

Published monthly  
Annual subscription:  
160 Swiss francs  
Each monthly issue:  
20 Swiss francs

# Copyright

28th year – Nos. 7-8  
July-August 1992

Monthly Review of the  
World Intellectual Property Organization (WIPO)

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#### WIPO 1992

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## Notifications Concerning Treaties Administered by WIPO in the Field of Copyright

### Convention Establishing the World Intellectual Property Organization and Certain Other Treaties Administered by WIPO

#### Declaration

#### SLOVENIA

The Government of Slovenia deposited, on June 12, 1992, a declaration to the effect that the following treaties continue to be applicable to the territory of Slovenia and that Slovenia accepts the obligations set forth in the said treaties in respect of its territory:

- the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967, and amended on October 2, 1979;

- the Paris Convention for the Protection of Industrial Property, of March 20, 1883, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979;

- the Madrid Agreement Concerning the International Registration of Marks, of April 14, 1891, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979;

- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised at Geneva on May 13, 1977, and amended on October 2, 1979;

- the Locarno Agreement Establishing an International Classification for Industrial Designs, signed on October 8, 1968, and amended on October 2, 1979;

- the Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, as revised at Paris on July 24, 1971, and amended on October 2, 1979.

Slovenia will belong to Class VII for the purpose of establishing its contribution towards the budget of the Berne Union.

*WIPO Notification No. 157, Berne Notification No. 139, of June 30, 1992.*

#### Berne Convention

#### New Member of the Berne Union

#### CHINA

The Government of China deposited, on July 10, 1992, its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, and amended on October 2, 1979, with the declaration that the Government of China avails itself of the faculties provided for in Articles II and III of the Appendix to the said Convention.

The Berne Convention, as revised at Paris on July 24, 1971, and amended on October 2, 1979,

will enter into force, with respect to China, on October 15, 1992. On that date, China will become the 91st member of the International Union for the Protection of Literary and Artistic Works ("Berne Union").

China will belong to Class V for the purpose of establishing its contribution towards the budget of the Berne Union.

*Berne Notification No. 140, of July 15, 1992.*

## Normative Activities of WIPO in the Field of Copyright

### Working Group of Non-Governmental Organizations on Arbitration and Other Extra-judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties

First Session

(Geneva, May 25 to 27, 1992)

#### NOTE

##### I. Introduction

A Working Group of Non-Governmental Organizations on Arbitration and Other Extra-judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties (hereinafter referred to as "the Working Group") held its first session at the headquarters of WIPO, on May 25 and 26, 1992. The meeting of the Working Group was convened by the Director General of the World Intellectual Property Organization (WIPO).

The following non-governmental organizations were represented at the meeting: Association of Dutch Patent Agents (APA), Brazilian Association of Industrial Property Agents (ABAPI), Brazilian Association on Industrial Property (ABPI), Center for Advanced Study and Research on Intellectual Property (CASRIP), Chartered Institute of Arbitrators (CI Arb), Committee of National Institutes of Patent Agents (CNIPA), Federal Chamber of Patent Attorneys (FCPA), Institute of Intellectual Property (IIP), Institute of Professional Representatives Before the European Patent Office (EPI), 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 Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Industrial Property Attorneys (FICPI), International Federation of Reproduction Rights Organisations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Associa-

tion (ALAI), International Publishers Association (IPA), International Union of Architects (IUA), International Video Federation (IVF), Japan Patent Association (JPA), United States Trademark Association (USTA). Five experts, invited by the International Bureau, also participated in the meeting. The list of participants follows this Note.

The Director General of WIPO, Dr. Arpad Bogsch, chaired the meeting.

Discussions were based on a memorandum prepared by the International Bureau entitled "Observations on the Possible Establishment of Extra-judicial Dispute-Resolution Services Within the Framework of WIPO" (hereinafter referred to as "the working document") (document ARB/WG/1/1).

The present Note, which was prepared by the International Bureau, summarizes the discussions without reflecting all the observations made.

##### II. The Desirability of or the Need for Specialized Extra-judicial Services for the Resolution of Disputes in the Field of Intellectual Property

A number of participants expressed the view that extra-judicial mechanisms for the resolution of intellectual property disputes between private parties, particularly arbitration, offered several advantages over court litigation and merited further examination by WIPO with a view to determining whether a role could be played by WIPO in this area. Among the advantages noted by participants were the following:

(i) The possibility of selecting mediators, arbitrators or other third party neutrals with *special*.

*skills* in the field of intellectual property or the subject matter to which the dispute relates. It was underlined that intellectual property disputes could involve technical issues of considerable complexity whose understanding required highly specialized theoretical and practical expertise which might not be generally available in national judicial systems. Some participants called attention to the fact that intellectual property disputes could and did arise in the context of larger commercial disputes which would require arbitrators or other third party neutrals with experience reaching beyond intellectual property. Others, particularly in the sectors in which copyright played a central role, indicated that intellectual property was the main component of the products or services they provided in the market and that disputes essentially concerned with intellectual property were not unusual.

(ii) The *confidentiality* of the existence of the dispute and its outcome could be assured by extra-judicial procedures, thereby meeting a need of the business community that judicial resolution could not meet. Confidentiality was considered particularly important in respect of disputes involving trade secrets.

(iii) Extra-judicial procedures provided a *flexibility* that responded to the needs of business relationships. The disputants could select the kind of procedure that was best adapted to their commercial needs. In particular, extra-judicial procedures were more apt to facilitate the continuation of the business relationship in the context of which a dispute had arisen by encouraging a conciliatory rather than adversarial approach to the dispute-settlement process.

(iv) In situations where a dispute involved intellectual property rights covering the same or similar subject matter in different jurisdictions, extra-judicial procedures provided the possibility of adopting a *single procedure* in respect of all the jurisdictions concerned, thereby offering an approach that was cost-effective and that minimized dislocation of management and personnel time and resources. Some participants cautioned against thinking that extra-judicial procedures were always cost-effective, pointing out that arbitration proceedings could involve considerable time and cost.

(v) Extra-judicial dispute-resolution procedures reduced the risk (built in when the national court of a given country decides the dispute) that, where the litigants belong to different legal cultures one's would prevail over the other's.

It was pointed out by some participants that, while interest in and resort to arbitration and other extra-judicial procedures was growing, those procedures were not always well known in some circles,

particularly in the context of intellectual property disputes. It was considered that it would be desirable for the International Bureau to endeavor to publicize the availability and advantages of extra-judicial dispute-resolution services generally and of any such services that might be offered by WIPO.

Several participants pointed out that there might be some doubt in certain jurisdictions about the arbitrability of certain aspects of intellectual property disputes. Others were of the view that an extra-judicial dispute resolution should be viewed as a consensual procedure on an *inter partes* basis, and that any decision on the dispute should be considered in the same manner as an *inter partes* contract which could not have an *inter omnes* effect, but, rather, reflected a private arrangement between the parties. Like contracts, such private arrangements were subject to supervening considerations of public policy, for example, competition or antitrust laws.

### III. The Appropriateness of WIPO for Providing Extra-judicial Dispute-Resolution Services

In response to the question whether dispute-resolution services, which were directed at facilitating, by consensual means, the enforcement of intellectual property rights, were compatible with the activities of WIPO, which seemed to concern principally the setting of standards and the obtaining of protection, the representative of the International Bureau pointed out that the Convention Establishing the World Intellectual Property Organization established, as one of the objectives of the Organization, the promotion of the protection of intellectual property throughout the world. Since a title of protection was of little use if it could not be enforced, the provision by WIPO of services for the extra-judicial resolution of disputes which would encourage consensual enforcement would seem not only to be compatible with, but also to promote actively, that objective of the Organization.

In response to a query concerning the means by which such services might be established, the representative of the International Bureau stated that the conclusion of a new treaty was not considered to be necessary. In the first place, a well-established framework for the recognition and enforcement of arbitral awards already existed on the international level. Furthermore, the power to establish such services seemed to fall clearly within the competence of the Governing Bodies of WIPO. In particular, it was recalled that the General Assembly of WIPO was competent to exercise such functions as were appropriate under the Convention Establishing the World Intellectual Property Organization and, thus, as were appropriate to the objectives of the

Organization established by that Convention. In addition, the Assemblies constituted by the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, as well as by other treaties administered by WIPO, were competent to take appropriate action designed to further their objectives, which objectives were always related to the protection of intellectual property.

It was also recalled that intellectual property concerned private property rights and that many of WIPO's activities were, in consequence, related to services used by or put at the disposal of the private sector. Such was the case of the registration activities under the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs.

#### IV. The Range of Possible Services That Might Be Made Available Through WIPO

*Arbitration.* Arbitration was considered to be the best known and, in many jurisdictions, the most important alternative to judicial adjudication. Many participants referred to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), done at New York on June 10, 1958, to which 87 States were party. It was noted that that Convention facilitated, at the international level, the enforcement of arbitral awards and that there was not an equivalent convention concerning the enforcement of judgments of national tribunals.

As concerns the rules governing arbitration proceedings, the UNCITRAL Arbitration Rules, prepared by the United Nations Commission on International Trade Law, were mentioned as a basic reference. While those Rules were currently widely accepted and used in international commercial transactions, it was considered desirable that an endeavor be made by WIPO to draft a modified form of rules specially adapted to intellectual property disputes and any services that might be made available through WIPO.

*Other Extra-judicial Procedures.* It was pointed out that in certain countries a wide range of extra-judicial procedures other than arbitration were increasingly used. That range included conciliation or mediation, the executive or "mini" trial and hybrid procedures involving a combination of some or all of those procedures.

As opposed to adjudication or arbitration, those procedures are non-adversarial in nature and provided for the involvement of an intermediary or

third party "neutral" who assisted the parties in reaching an amicable settlement of the dispute by common agreement. Typically, the intermediary acted as a mediator or conciliator. The philosophy behind those procedures was to characterize a dispute as a problem to be resolved together by the parties rather than a conflict to be won; disputes, therefore, could be settled without unnecessarily endangering and disrupting commercial relationships. In view of those advantages, some participants considered that WIPO services should be available in respect of means other than, and in addition to, arbitration. Certain participants pointed out, however, that those other procedures were not always widely used in all countries.

A number of participants underlined particularly the importance of the availability of a conciliator or mediator consultant (referred to as a "dispute manager" in the working paper), particularly for large and complex disputes. The main roles of such a consultant would be to assist the parties in the identification of the issues in dispute, to provide the possibility of arriving at an early settlement of the dispute through the mediation of the consultant and to design, or to facilitate the choice of, the most appropriate procedures for the settlement of those issues that remained in dispute despite the attempt to reach a settlement through mediation. Some participants pointed out that there were a number of countries where such a notion of a conciliator or mediator consultant was unknown. In addition, it was mentioned that conciliation had not yet been widely resorted to under existing institutions administering systems for the settlement of international commercial disputes between private parties.

*Experts.* It was pointed out that experts could be used in two capacities: first, to reach a determination of the dispute between the parties in much the same way as a single arbitrator but without necessarily being bound by a particular set of arbitral rules, and, secondly, to give an expert opinion on a particular point or issue, usually technical, in the context of a broader range of issues. It was generally considered that further consideration of the use of experts should be limited to the second sense of technical experts acting as neutral fact-finders and giving technical opinions on particular issues.

*List of Arbitrators.* The adequate selection of arbitrators was considered to be a critical condition for the success of an arbitration system. Many participants were of the view that a list of arbitrators should be established. The qualifications required for nomination to the list could be specified by WIPO and could include, according to some participants, those qualifications mentioned in para-

graph 39 of the working document, as well as other qualifications that would ensure a reliable, internationally oriented, technically adequate and neutral procedure.

It was suggested that the list be established on the basis of names of persons with adequate expertise or qualifications nominated by non-governmental organizations. Each nomination would have to be accompanied by a professional curriculum vitae of the designated person. The attention of the Working Group was drawn to the possibility that a number of non-governmental organizations might not, in accordance with their statutes and regulations, be entitled to nominate persons to be placed in the list of arbitrators. The question was raised as to which non-governmental organizations should be invited to nominate names for that list and the suggestion was made that, in addition to organizations primarily interested in intellectual property, organizations administering institutional arbitration could be invited to make nominations.

It was expected that, in a number of disputes, the parties would be able to appoint the arbitrators by common agreement. In those cases where the parties are unable to reach an agreement, it was considered appropriate that the Director General of WIPO should, at the request of the parties concerned, act as appointing authority (see, further, "Appointing Authority"). In exercising such a function, it was understood that the Director General would do so only after consultations with the parties concerned.

*List of Conciliators and Mediators.* Certain participants stated that, if conciliators and mediators were to be made available through services provided by WIPO, then WIPO should prepare a list of persons qualified to perform such functions. It was pointed out by those participants that, since the function of the conciliator and mediator was different from that of the arbitrator, there should be different lists established according to different sets of criteria. A greater number of participants considered, however, that it was not necessary to prepare a separate list of conciliators and mediators, since undue specialization of functions might not be desirable.

*List of Experts.* It was considered inappropriate to establish a list of experts, since it would not be possible to establish and maintain an adequate, up-to-date list of experts in every possible branch of technical expertise.

*Appointing Authority.* While, as noted above, in many cases, the parties to a dispute submitted to either *ad hoc* or institutional arbitration were able to appoint the arbitrators by common agreement,

in default of such agreement, it was considered necessary to have an appointing authority. That function could be performed by the Director General of WIPO. The appointing authority would appoint the arbitrator or the arbitrators on the basis of the names mentioned in the list of arbitrators established by WIPO. The appointing authority, it was understood, would consult the parties to the dispute and, if agreement was not reached during such consultations, would appoint the arbitrator(s) taking into account the circumstances of each case and the special qualifications of each arbitrator.

*Code of Ethics.* While it was acknowledged that a Code of Ethics could be useful for arbitrators and other intermediaries, it was felt that such a Code could also be used to bring unwarranted challenges to arbitral awards, thereby avoiding the finality of arbitration. Instead of a Code of Ethics, it was suggested to require from arbitrators and other intermediaries upon nomination a declaration of non-interest in the subject matter of the dispute and in relation to the parties to the dispute, and a commitment to report conflicts of interest and cognate matters arising during the conduct of the dispute-settlement procedure.

*Other Services.* In the course of the discussions, it was mentioned that consideration should be given to the provision by WIPO of services of a promotional and educational nature, such as the preparation of publications, the drafting of model contract clauses, and the organization of symposia and seminars on arbitration and other procedures for the settlement of disputes in the field of intellectual property.

## LIST OF PARTICIPANTS\*

### I. Organizations

Association of Dutch Patent Agents, Netherlands (APA): M. Ge-lissen. Brazilian Association of Industrial Property Agents (ABAPI): J.A. Faria Correa. Brazilian Association on Industrial Property (ABPI): J.A. Faria Correa. Center for Advanced Study and Research on Intellectual Property (CASRIP): D. Chisum. Chartered Institute of Arbitrators (CI Arb): R. Briner; D. Brown-Bersel. Committee of National Institutes of Patent Agents (CNIPA): U. Willenzellner; W. Holzer. Federal Chamber of Patent Attorneys (Patentanwaltskammer (PAK)), Germany (FCPA): U. Wittenzellner. Institute of Intellectual Property, Japan (IIP): Y. Ishii. Institute of Professional Representatives Before the European Patent Office (EPI): W. Holzer. International Advertising Association (IAA): M. Ludwig. International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): G. Karnell. International Association for the Protection of Industrial Property (AIPPI): J. Clark. International Chamber of Commerce (ICC): D. Hascher;

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

J.H. Kraus; X. de Mello. International Confederation of Societies of Authors and Composers (CISAC): N'D. N'Diaye. International Federation of Associations of Film Distributors (FIAD): G. Grégoire. International Federation of Film Producers Associations (FIAPF): A. Chaubeau. International Federation of Industrial Property Attorneys (FICPI): A. Briner. International Federation of Reproduction Rights Organisations (IFRRO): T. Koskinen. International Federation of the Phonographic Industry (IFPI): B. Lindner. International Literary and Artistic Association (ALAI): G. Karnell. International Publishers Association (IPA): J.-A. Koutchoumow. International Union of Architects (IUA): J. Duret. International Video Federation (IVF): H. Pasgrimaud; C.G. Soulie. Japan Patent Association (JPA): Y. Kanazaki; K. Uchida. United States Trademark Association (USTA): R.A. Rolfe.

*Berne Convention for the Protection of Literary and Artistic Works.* In May 1992, the Director General and several WIPO officials held informal consultations in Geneva with various experts from Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, the Netherlands, Portugal,

## II. Experts

T. Arnold, United States of America; J.A. Faria Correa, Brazil; Z. Kitagawa, Japan; D.C. Maday, Switzerland; L. Street, Australia.

## III. International Bureau of WIPO

A. Bogsch (*Director General*); F. Gurry (*Director-Counsellor, Office of the Director General*); R. Satelec (*Assistant Legal Counsel, Office of the Legal Counsel*).

Spain, Sweden, Switzerland, the United Kingdom, the United States of America and the Commission of the European Communities (CEC) concerning a possible Protocol to the Berne Convention. The consultations were based on a discussion paper prepared by the International Bureau.

# Committee of Experts on a WIPO Model Law on the Protection of Producers of Sound Recordings

First Session

(Geneva, June 15 to 19, 1992)

## DRAFT WIPO MODEL LAW ON THE PROTECTION OF PRODUCERS OF SOUND RECORDINGS

Document prepared by the International Bureau

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#### INTRODUCTION

1. In accordance with the program of WIPO for the 1992-93 biennium (document AB/XXII/2, item 03(6)), a Committee of Experts has been convened from June 15 to 19, 1992, for its first session to consider a draft model law on the protection of the intellectual property rights of producers of sound recordings.\* This document has been prepared for that Committee of Experts (hereinafter referred to as "the Committee").

2. The program item referred to in the preceding paragraph reads as follows:

"The International Bureau will prepare, convene and service two sessions of a committee of experts to advise it on the preparation of a model law on the protection of the intellectual property rights of

\* The report of this meeting will be published in the September 1992 issue of this review.

producers of sound recordings. The model law will establish norms for all issues that a national or regional law on the subject matter should cover. The work of the committee of experts will be useful also in the preparation of a Protocol to the Berne Convention.

"The International Bureau will prepare and publish the model law, with explanatory notes, probably only in 1994."

3. Under the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961), a "phonogram" is any exclusively aural fixation of sounds of a performance or other sounds (Article 3(b)), and "producer of phonograms" denotes a person who, or a legal entity which, first fixes the sounds of a performance or other sounds (Article 3(c)). In some countries, the expression "sound recordings" is used rather than the expression "phonograms" with practically the same meaning. In the present document and in the draft Model Law, the expression "sound recordings" is used because it indicates the essence of such productions more directly.

4. In carrying out its preparatory work for the Committee, the International Bureau has taken into account the results of other recent WIPO meetings that have relevance to the draft Model Law. Those include, in particular, the first two meetings of the Committee of Experts on a Possible Protocol to the Berne Convention, which took place in November 1991 and February 1992; the three meetings of the Committee of Experts on Model Provisions for Legislation in the Field of Copyright, which took place during 1989 and 1990; the meeting of the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works, held in 1988; and the meeting of the Committee of Governmental Experts on Audiovisual Works and Phonograms, held in 1986 (the latter two meetings had been convened jointly with Unesco).

5. In the course of the discussions at the various meetings referred to in the preceding paragraph, in particular those relating to the Model Law on Copyright and the possible protocol to the Berne Convention, it became clear that there are differing views concerning whether sound recordings should be considered "works" within the meaning of the Berne Convention—and, consequently, whether the producers of sound recordings might properly be considered "authors" of, or, at least, original owners of *copyright* in, such works under the Convention—or, rather, whether the intellectual prop-

erty classification of sound recordings and producers thereof should remain exclusively within the ambit of so-called neighboring rights (an expression used for convenience, meaning the rights of performers, producers of sound recordings and broadcasting organizations).

6. At the meetings of the Committee of Experts on Model Provisions in the Field of Copyright, mentioned in paragraph 4, above, opinions were divided on the question of whether sound recordings should be included in the list of works to be protected under the Model Law. Those in favor of such inclusion made the following arguments: (a) the list of works in Article 2(1) of the Berne Convention is not exclusive, and countries party to the Convention may also protect other subject matter which they view as literary and artistic works; (b) sound recordings may be properly considered literary and artistic works in the current environment where new forms of authorship based on technological developments are becoming ever more widespread and more widely recognized; (c) the copyright laws of more than 40 countries treat sound recordings as works; (d) copyright protection for sound recordings furthers the interests of the authors and the performers of works embodied in sound recordings by providing producers with indispensable weaponry in the fight against piracy; (e) the Phonograms Convention (Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 1971) expressly refers to copyright as one of the four possible means of its implementation.

7. Those opposed to inclusion of sound recordings in the list of works protected by copyright made the following assertions: (a) the Berne Convention only protects creators of literary and artistic works, the sole exception being Article 14<sup>bis</sup> which allows countries to recognize "makers" of cinematographic works as initial owners of rights, but, even there, the Convention stops short of referring to them as "authors"; (b) the creative contributions of sound engineers and others to the production of sound recordings may arguably rise to the level of authorship, but such contributions cannot as a matter of law confer rights upon the producers; (c) in the majority of the countries which protect sound recordings by "copyright," the notion "copyright" is used in a broader meaning than in the Berne Convention since, in those countries, in addition to the rights in literary and artistic works, "copyright" protection is granted also to rights in other productions and, even in the few countries where sound recordings are protected as a category of literary and artistic works, national

treatment and the minimum rights under the Berne Convention are not always granted; (d) the international instruments applicable to the rights of producers of sound recordings are the Rome and Phonograms Conventions, not the Berne Convention, and any change would upset the balance of interests between the three sets of beneficiaries protected under the Rome Convention; (e) producers of sound recordings protected by neighboring rights are not hampered in their fight against piracy, the more so as they usually acquire by transfer the rights of authors and performers of works included in sound recordings.

8. At the first meeting of the Committee of Experts on a Possible Protocol to the Berne Convention, mentioned in paragraph 4, above, all of the delegations and observers addressing the issue agreed that producers of sound recordings should enjoy strong intellectual property protection duly adapted to new technological developments. The opinions were, however, divided in respect of the level of the protection to be granted for producers of sound recordings and the nature of the international instrument by means of which the modernization of the protection of sound recordings could take place.

9. The conceptual differences referred to above should not obscure the fact, however, that few national laws protecting producers of sound recordings adhere purely to all the precepts of the copyright approach or neighboring rights approach. For example, the laws of countries protecting the producers of sound recordings by copyright—as indicated above—do not apply, to such producers, all the minimum rights prescribed by the Berne Convention in respect of authors (for example, the minimum rights of broadcasting, other communication to the public and public performance are mostly denied in respect of producers of sound recordings); further, some of those laws deny national treatment in respect of such producers (expressly conditioning protection of producers of sound recordings of any other country party to the Berne Convention on the protection that such other country provides for their producers). By contrast, the laws of a number of countries protecting producers of sound recordings by neighboring rights go well beyond the minima prescribed by the Rome Convention. A typical example is the duration of protection. Article 14 of the Rome Convention prescribes a minimum term of 20 years from fixation of a sound recording, as regards the rights of producers of sound recordings (and performers whose performances are embodied therein); a term of 50 years, however, seems to become the norm as regards protection of these beneficiaries irrespec-

tive of whether protection is granted by copyright or by neighboring rights.

10. It is also significant that, in the new national laws of those countries that legislated in this field between 1985 and 1990 (and there are over 30 such countries), irrespective of whether they protect sound recordings by copyright or by neighboring rights, there are certain similarities among the improvements made with respect to the protection of producers of sound recordings. In particular, those laws tend to recognize “new” rights—such as certain “performing rights,” the right of rental and the right to equitable remuneration for “home taping”—extend the term of protection, increase penalties and provide otherwise for more efficient remedies in case of infringements.

11. Notwithstanding the said developments, the protection of the rights of producers of sound recordings is not sufficiently effective in many countries. Piracy remains a major problem, and there are still important differences among national laws, differences that inhibit the development of appropriate contractual practices that should facilitate the exploitation of sound recordings on a global basis. It is necessary, thus, to provide guidance to governments wishing to improve existing levels of protection for producers of sound recordings, or to provide such protection where it does not yet exist. The draft Model Law has been prepared to provide such guidance.

12. The draft Model Law appearing in this document also recognizes the symbiotic relationship between producers of sound recordings and performers, particularly in respect of the remuneration contemplated by Article 12 of the Rome Convention for broadcasting and other communication to the public of published sound recordings, and in respect of the right to remuneration for private reproduction of sound recordings for personal purposes.

13. Since it is intended for both countries protecting sound recordings by copyright and countries protecting sound recordings by neighboring rights and since it is intended that it should be usable by countries of different cultural, economic and social conditions, the draft Model Law contains alternatives in the case of certain provisions.

14. It should be borne in mind that the draft Model Law is—as its title indicates—a model, that is, a set of guidelines. No country is obliged to follow it. Thus, while it is believed to reflect the most recent technological developments and incorporates the latest collective thinking of experts, the draft Model Law may or may not be followed by national legislators.

## EXPLANATORY NOTES

*Ad Section 1*

15. *Paragraph (1)* seems to be self-explanatory.
16. *Paragraph (2)* is in harmony with Article I of the Rome Convention.

*Ad Section 2*

17. The definition of "*broadcasting*" in *item (i)* is consistent with Article 3(f) of the Rome Convention, under which, from the standpoint of protection of intellectual property rights, the essence of broadcasting is communication to the public by wireless means.
18. The definition of "*communication to the public*" in *item (ii)* covers, for example, cable distribution of sound recordings to the homes of paying subscribers or the rooms of guests in a hotel. Two aspects should be emphasized. First, a sound recording can only be considered "communicated" if it is actually made available to the public; second, it is not a further condition that the sound recording made available is actually listened to by any member of the public. This notion of communication to the public also applies in respect of broadcasting (*item (i)*).
19. The definition of "*fixation*" in *item (iii)* describes the act by which sound recordings are created. It is also important in respect of the definition of "producer of a sound recording" (see *item (vii)*), and in respect of calculating the duration of protection (see Section 9).

DRAFT WIPO MODEL LAW  
ON THE PROTECTION OF  
PRODUCERS OF SOUND RECORDINGS

CHAPTER I: GENERAL PROVISIONS

*Section 1*

*Protection of Producers of Sound Recordings*

- (1) Producers of sound recordings shall be entitled to the protection provided in this Law.
- (2) The protection provided in this Law shall leave intact and shall in no way affect the protection of copyright in literary and artistic works embodied in sound recordings. Consequently, no provision of this Law may be interpreted as prejudicing such protection.

*Section 2*

*Definitions*

For the purpose of this Law, the following terms shall mean the following:

- (i) "broadcasting" is the communication of a sound recording to the public by wireless transmission, including such transmission by a satellite;
- (ii) "communication to the public" is the transmission, either by wire or without wire, of a sound recording in such a way that the sounds are audible to any person in a place or places so distant from the place where the transmission originates that, without the transmission, the sounds would not be audible at the said place or places;
- (iii) "fixation" of sounds is the embodiment of sounds, by any method, in a material form with the help of which the sounds can, at any time, be made audible; it does not cover reproduction;

## EXPLANATORY NOTES

[Section 2, continued]

20. In *item (iv)*, the definition of “performers” corresponds to Article 3(a) of the Rome Convention, except that it deals not only with the performance of literary or artistic works but also of expressions of folklore.

21. The definition of “public lending” in *item (v)* should be distinguished from the definition of “rental” in *item (ix)*. The common element of the two definitions is that the possession of the copy of a sound recording is transferred for a limited period of time. The difference is that, in the case of public lending, the transfer of possession cannot be for profit-making purposes, while in the case of rental, the transfer of possession is for profit-making purposes. Under the definition, lending must be “public”; that is, it must be made by an institution the services of which are available to the public. Other lendings, for example, between private persons, are not dealt with in the Model Law, and thus do not give rise to any right for the benefit of producers.

22. In *item (vi)*, the definition of “public performance” expresses the basic principle that any performance of sound recordings in places where persons are gathered outside the normal circle of a family and the family’s closest social acquaintances is considered a “public” performance. It is indifferent whether or not such persons are present for the sole purpose of listening to the recording, and whether or not they are present at the same place and at the same time. For example, it is also public performance if, in a “video shop,” each customer watches audiovisual works in a separate box, and each at a different time, freely selected by him.

23. The definition of “producer of a sound recording” in *item (vii)* is consistent with Article 3(c) of the Rome Convention. The producer is the person or legal entity that takes the initiative and has the responsibility for the fixation; the persons who direct the performance or handle the equipment used for the fixation are not producers. The initiative and the responsibility attach to a person, but if that person is an employee of another person or a legal entity in the name of whom or which the initial fixation is made, the employing person or entity, not the employee, is considered the producer.

24. In *item (viii)*, the definition of “published sound recording” is based on Article 3(d) of the Rome Convention. It clarifies that copies of the sound recording must be made available to the public—with the consent of the producer—for publication to occur. The way in which copies are made

(iv) “performers” are singers, musicians and other persons who sing, deliver, declaim, play in, or otherwise perform literary or artistic works or expressions of folklore;

(v) “public lending” is the transfer of the possession of a copy of a sound recording for a limited period of time, for non-profit-making purposes, by an institution the services of which are available to the public, such as a public library or a public archive;

(vi) “public performance” of a sound recording is making the recorded sounds audible, by means of any device or process at a place where persons outside the normal circle of a family and that family’s closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and at different times, and where the performance can be perceived without the need for communication to the public according to *item (ii)*;

(vii) the “producer of a sound recording” is the natural person who, or the legal entity which, takes the initiative and has the responsibility for the fixation of the sound recording;

(viii) a “published sound recording” is a sound recording whose copies have been made available, in a reasonable quantity, to the public with the consent of the producer of the sound recording;

## EXPLANATORY NOTES

[Section 2, continued]

available is irrelevant. The copies need not be sold; they may be rented, lent or distributed free of charge.

25. For *item (ix)* which defines “rental,” see the commentary on *item (v)*.

26. *Item (x)* defines “reproduction.” The copy or copies that result from the reproduction may be of a different kind than the copy from which the reproduction is made. For example, the reproduction, on a tape, of the sounds from a disk is a reproduction.

27. In *item (xi)*, the definition of “sound recording” is based on the definition of “phonograms” in Article 3(b) of the Rome Convention. Three elements of this definition should be emphasized. First, a sound recording is protected from the moment of the fixation, and both the medium of fixation (tape, disc or other) and the means of recording (analog, digital or other) are indifferent. Second, the recording must be of sounds and of sounds only; where the recording is both of sounds and images, the Model Law does not apply, not even to the sounds that are part of such a mixed (“audiovisual”) recording (e.g., the sound track of a film). Third, while the fixation may be of a performance, it may also be of other sounds, such as bird calls.

(ix) “rental” is the transfer of the possession of a sound recording or a copy thereof for a limited period of time for profit-making purposes;

(x) “reproduction” is making one or more copies of a sound recording;

(xi) a “sound recording” is any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; it does not include fixations of sounds fixed together with images, such as the sound tracks of motion pictures or other audiovisual works.

## CHAPTER II: RIGHTS PROTECTED, LIMITATIONS ON RIGHTS AND DURATION OF PROTECTION

## Section 3

## Ad Section 3

## Rights Protected

28. This Section sets out the rights of the producer of a sound recording. It includes—as an exclusive right—the *right of reproduction (item (i))* recognized by Article 10 of the Rome Convention and the *right of importation (item (iv))* recognized by Article 2 of the Phonograms Convention.

29. *Item (iii)* recognizes—also as an exclusive right—the *right of rental and public lending*. Rental of copies has become an important means of exploiting sound recordings. The loss of revenue to producers can be enormous, unless rental can be controlled through authorization. Public lending by libraries and other public institutions has practically the same impact as rental.

(1) Subject to the provisions of Sections 4 to 8, the producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts:

(i) reproduction of the sound recording,

(ii) adaptation or other transformation of the sound recording,

(iii) rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent,

(iv) importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer[.].]

## EXPLANATORY NOTES

[Section 3, continued]

30. The *right of adaptation (item (ii))* is also included—as an exclusive right—since, by means of new technologies, particularly digital technology, various transformations of sound recordings (speeding up or slowing down the rhythm, changing the arrangement or even the melody line) have become possible, which transformations should not be permissible without the authorization of the producer of the sound recording.

31. In respect of the *rights of broadcasting, other communication to the public* (including cable distribution) and *public performance*, Section 3 contains two alternatives. *Alternative A* is constituted by items (v), (vi) and (vii) under the heading “Alternative A.” *Alternative B* is constituted by paragraphs (2), (3) and (4) under the heading “Alternative B.”

32. *Alternative A* gives the producer an exclusive right to authorize the said three acts. There is an increasing number of national laws that recognize such a right. With the advent of digital broadcasting and digital cable distribution, an exclusive right to control such acts has become even more important for producers, because the availability of sound recordings through such services, combined with the possibility of digital copying, may undermine the market for the legitimate copies of the same sound recordings.

33. *Alternative B* provides for a non-exclusive right—a right to equitable remuneration, and not a right of authorization—and provides for it both in favor of the producer and the performer(s). It is to be noted, therefore, that the Model Law under this Alternative, establishes rights not only for the benefit of producers of sound recordings but also for the benefit of performers.

34. *Alternative B* is inspired by Article 12 of the Rome Convention, but, in some respects, it differs from that Article: whereas *Alternative B* deals with any kind of sound recordings, the Rome Convention only deals with sound recordings “published for commercial purposes”; whereas, under *Alternative B*, equitable remuneration is obligatory, under the Rome Convention, even equitable remuneration is avoidable (through reservation under Article 16(1)(a)(i)), can be limited to certain (secondary) uses (Article 16(1)(a)(ii)) or may be subjected to reciprocity (Article 16(1)(a)(iv)).

*Alternative A:*

- (v) broadcasting of the sound recording,
- (vi) other communication of the sound recording to the public,
- (vii) public performance of the sound recording.

*Alternative B:*

[No items (v) to (vii) but paragraphs (2) to (4) (see below)].

(2) The producer of a sound recording, and the performer or performers whose performance is or whose performances are embodied in the sound recording, shall be entitled to equitable remuneration for the following acts:

- (i) broadcasting of the sound recording,
- (ii) other communication of the sound recording to the public,
- (iii) public performance of the sound recording.

(3) The equitable remuneration mentioned in paragraph (2) shall be paid to the producer by those who carry out acts mentioned in paragraph (2). In the absence of agreement between the parties other-

## EXPLANATORY NOTES

[Section 3, continued]

35. Whereas under Alternative B, paragraph (3), the equitable remuneration is to be paid to the producer, under the Rome Convention, it is to be paid to the performers, or to the producer or to both. Under Alternative B, paragraph (3), the performers must receive (unless otherwise agreed by contract) one half of the remuneration; the Rome Convention merely provides that performers and producers must share the remuneration. Finally, Alternative B, paragraph (4) makes the collective administration of the remuneration obligatory. The Rome Convention is silent on this point.

36. It should be noted that it is only under Alternative B that the collective administration of the rights of broadcasting, other communication to the public and public performance is made obligatory. Under that Alternative, the said rights are mere rights to remuneration in the cases of which collective administration is the only reasonable and practicable way of exercising rights. Under Alternative A, the same rights are granted as exclusive rights in the case of which obligatory collective administration does not seem an appropriate provision being in conflict with the exclusive nature of the rights. Nevertheless, even in that case, collective administration is an advisable way of exercising rights taking into account that it is very difficult and expensive to try and exercise the rights involved on an individual basis.

*Ad Section 4*

37. This Section establishes a system of remuneration for so-called "home taping" of sound recordings. It is common for owners of recording equipment to make copies of sound recordings. The cumulative effect of this copying, which is increasingly widespread, unreasonably prejudices the interests of producers of sound recordings (as well as the interests of authors and performers of works embodied therein). An exclusive right to authorize "home taping" would conflict with legitimate privacy interests and would be virtually unenforceable. Consequently, *paragraph (1)* exempts "home taping" from the requirement of authorization. However, in conformity with the practice of a growing number of countries, it provides—in order to mitigate the prejudice caused to rights owners by "home taping"—for a levy on recording equipment (that is, any equipment allowing the making of copies of sound recordings) and on blank "material supports" (that is blank recording media, like blank tapes).

wise, the producer is entitled to one half, and the performer is or the performers are entitled to the other half, of the remuneration.

(4) The equitable remuneration mentioned in paragraph (2) shall be collected and distributed by a collective administration organization. In the absence of agreement between the representatives of those who carry out acts mentioned in paragraph (2), on the one hand, and the collective administration organization, on the other, the amount of equitable remuneration and the conditions of its payment shall be fixed by the competent government authority.

*Section 4**Limitations on Rights:  
Private Reproduction for Personal Purposes*

(1) Notwithstanding the provisions of Section 3 and subject to paragraphs (2) to (6), the private reproduction in a single copy of a published sound recording, for the personal purposes of a physical person, shall be permitted without the authorization of the producer of the sound recording.

## EXPLANATORY NOTES

[Section 4, continued]

38. *Paragraph (2)* excludes “serial” digital reproduction: where the sound recording is a digital one, any person can make *one* copy for personal use, but such a copy is not allowed to be used for making any further copy. While, in the case of analog recordings, a serious loss of quality occurs with each subsequent act of reproduction, there is no loss of quality if a digital recording is copied by digital equipment. Consequently, whereas serial copying—that is the making of subsequent copies, each being a copy of the preceding copy and not of the original—yields increasingly unsatisfactory sounds when done by analog way and therefore is not occurring frequently and, by not occurring frequently, cannot cause major prejudice to the holder of the right, serial copying yields perfectly satisfactory results when done in a digital way, may occur frequently and, if it does, it conflicts with the normal exploitation of the recording.

39. *Paragraph (3)* provides that, for the private reproduction of a sound recording for personal purposes, an equitable remuneration must be paid not only to the producer of sound recordings but also to the performers whose performances are embodied in the sound recording. This extension of the provision to performers is justified. The contribution of performers to the commercial success of sound recordings is, as a rule, of a decisive importance. Therefore, it is only equitable that they receive the same treatment as the producers of sound recordings. *Paragraph (3)* also provides that the equitable remuneration, in the absence of agreement otherwise, should be shared equally between producers and performers.

40. While it is the copiers who, in theory, should pay the remuneration, this is a practical impossibility since copiers are very numerous and it is impossible to establish their identity. Thus, *paragraph (4)* provides that it is the manufacturer or importer of recording equipment and blank material supports who are responsible for paying the equitable remuneration, because it is they who make “home taping” possible (by marketing their products). They can, of course, recover the resulting cost by including it in the price of the recording equipment and blank material supports.

41. *Paragraphs (5) and (6)* seem to be self-explanatory.

(2) The permission under paragraph (1) shall not extend to the reproduction, by digital means, of a copy of a digital sound recording where that copy has been made under paragraph (1).

(3) For the reproduction in accordance with paragraph (1), the producer of the sound recording, and the performer or performers whose performance is or whose performances are embodied in the sound recording, shall be entitled to an equitable remuneration. In the absence of agreement between the parties involved, the producer is entitled to one half, and the performer is or the performers are entitled to the other half, of the remuneration.

(4) The equitable remuneration shall be paid

(i) by the manufacturers of equipment and blank material supports normally used for reproduction mentioned in paragraph (1), except where such equipment is, or such supports are, exported; or

(ii) by the importers of such equipment and supports, except where the importation is by a private person for his personal purposes.

(5) The equitable remuneration shall be collected and distributed by a collective administration organization. [*Alternative A*: In the absence of agreement between the representatives of the manufacturers and importers, on the one hand, and the collective administration organization, on the other, the amount of the equitable remuneration

## EXPLANATORY NOTES

[Section 4, continued]

and the conditions of its payment shall be fixed by the competent government authority.] *[Alternative B: The amount of the equitable remuneration and the conditions of its payment shall be fixed by regulations mentioned in Section 26.]*

(6) The collective administration organization shall distribute the equitable remuneration to the producers of those sound recordings in respect of which, under the given circumstances, it is probable that they are reproduced under paragraph (1) and to the performers whose performances are embodied in the said sound recordings.

## Section 5

*Limitations on Rights: Reproduction, Broadcasting and Other Communication to the Public for Informatory Purposes*

## Ad Section 5

42. This Section is inspired by Article 15(1)(b) of the Rome Convention and seems to be self-explanatory.

Notwithstanding the provisions of Section 3, the reproduction, broadcasting and other communication to the public for the purpose of reporting current events of short excerpts of a published sound recording performed in the course of such an event, shall be permitted, without the authorization of the producer of the sound recording, to the extent compatible with fair practice and justified by the said purpose, and subject to the obligation to indicate, as far as practicable, the source.

## Section 6

*Limitations on Rights: Reproduction and Public Performance for Teaching*

## Ad Section 6

43. This Section is inspired by Article 15(1)(d) of the Rome Convention and seems to be self-explanatory.

Notwithstanding the provisions of Section 3, the reproduction and the public performance of a published sound recording shall be permitted, without the authorization of the producer of a sound recording, for the purpose of face-to-face teaching in educational institutions whose activities do not serve the purposes of direct or indirect commercial gain, to the extent compatible with fair practice and justified by the said purpose, and subject to the obligation to indicate, as far as practicable, the source.

## Section 7

*Limitations on Rights: Importation for Personal Purposes*

## Ad Section 7

44. This Section seems to be self-explanatory.

Notwithstanding the provisions of Section 3, the importation of a copy of a sound recording by a physical person, for his personal purposes, shall be permitted, without the authorization of the producer of the sound recording.

## EXPLANATORY NOTES

## Section 8

*Ad Section 8*

45. This Section is inspired by Article 15(1)(c) of the Rome Convention and seems to be self-explanatory.

*Limitations on Rights: Ephemeral Reproduction by Broadcasting Organizations*

Notwithstanding the provisions of Section 3, the ephemeral reproduction of a copy of a sound recording by a broadcasting organization shall be permitted, without the authorization of the producer of the sound recording, provided that the reproduction is carried out by the broadcasting organization's own facilities and solely for its own broadcasts, and subject to the obligation to destroy the ephemeral copy within six months after it is made.

## Section 9

*Ad Section 9*

46. This Section provides for a term of protection that is longer than the minimum (20 years) prescribed by Article 14 of the Rome Convention. The proposed 50-year term corresponds to the term provided for in a number of modern national laws.

*Duration of Protection*

The rights protected under this Law shall be protected from the date of the fixation until the end of the fiftieth calendar year following that date.

## CHAPTER III: TRANSMISSION OF OWNERSHIP OF RIGHTS AND LICENSES

## Section 10

*Ad Section 10*

47. This Section seems to be self-explanatory.

*Transmission of Ownership of Rights*

The ownership of the rights provided in Section 3 shall be transmissible in whole or in part by assignment, by testamentary disposition or by operation of law.

## Section 11

*Ad Section 11*

48. This Section seems to be self-explanatory.

*Licenses*

(1) The producer of a sound recording may grant non-exclusive or exclusive licenses to others to carry out, or to authorize the carrying out of, all or certain specified acts covered by his or its rights.

(2) A non-exclusive license shall entitle the licensee to carry out, or to authorize the carrying out of, all or certain specified acts concerned concurrently with the producer of the sound recording and concurrently with any other non-exclusive licenses.

## EXPLANATORY NOTES

[Section 11, continued]

(3) An exclusive license shall entitle the licensee to carry out, or to authorize the carrying out of, all or certain specified acts concerned with the exclusion of all others, including the producer of the sound recording.

*Section 12**Ad Section 12**Form of Assignments and Exclusive Licenses*

49. This Section seems to be self-explanatory.

An assignment of a right shall be made, and an exclusive license shall be granted, in writing.

*Section 13**Ad Section 13**Alienation of Copies of Sound Recordings and Assignments and Licenses*

50. This Section seems to be self-explanatory.

If the producer of a sound recording alienates a copy of the sound recording, he or it shall not be deemed, unless provided otherwise in a written contract, to have assigned any rights, or to have granted any license for carrying out any acts covered by the exclusive rights.

*Ad Chapter IV, in general*CHAPTER IV: COLLECTIVE  
ADMINISTRATION OF RIGHTS

51. With ever more widespread large-scale uses of sound recordings, the importance of collective administration of rights is constantly increasing. The provisions in national laws on collective administration organizations regulate various aspects of the establishment and operation of such organizations. The draft Model Law only includes provisions which seem to be indispensable for the appropriate operation of collective administration systems and for ensuring that collective administration of the rights of producers of sound recordings and performers does not lead to direct or indirect restriction of the rights administered and to conflicts with standards under the relevant international conventions (such as minimum economic rights and national treatment).

*Section 14**Ad Section 14**Collective Administration: In General*

52. This Section seems to be self-explanatory. Section 3(2) to (4) and Section 4 deal with the right to equitable remuneration for broadcasting, other communication to the public and public performance and the right to equitable remuneration for "home taping," respectively, and make collective administration of the said rights mandatory.

Producers of sound recordings, and performers whose performances are embodied in sound recordings, may, subject to Sections 3(2) to (4) and 4, authorize collective administration organizations to administer their rights provided for in this Law.

## EXPLANATORY NOTES

## Section 15

*Ad Section 15*

53. In principle, rights of producers of sound recordings and performers can be, and, in certain countries, are, administered by State organizations or organizations in which the public and private elements are combined. However, it is a private society or other private organization which corresponds more fully to the nature of these rights. *Paragraph (1)* provides accordingly.

54. The provisions of *paragraphs (2) to (4)* follow two principles: The first principle is that the rules of the incorporation of collective administration organizations should guarantee that only those organizations be established which are able to fulfill the functions of collective administration appropriately, in harmony with the provisions of the Model Law and other relevant laws, while the second principle is that the conditions of incorporation should not restrict unnecessarily the freedom of association of producers of sound recordings.

*Establishment and Incorporation  
of Collective Administration Organizations*

(1) Collective administration organizations shall be established in the form of civil law associations subject to [the relevant provisions of the Civil Code].

(2) The incorporation of a collective administration organization shall be requested from [the Ministry of Culture or other competent authority] (hereinafter referred to as the "supervisory authority") along with the submission of a copy of the statutes of the collective administration organization and its regulations concerning the system and amounts, as well as the collection and distribution, of the fees and equitable remuneration.

(3) The supervisory authority shall incorporate the collective administration organization unless

(i) the statutes or regulations mentioned in paragraph (2) do not conform to the provision of this Law or to the [relevant provisions of the Civil Code];

(ii) there is factual evidence indicating that a physical person who may lawfully represent the collective administration organization under the statutes of the organization and [the relevant provisions of the Civil Code] does not possess the professional qualifications or reliability necessary for the exercise of such activity;

(iii) there is factual evidence indicating that the collective administration organization is not able to fulfill its functions (for example, because of the absence of economic and technical means, or of appropriate staff).

(4) If the supervisory authority decides not to incorporate the collective administration organization, it shall transfer the case to the court that is competent under [the relevant provisions of the Code on Civil Procedure], which shall decide on the question of incorporation.

## Section 16

*Functions of Collective  
Administration Organizations*

*Ad Section 16*

55. This Section seems to be self-explanatory. By enumerating the functions of collective administration organizations, this Section also provides an indirect definition of collective administration.

A collective administration organization, on behalf of, and on the basis of the authorization by, the producers of sound recordings and performers who and which are its members or whom and which it

## EXPLANATORY NOTES

*[Section 16, continued]*

otherwise represents (for example, on the basis of agreements with foreign collective administration organizations), may fulfill the following functions:

(i) to give authorization to third parties to carry out acts covered by the exclusive rights administered;

(ii) to collect fees for the authorizations mentioned in item (i) and to collect equitable remuneration where the right to such remuneration is administered;

(iii) to distribute the fees and equitable remuneration thus collected among the producers of sound recordings and performers concerned;

(iv) to take any legal action necessary for the enforcement of rights administered;

(v) to carry out any other acts authorized, in keeping with Section 17, by the producers of sound recordings and performers, or by the bodies representing them, whose exclusive rights or rights to equitable remuneration are administered.

*Section 17**Operation of Collective Administration Organizations**Ad Section 17*

56. Paragraphs (1) to (4) follow from the private and generally exclusive nature of the rights of producers of sound recordings and performers: collective administration should not involve unjustified restriction and collectivization of such rights.

(1) Decisions about the methods and rules of collection and distribution of fees and equitable remuneration and about other important aspects of collective administration shall be taken by the producers of sound recordings and performers whose rights are administered or by the bodies representing them.

(2) The producers of sound recordings and performers whose rights are administered shall have the right to obtain full and detailed information about all the activities of the collective administration organization that concern the exercise of their rights.

(3) Without the authorization of the producers of sound recordings and performers whose rights are administered or by the bodies representing them, fees or equitable remuneration collected by a collective administration organization shall not be used for any purposes (for example, for cultural or social purposes, or for financing promotion activities) other than the purposes of covering the actual costs of administration of the rights involved and of distributing the amounts of fees or equitable remuneration that remain after the deduction of such costs, in keeping with paragraph (4).

## EXPLANATORY NOTES

[Section 17, continued]

57. *Paragraph (5)* is based on the principle that foreign producers of sound recordings and foreign performers should enjoy the same rights and the same treatment as national producers and national performers who are members of the collective administration organization or whose rights are otherwise directly administered by it. This is in harmony with the principle of national treatment. "Same treatment" means that foreigners must enjoy the same treatment as nationals but, naturally, if nationals are given a less favorable treatment than the one provided for, as a minimum, in a treaty to which the country is party, foreigners must benefit by the said minimum.

58. *Paragraph (6)* guarantees the transparency of the activities of the collective administration organizations for their foreign partners and seems to be self-explanatory.

(4) The amounts of fees and equitable remuneration collected by a collective administration organization shall, after the deduction of the actual costs of collective administration and other possible deductions that may be authorized in keeping with paragraph (3), be distributed among producers of sound recordings and performers in proportion to the actual use of their works, as much as is possible and practicable.

(5) Foreign producers of sound recordings and performers whose rights are administered (either directly or on the basis of an agreement with foreign collective administration organizations by which such producers of sound recordings and performers are directly represented) shall enjoy the same treatment as those members of, or otherwise represented by, the collective administration organization who or which are nationals of, or have their habitual residence or their headquarters in [the name of the country].

(6) Foreign collective administration organizations shall receive regular, full and detailed information of all the activities of a collective administration organization, with which they have concluded an agreement on the mutual representation of the rights administered by them, that may concern the exercise of the rights of, and the distribution of fees to, the producers of sound recordings and performers whose rights are administered by such foreign collective administration organizations.

*Ad Section 18*

59. Collective administration of rights is useful for the users of sound recordings who, through authorizations received from collective administration organizations (generally in the form of a blanket license), can obtain the necessary rights for their activities much more simply and cheaply than it would be the case if they had to obtain individual licenses. In recognition of the advantages enjoyed by users through collective administration systems, it is justified to require that they cooperate reasonably with collective administration organizations; such cooperation is indispensable for appropriate operation of any collective administration system. This Section provides accordingly.

*Section 18**Obligations of Those Who Perform Acts Authorized by Collective Administration Organizations*

Those who carry out acts authorized by a collective administration organization shall

(i) facilitate the monitoring of the acts authorized by the representatives of the collective administration organization;

(ii) if required, give the collective administration organization all information available to them concerning the acts carried out in respect of the sound recordings concerned.

## EXPLANATORY NOTES

## Section 19

*Supervision of Collective  
Administration Organizations**Ad Section 19*

60. This Section is, in general, self-explanatory. Its provisions concerning the supervision of collective administration organizations follow the same principles as those mentioned in the comments to Section 15: they intend to guarantee the appropriate and lawful operation of the collective administration organizations but to avoid, at the same time, any unjustified interference in the activities of such organizations.

(1) Any collective administration organization shall immediately furnish the supervisory authority with a copy of

(i) any amendment to its statutes or regulations mentioned in Section 15(2);

(ii) any bilateral or multilateral contract concerning the administration of rights of producers of sound recordings and performers;

(iii) any resolution of the general assembly and of any supervisory or advisory board of the collective administration organization;

(iv) the yearly balance sheet, annual report and auditor's report concerning the operation of the collective administration organization.

(2) Any collective administration organization shall immediately inform the supervisory authority of any change concerning the physical persons who may lawfully represent the collective administration organization under the statutes and [the relevant provisions of the Civil Code].

(3) The supervisory authority may at any time demand from any collective administration organization any further information that is necessary to determine whether or not the operation of the collective administration organization conforms to the statutes of the organization, to the provisions of this Law and to the [relevant provisions of the Civil Code] and whether or not the appropriate fulfillment of the functions of the organization is ensured.

## Section 20

*Dissolution of Collective  
Administration Organizations**Ad Section 20*

61. This Section takes into consideration that, in national laws, there are general provisions concerning civil law associations. Those provisions, as a rule, also regulate the question of the dissolution of such associations. This Section refers to the said general provisions and only provides for certain specific aspects of the dissolution of collective administration organizations.

Notwithstanding the general provisions applicable to the dissolution of civil law associations under [the relevant provisions of the Civil Code],

(i) a request for dissolution of a collective administration organization may also be submitted by the supervisory authority to the court that is competent under [the relevant provisions of the Code on Civil Procedure];

(ii) the court shall dissolve a collective administration organization if any grounds exist for which the incorporation of the collective administration

*[Section 20, continued]*

organization would have been denied, if the circumstances giving rise to such grounds are not remedied within a reasonable period fixed by the supervisory authority, or, if, despite a warning by the supervisory authority, the collective administration organization repeatedly violates its statutes, its regulations, the provisions of this Law or [the relevant provisions of the Civil Code].

*Ad Chapter V, in general*

62. The provisions on the protection of the rights of producers of sound recordings can only be duly applied if appropriate legal means are available for their enforcement. The need for an efficient enforcement mechanism is particularly evident in the face of recent spectacular developments of reproduction and telecommunication technology as a result of which piracy of sound recordings has become much more easy and has become actually extremely widespread and dangerous.

63. It depends on the structure of a national legal system whether the provisions concerning the enforcement of the rights of producers of sound recordings are included in the same law in which such rights are provided, or, rather, whether they can be found in the codes and laws regulating civil remedies, penal sanctions and procedural aspects. The draft Model Law follows the former solution in Chapter V; however, it also refers to the said relevant codes and laws as possible legal background.

## CHAPTER V: ENFORCEMENT OF RIGHTS

### *Section 21*

*Ad Section 21*

#### *Conservatory Measures*

64. This Section contains the basic provisions concerning conservatory measures whose purpose is to prevent the committing, or the continuation of committing, of infringements and to impound those infringing copies, packaging tools, documents, accounts or business papers which are necessary for providing evidence concerning the infringing acts and/or which may be subject of seizure or other remedies or sanctions.

The court having jurisdiction of a civil action arising under this Law, may, subject to [the relevant provisions of the Code on Civil Procedure], and on such terms as it may deem reasonable,

(i) grant injunction to prohibit the committing, or the continuation of the committing, of infringement of any right protected under this Law;

(ii) order the impounding of copies of sound recordings suspected to have been made or imported without the authorization of the producer of the sound recording where the making or importation of copies is subject to such authorization, as well as of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies.

## EXPLANATORY NOTES

## Section 22

*Ad Section 22**Civil Remedies*

65. This Section seems to be self-explanatory.

(1) The producer of a sound recording or a performer any of whose rights under this Law has been infringed shall be entitled to the payment, by the infringer, of damages for the prejudice suffered by him or by it as a consequence of the act of infringement, as well as the payment of his or its legal costs, including lawyers' fees. The amount of damages shall be fixed in keeping with [the relevant provisions of the Civil Code], taking into account the importance of the material prejudice suffered by the producer of the sound recording or the performer, as well as the importance of the infringer's profits attributable to the infringement.

(2) Where the infringing copies exist, the court shall order the destruction or other reasonable disposition of those copies and their packaging, unless the producer of the sound recording requests otherwise. This provision shall not be applicable to copies and their packaging the ownership of which was acquired by a third party in good faith.

(3) Where there is a danger that implements may be used to commit, or continue to commit, acts of infringement, the court shall, whenever, and to the extent that, it is reasonable, order their destruction, other reasonable disposition or surrender to the producer of the sound recording.

(4) Where there is a danger that any acts of infringement may be continued, the court shall expressly order that such acts not be committed. Furthermore, the court shall fix a fine, from ... to ..., to be paid should the order not be respected.

## Section 23

*Ad Section 23**Criminal Sanctions*

66. This Section is, in general, self-explanatory. It should be noted that the provisions of Section 23 also cover piracy, that is, infringing acts committed on a commercial scale and/or for commercial purposes, but the notion of infringing acts with profit-making purposes is broader than the generally accepted notion of piracy.

(1) Any infringement of a right, if committed willfully or by gross negligence and for profit-making purposes, shall, in keeping with [the relevant provisions of the Penal Code and the Code on Criminal Procedure], be punished by imprisonment for a period of ... to ..., or by a fine of ... to ..., or by both. The amount of the fine shall be fixed by the court, taking into account, in particular, the defendant's profits attributable to the infringement.

(2) The upper limit of the penalties specified in paragraph (1) may be increased up to double

## EXPLANATORY NOTES

[Section 23, continued]

where the defendant has been convicted for a new act of infringement within five years of his conviction for a previous infringement.

(3) The court shall also apply the remedies referred to in Section 22 also in a criminal proceeding, provided that no decision has been taken yet on such remedies in a civil proceeding.

## Section 24

*Measures, Remedies and Sanctions  
Against Abuses in Respect of Technical Means*

*Ad Section 24*

67. The development of reproduction technologies has made infringements of the rights of producers of sound recordings much easier to perpetrate and, as a consequence, much more widespread than before. The same technologies can offer, however, appropriate solutions to prevent or, at least, mitigate the prejudice they cause to the legitimate interests of producers of sound recordings and of performers whose performances are included in sound recordings. In cases where such solutions can be applied without unreasonable prejudice to the legitimate interests of third parties, it is justified to facilitate their application also by appropriate legal provisions. This Section concerning technical means of protection contains such provisions.

68. Digital technology makes perfect serial copying of perfect recordings possible and easy. If such copying were allowed in any case and without limits, it would make the normal exploitation of sound recordings impossible or would otherwise seriously and unreasonably prejudice the legitimate interests of producers, as well as the interests of performers whose performances are embodied in sound recordings. This can only be prevented or at least mitigated if so-called copy-protection or copy-management systems are applied by which copying can be prevented or restricted or the quality of copies can be impaired. Such systems can only fulfill their functions, however, if they enjoy protection against circumvention.

69. The manufacture and importation of devices and means for the circumvention of copy-protection and copy-management systems are very similar—in respect of their nature and their impact on the exploitation of sound recordings—to piracy and other infringing acts committed with profit-making purposes. Therefore, Section 24 extends the provisions concerning measures, remedies, and sanctions

(1) In the application of Sections 21 to 23, the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a sound recording (the latter device or means hereinafter referred to as “copy-protection or copy-management device or means”), shall be assimilated to infringements of the rights under this Law of producers of sound recordings and of performers whose performances are embodied in the sound recordings concerned.

(2) In the application of Sections 21 to 23, any illicit device or means mentioned in paragraph (1) shall be assimilated to infringing copies of sound recordings.

(3) The producer of a sound recording and the performer whose performance is, or performers whose performances are, embodied in a sound recording shall be entitled to civil damages provided for by Section 22 in the same way as in a case where their rights under this Law are infringed, where copies of the sound recording are offered for sale or rental in an electronic form with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental.

## EXPLANATORY NOTES

to be applied in case of the said infringing acts to abuses committed in respect of technical means for the protection of the rights of producers of sound recordings and of performers concerned.

*Ad Section 25*

70. This Section determines the "points of attachment" for application of the draft Model Law, taking into account Articles 2 and 5 of the Rome Convention.

*Ad Section 26*

71. The Model Law leaves certain details to provisions below the level of laws, for example, regulations promulgated by the Council of Ministers or the Minister of Culture. This Section refers to this possibility. Naturally, those details may be regulated in the Law itself, or in a separate law, depending on the constitutional framework established in the particular country.

*Ad Section 27*

72. This Section contains a simple reference to the need for a provision concerning the entry into force of the Law and possible transitory measures.

## CHAPTER VI: FINAL PROVISIONS

*Section 25**Scope of Application of the Law*

The provisions of this Law shall apply to

- (i) sound recordings the producers of which are nationals of, or have their habitual residence or headquarters in, [the name of the country];
- (ii) sound recordings first fixed in [the name of the country];
- (iii) sound recordings first published in [the name of the country] or first published in another country and also published in [the name of the country] within 30 days; and
- (iv) sound recordings that are entitled to protection under an international treaty to which [the name of the country] is party.

*Section 26**Implementing Regulations*

[The Council of Ministers or the Minister of Culture or the Minister] may make regulations (to be promulgated by order/decreed) for the implementation of this Law.

*Section 27**Entry Into Force*

This Law shall enter into force on ...

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

### Africa

*Côte d'Ivoire.* In May 1992, Mrs. Henriette Diabaté, Minister of Culture, and another government official visited WIPO to discuss with the Director General and WIPO officials cooperation with WIPO, particularly the holding of a national seminar on copyright and neighboring rights in Abidjan in August 1992. This seminar will be organized by WIPO in cooperation with the Government of Côte d'Ivoire.

*Ethiopia.* In April 1992, a WIPO official visited Addis Ababa and held discussions with government officials on cooperation between WIPO and Ethiopia. Among the matters discussed were possible assistance from WIPO in drafting new industrial property legislation and the possible accession of Ethiopia to the WIPO Convention.

*Kenya.* In April 1992, the Director General received the visit of Mr. Amos Wako, Attorney General of Kenya, at WIPO headquarters and discussed with him questions relating to the country's copyright and industrial property laws, including possible accession to certain WIPO treaties. It was agreed that the International Bureau of WIPO would prepare a draft amendment to the Copyright Act and organize, in cooperation with the Govern-

ment of Kenya, a national copyright seminar in Nairobi.

*Niger.* In May 1992, at the request of the national authorities, the International Bureau gave advice on the compatibility of the draft copyright law of Niger with the Berne Convention.

*Zambia.* In April 1992, at the request of the national authorities, the International Bureau sent draft amendments to the Copyright Act of Zambia to make the Act fully compatible with the Berne Convention and which also took into account the copyright aspects raised by new technologies.

*Organization of African Unity (OAU).* In April 1992, two WIPO officials attended a meeting, which took place in Addis Ababa (Ethiopia), on the strengthening of cooperation between the United Nations system and the OAU Secretariat.

Also in April 1992, two WIPO officials had meetings in Addis Ababa with Mr. Salim A. Salim, Secretary-General of OAU, and with other officials of that Organization to discuss cooperation between the two Organizations, including in respect of the proposed Protocols on Science and Technology and on Industry that are being prepared by the OAU Secretariat.

### Asia and the Pacific

#### Assistance With Legislation and Modernization of Administration

*United Nations Economic and Social Commission for Asia and the Pacific (ESCAP).* In May

1992, an ESCAP official met with a WIPO official in Geneva to discuss plans for cooperation between the two Organizations.

## Latin America and the Caribbean

### Regional Activities

#### *Seminars and Congress*

*Chile.* In April 1992, the Seventh International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers) was organized in Santiago by WIPO in cooperation with the Ministry of Foreign Affairs of Chile and the University of Chile. More than 600 participants from 18 Latin American countries took part in the Congress, among them a number of magistrates from Chile.

The Director General and four WIPO officials attended the Congress.

Thirty-one papers were given by experts, mostly from Latin America but also from France, Portugal, Puerto Rico, Spain, Switzerland, the United Kingdom, the United States of America and by two WIPO officials.

The Congress was preceded by the 10th specialized Training Course on Copyright and Neighboring Rights for Latin America organized at Viña del Mar. A note on this Training Course appeared in the June issue of this review, pp. 137-138. The participants in the Training Course also attended the Congress.

Also in April 1992, on the occasion of his presence in Santiago to attend the Seventh International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers), the Director General held talks with Mr. Patricio Aylwin Azocar, President of Chile, and with several Ministers as well as with government officials. They discussed matters of common interest, particularly WIPO's cooperation in the proposed creation of a Chilean National Industrial Property Institute and the possible accession of Chile to the Patent Cooperation Treaty.

*Jamaica.* A subregional Seminar on Copyright organized by WIPO in cooperation with CARICOM (Caribbean Community) was held in Kingston on May 7 and 8, 1992. The Seminar was attended by 30 government and private sector participants from Jamaica, government officials from the Bahamas and two government officials from Belize. A WIPO official and a WIPO consultant from Switzerland presented papers at the Seminar.

*Saint Lucia.* A subregional Seminar on Copyright, organized by WIPO in cooperation with CARICOM (Caribbean Community) and with the assistance of the Organization of Eastern Caribbean

States (OECS), was held in Castries on May 4 and 5, 1992. The Seminar was attended by 13 government officials from the following countries: Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and from OECS. A WIPO official and a WIPO consultant from Switzerland presented papers at the Seminar.

#### Assistance With Legislation and Modernization of Administration

*Argentina.* In May 1992, a government official visited WIPO to discuss cooperation between WIPO and Argentina.

*Colombia.* In April 1992, at the invitation of the Government of Colombia, the Director General visited Santa Fe de Bogotá, accompanied by two WIPO officials and a WIPO consultant from Switzerland. He held talks with several Ministers on cooperation between WIPO and Colombia, including the possible accession of Colombia to the Paris Convention for the Protection of Industrial Property.

During his visit, the Director General received the decoration of the National Order of Merit in the grade of Commander (*Orden Nacional del Mérito en el Grado de Comendador*) from the hands of Mr. Humberto de la Calle Lombana, Minister of Government, on behalf of Mr. Cesar Gaviria, President of Colombia. The ceremony was also marked by the inauguration of the new computerized system of the National Registry of Copyright of Colombia.

The WIPO officials and the WIPO consultant from Switzerland also reviewed with government officials cooperation activities, particularly with a view to establishing a copyright library in the Colombian Copyright Office.

In May 1992, Mr. Arturo Hein Cáceres, UNDP Resident Representative in Colombia, was received by the Director General and met with WIPO officials in Geneva. They discussed the ongoing country project in Colombia.

*Costa Rica.* In May 1992, Mrs. Elizabeth Odio, Minister of Justice, visited WIPO and discussed with the Director General various matters of common interest, including cooperation between WIPO and Costa Rica and a proposed ministerial meeting of Central American countries to discuss their possible accession to the Paris Convention.

## Development Cooperation (in General)

*Japan.* In May 1992, two Japanese government officials visited WIPO to discuss with WIPO officials the possibility of a joint WIPO/Japan development cooperation program in the field of copyright for Asian countries. The idea of a possible funds-in-trust arrangement as a basis for such cooperation was also discussed.

*Portugal.* In May 1992, a government official visited WIPO and had discussions with WIPO officials on future joint development cooperation activities between WIPO and Portugal.

*United Nations Development Programme (UNDP).* In May 1992, several WIPO officials attended the 39th session of the UNDP Governing

Council held in Geneva. The Director General and WIPO officials had discussions in Geneva with a number of UNDP officials, including Mr. Luis Maria Gomez, Associate Administrator, on UNDP financing of WIPO development cooperation activities.

*International Bank for Reconstruction and Development (World Bank).* In May 1992, a WIPO official visited the World Bank in Washington, D.C., and discussed with Bank officials possible cooperation in training between the two Organizations.

Also in May 1992, an official from the World Bank visited WIPO and discussed a possible WIPO awareness seminar on intellectual property and WIPO programs and activities for the Bank staff.

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

### Regional Activities

*Baltic States.* In April 1992, an official from the Ministry of Justice of Sweden was invited to the International Bureau to discuss cooperation between WIPO and the Nordic countries for the benefit of the Baltic States in the field of copyright.

### National Activities

*Albania.* In April 1992, in the framework of the WIPO training program, a government official from Albania followed a special training course on the administration of copyright at the Italian Office for Literary, Artistic and Scientific Property and at the Italian Society of Authors and Publishers (SIAE) in Rome.

In May 1992, the Albanian Copyright Law, based on a draft prepared by the International Bureau, was promulgated.

*Romania.* In April 1992, at the request of the national authorities, the International Bureau sent comments on the draft copyright law of Romania.

*Russian Federation.* In March and April 1992, a WIPO official visited Moscow to discuss with various officials and the Copyright Drafting Group of the Supreme Council of the Russian Federation the draft copyright law of that country and its possible accession to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Con-

vention 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. On that occasion, he also had discussions, *inter alia*, with high officials of the Supreme Council of the Russian Federation and with Mr. Mikhail A. Fedotov, Director General of the Russian Agency for Intellectual Property (RAIS), concerning the draft copyright law and the status and activities of RAIS.

In May 1992, Mr. Yuri Alexandrovich Ryzhov, Chairman of the Subcommittee for Science and Advanced Technology of the Russian Parliament, accompanied by an official of the Committee for Patents and Trademarks and the Director General of the Russian Agency for Intellectual Property (RAIS), visited WIPO and met with the Director General and several WIPO officials. During the visit, the situation of industrial property in the Russian Federation, the draft copyright law of the Russian Federation and that country's possible accession to several WIPO-administered treaties, as well as cooperation between RAIS and WIPO, were discussed.

Also in May 1992, the Director General gave an interview to the News Agency of the Russian Federation (TASS Agency) on the problems of the protection of intellectual property in the States on the territory of the former Soviet Union and on legislative trends in the field of patents in the Russian Federation. An article based on the interview was published in the *Russian Federation Newspaper* in May 1992.

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

### United Nations

*United Nations Administrative Committee on Coordination (ACC).* The Director General and two WIPO officials attended this meeting which took place in Geneva in April 1992.

*United Nations Organizational Committee of ACC.* A WIPO official attended the resumed session of this Organizational Committee which took place in April 1992 in Geneva.

*United Nations Consultative Committee on Substantive Questions (Operational Activities (CCSQ (OPS)).* In May 1992, a WIPO official attended a UN system Seminar on the Implications for its Operational Activities of the recent Global Political, Economic and Social Changes, convened by the Chairman of CCSQ (OPS).

*United Nations Center Against Apartheid.* In May 1992, a WIPO official participated, in Windhoek (Namibia), in a seminar organized by the United Nations Center Against Apartheid entitled "South Africa's Socio-Economic Problems: Future Role of the UN System in Helping Address Them." The participants included representatives of agencies and organizations of the United Nations system and other intergovernmental organizations as well as the African National Congress (ANC) and the Panafricanist Congress of Azania (PAC).

### Other International Organizations

*International Labour Organisation (ILO).* In May 1992, a WIPO official attended the ILO Tripartite (workers, employers, States) Meeting on conditions of employment and work of performers, held in Geneva.

*United Nations Educational, Scientific and Cultural Organization (UNESCO).* In April 1992, a WIPO official attended the third ordinary session of the Intergovernmental Committee for the World Decade for Cultural Development which was held at Unesco headquarters in Paris.

### Other Organizations

*European Committee for Interoperable Systems (ECIS) and European Computing Services Association (ECSA).* In April 1992, a delegation from ECIS/ECSA visited WIPO to discuss computer-related aspects of the preparatory work of the possible Protocol to the Berne Convention.

### National Contacts

*Israel.* In May 1992, a WIPO official participated in a conference on information law and technology organized by the Israeli Industry Association in Tel Aviv. The WIPO official delivered lectures on the international copyright aspects of information technology.

## Calendar of Meetings

### WIPO Meetings

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

#### 1992

- 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 16 to 20 (Geneva)**      **Committee of Experts on the Harmonization of Laws for the Protection of Marks (Fourth 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.
- November 25 to 27 (Geneva)**      **Working Group of Non-Governmental Organizations on Arbitration and Other Extra-Judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties (Second Session)**  
 The Working Group will continue to 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.

## 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

- September 17 and 18 (Munich)**      International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOFORA): Vith International Symposium on the Protection of Plant Breeders' Rights.
- September 24 and 25 (Helsinki)**      International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting.
- October 3 (Sitges)**      International Literary and Artistic Association (ALAI): Executive Committee.
- October 4 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.
- December 4 (Washington)**      International Association for the Protection of Industrial Property (AIPPI) [American Group]: Annual Meeting.

### 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 (LESI): Annual Meeting.
- September 20 to 24 (Antwerp)**      International Artistic and Literary Association (ALAI): Congress.
- September 27 to 29 (Helsinki)**      International Association for the Protection of Industrial Property (AIPPI) [Finnish Group]: Symposium.

### 1994

- June 12 to 18 (Copenhagen)**      International Association for the Protection of Industrial Property (AIPPI): Executive Committee.
- June 20 to 24 (Vienna)**      International Federation of Industrial Property Attorneys (FICPI): Congress.

