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### **WIPO 1992**

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# Normative Activities of WIPO in the Field of Copyright

## Committee of Experts on a Possible Protocol to the Berne Convention for the Protection of Literary and Artistic Works

Second Session

(Geneva, February 10 to 17, 1992)

### REPORT

adopted by the Committee

#### I. Introduction

1. In pursuance of the decision taken by the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO at the twentieth series of meetings in Geneva, in September–October 1989 (see document AB/XX/2, Annex A, item PRG.02(2)), and, upon the invitation of the Director General of WIPO, the second session of the Committee of Experts on a Possible Protocol to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as “the Committee”) met at the headquarters of WIPO, in Geneva, from February 10 to 17, 1992.

2. Experts from the following 38 States (members of the Berne Union) and one intergovernmental organization, members of the Committee, attended the meeting: Argentina, Australia, Austria, Brazil, Cameroon, Canada, Chile, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Mexico, Morocco, Netherlands, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States of America, and Commission of the European Communities.

3. Experts from the following eight States (not members of the Berne Union) participated in an observer capacity: Algeria, China, Indonesia, Panama, Republic of Korea, Russian Federation, United Arab Emirates, Viet Nam.

4. Representatives of five intergovernmental organizations participated in an observer capacity.

They were the following: United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), General Agreement on Tariffs and Trade (GATT), Islamic Educational, Scientific and Cultural Organization (ISESCO), Organization of African Unity (OAU).

5. Observers from 38 non-governmental organizations participated in the meeting. They were the following: Agency for the Protection of Programs (APP), Asia-Pacific Broadcasting Union (ABU), Business Software Alliance (BSA), Computer and Business Equipment Manufacturers Association (CBEMA), European Association of Manufacturers of Business Machines and Information Technology Industry (EUROBIT), European Broadcasting Union (EBU), European Committee for Interoperable Systems (ECIS), European Tape Industry Council (ETIC), European Writers' Congress (EWC), Information Industry Association (IIA), Institute of Intellectual Property (IIP), Intellectual Property Owners, Inc. (IPO), International Advertising Association (IAA), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), International Association of Audio-Visual Writers and Directors (AIDAA), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists

(IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organisations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Intellectual Property Alliance (IIPA), International Literary and Artistic Association (ALAI), International Organization of Journalists (IOJ), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Video Federation (IVF), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI), National Music Publishers' Association Inc. (NMPA), Union of Industrial and Employers' Confederations of Europe (UNICE).

6. The list of participants follows this report.

7. The meeting was chaired by Mr. Jukka Liedes (Finland), elected as chairman in the first session of the Committee.

## II. Examination of Questions Concerning a Possible Protocol to the Berne Convention

8. Discussions were based on the second part of the memorandum prepared by the International Bureau of WIPO entitled "Questions Concerning a Possible Protocol to the Berne Convention" (document BCP/CE/1/3; hereinafter referred to as "the memorandum").\* The Secretariat noted the interventions made and recorded on tape. This report summarizes the discussions without reflecting all the observations made.

### *General Discussion*

9. The Delegation of Greece emphasized the importance of further studying the legal nature of the proposed special agreement, in particular as it would relate to existing obligations under the Berne Convention and to possible retroactivity of such a provision. It raised the possibility of convening a small working group, composed of the representatives of the Secretariat and of independent experts or consultants, to study this question before the next meeting of the Committee.

10. The Delegation of Hungary referred to the Secretariat's proposals for inclusion in the possible

protocol of provisions concerning collective administration of rights, and suggested that the Committee also consider inclusion of provisions on the individual exercise of rights by contractual means and on enforcement of rights, e.g., about injunction or penal sanctions. It suggested further that the form of the possible new agreement should maintain a clear separation between subject matter of protection and rights protected.

11. The Delegation of the Commission of the European Communities stressed the importance of determining the legal nature of any new instrument in relation to the Berne Convention. It referred to the fact that recently its organization had proposed directives for harmonization of the laws of member States of the Communities concerning protection of data bases and the duration of protection for copyright and neighboring rights. It stated that the Committee should take cognizance of recent developments in national or international forums in the course of its deliberations, but pointed out that it was not always necessary to wait for decisions taken in other forums. It also pointed out that some proposals in Part II of the memorandum called for more detailed examination. It opposed the addition of new topics which were not covered by the memorandum.

12. The Delegation of Italy stressed the importance of clearly identifying which provisions were of an interpretative nature and which provisions represented extension of protection and expressed the view that questions concerning individual exercise of rights, even in the context of collective administration, should be examined for inclusion in the possible protocol. It was of the opinion that, although it was necessary to study further the relationship of the proposed provisions with existing obligations under the Berne Convention, it would be premature to determine the legal nature of the future international instrument before knowing its foreseeable contents.

13. The Delegation of Portugal referred to the ongoing process of harmonizing the copyright and neighboring rights legislation of the member States of the European Communities, and stated that the Committee should proceed with caution in developing a new international instrument to modernize the Berne Convention.

14. The Delegation of Norway favored the idea of a new instrument as a means of clarifying the application of the Berne Convention, but added that some proposals needed more detailed study. It emphasized the importance of further studying the relationship between the new instrument and the Berne Convention.

\* Part II of the memorandum has been published in the March 1992 issue of this review, pp. 66 to 82.

15. The Delegation of the United States of America stated that it saw the need to clarify the application of the Berne Convention to, among other things, new media of expression, commercial and non-commercial exploitation of protected works, and new means of using those works. It stated its belief that there was not yet an international consensus on many of the issues raised in the memorandum and that other issues raised were not ripe for resolution because there were too many divergences in national laws to permit the development of an international norm. The Delegation presented a list of issues that it considered ripe for discussion and urged other nations to consider submitting their own lists. It urged that a future meeting of the Committee examine those lists and determine which issues had the needed consensus for inclusion on the agenda of the next meeting. In introducing the following list, the Delegation noted that a number of the issues were already treated in the memorandum. The issues were enforcement, distribution rights, the right of public display, a definition of "public," the clarification of Article 14<sup>bis</sup> of the Berne Convention in respect of film producers, conflicts of law in respect of ownership and contracts, affirmation of the protection of computer programs and data bases under the Berne Convention as literary works, provision of a basis for the enhanced protection of sound recordings, definition of the concept of originality, and the elimination of non-voluntary licensing for primary broadcasts. The Delegation stated its belief that it was premature to consider specific legal language to resolve the issues raised in the Secretariat's draft and that it would propose specific language only after determining that a consensus that the issues ripe for international resolution had developed.

16. The Director General said that it was extremely useful that the Delegation of the United States of America had specified the issues it would like to see being covered; he expressed the hope that draft texts on each issue would be proposed, since it was difficult to verify the opinion of the participants without such texts. He said that other participants also should identify any questions not covered in the memorandum but which should be covered by the possible protocol. He asked the participants not only to list those questions but also to make written proposals on the texts of the provisions to be included in the possible protocol. Such written proposals should consist of amendments to the provisions proposed in the memorandum and of completely new texts on issues not covered in the memorandum. As regards the idea of convening a working group to examine the legal nature of the proposed instrument (revision of the Berne Convention, Protocol to the Berne Convention

or other) and the possible differentiation between provisions which would merely "interpret" the provisions of the Berne Convention and those that would create new obligations for the Contracting Parties, he said that such questions could not be reasonably discussed *in abstracto* and should rather be addressed once the possible contents of a new instrument were, at least, tentatively, decided.

17. The Delegation of France said that certain discussions which had taken place in other forums should be taken into account, and that the legal nature of the proposed instrument should be further examined. It supported the idea of convening a small working group to examine the proposals contained in the memorandum in order to distinguish those proposals interpreting the Berne Convention and those creating new rights.

18. The Delegation of the Netherlands stated that the legal nature of the proposed instrument should be further clarified and that study should be undertaken in respect of certain questions, in particular concerning the application of national treatment and reciprocity.

19. The Delegation of Germany said that while it could support certain proposals made in the memorandum, it considered that some items merited more detailed analysis before being incorporated in an international instrument. It also said that the possibility of the revision of the Berne Convention should not be fully excluded, and that the rule of unanimity required for such revision could be examined in the context of the present exercise.

20. The Delegation of Sweden stressed that the legal nature of the proposed instrument should be clearly determined. It noted that certain proposals of the memorandum seemed to be too detailed.

21. The Delegation of Switzerland noted that two kinds of provisions were proposed in the memorandum. Some provisions would create rights not presently existing in the Berne Convention, and some provisions would clarify existing rights under the Convention. It underlined the importance of drafting solutions to ensure that such a distinction should not create uncertainties in respect of the existing level of protection required by the Berne Convention.

22. The Delegation of the Republic of Korea expressed its support for the idea of a protocol to the Berne Convention. It referred to the ongoing GATT negotiations and their impact on the present discussions. The Delegation stressed the balance between copyright and neighboring rights and the

importance of clarifying which proposals were of interpretative nature and which proposals went beyond the present obligations under the Berne Convention.

23. The Delegation of Japan pointed out that, at both the national and international levels, rapid technological changes were affecting the exploitation of works. It stated that the questions of individual exercise of rights, and the relationship between national treatment and reciprocity, deserved further study. The Delegation stressed the importance of the Rome Convention and the correct balance between copyright and neighboring rights.

24. The Delegation of Mexico said that the question of the impact of interpretative provisions on the existing obligations under the Berne Convention should be further studied. It urged that moral rights be included in the subjects to be considered in respect of the proposed protocol. The Delegation stated that the question of the legal nature of the proposed instrument should be studied without further delay. It said that more detailed analysis was necessary in respect of certain questions under discussion, and suggested broadening the list of subjects for possible inclusion in a possible protocol to modernize the Berne Convention. It pointed out that not all national laws contained express moral rights provisions and that moral rights were recently removed from the GATT text on intellectual property rights, which would have a detrimental effect on the rights of authors everywhere in the world.

25. The Delegation of Argentina stated that the proposed protocol should include provisions on enforcement, including penal sanctions as a means of fighting piracy, as well as provisions on importation and individual exercise of rights. It supported those delegations which found further study necessary on the possible influence of interpretative provisions on existing obligations under the Berne Convention.

26. The Delegation of the United Kingdom pointed out that the proposals in the memorandum related to issues of varying degrees of complexity and urgency, and it questioned whether a single new international instrument could accommodate them all. It stressed that the relationship between any new instrument and the Berne Convention should be clearly determined, and, in particular, that a distinction should be drawn between proposals for the creation of new rights and proposals which would merely clarify existing obligations under the Convention.

27. The Delegation of Canada said that the copyright legislation in its country was currently under revision, and that it might have to reserve its opinion on certain subjects to be discussed in the present context. It also pointed out that some proposals included in the memorandum were premature to be dealt with at the present time.

28. The Delegation of Algeria noted that the memorandum reflected the great efforts which were undertaken at the national and international levels to identify new ways to provide for better protection of authors, taking into account the evolution of new technologies. It said that the memorandum suggested clarifications and improvements in various fields and considered that the approach on certain notions contained in the memorandum was pertinent. However, it was of the view that certain aspects deserved further detailed study. It referred to the question of importation which was of importance for developing countries, to the notions of private reproduction and communication to the public, and to collective administration of rights which would need some clarifications in the course of the debate.

29. The Delegation of India supported the initiative aimed at the preparation of a protocol to the Berne Convention. It stressed that no norms in the new instrument should create unreasonable obstacles for developing countries to the development of their economy and to the creation and the dissemination of new works.

30. The Delegation of Australia suggested that the proposed protocol could be so worded as not to affect current understandings among member States of the Berne Union concerning their existing obligations under the Convention. It expressed the view that appropriate wording could be adopted to affirm that a specified situation was covered by the Convention without prejudice to its residual application to other cases.

31. The Delegation of Peru said that the possible protocol or any other international instrument should provide for appropriate provisions which could be operational for all countries, and in particular for developing countries. It noted that technological developments have created the need for recognition of new rights, which should be included in any international instrument complementing the Berne Convention and the Rome Convention. The Delegation said that the possible protocol should contain provisions acceptable to a large number of countries, safeguarding the interests of developing countries, including those which were not members of the treaties administered by WIPO.

32. The Delegation of Morocco referred to a study undertaken in its country concerning the legal protection of computer programs and artificial intelligence. It noted that certain proposals contained in the memorandum would require more specific definitions. It expressed support for the proposals concerning extension of the duration of protection, the right of importation, and the abolition of certain non-voluntary licenses.
33. The observer from the United Nations Educational, Scientific and Cultural Organization (UNESCO) supported the development of a protocol to the Berne Convention, growing out of work conducted under joint Unesco/WIPO auspices in the mid-1980s. He stated that the inclusion of provisions on individual exercise of rights might also be useful.
34. An observer from the International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU) read a statement on behalf of the International Federation of Journalists (IFJ). The statement expressed the view that transfer of copyright in works of employed journalists should be limited to the extent necessary for the employer's business. The statement also referred to the importance of Article 6<sup>bis</sup> of the Berne Convention in protecting the moral rights of authors. Another observer from ISETU stated that performances of works should be treated as protected works, and that the work-for-hire provisions in certain national laws imposed undue restrictions on the rights of performers to exploit such performances. He expressed the view that improved legal protection for performers was a matter for urgent action at the international level.
35. The observer from the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM) stated that it was necessary and urgent to improve the level of protection under the Berne Convention in the light of recent technological developments and stressed that such improvement should not be dependent on developments of a more commercial nature in other international forums. He referred to the possible development, outside the context of the possible protocol to the Berne Convention, of a separate and free-standing international instrument for the protection of producers of sound recordings. Such matter, on which BIEM would give its final support to the producers of sound recordings only if a satisfactory agreement had been reached on other economic matters, was less urgent than those presently under discussion for the increased protection of authors' rights. The observer expressed his particular support for the Secretariat's proposals included in the memorandum concerning limitations on private copying, extension of the duration of protection, and collective administration of rights in view of its importance and quality.
36. The observer from the International Literary and Artistic Association (ALAI) stated that the proposed protocol should include provisions on the individual exercise of rights and on moral rights, which might serve the interests of authors in contractual relations.
37. The observer from the International Confederation of Music Publishers (ICMP) supported the proposal for a protocol to the Berne Convention and urged that the distinction between copyright and neighboring rights should be maintained. She specified that the protection of producers of sound recordings was a neighboring right issue. As a result, it should not fall within the scope of discussions concerning a possible protocol to the Berne Convention. She expressed approval of the choice of subjects proposed for discussion, including the extension of the duration of protection, the abolition of non-voluntary licenses, the limitation on private copying and the restrictive definition of the term "public." She stated that, if the inclusion of other subjects could be considered, there was certainly no need for provisions on individual copyright contracts.
38. The observer from the European Committee for Interoperable Systems (ECIS) stated that the recognition of the status of computer programs as literary works under the Berne Convention necessarily implied that all of the Convention's exceptions applicable to literary works applied equally to such programs.
39. An observer from the International Federation of Reproduction Rights Organisations (IFRRO) emphasized the need to clarify Article 9(2) of the Berne Convention. She expressed support for the inclusion of provisions on collective administration of rights in a possible protocol, while emphasizing that only a minimum of statutory regulation of collective administration organizations was needed.
40. The observer from Intellectual Property Owners, Inc. (IPO) stated that the Berne Convention established international norms for the protection of copyright while leaving detailed implementation to national laws. He expressed the view that certain proposals in Part II of the memorandum were too detailed for inclusion in an international instrument and cautioned against the possible im-

plication that rights included in such an instrument were not already part of the international law of copyright.

41. The observer from the European Association of Manufacturers of Business Machines and Information Technology Industry (EUROBIT) stated that a possible protocol to the Berne Convention should confirm the existing level of protection under the Convention to avoid negative impact on existing protection. While he emphasized the importance of including provisions on general principles in the protocol around which consensus could form, he stressed that, besides the issues proposed in the memorandum, other issues should be considered, such as the question of originality.

42. An observer from the International Confederation of Societies of Authors and Composers (CISAC) restated CISAC's objection to the inclusion of protection for producers of sound recordings in the possible protocol. He emphasized the need to include provisions on enforcement, moral rights, and collective administration. He said that minimum standards on contracts might be useful, but pointed out that the inclusion of such provisions might be difficult, given the differences among national laws on this point.

43. The observer from the Information Industry Association (IIA) stressed the need to further clarify the legal nature of the proposed instrument or instruments, in particular the relationship to the existing text of the Berne Convention. He emphasized the need for detailed consideration of the issues of enforcement of rights, non-voluntary licenses, the rule of national treatment (as opposed to reciprocity), the work-for-hire principle, the substitution of *sui generis* notions for copyright principles in certain national laws, and the originality requirement.

44. An observer from the International Federation of Musicians (FIM) stated that certain developments in other international forums should be taken into account by the Committee. He stressed the special relationship between performers and producers of sound recordings and the need for an appropriate balance of their rights. He stated that FIM was not committed solely to the Rome Convention as a possible framework for the modernization of the protection of performers' rights; such modernization could also take place in a new WIPO instrument provided such instrument guaranteed the said balance of rights. He pointed out that certain proposals in the memorandum, such as the proposals on home taping, indicated that it was no longer meaningful to regulate certain questions

at the international level in an isolated way limited to the viewpoint of authors, or only to the viewpoint of producers. From the viewpoint of performers, global regulation was needed. He expressed the view that provisions on minimum contractual provisions for performers might be useful at the international level.

45. The observer from the European Broadcasting Union (EBU) stated that some proposals were overly detailed for inclusion in an international instrument, while others were not detailed enough in their analysis and did not recognize and reflect the evolution of discussion and consensus which had already been generally reached.

46. The observer from the Computer and Business Equipment Manufacturers Association (CBEMA) stated that a possible protocol to the Berne Convention should affirm the Convention's present coverage of computer programs as literary works, and that the inclusion of a rental right for computer programs would be a useful addition.

47. The observer from the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) emphasized the importance of statutory provisions on individual contracts as a means of ensuring that the consequences of assignments of economic rights and licenses were duly contemplated by the parties, and that internationally binding rules concerning contractual provisions—even such as might be set aside by contract—would serve that purpose.

#### *Right of Reproduction: Storage of Works in Computer Systems*

48. A great number of delegations and representatives of some international non-governmental organizations stressed that storage of works in computer programs was "reproduction" under Article 9(1) of the Berne Convention.

49. Several delegations and observers were of the view that it was unnecessary to include any provision in a possible protocol on this subject. Many of them added, however, that they would not be against such a provision, provided that it expressed clearly that what was involved was a mere clarification of provisions already existing in the Berne Convention.

50. Several other delegations, an observer from an intergovernmental organization and several observers from non-governmental organizations supported the proposal that an interpretative provision

should be included on this subject because it would be necessary and useful to eliminate any doubts. As possible sources of doubts the following were mentioned: in certain countries, the notions of fixation and reproduction were not considered as being exactly the same; in other countries, the notion of reproduction was still closely connected to the notion of making multiple copies; in still other countries, the absence of clear provisions created problems in practice. It was also pointed out that, although Article 9(1) of the Berne Convention spoke of reproduction in any manner or form, it had still been found necessary to include an interpretative provision on sound and visual recording, something which was much closer to the traditional cases of reproduction—because it involved tangible copies—than the storage of works in electronic memories.

51. A great number of delegations and observers from non-governmental organizations expressed preference for the first alternative in paragraph 75 of the memorandum. Some of them proposed, however, that the notion of storage should be made more flexible. As possible alternatives, the following were proposed: “storage of works in electronic form,” “storage of works in electronic medium,” “making a copy in machine-readable form.”

52. Some delegations expressed preference for the second alternative in paragraph 75 in the memorandum.

53. Several delegations and observers from non-governmental organizations proposed that the “running” of computer programs should also be considered reproduction. They considered that, in such a case, special exceptions seemed necessary to ensure, for lawful owners of computer programs, the use of the programs for the purposes for which they lawfully obtained the programs.

54. Some of the other delegations expressed doubts that mere running of a program could be considered reproduction; they compared such a use to the playing of a sound recording and pointed out that such a use was closer to performance than to reproduction.

55. An observer from an international non-governmental organization said that the storage and running of a computer program, in addition to reproduction, might also involve the adaptation or translation of that program.

56. One delegation said that, besides the storage of a work in a computer system, the temporary display of a work in part or as a whole should be con-

firmed as reproduction in the sense of Article 9 of the Berne Convention, because otherwise such a display might only come under the coverage of “public display” which was proposed in the memorandum as a kind of new right. The latter approach might suggest that display of works retrieved from a computer system was not yet covered by the Berne Convention.

57. The Chairman summarized the discussion and stated that several delegations considered a provision on storage of works in computer systems unnecessary; however, the position of some of them seemed flexible, as they said that they would accept such a provision provided that its wording would make it clear that what was involved was a mere interpretation. The majority favored the first alternative in paragraph 75 of the memorandum. Some delegations, however, found it necessary to make the notion of storage more flexible to include all kinds of electronic storage. He stated that in a future document concerning the proposed protocol there should be draft provisions on this issue.

*Right of Reproduction: Reprographic Reproduction by Libraries, Archives and Educational Establishments*

58. Several delegations stated that, although the provisions proposed in paragraph 88 of the memorandum would be suitable for inclusion in a national law, they were too detailed for an international instrument; Article 9(2) of the Berne Convention was an appropriate basis for national laws to regulate possible exceptions in respect of reprographic reproduction. They proposed that the possible protocol should not include any provisions on reprographic reproduction.

59. One delegation was of the view that the proposed provisions would merit further study.

60. After the above-mentioned interventions, the Director General proposed that, unless some delegations were opposed to such a step, the discussion, due to the fact that the majority of delegations clearly did not seem to support the proposals, should be terminated and the question of reprographic reproduction should be taken off the agenda.

61. No opposition was expressed to the Director General’s proposal. Accordingly, the Chairman stated that the discussion on the proposed provisions on reprographic reproduction had been terminated and the question of reprographic reproduction had been taken off the agenda, but the search for new solutions would continue.

62. After the above-mentioned decision, some delegations stated that, although they had accepted the decision, they would be in favor of continuation of considering the questions of reprographic reproduction in the framework of other further WIPO activities with the purpose of establishing at least certain guidelines and, later, possibly binding rules, so that certain overly extensive interpretations of Article 9(2) could be avoided.

63. Observers from three non-governmental organizations, in a joint statement, stated that they found it necessary to reconsider, as the work would continue, the decision concerning the removal of the question of reprographic reproduction from the agenda. They indicated that, because it was mainly the detailed nature of the proposed provisions that had raised objections, they would prepare proposals concerning more general draft provisions.

*Right of Reproduction: Private Reproduction for Personal Use by Devices*

64. A great number of delegations and observers from non-governmental organizations were of the view that a possible protocol should deal with this subject. Views were divided, however, concerning the nature and extent of the possible provisions.

65. Several delegations and some observers from non-governmental organizations opposed point (a) of paragraph 102 of the memorandum, because, in general, they did not find the practical application of prohibition of private copying realistic. Some of those delegations considered, however, that such prohibition could, and should, be applicable concerning computer programs.

66. One delegation and some observers from non-governmental organizations stated that prohibition of private copying could be applied by means of copy-protection systems. They proposed that the possible protocol should deal with the application of such systems.

67. Several delegations and observers from non-governmental organizations supported the proposed provisions on a right to remuneration in respect of private reproduction. Many of them considered, however, that it would be premature to extend those provisions to reprographic reproduction.

68. Some other delegations stated that further study was needed before they could state their final position on this issue.

69. Still some other delegations and observers from non-governmental organizations were of the view that the proposed protocol should not provide for a right to remuneration in this respect. They recognized that, in certain cases, private reproduction might be in conflict with Article 9(2) of the Berne Convention, but they considered that such cases should rather be eliminated by means of copy-protection or copy-management systems and new licensing techniques.

70. An observer from a non-governmental organization stated that the case had not yet been made for remuneration for private reproduction of sound recordings or audiovisual works.

71. Some delegations stated that, although they tended to agree with the proposed provisions concerning sound recordings and works included in them, they did not agree with them in respect of audiovisual works, because the private reproduction of such works was mainly for time-shifting purposes.

72. Some other delegations pointed out that, although the provisions in points (b) and (c) of paragraph 102 of the memorandum would, in general, be acceptable, it was necessary to provide for certain exceptions, e.g., in respect of certain cases of fair dealing, particularly the case where handicapped people were involved, and, in respect of professional equipment and material.

73. Several delegations and some observers from non-governmental organizations proposed that the question of possible differentiation between analog and digital recordings, and the notion and possible importance of serial digital reproduction should be further clarified. Some observers from non-governmental organizations said that there should be no such distinction between analog and digital recordings.

74. Several delegations and observers from non-governmental organizations proposed that, in respect of private reproduction, the question of the application of national treatment or the possible application of reciprocity should be studied.

75. One delegation proposed that the small working group which had been suggested to deal with the legal nature of the possible protocol should also deal with the question of the application of national treatment. It added that the small working group could consist of the representatives of the Secretariat, the Chairman of the Committee and some consultants whom the Secretariat might wish to ask to participate in such a group. The proposal was supported by a number of delegations.

76. Some delegations underlined the specific aspects of the question of importation of equipment and material and proposed that it be studied in respect of economic communities with common markets and no internal frontiers.

77. Some other delegations and observers from non-governmental organizations were of the view that the reference to importation by private persons for personal use should be deleted.

78. The Chairman summarized the discussion and stated that point (a) of paragraph 102 of the memorandum had not received sufficient support, except in respect of computer programs. A substantial number of participants supported the recognition of a right to remuneration as proposed in points (b) and (c) of the said paragraph, except for reprographic reproduction. Some delegations considered, however, that the question of home copying should rather be tackled by means of copy-protection or copy-management systems and by new licensing techniques. Certain aspects of the proposed right of remuneration, the exceptions applicable to it and its practical application, should be further studied.

*Right of Reproduction: Possible Exclusion of the Application of Non-Voluntary Licenses for Sound Recording*

79. A great number of delegations and observers from non-governmental organizations noted that the provision of the Berne Convention allowing non-voluntary licenses for sound recording had become obsolete, and expressed general support for the proposal contained in the memorandum as being in full harmony with the idea of modernizing the Berne Convention.

80. Some delegations referred to their national laws which provided for non-voluntary licenses for sound recording to be applied only in the absence of a collective administration system. One of those delegations expressed the view that the question of non-voluntary licenses for sound recording should not be dealt with in a possible protocol, while several other delegations did not oppose its inclusion in the future protocol.

81. An observer from a non-governmental organization said that the non-voluntary licensing systems in recording music had worked satisfactorily in a number of countries, and had proved useful in regulating licensing terms between record producers and music right owners, and the possibility for countries to continue to use this system should not be abolished.

82. Some other delegations noted that non-voluntary licenses for sound recording could be maintained as an option for developing countries where the phonographic industry was not yet fully developed; however, they were not opposed to phasing out such licenses, if a consensus was reached in favor of such phasing out.

83. One delegation mentioned the possible incompatibility which might emerge in connection with Article 20 of the Berne Convention, because a provision for the elimination of the non-voluntary license expressly permitted by Article 13 might amount to a provision contrary to the Convention, such as was not allowed in agreements under Article 20.

84. Some delegations said that the matter was not so urgent as to be dealt with at the present stage; they were, however, not opposed to the proposal made in the memorandum.

85. One delegation and some observers from non-governmental organizations, while agreeing with the abolition of existing non-voluntary licenses for sound recording, were of the opinion that the proposed five-year transition period for phasing out such non-voluntary licenses was too long.

86. The Chairman summarized the discussion and stated that there was very limited support for maintaining the possible application of non-voluntary licenses for sound recording as provided by Article 13(1) of the Berne Convention. He concluded that, as a result of the discussion, the proposal in the memorandum should be included in any further document on the possible protocol.

*Right of Public Display*

87. A great number of delegations and observers from non-governmental organizations supported inclusion of provisions on the right of public display in the possible protocol. Some delegations and an observer from a non-governmental organization opposed inclusion of, or requested further justification for, this right.

88. Several delegations and observers drew a distinction between direct display of a work, particularly such as display of a work of the plastic or graphic arts by a gallery or museum, and indirect display of a work, particularly such as display of text on a computer screen.

89. Some delegations said that a right of direct display in the case of works of the graphic and

plastic arts would be a new right. An observer from a non-governmental organization stated that such a right was analogous to the right of communication to the public already included in the Berne Convention.

90. One delegation questioned whether it was justified to create a new right of direct display, while two observers from non-governmental organizations stated that it was necessary to create such a right for works of the plastic and graphic arts. One delegation pointed out that the creation of such a new right would not be binding on States party to the Berne Convention which did not also adhere to the possible protocol.

91. Some delegations and observers from non-governmental organizations said that a right of indirect display of works on computer screens could be seen as a temporary reproduction already covered by Article 9 of the Berne Convention. Some other delegations and observers disagreed that indirect display of a work on a computer screen was adequately covered by Article 9 and were in favor of express recognition of a right of public display. An observer from a non-governmental organization stated that national treatment should apply in the case of such a right.

92. The delegation that opposed inclusion of a right of public display said that there was no such right in the law of its country, and that, without more analysis, it saw no justification for the right. The observer from a non-governmental organization who expressed opposition stated that such a right could inhibit the display of works by public libraries and museums.

93. One delegation stressed the need for further study of the differences between direct and indirect display, particularly with regard to the exceptions or waivers suitable to each. Several delegations emphasized the need for detailed exceptions to the right of public display, particularly in respect of the possible display of originals or copies of works of the plastic and graphic arts by museums, art galleries and other owners of such originals or copies.

94. One delegation pointed out that some displays of works were not undertaken for profit and did not unreasonably prejudice the legitimate interests of the authors. Some delegations stated that the recognition of a display right should not erect barriers to the dissemination of culture in developing countries. One delegation added that any provision in the protocol on exceptions to the right of public display should have the same relationship to the right as Article 9(2) of the Berne Convention had to the right of reproduction.

95. The Chairman summarized the discussion and stated that there was broad consensus in favor of further study of the right of public display in the context of the proposed protocol. He noted the discussions concerning the differences between direct and indirect display and said that more specific exceptions to the right of public display seemed desirable. He also mentioned that the rights of owners of the physical objects in which works were embodied should be taken into account.

#### *Right of Rental and Public Lending Right*

96. A great number of delegations and observers from non-governmental organizations expressed their support to provide for a rental right in a possible protocol. Those delegations and observers agreed, in particular, that such a right should be an exclusive right. Some delegations considered, however, that it would be more appropriate to provide for a mere right of remuneration, or to provide for an exclusive right along with a provision similar to Article 9(2) of the Berne Convention, which would allow such derogations from the exclusive right. An observer from an intergovernmental organization stated that, in general, he was in favor of submitting public lending activities to copyright liability; however, he reserved his position on the question whether authors should be granted an exclusive right in this respect or a right to equitable remuneration only.

97. The views were divided concerning the desirable scope of a right of rental. Some delegations and observers from non-governmental organizations considered that such a right should extend to all categories of works. Some delegations agreed that the categories of works mentioned in paragraph 129 of the memorandum should be covered, while a great number of delegations and observers from non-governmental organizations, although considering that the right of rental should only be granted in respect of certain categories of works, disagreed with the list proposed in the said paragraph; in general, the latter delegations were in favor of a more restricted list, but some of them, on the contrary, proposed widening the scope of the right.

98. There was broad agreement that the right of rental should extend to works embodied in sound recordings, sound recordings themselves and computer programs. Some delegations opposed the inclusion of audiovisual works, data bases and sheet music. Some other delegations and several observers from non-governmental organizations were of the view that the right of rental should also be extended to books.

99. Some delegations and observers from non-governmental organizations stated that a rental right on audiovisual works was necessary not only to combat piracy but also, and more importantly, to give the distributor the possibility to decide whether an audiovisual work on video medium should be rented or sold with a view to ensuring optimal exploitation of the work.

100. Some delegations and observers from non-governmental organizations referred to their reservation, expressed at the first session of the Committee, concerning the inclusion of provisions on sound recordings in a possible protocol.

101. One delegation drew attention to the problem of those computer programs that were parts of machines, cars, airplanes and other products, and stated that the right of rental should not apply to such programs.

102. A great number of delegations and some observers from non-governmental organizations opposed the inclusion of provisions on a right of public lending in a possible protocol. Some delegations stated that, where a public lending right existed, it was not considered a part of copyright. One delegation stated, however, that a public lending right was recognized in respect of the use of protected works, in favor of the authors of such works; thus its copyright nature could not be denied.

103. Some delegations and observers from non-governmental organizations expressed hesitation about any recognition of a right of public lending; they considered that the matter was not urgent and could be reconsidered at a later stage.

104. One delegation and some observers from non-governmental organizations supported the recognition of a right of public lending.

105. An observer from a non-governmental organization proposed that a right of public lending should be recognized in an optional way, as was the case in the present text of the Berne Convention in respect of the *droit de suite*.

106. Some delegations proposed that the definition of rental and public lending should be further clarified.

107. The Chairman summarized the discussion and stated that there was agreement that a possible protocol should provide for a right of rental; at the same time, the proposal for the recognition of a right of public lending had not received sufficient support. The scope of the right of rental and the

definition of rental should be further clarified, and specific exceptions should be considered in respect of computer programs included in products.

#### *Right of Importation*

108. A great number of delegations and observers from non-governmental organizations expressed support for continued consideration of the inclusion of a provision on a right of importation in a possible protocol. Some delegations opposed the inclusion of an importation right in a possible protocol.

109. One delegation noted that legislation had recently been enacted in its country which, in certain cases and under certain conditions, abolished the copyright owner's right of importation as applied to books. It stated that similar legislation was under consideration to limit the importation right with respect to sound recordings. The delegation said that abolition of importation right in its country was intended to provide the consuming public with faster and cheaper access to legitimate copies of reading materials of foreign origin. Not only pirate copies but also copies made under non-voluntary license were not able to be imported under the legislation without the copyright owners' authorization.

110. Of the delegations which opposed the right of importation, some said that the principle of international exhaustion should apply. Under the said principle, the first sale or other distribution of copies with the authorization of the author or other copyright owner, in any territory, exhausted his or its right to control the further distribution of those copies in any other territory. It was said that the author or other copyright owner received a royalty for the said first sale or distribution, and that it was not justified to permit further segregation of national markets by granting an additional right to control importation of those copies. One delegation said that the right of importation should not be included in the proposed protocol because it was inseparable from the right of distribution, which had been rejected at the Stockholm Diplomatic Conference of 1967. An observer from a non-governmental organization pointed out, however, that that rejection had been on procedural rather than substantive grounds.

111. Of the delegations which expressed support for further consideration of the importation right in the context of the proposed protocol, several took the view that the precise nature of the right was unclear, and said that the nature of, and justification for, the right should be studied further.

112. Some delegations and observers from non-governmental organizations said that the right of importation was inherent in the principle of territoriality of copyright and was already covered by the notion of reproduction under the Berne Convention; they took the view that provisions to confirm this were all that was needed in the proposed protocol.

113. Some other delegations said that importation was the first step in either the distribution or communication of works to the public, and that it was necessary to study further the cases in which, independently of those acts, exercise of the right of importation was appropriate.

114. One delegation proposed adding the words "for distribution" after "importation" in paragraph 134 of the memorandum.

115. Some delegations and observers from non-governmental organizations pointed out that territorial restrictions on reproduction and distribution of works were often established by contract. One delegation said that the need for a right of importation depended on the circumstances of such contracts, for example, whether the contracts established territorial restrictions, or whether they authorized importation or exportation among countries with greatly differing systems of copyright protection. Some observers from non-governmental organizations stated that territorial restrictions in contracts did not prevent the unauthorized importation of copies by persons or entities not in privity with the contracting parties.

116. Some delegations drew a distinction between a right to authorize importation of copies of works which had been made with the authorization of the author or other copyright owner, and copies which had been made without such authorization, e.g., under the authority of a non-voluntary license. As to the former, it was said that the principle of international exhaustion might be applicable, since the author or other copyright owner might have exhausted his or its right to control the importation of those copies for sale in another territory or territories. As to the latter, it was said that the author or other copyright owner should have the right to prohibit importation, since the copies were made without his or its consent.

117. One delegation said that the uniform recognition of the reproduction right granted by the Berne Convention without territorial limitation—except for the country of origin of the work—enabled the author to control the distribution of copies of his work also outside the country of repro-

duction, without the need for a new right of importation. It said that the author may confine his authorization to certain countries and prevent the exportation of copies into other contracting States, and that this could be confirmed in a protocol to the Berne Convention. The delegation pointed out that a right of importation might suggest that every importer in each country would need separate authorization from the author, which could split the act of authorizing the producers, with certain territorial export limitations, into many permissions to import copies. It took the view that this seemed to be alien to the Berne Convention.

118. Several delegations supported the recognition in paragraph 134 of the memorandum that an "economic community" of nations constituted a single market, within which the right of importation would not apply, but some of them also stated that the wording of a possible provision should make clear that, e.g., the European Communities were covered. Some observers from non-governmental organizations stated that such an exemption in an international instrument would have to be carefully drafted since the notion of an "economic community" might have different meanings in different contexts; moreover, it was important to consider that such a community might cover so large a territory that the right of importation could lose much of its meaning. One observer from a non-governmental organization suggested a notification procedure as an alternative for an exemption in the protocol for an "economic community"; under such a procedure, the contracting Parties of the protocol would notify its administrative organ of their intention to constitute such a community for purposes of the right of importation. One delegation expressed strong opposition to the latter suggestion, because the principle of exhaustion applied to goods within the European Communities was among the constitutional principles of the European Community law.

119. A number of non-governmental organizations described the complex arrangements and considerable investment required to maintain effective marketing networks for supplying books and other copyright products to individual national markets, which would be undermined if the right to control parallel imports was withdrawn, to the prejudice of the consumers in those markets.

120. The Chairman summarized the discussion and said that the questions concerning the right of importation should be kept on the agenda for further discussion by the Committee, and, in particular, that the circumstances in which the right was justified should be studied in detail.

*Right of Broadcasting: Direct Broadcasting by Satellite*

121. A great number of delegations and observers from non-governmental organizations indicated that it would be useful to include a clarification in a possible protocol that satellite broadcasting, whenever the broadcast program was directly receivable by the public, was broadcasting under the Berne Convention. Several delegations and observers stressed that only direct receivability, and not the telecommunication law categories of direct broadcasting by satellites and fixed service satellites, should be decisive from that viewpoint.

122. Also, a great number of delegations, an observer from an intergovernmental organization and some observers from non-governmental organizations stated that they favored the application of one single law. Those delegations and observers, were, in general, in favor of the exclusive application of the law of the country from where the program was initiated or, at least, they expressed serious doubts concerning the additional applicability of the law of the country where the signals were normally receivable as proposed in paragraph 142(b)(i) and (ii) of the memorandum.

123. Various delegations referred, in that context, to the draft directive of the European Communities and to the Council of Europe treaty on trans-frontiers broadcasting which dealt, *inter alia*, with this question. It was mentioned that the draft directive obliged the member States of the Communities to consider the place of the act of broadcasting where the final decision was taken concerning the contents of the broadcast program, which place thus determined the applicable law; furthermore, that the draft directive excluded non-voluntary licenses for satellite broadcasting.

124. Some delegations and observers from non-governmental organizations stated that, although they favored the exclusive application of the law of the country from where the program was initiated, this did not mean that they would agree with neglecting the rights of copyright owners in footprint countries. If the rights owners were not the same as those in the country from where the program was initiated, authorization could be obtained through collective administration schemes or through contracts.

125. An observer from a non-governmental organization said that the broadcaster must acquire the right to broadcast protected material only from the right owner for the originating country. However, further to the author's authorization, payment

would take account of all the features characterizing the broadcast, in particular that the broadcast would be seen or heard in other countries.

126. Some delegations and observers from non-governmental organizations were of the view that the exclusive application of the law of the country of emission would not be in harmony with the Berne Convention and the cultural and economic reality of satellite broadcasting. They proposed that the provisions concerning the alternative application of the law of the country of footprint should be further studied.

127. Still some other delegations were of the view that it was not necessary to include provisions in the possible protocol on applicable law.

128. The Chairman summarized the discussion and said that there was general agreement that it would be useful to clarify in a possible protocol that broadcasting by satellite, where the program was directly receivable, was broadcasting under the Berne Convention. There was also fairly general agreement that, in such a case, only one law should be applied, and the majority considered that this law should be the law of the country from which the program was initiated. Some participants were of the view, however, that the additional application of the law of the country of footprint should be further studied. The proposal of certain delegations that the protocol should not deal with applicable law should also be considered.

*Right of Broadcasting: Possible Exclusion or Restriction of the Application of Non-Voluntary Broadcasting Licenses*

129. A great number of delegations and observers from non-governmental organizations were of the view that provisions on the exclusion, at least in certain cases, of the application of non-voluntary broadcasting licenses should be included in a possible protocol.

130. Some delegations and observers from non-governmental organizations expressed their full agreement with the proposal in paragraph 148 of the memorandum, considering that non-voluntary licenses as allowed under Article 11<sup>bis</sup> of the Berne Convention, concerning direct and indirect broadcasting, as well as concerning retransmission by cable, should be abolished.

131. Some other delegations and an observer from a non-governmental organization were of the view that a distinction should be made between pri-

mary broadcasting and simultaneous and unchanged retransmission by cable of a broadcast program. While they supported abolition of non-voluntary licenses for primary broadcasting, they opposed such abolition in the other cases.

132. Still some other delegations were of the view that the abolition of non-voluntary licenses should be restricted to satellite broadcasting.

133. Some delegations and observers from non-governmental organizations opposed the general abolition of non-voluntary broadcasting licenses, especially in developing countries. The said delegations stated, however, that they would accept the abolition of non-voluntary licenses for primary broadcasting, in cases where there were collective administration schemes which ensured access to works.

134. Several delegations and observers from non-governmental organizations were of the view that the transition period provided in paragraph 148(ii) of the memorandum should be shortened.

135. The Chairman summarized the discussion and said that there was strong support in favor of abolishing non-voluntary licenses in respect of primary broadcasting, at least as far as satellite broadcasting was concerned. Some delegations wished to restrict such abolition to cases where collective administration schemes existed. The abolition of non-voluntary licenses for retransmission had not received sufficient support but it might also be further studied.

*Definitions of "Public Display," "Public Performance" and "Communication to the Public"*

136. A great number of delegations and observers from non-governmental organizations that took the floor on this topic stated that there was a need to define, in the possible protocol, those uses of works which were "public" and therefore subject to authorization by the author or other copyright owner.

137. Some delegations and observers from non-governmental organizations opposed the inclusion of definitions on qualified public acts in a possible protocol. They considered that it was more appropriate to leave this question to national laws. However, one of those delegations suggested that a few of the particular cases which should be deemed to be instances of public use of works, could be specified non-exhaustively in the possible protocol.

138. The delegations and observers from non-governmental organizations that expressed support for a definition of "public" noted that there were many discrepancies in national laws and judicial interpretations as to what constituted a public use of protected works. Several delegations emphasized that it was necessary to formulate a definition that was not overly restrictive, in light of the dynamic, rapidly-changing technological environment in which uses of protected works were taking place.

139. Some delegations stated that the definition of "public" would be different depending on the right involved, and that the proposed provisions in the memorandum were overly detailed for inclusion in an international instrument. One delegation said that "public" should be defined as a discrete notion, and several delegations and observers from non-governmental organizations favored a general statement that every use should be considered "public" that went beyond the circle of family members and the close social acquaintances of a family or an individual. One delegation and some observers from non-governmental organizations stressed that the notion of "public" should not depend on whether the place where the use of a work occurred was a "public" place or a "private" place; the relevant factor was the number of persons to whom the work was made available. Another observer from a non-governmental organization proposed that "public" should refer to all uses that went beyond the circle of family members, without referring to social acquaintances or to the number of persons who were present.

140. One delegation proposed to substitute the following definition for the entirety of paragraph 156 of the memorandum: "A display, performance or communication of a work is 'public' when it makes the work available to persons who do not belong to the narrow circle of a family or its closest social acquaintances." Some observers from non-governmental organizations proposed that the definition begin with such a general statement and continue with a non-exhaustive enumeration of certain illustrative examples of uses of works which were considered "public." He said that this approach would correspond to the technique applied in the case of Article 2(1) of the Berne Convention, which presented a non-exhaustive list of protected subject matter.

141. Concerning the definition of "public display" in item (a) of paragraph 156 of the memorandum, some delegations stated that the definition would apply only to direct display of a work, since indirect display was already covered by the notion of reproduction. One delegation stressed that the

definition of public display would be of importance to creators of works of the plastic and graphic arts. One observer from a non-governmental organization said that the definition of "communication to the public" in item (c) should include transmission of text; in such a case, there was no need for a separate definition of public display. Some other delegations expressed doubts whether display could be considered reproduction.

142. Concerning the definitions of "public performance" and "communication to the public" in items (b) and (c), respectively, of paragraph 156 of the memorandum, some delegations and observers from non-governmental organizations pointed out that the definitions proposed did not correspond literally to Articles 11 and 14 of the Berne Convention or to Article 12 of the Rome Convention. One delegation stated that the correct definition of "communication to the public" in item (c) did not, however, correspond to Article 12 of the Rome Convention, and that the definitions should thus be qualified as serving the purpose of the Berne Convention. Another delegation said that the definition of public performance should be deleted, because it did not correspond to Article 12 of the Rome Convention.

143. Some delegations said that exceptions to the public performance right should be recognized. One of those delegations referred to provisions in its national law that allowed certain free public performances in the context of teaching activities. Another delegation suggested that reference might be made to the "minor exceptions" to the rights of public performance and communication to the public in Article 11 of the Berne Convention, which were reflected in the Records of the Brussels (1948) and Stockholm (1967) revision Conferences. One delegation and an observer from a non-governmental organization stated that the definitions should also take the interests of performers into account.

144. One delegation said that the definition of "public performance" in item (b) should not be understood as establishing a public performance right in sound recordings, if the possible protocol were to apply to sound recordings. The same delegation and two observers from non-governmental organizations said that the definition of "communication to the public" in item (c) should include communications that could be received "at the same or different places, and at the same or different times."

145. An observer from a non-governmental organization suggested that the reference to transmission "by electronic, electric or similar means" in

item (c) be replaced by reference to transmission "by any method, manner or form now known or later developed, and from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device."

146. The Chairman summarized the discussion and stated that there was broad agreement that the notion of qualified public acts should be clarified in a possible protocol, although some delegations would be in favor of leaving the whole issue to national laws. In the future work, the various proposals concerning certain details, and the wording, of the definitions should be taken into account, and it should be considered whether a simpler definition, concentrating on the notion of "public," would not be more appropriate.

#### *Term of Protection*

147. Several delegations and observers from non-governmental organizations expressed agreement with the proposal in paragraph 161 of the memorandum to extend the minimum term of protection, while others opposed such extension. References were made by the delegations to the situation in their national legislation.

148. Some delegations and observers from non-governmental organizations were of the opinion that the justification given in paragraph 160 of the memorandum was not satisfactory. It was considered that basing an extension of the term of protection on continuous increases in life expectancy was not valid. Some of them pointed out that further study would be on possible justifications for the extension of the minimum term of protection.

149. An observer from an intergovernmental organization stated that he was not generally opposed to the extension of copyright protection *post mortem auctoris* if the States or groups of States so wished. However, he believed that, if the extension was provided for in the possible protocol, it might create, on the one hand, unreasonable difficulties for the access of developing countries to protected works indispensable for their development and, on the other hand, purely practical difficulties for the users of works, since the author's heirs were often difficult to find for the purpose of obtaining their authorization.

150. The Director General, in answer to the statement indicated in the preceding paragraph, noted that, of the growing number of countries which provided for a term of protection longer than

50 years *post mortem auctoris*, the majority was represented by developing countries; those countries which provided for a term of protection longer than 70 years were all developing countries, and it was a developing country, Côte d'Ivoire, which had the longest term: 99 years.

151. Other delegations and observers from non-governmental organizations were of the view that the extension of the minimum term of protection was justified not only by the increased life expectancy of authors, but also because a longer term of protection would increase the value of copyright. It was underlined in this context that the nature of the work and the conditions of exploitation of works were to be considered from the economic and social point of view as criteria for justifying the proposed extension of the term of protection.

152. A number of delegations noted the existing differences among national laws and said that, even if there was no guarantee to create complete harmony, providing a minimum term of protection of 70 years *post mortem auctoris* would be a step towards such harmonization and uniformity of national laws, and existing differences would be mitigated. In this context, the idea that not only the minimum, but also the maximum, of the term of protection, or a fixed term of protection, should be determined was also mentioned.

153. Some delegations stated that the present minimum term of protection as provided for in Article 7(1) of the Berne Convention was a suitable solution, reflected in the laws of about 90 percent of the States party to the Convention.

154. Several delegations and observers from non-governmental organizations noted that there should not be a differentiation between the various categories of works. In their view, it was important that all categories of works were embraced by the extension proposed in paragraph 161 of the memorandum, irrespective of the type of works concerned.

155. Some delegations were of the view that, on the contrary, a distinction should be made. Reference was made in this context to the term of protection of certain categories of works, such as computer programs and anonymous works.

156. As regards computer programs, a great number of delegations and observers from non-governmental organizations were of the opinion that a 50-year term of protection was sufficient, while some other delegations mentioned that even a term of such length would not be justified.

157. A great number of delegations and observers from non-governmental organizations stated that they were in favor of extending the term of protection for photographic works to either 50 years *post mortem auctoris* or 50 years from the making of the photographic work, and expressed their agreement with paragraph 163 of the memorandum.

158. A delegation pointed out that the proposed extension of the term of protection under discussion concerned economic rights and did not apply to moral rights.

159. An observer from a non-governmental organization said that a transition period not longer than two years, to incorporate such extension of the duration of protection in the national legislation, would be desirable.

160. The Chairman summarized the discussion and stated that there was no general agreement on the proposal in paragraph 161 of the memorandum concerning the general extension of the minimum term of protection, although a number of delegations supported the proposal. There was, at the same time, general support for the proposal in paragraph 163 of the memorandum concerning the extension of the minimum term of protection for photographic works. A possible protocol should include provisions on the minimum term of protection, but any revised working document should contain further justifications for any extension of such minimum.

#### *Collective Administration of Rights*

161. Because of lack of time, the Committee agreed that paragraphs 164 to 168 of the memorandum would be discussed in the next session of the Committee.

### III. Continuation of the Work of the Committee

162. At the request of the Chairman, the Director General stated how the Secretariat intended to continue the work concerning the possible protocol. The Director General said that

(i) the International Bureau would, in the near future, write to the invited governments and organizations requesting each to make, if it so desired, written proposals to the International Bureau concerning the provisions of a possible protocol,

(ii) the International Bureau would, after consultations with the Chairman and outside consul-

tants, further study the questions raised in the memorandum and in the first two sessions of the Committee, as well as any proposals it would receive in response to the invitation mentioned above; such study would particularly concentrate on the more controversial questions,

(iii) taking into account such study, the International Bureau would issue a working document, probably in September 1992, for the preparation of the next session of the Committee.

163. The Chairman asked the participants whether there was agreement concerning the program outlined by the Director General. No opposition was expressed. The Chairman stated that there was agreement.

164. One delegation referred to its earlier written proposal to consider possible further study of the question of individual exercise of rights. The Director General noted this, and said that the proposal would be considered during the study indicated in paragraph 162(ii), above.

165. One delegation referred to the suggestion by some observers from non-governmental organizations to reconsider the decision concerning the removal of the question of reprographic reproduction from the agenda. It proposed that this question should be considered with the aim to try to develop less detailed provisions which might be acceptable. Several delegations supported this proposal.

166. An observer from a non-governmental organization said that any future document should also deal with the protection of performers.

167. The Director General stated that the new working document would mention that the question of the protection of performers was raised in the Committee, but, for any extension of the scope of the possible protocol to the rights of performers, it would be necessary that the competent Governing Bodies of WIPO take a decision to that effect.

168. It was noted that the next session of the Committee would take place from November 30 to December 4, 1992.

#### IV. Adoption of the Report and Closing of the Session

169. The Committee unanimously adopted this report, and after the usual statements of thanks, the Chairman declared the session closed.

## LIST OF PARTICIPANTS\*\*

### I. Members

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### II. Observer States

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### III. Intergovernmental Organizations

**United Nations Conference on Trade and Development (UNCTAD):** C.U. Radhakishun. **United Nations Educational, Scientific and Cultural Organization (UNESCO):** E. Guerassimov. **General Agreement on Tariffs and Trade (GATT):** A. Otten; M. Geuze. **Islamic Educational, Scientific and Cultural Organization (ISESCO):** N. Rhiati. **Organization of African Unity (OUA):** M.H. Tunis.

### IV. Non-Governmental Organizations

**Agency for the Protection of Programs (APP):** D.H. Duthil. **Asia-Pacific Broadcasting Union (ABU):** T. Kurihara. **Business Software Alliance (BSA):** R.W. Holleyman; E.S. Koenig; A.N. Dixon; B.L. Smith. **Computer and Business Equipment Manufacturers Association (CBEMA):** I.A. Voorhees. **European Association of Manufacturers of Business Machines and Information**

\*\* A list containing the titles and functions of the participants may be obtained from the International Bureau.

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R.A.E. Stuyt. International Group of Scientific, Technical and Medical Publishers (STM): J.A. Koutchoumow. International Intellectual Property Alliance (IIPA): E.H. Smith. International Literary and Artistic Association (ALAI): A. Françon; H. Cohen Jehoram. International Organization of Journalists (IOJ): A. Angelov. International Publishers Association (IPA): J.A. Koutchoumow; C. Clark; S. Wagner. International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU): W. Bacher; J. Golodner; J. Wilson. International Video Federation (IVF): D. Gervais; H. Pasgrimaud. Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI): T.K. Dreier; A. Dietz. National Music Publishers' Association Inc. (NMPA): E.P. Murphy; F.S. Rittman. Union of Industrial and Employers' Confederations of Europe (UNICE): F. Blakemore.

## V. Officers

*Chairman:* J. Lienes (Finland). *Vice-Chairmen:* G. Boytha (Hungary); H. Retondo (Argentina). *Secretary:* M. Ficsor (WIPO).

## VI. International Bureau of the World Intellectual Property Organization (WIPO)

A. Bogsch (*Director General*); M. Ficsor (*Director, Copyright Law Division*); P. Masouyé (*Senior Legal Officer, Copyright Law Division*); R. Owens (*Senior Legal Officer, Copyright Law Division*).

# Activities of WIPO in the Field of Copyright Specially Designed for Developing Countries

## Africa

### Preparatory Meeting and Conference of Ministers in Charge of Copyright in West Africa on the Eradication of the Piracy of Musical, Literary and Artistic Works

(Dakar, March 2 to 5, 1992)

#### REPORT

prepared by the International Bureau of WIPO

#### Introduction

1. WIPO organized jointly with the Government of the Republic of Senegal, on March 4 and 5, 1992, in Dakar, the Conference of Ministers in Charge of Copyright in West Africa on the Eradication of the Piracy of Musical, Literary and Artistic Works. The Conference was preceded by a preparatory meeting of officials in charge of the copyright offices of those countries, also held in Dakar, on March 2 and 3, 1992.

2. Fourteen States, including the host country, were represented at both meetings: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.

3. Seven States were represented by their ministers in charge of copyright: Côte d'Ivoire, Gambia, Ghana, Mali, Nigeria, Senegal, Togo. Burkina Faso was represented by the Secretary General of the Ministry of Information and Culture.

4. Observers from three intergovernmental organizations and five non-governmental organizations participated in the meetings, as did numerous observers from the interested circles in the host country: United Nations Educational, Scientific and Cultural Organization (UNESCO), Agency for Cultural and Technical Cooperation (ACCT), Islamic Educational, Scientific and Cultural Organization (ISESCO), African Association Against Piracy

(ACOP), Francophone Song Council, International Confederation of Societies of Authors and Composers (CISAC), International Federation of the Phonographic Industry (IFPI), Society of Authors, Composers and Music Publishers (SACEM).

5. The lists of participants at the two meetings are attached to this report (Annexes III and IV).

#### Preparatory Meeting

6. The preparatory meeting, opened by Mr. Moustapha Ka, Minister for Culture of Senegal, was given the task of proposing to the Ministerial Conference a draft recommendation, known as the "Dakar Appeal," and resolutions. During the preparatory meeting, the delegations of the 14 countries represented submitted national reports on the state of piracy of musical, literary and artistic works in their respective countries and the means employed to eradicate it.

7. Mr. Ahmed Amine Dabo, Director General of the Senegalese Copyright Office (BSDA), was elected Chairman of the meeting, Mrs. Fatoumata Dembélé Diarra, Director of the Mali Copyright Office, and Mr. Moses Frank Ekpo, Director of the Nigerian Copyright Council, were elected Vice-Chairmen.

8. Lectures were given by the Legal Adviser, Anti-Piracy, of IFPI, London, the Chairman of As-

sociated Book Makers Nigeria Ltd., Ibadan, an Assistant Lecturer at the University of Dakar, the Director General of BSDA and an official of WIPO.

### Ministerial Conference

9. The inaugural session of the Conference of Ministers was presided over by the President of the Republic of Senegal, Mr. Abdou Diouf. The address given by Mr. Abdou Diouf is attached to this report (Annex I). Addresses were also given by Mr. Moustapha Ka, Minister for Culture of Senegal, and Dr. Arpad Bogsch, Director General of WIPO.

10. Messages were addressed to the Conference by Mr. Jean-Alexis Ziegler, Secretary General of CISAC, and Mr. Baaba Maal, Senegalese author, composer and performer.

11. The Conference of Ministers elected Mr. Moustapha Ka, Minister for Culture of Senegal, as President of the Conference. Mrs. Henriette Diabaté, Minister for Culture of Côte d'Ivoire, and Mr. Sam Oyovbaire, Minister for Information and Culture of Nigeria, were elected Vice Presidents. Mr. Diadie Yacouba Dagnoko, Minister for Sport, Culture and Promotion of Youth of Mali, was elected rapporteur.

12. Lectures were given by the Deputy Director of Legal Affairs, Ministry of Culture and Communication, Paris, the Adviser on African Affairs of CISAC, Paris, and the former Director General of

the Swiss Society for Authors' Rights in Musical Works (SUISA), Zurich.

13. The Conference of Ministers unanimously adopted, by acclamation, the draft recommendation from the preparatory meeting, known as the "Dakar Appeal."

14. The Dakar Appeal recommended, *inter alia*, to the States of the African continent, particularly those of the West African subregion:

- to accede, where they have not as yet done so, to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;

- to accede also to the Treaty on the International Registration of Audiovisual Works (Geneva, 1989), of which one of the objectives mentioned in the preamble is the fight against piracy of audiovisual works and contributions contained therein;

- to promote, as proposed by the President of the Republic of Senegal, Mr. Abdou Diouf, the adoption of a United Nations General Assembly Resolution condemning the piracy of intellectual works, the rights of whose authors are among the rights recognized by the Universal Declaration of Human Rights. A similar proposal should also be submitted to the Organization of African Unity.

15. The full text of the Dakar Appeal is attached to this report (Annex II).

### ANNEX I

#### Opening Address by Mr. Abdou Diouf, President of the Republic of Senegal

It is with great pleasure that I have come here today to preside over the inaugural session of the Conference of Ministers in charge of copyright in West Africa on the eradication of the piracy of the works of creators.

Above all, however, it is Senegal, both its people and its Government, that feels honored to host this important meeting, the first of its kind on the continent of Africa. This places upon us an absolute obligation to initiate decisive thinking on the deep-rooted ills that beset the promotion of artistic and literary production in Africa.

The devastating effects of these ills are well known to us and it is not enough to denounce them in the hope of defeating them. Neither indignation nor passive resignation will help us in our fight. What we must do is act. I should say that it is time to act, to prove movement by walking and show at last that piracy is not an unchangeable fact.

We are all aware that the situation is difficult for our artists and writers who cruelly endure the legitimate frustrations generated by such a situation. God knows the vital and irreplaceable part they play within society.

Untiringly, they work, masterfully, to blaze the trail to be followed by creation and thinking. However, you must admit that a true creator is not defined solely by his capability to take up his inspiration and to give it form. His alerting function, his transcendence that we recognize in him makes him a visionary, or better, a fabricator of symbols. A society without symbols, that is to say a society deprived of those signs that crystallize both its basic needs and its hopes, is a society with no future.

The very aim pursued by the developing countries, such as Senegal, is to make their contribution to building a world of progress, a world that is richer in spirituality and in creativeness.

Indeed, it is not only, of course, material and real forces, but also religious and cultural values that give life to peoples and which, in the final analysis, are the soul of those peoples.

We may therefore truly state that, if we do not introduce more creativeness into a world shaken by an unprecedented economic crisis, any cultural project, any new awareness of our socio-cultural identity will be a vain undertaking.

As you will have noticed, I wish to place the topic of your debates beyond the eradication of piracy and place it on the level of the promotion of a national culture that is dynamic in its productions of quality, open to the outside world, but faithful to its sources and capable of influencing contemporary civilization. In order to do so, we must continue our way towards full awareness of the objective conditions of creation, of its day-to-day reality, of its limits and of the hopes it carries with it.

However, I perceive a paradox in our cultural scene when I read the letters that I frequently receive from creators, particularly the authors and composers of music. This paradox is to be found in the abundance of today's cultural production and the precariousness of the living conditions of creators.

Indeed, despite the fact that the various fields of art and letters, particularly music, painting and literature, are remarkable for their creativeness, it is obvious that such productions are not always as remunerative as they should be. In other words, our creators do not receive the full price for their talent.

However, even more scandalous is the fact that these productions bring riches to other individuals through the piracy of musical, literary and artistic works. This is not just a matter of poor remuneration, but one of the theft of property that characterizes the piracy of works of the mind, one of today's plagues.

A further paradox is the fact that, despite the joint efforts of governmental organizations such as WIPO and Unesco, of private institutions such as

CISAC and IFPI, or again of authors' bodies such as BSDA, this intolerable plundering remains unknown to the general public or—and that is serious—is accepted as commonplace.

According to a false belief firmly rooted in certain mentalities, a creator or artist is a person who lives on fresh air, who has no need for material possessions, nor for a roof or a table, nor for medical care. This caricature can but reduce the creator to the state of a disembodied entity.

It is no simple chance that the highly industrialized countries with a high cultural level have devoted the greatest efforts to fighting the perverse effects of piracy and the infringement of literary and artistic property. For those countries it is a question of lucidly, but surely, preventing intellectual production from drying up due to the impoverishment and loss of motivation of creators.

From that point of view, the peoples of the Third World, particularly those of Africa, should take inspiration from that experience and define an effective response strategy.

I am of course aware that our respective governments have realized the extent of this plague and that efforts have been made for many years, as in the case of Senegal, to stifle it by setting up legislative and regulatory arrangements and by launching a vast campaign to make people aware of the problem. Nevertheless, we must go yet further, we must be more audacious and more imaginative in elaborating a collective plan of battle which is practical and coordinated, which is organized on the scale of our continent.

That is why we must undertake to improve the protection of our creators in the West African region and throughout Africa, in accordance with Article 27(2) of the Universal Declaration of Human Rights which proclaims: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

However that may be, one reason for my satisfaction in presiding over today's inaugural session is the meaningful presence in this room, united in the cause of the fight against piracy, of decision-makers of all kinds, members of the worlds of arts and letters, all involved together in this same reflection. I am sure that the conclusions that will emerge from your debates will augur well for the future of literary and artistic property.

In that spirit, I would like to welcome to Dakar those of you who are our guests. I have pleasure in greeting them all through the Ministers of our brother countries, through the Director General of WIPO, whose institution has coorganized the preparatory meeting and the Ministerial Conference; also through the representatives of ISESCO, CISAC, SACEM and ACCT, whose contributions

in preparing these meetings were stressed by the Minister for Culture in his welcoming address; finally, through all the delegates from the government or private organizations and those of the creators, that also represent their brothers from Africa and elsewhere, and who have not been able to join us here.

In accepting to take part in the preparatory meeting and in the Ministerial Conference, you have shown your wish to examine the crucial problem raised for all our countries by the piracy of musical, literary and artistic works. As far as I am concerned, I can assure you that I will speak in favor of your resolutions and recommendations with ECOWAS,\* of which I am President in office, and with other organizations, such as the OAU and UN.

I believe here, Mr. Director General, that WIPO would find more support for its mission if the

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\* *Editor's Note:* Economic Community of West African States.

United Nations General Assembly were to adopt, at the request of the African States, a resolution in favor of the eradication of piracy of musical, literary and artistic works, as it did with the illegal trade in drugs.

The aim henceforth is to identify all the contours of what is at stake, particularly with the contributions of the highly experienced lecturers whose presence I welcome here, in order to formulate concrete proposals to commit the future, to ensure that creators are better able to live, both at local and international level, from the fruit of their intellectual work.

Once more, you may count, in this fight, on my personal, vigilant support and on that of the Government of Senegal.

It is with that conviction and once more with my ardent wishes for your every success, that I open the Conference of Ministers in Charge of Copyright in West Africa on the Eradication of Piracy of Musical, Literary and Artistic Works.

Dakar, March 4, 1992.

## ANNEX II

### Dakar Appeal

The Ministers in charge of copyright in West Africa, meeting at Dakar on March 4 and 5, 1992, express their deep satisfaction with the initiative jointly taken by the Government of the Republic of Senegal and the World Intellectual Property Organization (WIPO), in holding this Conference on the Eradication of the Piracy of Musical, Literary and Artistic Works.

The Ministers, having discussed the nature, extent and disastrous consequences of the illicit reproduction of copies of musical, literary and artistic works, known as piracy, on the national and international scale, note that:

- (1) piracy jeopardizes the creation of intellectual works as well as the cultural, social and economic development of the African continent;
- (2) piracy causes serious prejudice to the interests of authors and publishers, performers, producers and broadcasting organizations;
- (3) piracy seriously retards the promotion of national culture.

In consequence, the Ministers reaffirm and acknowledge unanimously the preponderant role of the international copyright and neighboring rights

conventions at the international level, and the important role played by legislation at the national level. They recommend to African States, particularly those of the West African subregion:

– to accede, where they have not as yet done so, to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;

– to accede also to the Treaty on the International Registration of Audiovisual Works (Geneva, 1989), of which one of the objectives mentioned in the preamble is the fight against piracy of audiovisual works and contributions contained therein;

– to take adequate measures to adopt legislation in the field of copyright and neighboring rights, as well as measures to ensure that such legislation is effectively applied and respected, and to establish speedy procedures and dissuasive civil and penal sanctions capable of putting an effective stop to the production, distribution, importation and exportation of pirated products;

– to join the endeavors pursued at the international level by WIPO to update the international conventions and adapt them to technological developments, particularly through its program of cooperation with the African countries and the current preparations for adopting a Protocol to the Berne Convention;

– to support the initiatives taken to coordinate activities to fight piracy at national, regional and international levels, in collaboration with the international organizations concerned and with the collective administration bodies;

– to set up in West Africa a mechanism to coordinate the efforts of national governments towards combating piracy and follow up the recommendations arising from the present Conference;

– to take steps to harmonize national legislation on copyright and neighboring rights of West African countries ensuring uniform appropriate penalties for infringement, and a common attitude to the importation and exportation of pirated products within the West African subregion;

– to take steps to ensure production of high-quality original, literary, musical and artistic works by West African creators of such works, which will ensure their competitiveness in the world market. In order to achieve this, each country should intensify efforts to provide a conducive environment for creative authors;

– to intensify the training and development of specialists so as to enhance the enforcement of copyright legislation within the subregion, with the cooperation of WIPO and Unesco, as well as ISESCO, ACCT and non-governmental agencies such as CISAC and IFPI;

– to promote the knowledge of copyright by introducing the subject in universities and other institutions in West African countries;

– to utilize the provisions in international trade and cultural agreements to ensure the protection of intellectual property rights of countries of the subregion;

– finally, to promote, as proposed by the President of the Republic of Senegal, Mr. Abdou Diouf, the adoption of a United Nations General Assembly Resolution condemning the piracy of intellectual works, the rights of whose authors are among the rights recognized by the Universal Declaration of Human Rights. A similar proposal should also be submitted to the Organization of African Unity.

The Ministers reaffirm their thankfulness and their deep gratitude to the Government of the Republic of Senegal and to WIPO for having jointly organized this Conference which is of great importance in the fight against piracy in the West African subregion, and recommend that other conferences of the same nature be convened periodically.

Dakar, March 5, 1992.

## ANNEX III

### List of Participants — Preparatory Meeting

#### I. States

##### Benin

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##### Cape Verde

Mario Alberto ALMEIDA-FONSECA, président de l'Institut national de la culture (INAC), Praia

José Luis HOPFFER C. ALMADA, cadre supérieur au Cabinet du Premier ministre, Praia

##### Côte d'Ivoire

Norbert YAO KOUAKOU, directeur général du Bureau ivoirien du droit d'auteur (BURIDA), Ministère de la culture, Abidjan

##### Gambia

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##### Ghana

Betty MOULD-IDDRISSU (Mrs.), Copyright Administrator, Acting Head, Copyright Society of Ghana (COSGA), Accra

##### Guinea

Ousmane KABA, directeur général du Bureau guinéen du droit d'auteur (BGDA), Ministère de la communication, Conakry

##### Guinea-Bissau

Rui NENE, responsable du droit d'auteur au Ministère de l'éducation, de la culture et des sports, Bissau

**Mali**

Fatoumata Dembélé DIARRA (Mme), directeur du Bureau malien du droit d'auteur (BMDA), Ministère des sports, de la culture et de la promotion des jeunes, Bamako

**Niger**

Mouokaila DJIBO, chef du Service de la coopération et de la réglementation, Direction de la culture, Ministère de la communication, de la culture, de la jeunesse et des sports, Niamey

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**Senegal**

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Annette MBAYE D'ERNEVILLE (Mme), écrivain, membre du Conseil d'administration du BSDA, Dakar

Mamadou Seyni MBENGUE, écrivain, membre du Conseil d'administration du BSDA, Dakar

Cheik Aliou NDAO, auteur dramatique, membre du Conseil d'administration du BSDA, Dakar

Maurice Sonar SENGHOR, auteur dramatique, membre du Conseil d'administration du BSDA, Dakar

Louis Diéop FAYE, auteur et compositeur, membre du Conseil d'administration du BSDA, Dakar

Mademba DIOP, auteur et compositeur, membre du Conseil d'administration du BSDA, Dakar

Ahmed Amine DABO, directeur général du BSDA, Dakar

Marie-Mody SAGNA (Mlle), secrétaire général du BSDA, Dakar

Papa Toumaré NDIAYE, conseiller culturel au BSDA, Dakar

**Sierra Leone**

KAREFA-SMART, Deputy Director of Culture, Ministry of Information, Broadcasting and Culture, Freetown

**Togo**

Komi Ametefé AYI, directeur général du Bureau togolais du droit d'auteur (BUTODRA), Direction des affaires culturelles, Ministère de la communication et de la culture, Lomé

Pascal Kossi TSOGBE, chargé des questions de droit d'auteur à la Direction des affaires culturelles, Ministère de la communication et de la culture, Lomé

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*Islamic Educational, Scientific and Cultural Organization (ISESCO)*

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*International Federation of the Phonographic Industry (IFPI):* Funkazi KOROYE-CROOKS (Mrs.) (Legal Adviser, Anti-Piracy), London

*Society of Authors, Composers and Music Publishers (SACEM):* Jacques MOINET (directeur du Département des droits phonographiques et vidéographiques), Paris

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Bienvenu AGBOTON, adjoint au chef du deuxième Bureau, Ministère de l'Intérieur, Direction générale de la Sécurité nationale, Dakar

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Bara DIOKHANE, avocat au barreau du Sénégal, Dakar

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Keba NDIAYE, conseiller technique au Ministère de la culture, Dakar

Oumar Seck NDIAYE, président de l'Association des jeunes écrivains au Sénégal (AJES), Dakar

Ousmane NDOYE, magistrat à la Cour suprême, Dakar

Didier Daniel PREIRA, secrétaire général de l'Association sénégalaise des avocats du droit d'auteur, Dakar

Cheikhna SANKARE, conseiller technique au Ministère de la culture, Dakar

Moustapha SIDATE, chercheur/écrivain, Association des écrivains du Sénégal, Dakar

Alioune TRAORE, président de l'Association des jeunes contre la piraterie musicale, Dakar

## V. Lecturers

Ibrahima CAMARA, maître assistant à la Faculté des sciences juridiques et économiques, Université Cheikh Anta Diop, Dakar

Ahmed Amine DABO, Director General, Senegalese Copyright Office (BSDA), Dakar

Carlos FERNÁNDEZ BALLESTEROS, Director, Developing Countries (Copyright) Division, Copyright Department

Funkazi KORROYE-CROOKS (Mrs.), Legal Adviser, Anti-Piracy, International Federation of the Phonographic Industry (IFPI), London

Akin THOMAS, Chairman, Associated Book Makers Nigeria Ltd., Ibadan

## VI. International Bureau of the World Intellectual Property Organization (WIPO)

Ibrahima THIAM, Director, Development Cooperation and External Relations Bureau for Africa

Carlos FERNÁNDEZ BALLESTEROS, Director, Developing Countries (Copyright) Division, Copyright Department

Guy ECKSTEIN, Counsellor, Copyright Department

## ANNEX IV

### List of Participants — Ministerial Conference

#### I. States

##### Benin

Didier Ifamondeb FALADE, directeur du Bureau béninois du droit d'auteur (BUBEDRA), Ministère de la culture et des communications, Cotonou

##### Burkina Faso

Luc-Adolphe TIAO, secrétaire général au Ministère de l'information et de la culture, Ouagadougou

Simon OUEDRAOGO, directeur du Bureau burkinabé du droit d'auteur (BBDA), Secrétariat d'Etat à la culture, Ministère de l'information et de la culture, Ouagadougou

##### Cape Verde

Mario Alberto ALMEIDA-FONSECA, président de l'Institut national de la culture (INAC), Praia

José Luis HOPFFER C. ALMADA, cadre supérieur au Cabinet du Premier ministre, Praia

##### Côte d'Ivoire

Henriette DIABATÉ (Mme), ministre de la culture, Abidjan

Norbert YAO KOUAKOU, directeur général du Bureau ivoirien du droit d'auteur (BURIDA), Ministère de la culture, Abidjan

##### Gambia

Hassan B. JALLOW, Attorney General and Minister for Justice, Banjul

Momodou A. CESSAY, Registrar General, Registrar General's Office, Attorney General's Chambers and Ministry of Justice, Banjul

##### Ghana

Mohammed BEN-ABDALLAH, Minister for Culture, National Commission of Culture, Accra

Betty MOULD-IDDRISU (Mrs.), Copyright Administrator, Acting Head, Copyright Society of Ghana (COSGA), Accra

##### Guinea

Ousmane KABA, directeur général du Bureau guinéen du droit d'auteur (BGDA), Ministère de la communication, Conakry

##### Guinea-Bissau

Rui NENE, responsable du droit d'auteur au Ministère de l'éducation, de la culture et des sports, Bissau

##### Mali

Diadie Yacouba DAGNOKO, ministre des sports, de la culture et de la promotion des jeunes, Bamako

Fatoumata Dembélé DIARRA (Mme), directeur du Bureau malien du droit d'auteur (BMDA), Ministère des sports, de la culture et de la promotion des jeunes, Bamako

##### Niger

Mounkaila DJIBO, Chef, Service de la coopération et de la réglementation, Direction de la culture, Ministère de la communication, de la culture, de la jeunesse et des sports, Niamey

##### Nigeria

Sam OYOVBBAIRE, Minister for Information and Culture, Lagos

Egerton UVIEGHARA, Chairman, Nigerian Copyright Council, Federal Ministry of Information and Culture, Lagos

Moses Frank EKPO, Director, Nigerian Copyright Council, Federal Ministry of Information and Culture, Lagos

Bayo AIYEBUSI, Assistant, Chief Copyright Officer, Federal Ministry of Information and Culture, Lagos

##### Senegal

Moustapha KA, ministre de la culture, Dakar

Mouhamadou KANE, président du Conseil d'administration du Bureau sénégalais du droit d'auteur (BSDA), écrivain, Dakar

Annette MBAYE D'ERNEVILLE (Mme), écrivain, membre du Conseil d'administration du BSDA, Dakar

Mamadou Seyni MBENGUE, écrivain, membre du Conseil d'administration du BSDA, Dakar

Cheik Aliou NDAO, auteur dramatique, membre du Conseil d'administration du BSDA, Dakar

Maurice Sonar SENGHOR, auteur dramatique, membre du Conseil d'administration du BSDA, Dakar

Louis Diène FAYE, auteur et compositeur, membre du Conseil d'administration du BSDA, Dakar

Mademba DIOP, auteur et compositeur, membre du Conseil d'administration du BSDA, Dakar

Ahmed Amine DABO, directeur général du BSDA, Dakar

Marie-Mody SAGNA (Mlle), secrétaire général du BSDA, Dakar

Papa Toumaré NDIAYE, conseiller culturel au BSDA, Dakar

#### Sierra Leone

KAREFA-SMART, Deputy Director of Culture, Ministry of Information, Broadcasting and Culture, Freetown

#### Togo

Tchimbiano Martin DJAGBA, ministre de la communication et de la culture, Lomé

Komi Ametéfé AYI, directeur général du Bureau togolais du droit d'auteur (BUTODRA), Direction des affaires culturelles, Ministère de la communication et de la culture, Lomé

Pascal Kossi TSOGBE, chargé des questions de droit d'auteur à la Direction des affaires culturelles, Ministère de la communication et de la culture, Lomé

Edouodji Emile N'BOUKE SONCY, observateur au BUTODRA, Ministère de la communication et de la culture, Lomé

## II. Intergovernmental Organizations

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

Abderrahmane AMRI, chef de la Section du droit d'auteur, Paris

*Agency for Cultural and Technical Cooperation (ACCT)*

Alimata SALEMBÉRÉ (Mme), directeur général de la culture, Paris

Jacques DECK, responsable de programmes (arts vivants), Paris

*Islamic Educational, Scientific and Cultural Organization (ISESCO)*

Najib RHIATI, spécialiste de programmes, Rabat

## III. Non-Governmental Organizations

*African Association Against Piracy (ACOP):* Hervé Simon JEWELL (président), Paris

*Francophone Song Council:* Dominique THIANGE (Mme) (directrice régionale pour l'Europe), Bruxelles

*International Confederation of Societies of Authors and Composers (CISAC):* Jean-Alexis ZIEGLER (secrétaire général), Paris; Ndéné NDIAYE (conseiller aux affaires africaines), Paris

*International Federation of the Phonographic Industry (IFPI):* Funkazi KORROYE-CROOKS (Mrs.) (Legal Adviser, Anti-Piracy), London

*Society of Authors, Composers and Music Publishers (SACEM):* Jacques MOINET (directeur du Département des droits phonographiques et vidéographiques), Paris

## IV. Observers

Bienvenu AGBOTON, adjoint au chef du deuxième Bureau, Ministère de l'intérieur, Direction générale de la Sécurité nationale, Dakar

Emile Bernard BARBOZA, directeur général, EBB et Co. Entreprise culturelle et élite vocale, Dakar

Amadou Moctar DIENG, chef du Service de la propriété industrielle, Ministère de l'industrie, du commerce et de l'artisanat, Dakar

Bara DIOKHANE, avocat au barreau du Sénégal, Dakar

Cheikh M. Fadel DIOP, chef de la Sécurité urbaine, Commissariat central, Dakar

Mame Maguette DIOP (Mme), cinéaste, Bureau du cinéma, Dakar

Khassoum FALL, attaché de presse, Société africaine de production musicale (SAPROM), Dakar

Ousseynou FALL, avocat, Association sénégalaise des avocats du droit d'auteur, membre du groupe sénégalais de l'ALAI, Dakar

Marcellin MANGA, adjudant de gendarmerie, commandant de brigade de gendarmerie, brigade de gendarmerie du port de pêche, Dakar

Doudou NDIAYE, directeur général des Nouvelles éditions africaines du Sénégal, Dakar

Keba NDIAYE, conseiller technique au Ministère de la culture, Dakar

Oumar Seck NDIAYE, président de l'Association des jeunes écrivains au Sénégal (AJES), Dakar

Ousmane NDOYE, magistrat à la Cour suprême, Dakar

Didier Daniel PREIRA, secrétaire général de l'Association sénégalaise des avocats du droit d'auteur, Dakar

Cheikhna SANKARE, conseiller technique au Ministère de la culture, Dakar

Moustapha SIDATE, chercheur/écrivain, Association des écrivains du Sénégal, Dakar

Alioune TRAORE, président de l'Association des jeunes contre la piraterie musicale, Dakar

## V. Lecturers

Paul FLORENSON, Deputy Director, Ministry of Culture and Communication, Paris

Ndéné NDIAYE, Adviser on African Affairs, International Confederation of Societies of Authors and Composers (CISAC), Paris

Ulrich UCHTENHAGEN, Consultant, former Director General, Swiss Society for Authors' Rights in Musical Works (SUISA), Zurich

## VI. International Bureau of the World Intellectual Property Organization (WIPO)

Arpad BOGSCH, Director General

Ibrahima THIAM, Director, Development Cooperation and External Relations Bureau for Africa

Carlos FERNÁNDEZ BALLESTEROS, Director, Developing Countries (Copyright) Division, Copyright Department

Guy ECKSTEIN, Counsellor, Copyright Department

### Development Cooperation (in General)

*United Nations Development Programme (UNDP).* In January 1992, a WIPO official visited UNDP headquarters in New York and held discus-

sions with senior officials from the Office of the Administrator and the Regional Bureau for Africa. The purpose of the mission was to explore future cooperation possibilities under the UNDP Fifth Cycle (1992-96).

## Asia and the Pacific

### Development Cooperation (in General)

*United Nations Development Programme (UNDP).* In January 1992, two WIPO officials participated in the Fifth Meeting of Aid Coordinators, which was held in Manila, to consider UNDP's proposed inter-country programme for Asia and the Pacific for the UNDP Fifth Cycle (1992-96). The meeting was attended by representatives of 27 countries of Asia and the Pacific, representatives of donor countries and representatives of most of the United Nations agencies and organizations. The two officials had discussions with government officials of the Philippines and UNDP on future cooperation with the countries concerned and with UNDP.

### Assistance With Legislation and Modernization of Administration

*India.* In January 1992, the Director General, accompanied by two WIPO officials, visited New Delhi as the guest of the Government of India. The Director General was received by the Prime Minister, the Vice-President and members of the Government of India. He also had meetings with senior officials and met with members of the Federation

of Indian Chambers of Commerce and Industry and the Federation of Indian Publishers, representatives of private industry, professors from Delhi University and senior officials of UNDP in India. On review during his visit were, among other subjects, legislative issues on patents, trademarks and copyright, the possible accession of India to certain of the treaties administered by WIPO, the ongoing project for the Patent Information Service in Nagpur, a request from the government authorities for a project on computerization of the trademark administration as also international developments in the field of copyright.

Also in January 1992, a WIPO official and a WIPO consultant from the United Kingdom undertook a mission to India to prepare a survey of users of patent information for the UNDP-financed country project on the modernization of the Patent Information Service in Nagpur. The consultant had discussions with government officials, representatives of industry and other users of patent information in New Delhi, Bombay, Calcutta and Nagpur.

*Indonesia.* In January 1992, a WIPO official visited Jakarta to review ongoing activities under the UNDP-financed country project and discussed with government officials plans for future cooperation in the area of intellectual property.

## Latin America and the Caribbean

### Development Cooperation (in General)

*United Nations Development Programme (UNDP).* In January 1992, a WIPO official participated in a consultative meeting of UNDP held in New York on the regional programme for Latin America and the Caribbean for the UNDP Fifth Cycle (1992-96). The meeting was attended by representatives of 32 Latin American and Caribbean governments, and of most United Nations agencies and organizations. He also held discussions with UNDP officials and officials of Latin American countries concerning funding for the regional project on intellectual property (1992-96) that had been submitted by WIPO.

from Venezuela visited Santiago to participate in the preparation of the VIIth International Congress on Copyright and Neighboring Rights to be held by WIPO in cooperation with the Swiss Society for Authors' Rights in Musical Works (SUISA) in that city in April 1992.

### Assistance With Legislation and Modernization of Administration

*Peru.* In January 1992, two WIPO consultants from Chile and Switzerland gave a special course on the collective administration of copyright for Peruvian officials of the Copyright Office and the staff of the Peruvian authors' societies. Thirty participants attended the course.

*Chile.* In January 1992, a WIPO consultant

## Activities of WIPO in the Field of Copyright Specially Designed for European Countries in Transition to Market Economy

### General

*UNDP Intergovernmental Meeting.* Two WIPO officials participated in the UNDP Intergovernmental Meeting, Regional Programme for Europe, in preparation for the UNDP Fifth Cycle (1992–96), held in January 1992 in Geneva. In addition to government officials from Albania, Bulgaria, Czechoslovakia, Hungary, Malta, Poland, Romania, Turkey and Yugoslavia, representatives of most of the UN agencies and organizations participated in the meeting. The WIPO officials also discussed with UNDP officials the proposed extension of the UNDP-funded, WIPO-executed project "Patent Information Services" in Central and Eastern European countries.

### National Activities

*Albania.* In January 1992, two government officials undertook a special training course, with the

Swiss Society for Authors' Rights in Musical Works (SUISA) in Zurich, on the collective administration of copyright, conducted by a WIPO consultant from Switzerland. The training included a visit to WIPO and to the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), in Budapest, also covering the practical aspects of copyright.

*Latvia.* A WIPO official visited Riga in January 1992 and had discussions with government officials concerning, in particular, the preparation of a copyright law for Latvia, possible accession to the Berne Convention, the establishment of authors' societies and WIPO assistance with training in copyright matters.

*Russian Federation.* At the request of the national authorities, the International Bureau sent comments, in January 1992, on the draft laws of that country on patents, trademarks, integrated circuits and computer software.

## Contacts of the International Bureau of WIPO with Governments and International Organizations in the Field of Copyright

### United Nations

*United Nations Conference on Trade and Development (UNCTAD).* In January 1992, two WIPO officials attended the seventeenth Special Session (Part II) of UNCTAD's Trade and Development Board in Geneva.

Convention, in particular to obtain information on the views of non-governmental organizations on the items in the second part of WIPO's memorandum concerning the proposed Protocol, which had not been discussed at previous hearings.

### Regional Organizations

*European Communities.* A WIPO official attended a hearing organized in January 1992 in Brussels by the Commission of the European Communities on the proposed Protocol to the Berne

### Other Organizations

*Association of International Libraries (AIL).* In January 1992, a WIPO official was invited to participate in a roundtable session organized by AIL in Geneva, entitled "Future Visions," to discuss the programs of the international libraries based in or near Geneva over the next five years.

*International Association for the Protection of Industrial Property (AIPPI)*. In January 1992, three officials of AIPPI visited WIPO to discuss with the Director General the work program of AIPPI in relation to WIPO's activities, in particular the proposed patent law treaty, the trademark procedures treaty, industrial designs, geographical indications, the Madrid Protocol, the PCT, arbitration, dispute settlement between States and protection against unfair competition.

*International Federation of the Phonographic Industry (IFPI)*. In January 1992, three officials of IFPI visited WIPO headquarters and had discussions with the Director General and WIPO officials on matters of common interest.

*International Publishers Association (IPA)*. A Deputy Director General attended the 24th Congress of IPA held in New Delhi in January 1992.

## Miscellaneous News

### General News

*WIPO*. At a ceremony organized by the Canton of Geneva in January 1992, the Director General, together with the Head of the Geneva Public Works Department, laid the foundation stone of a new building in Geneva which WIPO will occupy.

### National News

*India*. The Ordinance to amend the Copyright Act No. 9 of 1991 entered into force on December 28, 1991. Copyright protection was extended from 50 to 60 years.

## Calendar of Meetings

### WIPO Meetings

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

#### 1992

- May 25 to 27 (Geneva)**      **Meeting of Non-Governmental Organizations on Arbitration and Other Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties**
- The meeting will consider the desirability of establishing within WIPO a mechanism to provide services for the resolution of disputes between private parties concerning intellectual property rights, as well as the type of services that might be provided under such a mechanism.
- Invitations:* International non-governmental organizations having observer status with WIPO.
- June 1 to 5 (Geneva)**      **Committee of Experts on the Harmonization of Laws for the Protection of Marks (Third Session)**
- The Committee will continue to examine a draft trademark law treaty, with particular emphasis on the harmonization of formalities with respect to trademark registration procedures.
- Invitations:* States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- June 15 to 19 (Geneva)**      **Committee of Experts on a Model Law on the Protection of the Intellectual Property Rights of Producers of Sound Recordings**
- The Committee will consider a draft Model Law dealing with the protection of the rights of producers of sound recordings, which could be used by legislators at the national or regional level.
- Invitations:* States members of the Berne Union or WIPO, or party to the Rome Convention or the Phonograms Convention, and, as observers, certain organizations.
- September 21 to 29 (Geneva)**      **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Third Series of Meetings)**
- Some of the Governing Bodies will meet in ordinary session, others in extraordinary session.
- Invitations:* As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.
- October 12 to 16 (Geneva)**      **Working Group on the Application of the Madrid Protocol of 1989 (Fifth Session)**
- The Working Group will continue to review joint Regulations for the implementation of the Madrid Agreement Concerning the International Registration of Marks and of the Madrid Protocol, as well as draft forms to be established under those Regulations.
- 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.
- November 2 to 6 (Geneva)**      **WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Tenth Session)**
- The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1991) and make recommendations on the future orientation of the said Program.
- Invitations:* States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

- November 9 to 13 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fifteenth Session)**  
 The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (July 1991) and make recommendations on the future orientation of the said Program.  
*Invitations:* States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.
- November 30 to December 4 (Geneva)** **Committee of Experts on a Possible Protocol to the Berne Convention (Third Session)**  
 The Committee will continue to examine the question of the preparation of a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.  
*Invitations:* States members of the Berne Union, the Commission of the European Communities and, as observers, States members of WIPO not members of the Berne Union and certain organizations.

## UPOV Meetings

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

### 1992

- October 26 and 27 (Geneva)** **Administrative and Legal Committee**  
*Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 28 (Geneva)** **Consultative Committee (Forty-Fifth Session)**  
*Invitations:* Member States of UPOV.
- October 29 (Geneva)** **Council (Twenty-Sixth Ordinary Session)**  
*Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental and non-governmental organizations.
- October 30 (Geneva)** **Meeting with International Organizations**  
*Invitations:* International non-governmental organizations, member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

## Other Meetings

### 1992

- May 11 to 15 (Marrakesh)** **International Chamber of Commerce (ICC): Conference on "Development Dimensions in the '90s"**
- May 18 to 20 (Lisbon)** **Commission of the European Communities (CEC): PATINNOVA '92. Second European Congress on Patents, Trade Marks and Innovation in Industry**
- October 5 to 7 (Sitges)** **International Literary and Artistic Association (ALAI): Study Days**
- October 7 to 10 (Amsterdam)** **International League of Competition Law (LIDC): Congress**
- October 18 to 24 (Maastricht/Liège)** **International Confederation of Societies of Authors and Composers (CISAC): Congress**
- November 15 to 21 (Buenos Aires)** **International Federation of Industrial Property Attorneys (FICPI): Executive Committee**

**1993**

- June 7 to 11 (Vejde) International Federation of Industrial Property Attorneys (FICPI): Executive Committee
- June 26 to July 1 (Berlin) Licensing Executives Society (International) (LES): Annual Meeting

**1994**

- June 10 to 17 (Vienna) International Federation of Industrial Property Attorneys (FICPI): Congress
- June 12 to 18 (Copenhagen) International Association for the Protection of Industrial Property (AIPPI): Executive Committee



