had not yet replied to the survey and States that had introduced legislation in the meantime to transmit information to the Secretariat for the next session. He added that the Secretariat could analyze that information, indicating areas where there appeared to be some shortcomings, mentioning new protection standards and outlining possible future developments. He noted that there was a consensus in the Committee in that regard.

## Other Business

43. The observer from Czechoslovakia said that despite the increased protection of the rights of performing artists and phonogram producers afforded by a recent law, the phonographic industry in his country was suffering heavy losses because of the large number of pirated cassettes coming from Poland. He asked the observer from Poland to request her government to take steps to halt these illicit exports as soon as possible.

44. The observer from IFPI said that to contain the problem of piracy that existed in Poland, the draft law currently being discussed there would have to be adopted and implemented.

45. The observer from India said that although his country had not yet acceded to the Rome Convention—a matter currently being considered—the rights of phonogram producers and broadcasting organizations were protected by copyright law.

## Adoption of the Report

46. The Committee unanimously adopted this report.

## Closure of the Session

47. After the usual thanks, the Chairman declared the session closed.

## ANNEX I

### Recommendation

#### The Intergovernmental Committee.

1. *Bearing in mind* the report submitted by the Secretariat of the Committee on the activities of Unesco, WIPO and ILO to provide assistance and training for developing countries with a view to promoting the protection of performers, producers of phonograms and broadcasting organizations;
2. *Noting* the importance of the activities carried out by Unesco in this area, that are not only of benefit to the sectors concerned in the developing countries but also represent general progress in relation to the protection of performers, producers of phonograms and broadcasting organizations;
3. *Also bearing in mind* the need for this work to be taken still further in view of the innovations resulting from technological modernization in that field, and *recalling* the importance of continuing to pay particular attention to the needs of developing countries;
4. *Invites* the General Conference of Unesco:
  - (a) to take into account and give due recognition to the exemplary and important activities of assistance and

training carried out by Unesco in developing countries with a view to promoting the protection of performers, producers of phonograms and broadcasting organizations;

- (b) to consider increasing the budgetary provision for those areas in the Organization's Programme and Budget for 1992-1993;
5. *Requests* the Director-General of Unesco:
    - (a) to transmit this recommendation to all member States of Unesco;
    - (b) to study, within the limits of the budget established by Unesco's governing bodies, the possibility of allocating further funds to the Organization's assistance and training activities in developing countries, aimed at promoting the protection of performers, producers of phonograms and broadcasting organizations;
  6. *Requests* the member States of Unesco and the Contracting States of the Rome Convention, taking into account the importance of Unesco's activity in the above-mentioned fields, to consider making voluntary contributions for this purpose.

## ANNEX II

### LIST OF PARTICIPANTS

#### I. Member States of the Committee

Brazil: M.M. Meirelles Nasser; I. de Freitas; J.C. Müller Chaves. Chile: G. Figueroa Yañez; R. Sanhueza. Colombia: H.A. Castro Moreno; N. Parra. Denmark: P. Schonning. Finland: H. Wager. France: H. de Montluc; F. Genton; S. Mory. Germany: K. Kemper. Mexico: J.M. Morfin Patraca; J. Neri Rendón; V. Blanco Labra. Niger: I. Diawara; A. Mahaman. Philippines: R.G. Manalo; D. Ongpin-Macdonald. United Kingdom: P. Britton. Uruguay: D. Espino de Ortega; R. Varela.

#### II. Observers

##### (a) States Party to the Convention which are not Members of the Committee

Austria: R. Dittrich. Czechoslovakia: V. Popelková; J. Karhová; D. Illík. Dominican Republic: E.L. Fernández. Ecuador: R. Ríofrío; L. Orcés-Pareja. El Salvador: L. Bloch. Italy: G. Aversa. Japan: M. Watanabe; D. Yoshida; K. Maekawa. Norway: B.O. Hermansen. Panama: J. Patiño.

##### (b) Other States

Argentina: C.A. Aldereté; L. Guinsburg. Australia: C. Creswell. Bolivia: A. Prudencia Claire. Bulgaria: D. Takova. Comoros: A. Saadi. Côte d'Ivoire: E. Miczanezo. Egypt: M.S. Salem. Greece: N. Papageorgiou; Guinea: O. Kaba. Holy See: L. Frana; P. Brun; P. Lambert. Hungary: G. Boytha. India: S. Jain. Israel: M. Ophir. Jamaica: M. Brown. Lebanon: B. Risk. Libya: M. Allablab. Madagascar: J. Rakotobé. Namibia: T. Shinavene. Nigeria: M. Ekpo; D. Omenai; Y. Lijadu. Poland: M. Romanska. Portugal: P. Cordeiro. Rwanda: R. Mutombo. Senegal: M. Mody Sagna; C.S. Diallo. Soviet Union: G. Ter-Gazariants; B. Kokine; G. Boundoukin. Spain: T.J. Díaz; L. Escobar de la Serna. Sudan: K.A. Abdalla; A. El Sayed. Syria: A.E. Saoud; M. Zouri. Thailand: S. Povatong. United Republic of Tanzania: C.C. Liundi; I.K. Bavu. United States of America: R. Oman; L. Flacks. Venezuela: M. von Braun de Karttunen.

*(c) Intergovernmental Organizations*

Commission of the European Communities (CEC): J. Reinbothe.  
Council of Europe (CE): G. Brianzoni.

*(d) International Non-Governmental Organizations*

International Confederation of Societies of Authors and Composers (CISAC): N. Ndiaye; D. Abramowicz. International Copyright Society (INTERGU): R. Talon. International Federation of Actors (FIA): R. Rembe; B. Hoberg-Petersen. International Federation of Film Producers Associations (FIAPF): A. Chauveau. International Federation of Musicians (FIM): J. Morton; Y. Burckhardt; Y. Akerberg. International Federation of the Phonographic Industry (IFPI): I.D. Thomas; N. Garnett; P. Fishet; D. de Freitas. International Literary and Artistic Association (ALAI): W. Duchemin; D. Gaudel. International Music Council (IMC): G. Huot. International Publishers Association (IPA): S. Wagner.

**III. Secretariat****International Labour Office (ILO)**

H. Sarfati (*Chief, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*); R.A. Beattie (*Senior Research Officer, Salaried Employees and Professional Workers Branch, Sectoral Activities Department*).

**United Nations Educational, Scientific and Cultural Organization (UNESCO)**

M. del Corral (*Director, Book and Copyright Division*); A. Amri (*Senior Legal Officer, Book and Copyright Division*); E. Gucrasimov (*Legal Officer, Book and Copyright Division*); A. Garzón (*Programme Specialist, Book and Copyright Division*).

**World Intellectual Property Organization (WIPO)**

M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Senior Legal Officer, Copyright Law Division*).

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**Studies**

**Legal Protection of Computer Programs in Chile**

Dina HERRERA\*







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## **Correspondence**

### **Letter from Lesotho**

**The Copyright Order No. 13 of 1989**

Teboho KIKINE\*









## Calendar of Meetings

### WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1991

- September 23 to October 2 (Geneva)**      **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second Series of Meetings)**  
 All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary session every two years in odd-numbered years. In the 1991 sessions, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium.  
*Invitations:* As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.
- October 17 and 18 (Wiesbaden, Germany)**      **Symposium on the International Protection of Geographical Indications (organized by WIPO in cooperation with the Government of the Federal Republic of Germany)**  
 The Symposium will deal with the protection of geographical indications (appellations of origin and other indications of source), at the national and multilateral level.  
*Invitations:* States members of WIPO and certain organizations. The Symposium will be open to the public (against payment of a registration fee).
- November 4 to 8 (Geneva)**      **Committee of Experts on a Possible Protocol to the Berne Convention (First Session)**  
 The Committee will examine whether the preparation of a protocol to the Berne Convention for the Protection of Literary and Artistic Works should start, and—if so—with what content.  
*Invitations:* States members of the Berne Union and, as observers, States members of WIPO not members of the Berne Union and certain organizations.
- November 11 to 18 (Geneva)**      **Working Group on the Application of the Madrid Protocol of 1989 (Fourth Session)**  
 The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.  
*Invitations:* States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.

### UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1991

- October 21 and 22 (Geneva)**      **Administrative and Legal Committee**  
*Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 23 (Geneva)**      **Consultative Committee (Forty-Fourth Session)**  
 The Committee will prepare the twenty-fifth ordinary session of the Council.  
*Invitations:* Member States of UPOV.

October 24 and 25 (Geneva)

**Council (Twenty-Fifth Ordinary Session)**

The Council will examine the reports on the activities of UPOV in 1990 and the first part of 1991 and approve the program and budget for the 1992-93 biennium.

*Invitations:* Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.

## Other Meetings in the Field of Copyright and/or Neighboring Rights

### Non-Governmental Organizations

#### 1991

September 30 to October 4 (Prague)

International Copyright Society (INTERGU): Congress

October 1 to 4 (Berlin)

International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting

October 5 and 6 (Madrid)

International Literary and Artistic Association (ALAI): Executive Committee

October 7 to 9 (Salamanca)

International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting

#### 1992

January 27 to February 1 (New Delhi)

International Publishers Association (IPA): Congress

October 18 to 24 (Maastricht/Liège)

International Confederation of Societies of Authors and Composers (CISAC): Congress

