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Monthly Review of the
World Intellectual Property Organization

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WIPO Convention

Accession

SAINT KITTS AND NEVIS

The Government of Saint Kitts and Nevis deposited, on August 16, 1995, its instrument of accession to the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967.

The said Convention will enter into force, with respect to Saint Kitts and Nevis, on November 16, 1995.

WIPO Notification No. 184, of August 16, 1995.

Paris Convention

Accession

COSTA RICA

The Government of Costa Rica deposited, on July 28, 1995, its instrument of accession to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967, and amended on September 28, 1979.

Costa Rica has not heretofore been a member of the International Union for the Protection of Industrial Property ("Paris Union"), founded by the Paris Convention.

The Paris Convention as revised will enter into force, with respect to Costa Rica, on October 31, 1995. On that date, Costa Rica will become a member of the Paris Union.

Paris Notification No. 168, of July 31, 1995.

Berne Convention

Accessions

REPUBLIC OF MOLDOVA

The Government of the Republic of Moldova deposited, on August 1, 1995, 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 September 28, 1979.

The said instrument of accession contains the following statement:

> "The provisions of the present Convention do not apply to the works which were public property on the territory of the Republic of Moldova by December 31, 1994." *(Translation provided by the Government of the Republic of Moldova.)*

The Republic of Moldova has not heretofore been a member of the International Union for the Protection of Literary and Artistic Works ("Berne Union"), founded by the Berne Convention.

The Berne Convention as revised will enter into force, with respect to the Republic of Moldova, on November 2, 1995. On that date, the Republic of Moldova will become a member of the Berne Union.

Berne Notification No. 170, of August 2, 1995.

UKRAINE

The Government of Ukraine deposited, on July 25, 1995, 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 September 28, 1979.

The said instrument of accession contains the following declaration:

> "According to Article 18(3) of the said Convention as so revised, the Ministry of Foreign Affairs of Ukraine declares that the above-mentioned Convention will not apply to literary and artistic works which on the date of entering into force by this Convention for Ukraine are already public domain on its territory."

Ukraine has not heretofore been a member of the International Union for the Protection of Literary and Artistic Works ("Berne Union"), founded by the Berne Convention.

The Berne Convention as revised will enter into force, with respect to Ukraine, on October 25, 1995. On that date, Ukraine will become a member of the Berne Union.

Berne Notification No. 169, of July 25, 1995.

Budapest Treaty

Change of Name and Address

KOREA RESEARCH INSTITUTE OF BIOSCIENCE AND BIOTECHNOLOGY (KRIBB)

(Republic of Korea)

(formerly known as the "Korean Collection of Type Cultures (KCTC)")

The Government of the Republic of Korea informed the Director General of WIPO by notification of August 9, 1995, of the new name and address of the Korean Collection of Type Cultures (KCTC), an international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

The new name and address of the said international depositary authority are:

Korea Research Institute of Bioscience and Biotechnology (KRIBB)
52, Oun-dong
Yusong-Ku
Taejon
305-333 Republic of Korea.

Budapest Notification No. 98 (this notification is the subject of Budapest Notification No. 140, of August 29, 1995).

Eurasian Patent Convention

Ratification

KAZAKSTAN

The Government of Kazakstan deposited, on August 4, 1995, its instrument of ratification of the Eurasian Patent Convention.

The said Convention will enter into force, with respect to Kazakstan, on November 4, 1995.

As indicated in EAPC Notification No. 5, the starting date of operations under the said Convention will be notified in due course.

EAPC Notification No. 7, of August 9, 1995.

Normative Activities of WIPO

Berne Union

Committee of Experts on a Possible Protocol to the Berne Convention

Fifth Session
(Geneva, September 4 to 8 and 12, 1995)

QUESTIONS CONCERNING A POSSIBLE PROTOCOL TO THE BERNE CONVENTION

INTRODUCTION

Memorandum prepared by the International Bureau
(WIPO document BCP/CE/V/2)

1. In accordance with the program of WIPO for the 1994-95 biennium (document AB/XXIV/2, item 03(3), page 21), the International Bureau has convened the fifth session of the Committee of Experts to examine questions concerning a possible protocol to the Berne Convention (hereinafter referred to as "the Committee of Experts" or "the Committee"). According to the program, the protocol is mainly intended to clarify the existing, or to establish new, international norms where, under the present text of the Berne Convention, doubts may exist as to the extent to which the Convention applies.

2. This program was adopted by the Assembly of the Berne Union on September 29, 1993 (see document AB/XXIV/18, paragraphs 224-231 and 283-284). A similar decision was made two years earlier by the same bodies for the program of the 1992-93 biennium (document AB/XXII/22, paragraph 197), and, two years before that, for the program of the 1990-91 biennium (document AB/XX/20), paragraphs 152 and 199).

3. So far, the Committee of Experts has met four times, at the headquarters of WIPO. The first session was held in 1991 (November 4 to 8), the second in 1992 (February 10 to 17), the third in 1993 (June 21 to 25) and the fourth in 1994 (December 5 to 9).

4. The discussions were based on working papers prepared by the International Bureau (documents BCP/CE/I/2 and 3 in the first and second sessions, documents BCP/CE/III/2-1 to III in the third session and document BCP/CE/IV/2 in the fourth session). The reports of the four sessions are contained in documents BCP/CE/I/4 (first session), BCP/CE/II/1 (second session), BCP/CE/III/3 (third session) and BCP/CE/IV/3 (fourth session).

5. The topics to be covered by the Committee, beginning with its third session, were decided by the Assembly of the Berne Union on September 29, 1992 (document B/A/XIII/2, paragraph 22), as follows:

(1) computer programs;
(2) data bases;
(3) rental right;
(4) non-voluntary licenses for the sound recording of musical works;
(5) non-voluntary licenses for primary broadcasting and satellite communication;
(6) distribution right, including importation right;
(7) duration of the protection of photographic works;
(8) communication to the public by satellite broadcasting;
(9) enforcement of rights; and
(10) national treatment.

6. At its fourth session, the Committee decided that

– the Director General would invite the Government members of the Committee and the European Commission to send, by June 20, 1995, to the International Bureau proposals to be discussed by the next (the present) session of the Committee;

– the preparatory documents of the next (the present) session of the Committee would consist of

the proposals mentioned above; and such documents would be distributed by the International Bureau–along with an accompanying document containing the list of topics covered by the proposals and a comparative table indicating the essence of the proposals–in due time to the Governments and the intergovernmental and non-governmental organizations invited to the next (the present) session.

7. On March 20, 1995, the Director General in the letter of invitation to the present session of the Committee, in keeping with the above-mentioned decision, invited the Government members of the Committee and the European Commission to send, by June 20, 1995, to the International Bureau proposals to be discussed by the present session of the Committee.

8. By the deadline mentioned in the preceding paragraph, the Director General received two sets of proposals; namely, on June 19, 1995, from Mr. Michel de Bonnecorse, Ambassador, Permanent Representative of France at the Office of the United Nations, Representative of the Presidency in exercise of the Council of the European Union, Geneva, and Mr. Jean-Pierre Leng, Ambassador, Head of the Delegation of the Commission of the European Communities, Geneva, proposals on behalf of "the European Community and its Member States," and, on June 20, 1995, from Mr. Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, Washington, proposals on behalf of the Government of the United States of America.

9. On June 29, 1995, the Director General received a third set of proposals from Mr. Chris Creswell, Assistant Secretary, International Trade Law and Intellectual Property Branch, Business Law Division, Attorney-General's Department, Canberra, on behalf of the Government of Australia.

10. In keeping with the decision referred to in paragraph 6, above, the relevant proposals—along with the accompanying comments—mentioned in the preceding paragraph are reproduced (in the order in which they were received) in document BCP/CE/V/3.

11. For the sake of facilitating reference and discussion, each paragraph of the proposals and accompanying comments of the European Community and its Member States and of the United States of America reproduced in document BCP/CE/V/3 is identified by a serial number in the left-hand margin of the document. The paragraphs in the proposals and comments of Australia were originally identified by serial numbers; thus no numbers are added in the margin. No such numbers are added either to the proposals of the European Community and its Member States and of Australia on the enforcement of rights since they consist of a comprehensive set of provisions with serial numbers already added to the various articles and paragraphs.

12. The "accompanying document containing the list of topics covered by the proposals and a comparative table indicating the essence of the proposals" (see paragraph 6, above) is document BCP/CE/V/4.

PROPOSALS OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE UNITED STATES OF AMERICA AND OF AUSTRALIA

Text of the Proposals
(WIPO document BCP/CE/V/3)

PROPOSALS OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

(1) At the fourth session of the Committee of Experts on a Possible Protocol to the Berne Convention as well as the third session of the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, it was agreed that the Government members of the Committee and the Commission of the European Communities would be invited to send, by June 20, 1995, proposals to be discussed at the next sessions of the Committees of Experts.

(2) In response to that invitation, we have the honor to transmit to you, on behalf of the European Community and its Member States:

(3) – proposals for the fifth session of the Committee of Experts on a Possible Protocol to the Berne Convention (Geneva, September 4 to 8 and 12, 1995).

.....

[Text omitted because mainly relevant for the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms; it is reproduced in document INR/CE/IV/4.]

Submission to WIPO in view of the Fifth Session of the Committee of Experts on a Possible Protocol to the Berne Convention (Geneva, September 4 to 8 and 12, 1995)

(4) The present submission of the European Community and its Member States is being

made in connection with the work of the Committee of Experts of the World Intellectual Property Organization on a Possible Protocol to the Berne Convention.

(5) At the last session of the Committee of Experts (December 5 to 9, 1994), it was agreed that the Government members of the Committee and the Commission of the European Communities would send proposals in relation to the items on the agenda of the possible Protocol to the Berne Convention to the International Bureau and that these proposals would be discussed at the next session of the Committee of Experts (September 4 to 8 and 12, 1995).

(6) In this context, the European Community and its Member States submit this document containing proposals (see Annex 1) on the following items:

I. Computer programs;
II. Original databases;
III. Non-voluntary licenses for the sound recording of musical works;
IV. Non-voluntary licenses for primary broadcasting and satellite communication;
V. Distribution right;
VI. Rental right;
VII. Duration of the protection of photographic works.

(7) These proposals will be further elaborated upon at the Fifth Session of the Committee of Experts.

(8) In addition, it is proposed that the Berne Protocol includes provisions relating to the enforcement of rights (see Annex 2). The proposal is based on the enforcement provisions of the TRIPS Agreement (Articles 41 to 61 of the Agreement) and includes the technical amendments necessary to make it part of the Berne Protocol.

(9) As regards the creation of a new right for the maker of a database, independently from the protection granted under copyright, a discussion paper will be submitted to the Committee of Experts by the European Community and its Member States once the political agreement on a Common Position reached on June 6, 1995, is formally adopted at the end of June 1995. It should be noted that, on the basis of the legislative procedure established in Article 189b of the European Community Treaty (the so-called "co-decision procedure"), the common position has to be further examined and finally adopted by the European Parliament and the Council of the European Communities. The aim of this document is to serve as a basis for the discussions of the Committee on this matter and will be submitted without prejudice to the final views the European Community and its Member States might adopt on this matter in the future. The document should not be considered as a proposal to include provisions relating to this specific "*sui generis*" right in a possible Berne Protocol.

(10) On all other points of the Agenda of the Committee of Experts on which no specific submissions are being made herewith, it is proposed that future discussions take place on the basis of the agreement reached at previous meetings of the Committee of Experts and on the relevant paragraphs in the memoranda prepared by the International Bureau.

(11) All these proposals are without prejudice to the final views the European Community and its Member States might adopt in the future in light of further developments of the discussions within the two Committees of Experts.

(12) No proposal is submitted as regards an importation right (paragraph 84 of the Memorandum of the International Bureau, document BCP/CE/IV/2). The European Community and its Member States consider that detailed study should be made of the economic effects and the legal nature of an importation right.

(13) The European Community and its Member States are not making any specific proposals at this stage on the possible impact of new technologies on authors' rights. However, as already indicated on previous occasions (see, in particular, the letter of September 22, 1994, from Mr. J.F. Mogg, Director General, Directorate-General Internal Market and Financial Services, Commission of the European Communities, to Dr. A. Bogsch, Director General of WIPO), we would like to underline the importance we attach to this subject and to reiterate our view that it is appropriate for these issues to be examined in WIPO and that the current discussions taking place in both Committees of Experts provide an adequate basis for doing so. Furthermore, the results of the consultative process that will follow the publication of the Commission's Green Paper on "Authors' rights and Neighboring Rights in the Information Society" should constitute a valuable contribution

to this debate and to the achievement of satisfactory solutions.

ANNEX I

I. Computer programs

(14) It is proposed that the Berne Protocol include the following provision:

"Computer programs are protected as literary works within the meaning of Article 2 of the Paris Act of the Berne Convention. Such protection applies to the expression in any form of a computer program.

"It shall be a matter for legislation in the countries parties to this Protocol to provide for limitations or exception to the exclusive rights in a computer program. These limitations or exceptions shall be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. This provision shall not permit limitations or exceptions that derogate from existing obligations under the Paris Act of the Berne Convention."

(15) This provision should be considered to be of a declaratory nature.

II. Original databases

(16) It is proposed that the Berne Protocol include the following provision:

"Collections of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations are protected as such.

"Such protection does not extend to the data or the material itself and is without prejudice to any rights existing in the data or material contained in the collection."

(17) This provision should be considered to be of a declaratory nature.

III. Non-voluntary licenses for the sound recording of musical works

(18) It is proposed that the Berne Protocol include the following provision:

"Within three years of ratifying or adhering to the Protocol, Contracting Parties shall no longer apply the provisions of Article 13 of the Paris Act of the Berne Convention."

IV. Non-voluntary licenses for primary broadcasting and satellite communication

(19) It is proposed that the Berne Protocol include the following provision:

"Within three years of ratifying or adhering to the Protocol, Contracting Parties shall no longer apply the provisions of Article 11bis(2) of the Paris Act of the Berne Convention in respect of the broadcasting of a work, the rebroadcasting of the broadcast of a work, and the cable retransmission of a broadcasting originating in another contracting party."

V. Distribution right

(20) It is proposed that the Berne Protocol include the following provision:

"Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public (distribution) of originals and copies of their works through sale or other transfer of ownership."

VI. Rental right

(21) It is proposed that the Berne Protocol include the following provision:

"Authors of literary artistic works shall enjoy the exclusive right of authorizing the rental of originals and copies of their works even after their distribution by or pursuant to an authorization of the author."

VII. Duration of the protection of photographic works

(22) It is proposed that the Berne Protocol include the following provision:

"In respect of photographic works, Contracting Parties will apply, instead of the provisions of Article 7(4) of the Paris Act of the Berne Convention, the provisions of Article 7(1), (3) and (5) to (8) of the same Act."

ANNEX 2

Enforcement of rights

It is proposed that the Berne Protocol include an Annex containing the following provisions relating to the enforcement of authors' rights:

Section 1: General Obligations

Article 1

1. Members shall ensure that the enforcement procedures as specified in this Annex are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by the Berne Convention or this Protocol, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Annex does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Annex creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

Section 2: Civil and Administrative Procedures and Remedies

Article 2
Fair and Equitable Procedures

Members shall make available to right holders[1] civil judicial procedures concerning the enforcement of any intellectual property right covered by the Berne Convention or this Protocol. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 3
Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 4
Injunctions

The judicial authorities shall have the authority to order a party to desist from an infringement, *inter*

[1] For the purpose of this Annex, the term "right holder" includes federations and associations having legal standing to assert such rights.

alia, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

Article 5
Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of preestablished damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 6
Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article 7
Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 8
Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 9
Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

Section 3: Provisional Measures

Article 10

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

Section 4: Special Requirements Related to Border Measures[2]

Article 11
Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures[3] to enable a right holder, who has valid grounds for suspecting that the importation of pirated copyright goods[4] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. [Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this section are met.][5] Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 12
Application

Any right holder initiating the procedures under Article 11 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 13
Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance to protect the defendant and the competent authorities and to prevent abuse. Such

[2] Where a Member had dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this section at that border.

[3] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the Market in another country by or with the consent of the right holder, or to goods in transit.

[4] For the purposes of the Berne Convention or this Protocol: "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a right covered by the Berne Convention or this Protocol under the law of the country of importation.

[5] This provision should be examined at a later stage in the light of the substantive contents of the Berne Protocol.

security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 14
Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 11.

Article 15
Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 10 shall apply.

Article 16
Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 15.

Article 17
Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of goods in question.

Article 18
Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 15;
(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 19
Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 6.

Article 20
De Minimis Imports

Members may exclude from the application of above provisions small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

Section 5: Criminal Procedures

Article 21

Members shall provide for criminal procedures and penalties to be applied at least in cases of willful

copyright infringement[6] on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

PROPOSALS OF THE UNITED STATES OF AMERICA

(1) I am sending you the United States views on the issues that are ripe for discussion at the Meeting of the Committees of Experts on the Protocol to the Berne Convention and the New Instrument on the Protection of Performers and Producers of Phonograms, scheduled for September 4 to 12.

(2) The United States Government believes that governments must find ways to provide strong and coherent copyright and neighboring rights protection at present and in the coming era of the Global Information Infrastructure. Moreover, the February 25-26, 1995, Brussels G-7 Meeting called for governments to develop measures "through national, bilateral, regional and international efforts, including in the World Intellectual Property Organization, which will ensure that the framework for intellectual property and technical protection guarantees that the right holders enjoy the technical and legal means to control the use of their property over the Global Information Infrastructure."

(3) The following comments reflect U.S. domestic developments and our studies on intellectual property and the National and Global Information Infrastructures. We are firmly convinced that consideration of one or more international agreements as outlined in the attached paper will provide a meaningful contribution to the work of the Committees in September.

UNITED STATES PROPOSALS FOR THE BERNE PROTOCOL AND THE NEW INSTRUMENT

General Observations

(4) The United States is committed to working in WIPO to improve international protection for works protected by copyright and authors' rights and the subject matter of neighboring rights. This is essential, because strong protection for intellectual property must be ensured in the rapidly growing Global Information Infrastructure (GII or Information Society). As confirmed by the G-7 Ministers at the Halifax Summit, the transition to a worldwide information society demands a resolution of these issues and the expansion of our work in WIPO to encompass fully the intellectual property issues raised by the information society.

(5) In the world-spanning digital distribution systems and multimedia works of the GII, distinctions among the rights of authors, producers and performers that are the basis for the separation of copyright and neighboring rights are rapidly becoming irrelevant. This new information society can mean economic growth, jobs, and exports for all economies. This will benefit every country's authors, producers and performers. To guarantee this benefit, governments must provide appropriate policies that will ensure the development of the GII through the effective protection of intellectual property. Our work in WIPO must be relevant to, and primarily focused on, the needs of the rapidly emerging digital world of the GII.

Matters Common to the Protocol and the New Instrument

(6) National Treatment. The United States continues to believe that national treatment must be the basis for protection in intellectual property agreements. National treatment must apply to the obligations established in any agreement in WIPO. The author or rights holder should be able to realize fully the economic benefits flowing from the free exercise of his or her rights in any country party to the Protocol or New Instrument. In respect of any work, this is required by Article 5 of the Berne Convention. To do otherwise in either a Berne Protocol or another agreement on copyright protection would be contrary to Article 20 because it would be a derogation of rights existing under Berne and not be an Agreement to "grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention" as provided for under Article 20. To the extent that we have agreed that the principles of the New Instrument should follow those of the Berne Convention, to do otherwise in respect of related rights,

[6] The scope of the term "copyright infringement" should be examined at a later stage, particularly in the light of the contents of the Berne Protocol.

would be contrary to the letter and the spirit of the Convention.

(7) Enforcement Provisions. Before the Uruguay Round Agreement on the Trade Related Aspects of Intellectual Property (TRIPS) in December 1993, we supported the inclusion of enforcement provisions in any new WIPO agreements. We believed that if TRIPS, with its strong enforcement provisions, was not adopted then other multilateral agreements should establish enforcement norms. Since TRIPS has been adopted and successfully establishes broadly applicable enforcement disciplines, such provision should no longer be included in the Protocol and New Instrument texts. Rather than be helpful, inclusion of the TRIPS enforcement provisions in these texts would be redundant and create the possibility of conflicting norms. If the enforcement language differed from that in TRIPS, the relative obligations in the two sets of texts would be unclear; even if the enforcement language in the texts were identical to that in TRIPS, there would still be the strong possibility of confusion through different interpretation of the texts in different fora. As a result, the United States believes that the TRIPS enforcement provisions should be removed from the Protocol and New Instrument unless they apply only to intellectual property standards not included in the TRIPS Agreement. In other words, to the extent that enforcement provisions are included, they should apply only to the new, "TRIPS plus" elements of the Protocol and New Instrument, such as provisions on the protection of rights management information, the use of technical security measures and the prohibition of devices and services that may be used to defeat technical security measures.

(8) Reproduction by Transmission. We believe that the Committees of Experts should consider the recognition of a digital "transmission" right for both the Berne Protocol and the New Instrument because of its serious implications for the continued effectiveness of the reproduction right ensured in Article 9 of the Berne Convention. While this is an issue that needs further discussion, the United States believes that such a right is an important part of the Berne Protocol and New Instrument which would be aimed at meeting the needs of the emerging GII.

(9) Distribution Right. The Protocol and New Instrument should include express provisions for the important issue of distribution rights. These provisions should secure the right of first public distribution on a territorial basis in all of the countries party to either Agreement. Such provisions should also provide for the possibility of limited exceptions to the right of distribution and the right of importation. It could include a general provision based on Article 9(2) of the Berne Convention that permits limited exceptions, as long as their grant does not unreasonably prejudice the interests of the rights owner in the normal exploitation of the work or sound recording.

(10) An exclusive right to authorize or prohibit the importation of works or sound recordings, even after first sale, is important. Intellectual property rights are essentially territorial in nature. Permitting the rights owner to determine where and how to market a product allows the rights owner to respond to the needs of domestic markets. Just as book publishers enter into contracts that provide for low cost books in developing countries, so do sound recording producers adjust pricing to the demands of local markets. Pricing to the local market helps to discourage piracy and protects domestic rights owners as well as foreign rights owners. If the relevant interests abuse this ability to price to the market, competition laws and policies can be employed in a targeted fashion to address specific anti-competitive practices. It is essential that we ensure the ability to limit the distribution of these copies to the market for which they are priced and for which licenses are negotiated.

(11) Technological Measures. Provisions to prohibit decoders and anti-copy prevention devices and services also should be considered for inclusion. Such provisions could prohibit the making available to the public goods or services the primary purpose of which is to defeat technical security measures. The ease of infringement and the difficulty of detection and enforcement will cause copyright owners to look to technology, as well as the law, for protection of their works. However, it is clear that technology can be used to defeat any protection technology provides. Consequently, legal protection alone may not be adequate to provide incentive to authors to create and to disseminate works to the public, unless the law also provides some protection for the technological processes and systems used to prevent unauthorized uses of copyrighted works and sound recordings.

(12) The prohibition of devices, products, components and services that defeat technological methods of preventing unauthorized use of works in digital form or communicated

through the GII is in the public interest. Consumers of copyrighted works and sound recordings pay for the acts of infringers through higher prices for copyrighted works and sound recordings to compensate right owners for infringement losses. The public will also have access to more works and sound recordings if rights owners can more effectively protect their property from infringement.

(13) Therefore, the United States believes that the Berne Protocol and the New Instrument should include provisions to prohibit the importation, manufacture and distribution of devices, as well as the provision of services, that defeat hardware or software based anti-copying systems.

(14) Rights Management Information. In the future, the rights management information associated with a work or sound recording–such as the name of the copyright owner or producer and the terms and conditions for uses of the work or sound recording–may be critical to the efficient operation and success of the GII. The public should be protected from fraud in the creation or alteration of such information. Therefore, the Protocol and the New Instrument should include a prohibition of the fraudulent inclusion of such management information and the fraudulent removal or alteration of such information.

Berne Protocol Issues

(15) In addition to these issues of common concern, there are issues that are applicable specifically to the Berne Protocol and to the New Instrument. We will first turn to those applicable to the Protocol.

(16) We continue to believe that we must be willing to accept an agreement that is not too ambitious. We believe that it should be focused on those matters needed to facilitate the growth of the GII. As previously indicated, we are also convinced that inclusion of modifications to the TRIPS obligations may be dangerous to the effective implementation of the TRIPS Agreement. In that regard we can accept proposals that reiterate the TRIPS obligations, with only those drafting changes necessary to adapt them to a purely intellectual property agreement.

(17) Computer Programs. In respect of computer programs, the United States proposes the following language:

> Computer programs are protected as literary works within the meaning of Article 2 of the Paris Act of the Berne Convention.
>
> Such protection applies to the expression in any form of a computer program.
>
> It shall be a matter for legislation in the Countries parties to this Protocol to provide for limitations or exceptions to the exclusive rights in a computer program. These limitations and exceptions shall be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder. This provision shall not permit limitations or exceptions that derogate from existing obligations under the Paris Act of the Berne Convention.

(18) Original Databases. In respect of databases, the United States proposes the following language to cover the copyright aspects of the protection of original databases:

> Collections of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations are protected as such.
>
> Such protection does not extend to the data or the material itself and is without prejudice to any rights subsisting in the data or material contained in the collection.

We also believe that there must be serious consideration of how to provide for a *sui generis* unfair extraction right to supplement copyright protection. There is increasing concern in the United States, following our Supreme Court Decision in the *Feist* case,[1] that many valuable, factually oriented databases may be denied copyright protection, and that courts may determine infringement in ways that severely limit the scope of copyright protection for all databases, especially factually oriented databases. We believe that it is worthwhile to consider how a right, such as the unfair extraction right proposed in the EU database directive, could protect such databases. This is especially important in view of the developments in regard to the European Union's progress on their database directive.

(19) Limitations and Exceptions. The United States is generally of the view that copyright rights must be exclusive rights, and we therefore do not support granting any new compul-

[1] *Feist Publications, Inc. v. Rural Tele. Serv. Co.*, 499 U.S. 340, 345 (1991).

sory licenses. In that regard, we are prepared to continue discussions on the elimination of the mechanical license–the compulsory license for the use of musical works in sound recordings and the elimination of compulsory licensing in respect of original broadcasting, either by terrestrial means or by satellite. However, when eliminating long-standing compulsory licensing systems, great care must be taken to ensure that there is minimal disruption to established business practices that may rely on the existence of such a compulsory license. Consequently, any possible elimination of the mechanical license would have to be evaluated considering the entirety of the provisions contained in both the Protocol and New Instrument. This would be a major concession for the United States, since elimination of the mechanical license is supported by neither the music nor the recording industry. Also, as is the case in many other countries, at this time we cannot agree to the elimination of retransmission compulsory licensing.

(20) Rental Rights. The United States supports the inclusion of provisions on rental of computer programs as embodied in the TRIPS Agreement and rental rights for musical works embodied in sound recordings. We believe that obligations in respect of rental rights in motion pictures are not appropriate because the need for such rental rights has not justified. However, it may be possible to consider rental rights for cinematographic works in both analog and digital media of fixation with a TRIPS-type exception for copying that does not impair the right of reproduction.

(21) In respect of satellite broadcasting, we believe that further discussion of this issue is needed before determining whether it should be dropped from the agenda or if it is ripe for the establishment of some international standards.

[Text omitted because mainly relevant for the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms; it is reproduced in document INR/CE/IV/4.]

PROPOSALS OF AUSTRALIA

AUSTRALIAN PROPOSALS FOR TREATY LANGUAGE FOR THE BERNE PROTOCOL

1. I refer to your letter dated 20 March 1995 in which you invited Governments to submit proposals for a joint session of the Committee of Experts considering a possible Protocol to the Berne Convention ("the Berne Protocol") and the Committee of Experts considering a possible New Instrument for the Protection of Performers and Producers of Phonograms ("the New Instrument").

2. Australia has consistently supported the development of these possible instruments and has been represented at each of the four meetings of the Committee of Experts to examine questions concerning the Berne Protocol and at the three meetings of a Committee of Experts to examine questions concerning the New Instrument.

3. The decision to seek proposals from member States in the further development of acceptable proposals is welcomed by Australia.

4. Australia has studied closely the Reports and Memoranda prepared by the International Bureau and the various discussions resulting from the previous sessions of the Committees of Experts. In regard to the Berne Protocol, Australia is able to support the development of possible treaty language in regard to a number of the items for consideration. Overall, Australia suggests that the Committee should seek to reach a concluded position on those matters that now seem capable of resolution so as to clear the way for consideration of outstanding or new matters.

.....

[Paragraph 5 of the proposals and comments received from Australia contains comments mainly relevant for the Committee of Experts on a possible New Instrument for the Protection of the Rights of Performers and Producers of Phonograms and is reproduced in document INR/CE/IV/4.]

6. Possible treaty language and/or comments are presented in relation to the following:

- computer programs;
- databases;
- non-voluntary licenses for primary broadcasting and satellite communication;
- general distribution right (including rental right);
- transmission right;
- duration of protection of photographic works;
- enforcement.

7. In presenting these proposals we have been conscious of the need for consensus if the items are to be adopted. The form of the proposals, whilst supported by Australia, therefore represents what the

Australian Government considers is likely to achieve that consensus, rather than being necessarily cast in the form most preferred by Australia.

Computer programs

8. To achieve consensus it is suggested that the possible treaty language focus on the key issue, that is, the assimilation of computer programs to literary works. The following treaty language is therefore proposed:

> "Computer programs are protected as literary works under the Berne Convention."

Comment

9. The report of the 4th session of the Committee of Experts noted the Chairman's summing up that the Committee agreed that the possible protocol should contain provisions concerning the protection of computer programs.

10. Whilst there was broad support for the essence of the "three-party proposal" (see paragraph 10 of the International Bureau memorandum of questions prepared for the 4th session and paragraph 29 of the 4th session report) the report recorded a range of dissenting and questioning interventions.

11. A major debate regarding the formulation of a computer programs proposal has been whether the statement should be declaratory or constitutive. The above proposed statement is expressed in such a way that it does not resolve that debate. Australia has sympathy for the concerns of those delegations calling for a form of words according to which computer programs are to be protected in the same way as literary works but recognises that there has also been considerable expression of support for the statement to be regarded as declaratory.

12. In Australia's view the debate on this issue has thus far been conducted at a conceptual level. As a matter of practicality in advancing this matter the Committee should consider what difference either approach makes. What is, in fact, at stake? It may be that no difference of obligation arises on either view. Consideration should be given to the application of Article 18 of the Berne Convention.

13. Ultimately, while presently considering that the question whether the statement is declaratory or constitutive is better left unresolved, Australia could accept either interpretation if that were the view of the overwhelming majority.

14. The remaining two limbs of the three-party proposal have not been included on the basis that, in Australia's view, they may be inappropriate and are, strictly, unnecessary. In regard to the third limb, if computer programs are protected as literary works then the provisions of Article 9(2) would apply. Although, unlike the three-party proposal, Article 9(2) is confined to exceptions to the right of reproduction only and not to all exclusive rights, the right of reproduction is the key right in respect of which exceptions are provided for under the EU Directive on Computer Software. Similar proposals for exceptions to permit decompilation for interoperability in certain limited circumstances have been proposed by Australia's Copyright Law Review Committee. Sufficient flexibility for possible needs is therefore provided by the existing provisions of the Berne Convention.

15. Having assimilated computer programs to literary works, it appears to be a questionable precedent to create special rules applicable only to that class of works using words otherwise capable of general application. It may be useful for the Committee of Experts to consider what would be gained from the inclusion of a generally worded exception. It is suggested that there is little, if anything, to be gained, while the potential for confusion by its inclusion is considerable.

16. A similar comment applies to the second limb of the three-party proposal. Moreover, a statement of the ideas/expression dichotomy is applicable to all copyright material. Given the special nature of computer programs there may be some instructive value in such a statement (cf. the provisions of Article 2(2) of the Berne Convention) but it is questionable whether such instruction needs to find its way into the statement of the standard itself.

Databases which are works

17. Australia does not propose treaty language for databases that are works. The Australian Government believes that such a proposal is unnecessary as original databases are already protected as literary works under Article 2(1) of the Berne Convention. But if it were the will of the majority of the Committee of Experts, Australia would not oppose the possibility of a treaty language proposal affirming the obligation to protect databases that are works.

Non-voluntary licenses for primary broadcasting and satellite communication

18. Australia proposes treaty language for non-voluntary licenses for primary broadcasting and satellite communication as follows:

> "When three years have expired from the year in which the Protocol enters into force for a Con-

tracting Party, that Party shall no longer provide for non-voluntary licenses for primary broadcasting, whether terrestrial or satellite, under Article 11*bis*(2) of the Paris Act of the Berne Convention.

It shall be a matter for legislation of the Contracting Parties to permit the primary broadcast of works, subject to the payment of equitable remuneration, in certain special cases, provided that such broadcast does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

Comment

19. The report of the 4th session of the Committee of Experts noted that all the delegations, and the vast majority of non-governmental organizations that took the floor, supported abolition of the compulsory licenses applicable to primary broadcasting. The removal of non-voluntary licenses in respect only of satellite broadcasting did not appear to have support. Nor would it be an approach favoured by Australia. Our preference is for broadly based rights expressed, so far as is possible, in a manner which is technology neutral.

20. Australia supports the phasing out of non-voluntary licenses for primary broadcasting. The three-year timeframe which has appeared in previous drafts appears to have been accepted as a reasonable period of transition.

21. The second limb of the proposal would enable a right to be retained for certain licenses that could be provided for public policy reasons. For example, the Australian Copyright Act provides for certain compulsory licenses for broadcasts, notably print-handicapped radio licenses, and this wording is intended to accommodate such licenses together with any other compulsory licenses that might be required for similar reasons. The above proposal for such licenses preserves the right to equitable remuneration provided for under Article 11*bis*(2) and then adopts the language of Article 9(2) which has won general acceptance in relation to the right of reproduction. While, therefore, not completely eliminating the possibility of non-voluntary licenses, the proposal would eliminate the possibility for member countries of maintaining or introducing general blanket statutory licenses to broadcasters in respect of all works.

General distribution right (including rental right)

22. Australia proposes treaty language for a general right of distribution as follows:

"(1) Subject to paragraphs 2 to 7, authors of literary and artistic works protected by the Berne Convention and this Protocol shall have the exclusive right to authorize the distribution by sale or otherwise to the public of tangible copies of their works.

(2) The right provided for in paragraph 1 shall be confined to the first act of distribution to the public and, except as regards the right provided for in Article 14*ter* of the Paris Act of the Berne Convention, shall not extend to the second or subsequent sale or other transfer of ownership of copies in any country of or outside the Berne Union.

(3) Contracting Parties may, however, by legislation restrict the circumstances giving rise to exhaustion of the right provided for in paragraph 1 to an act of distribution in the territory of the Contracting Party or in the territory of any other country.

(4) In addition to the rights provided for in paragraph 1 and under Article 14 of the Paris Act of the Berne Convention, owners of copyright in cinematographic works and authors of computer programs shall have the exclusive right of authorizing the commercial rental to the public of copies of their works except, in the case of computer programs, where the program is not the essential object of the act of rental.

(5) In addition to the right provided for in paragraph 1, authors of literary and musical works shall have the right to authorize the rental of copies of sound recordings of their works.

(6) Where rental has not lead to widespread reproduction of cinematographic works and sound recordings causing material impairment of the right of reproduction of the cinematographic works and works included in those recordings. Contracting Parties may, by legislation, determine

(i) that the exclusive right provided for in paragraph 4 does not apply to cinematographic works; and

(ii) not to apply the right provided for in paragraph 5, provided however that authors shall have at least the right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by a competent authority.

(7) It shall be a matter for each Contracting Party to determine the extent, if any, to which, and the conditions under which, the rights in this Article shall be extended to any lending of tangible copies of literary and artistic works other than as provided for in paragraphs 4 and 5."

Comment

23. The grant of a distribution right would, except in relation to Article 14 (cinematographic works), be a substantial addition to the rights under the Berne Convention. The above proposal takes a minimalist approach which seeks to draw on the existing obligations in the TRIPS Agreement, as previous proposals herein have done, and align the provisions closely to rental rights provided for under TRIPS.

24. Paragraphs 1, 4, 5 and 7 of the draft proposal are intended to make it clear that there is a complete discretion to include within the right of distribution provided for in paragraph 1 any form of lending but subject to the requirements in regard to commercial rental of sound recordings.

25. Paragraph 2 provides for international exhaustion of the distribution right subject to paragraph 3. Australia believes that a general right of distribution should not be subject only to national exhaustion, which would cause the right to operate as a *de facto* importation right. However, paragraph 3 makes provision for national or domestic exhaustion at the option of Contracting Parties.

26. Paragraphs 4, 5 and 6 provide for rental rights in similar terms to those of the rental rights under TRIPS. Australia does not support rental rights beyond those provided for in Article 11 of TRIPS. Thus, for instance, this proposal does not extend rental rights to all works in digital format as proposed in the memorandum by the International Bureau.

Transmission right

27. Australia proposes treaty language for a right of cable transmission for works as follows:

"In addition to the rights already provided for in the Berne Convention and subject to any limitations on those existing rights, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public by wire of their works."

Comment

28. Digital transmission of text and images between computer terminals is becoming a very widespread use of works. While some have characterized this activity as electronic distribution of the material, and it was referred to in discussion of the proposed distribution right of the Committee of Experts, Australia joins with those who would prefer to confine "distribution" to physical copies. Nonetheless, Australia includes the above proposed transmission right as we understand that the purpose of the Protocol is to update and clarify the application of the Berne Convention, and we interpret the mandate to the Committee of Experts in this spirit.

29. In combination, Articles 11, 11*bis*, 11*ter*, 14 and 14*bis* provide a range of rights for authors of literary and artistic works. In the case of works other than cinematographic works, the right does not extend to the communication to the public by wire of a work itself as opposed to performances, recitations, broadcasts and films of the work. This was noted recently in an international conference by a member of the International Bureau.

30. Under Article 11*bis*, broadcasts of literary and artistic works and retransmissions of broadcasts of those works are subject to a compulsory license. This is not the case in regard to the communication to the public by wire of cinematographic adaptations or reproductions of works (see Articles 14 and 14*bis*) which is not subject to any form of compulsory license.

31. As with all the proposals for consideration under the Protocol, Australia recognizes that the policy underlying the proposal and the language in which it is expressed are matters for debate and may need modification in the light of discussions. This is particularly so with a new proposal and the above wording does not represent a settled view. Rather, having regard to the growth in the technology enabling the direct transmission to the public of literary and artistic works, the inclusion of the new right proposed above would close one gap in the provision made under the Berne Convention.

32. The Australian Government has accepted the 1994 recommendations of the Australian Copyright Convergence Group for the introduction of a transmission right in Australia. The Copyright Convergence Group was an *ad hoc* advisory body established by the Australian Government. The proposed new transmission right is to be a technology-neutral right to authorize transmission to the public, and has been recommended to cover all copyright works and the subject matter of neighboring rights.

Duration of the protection of photographic works

33. Australia proposes treaty language for the duration of the protection of photographic works as follows:

"In respect of photographic works, the Contracting Parties agree to apply the provisions of Article 7(1), (3) and (5) to (8) of the Paris Act of the Berne Convention and not Article 7(4)."

Enforcement

34. Included for consideration as an Annex to this letter is a document showing how it is suggested that the TRIPS text on enforcement might be adapted for the purposes of the Berne Protocol. The intention has been to make only those technical amendments to the TRIPS enforcement provisions that would be necessary for such adaptation.

35. Australia was one of the three countries, the others being Sweden and the United States of America, which suggested in March 1993 that the enforcement provisions in the TRIPS Agreement should be incorporated into the Berne Protocol and New Instrument with minor technical amendments as necessary.

36. The incorporation of the TRIPS enforcement provisions into the Berne Protocol and New Instrument continues to be supported by Australia.

Annex

Enforcement

Section 1: General Obligations

Article [41]

1. ~~Members~~ **Contracting Parties** shall ensure that enforcement procedures as specified in this ~~Part~~ **Annex** are available under their law so as to permit effective action against any act of infringement of ~~intellectual property rights~~ **copyright** covered by ~~this Agreement~~ **the Berne Convention and this Protocol**, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of ~~intellectual property rights~~ **copyright** shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a ~~Member's~~ **Contracting Party's** law concerning the importance of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this ~~Part~~ **Annex** does not create any obligation to put in place a judicial system for the enforcement of ~~intellectual property rights~~ **copyright** distinct from that for the enforcement of law in general, nor does it affect the capacity of ~~Members~~ **Contracting Parties** to enforce their law in general. Nothing in this ~~Part~~ **Annex** creates any obligation with respect to the distribution of resources as between enforcement of ~~intellectual property rights~~ **copyright** and the enforcement of law in general.

Section 2: Civil and Administrative Procedures and Remedies

Article [42]: Fair and Equitable Procedures

~~Members~~ **Contracting Parties** shall make available to right holders[1] civil judicial procedures concerning the enforcement of ~~any intellectual property rights~~ **copyright** covered by ~~this Agreement~~ **the Berne Convention and this Protocol**. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article [43]: Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the

[1] For the purpose of this Annex, the term "right holder" includes federations and associations having legal standing to assert such rights.

opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a ~~Member~~ **Contracting Party** may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article [44]: Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of **copyright** ~~an intellectual property right~~, immediately after customs clearance of such goods. ~~Members~~ **Contracting Parties** are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of **copyright** ~~a intellectual property right~~.

2. ~~Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases~~ [T]he remedies under this ~~Part~~ **Annex** shall apply or, where these remedies are inconsistent with a ~~Member's~~ **Contracting Party's** law, declaratory judgments and adequate compensation shall be available.

Article [45]: Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's ~~intellectual property rights~~ **copyright** by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, ~~Members~~ **Contracting Parties** may authorize the judicial authorities to order recovery of profits and/or payment of preestablished damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article [46]: Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the ~~creation of the infringing goods~~ **act of infringement** [QUERY] be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. ~~In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce~~.

Article [47]: Right of Information

~~Members~~ **Contracting Parties** may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article [48]: Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of ~~intellectual property rights~~ **copyright**, ~~Members~~ **Con-**

tracting Parties shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article [49]: Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

Section 3: Provisional Measures

Article [50]

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of ~~any intellectual property right~~ **copyright** from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a ~~Member's~~ **Contracting Party's** law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of ~~an intellectual property right~~ **copyright**, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measures can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this section.

Section 4: Special Requirements Related to Border Measures[2]

Article [51]: Suspension of Release by Customs Authorities

~~Members~~ **Contracting Parties** shall, in conformity with the provisions set out below, adopt procedures[3] to enable a right holder, who has valid grounds for suspecting that the importation of pirated copyright goods[4] may take place, to lodge an ap-

[2] Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[3] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[4] For the purposes of this ~~Agreement~~ **Annex**:

~~(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owners of the trademark in question under the law of the country of importation.~~

~~(b)~~ "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of copyright ~~or a related right~~ under the law of the country of importation.

plication in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. ~~Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided the requirements of this Section are met. Members~~ **Contracting Parties** may also provide for corresponding procedures concerning the suspension by the customs authorities of the release infringing goods destined for exportation from their territories.

Article [52]: Application

Any right holder initiating the procedures under Article [51] shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's ~~intellectual property right~~ **copyright** and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article [53]: Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

~~2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.~~

Article [54]: Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article [51].

Article [55]: Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article [50] shall apply.

Article (56]: Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article [55].

Article [57]: Right of Inspection and Information

Without prejudice to the protection of confidential information, ~~Members~~ **Contracting Parties** shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case. ~~Members~~ **Contracting Parties** may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article [58]: Ex Officio Action

Where ~~Members~~ **Contracting Parties** require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that ~~an intellectual property right~~ **copyright** is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article [55];

(c) ~~Members~~ **Contracting Parties** shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article [59]: Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article [46]. ~~In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.~~

Article [60]: De Minimis Imports

~~Members~~ **Contracting Parties** may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

Section 5: Criminal Procedures

Article [61]

~~Members~~ **Contracting Parties** shall provide for criminal procedures and penalties to be applied at least in the case of willful ~~trademark counterfeiting or~~ copyright piracy **infringement** on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense. ~~Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights in particular where they are committed willfully and on a commercial scale.~~

LIST OF TOPICS AND COMPARATIVE TABLE

Memorandum prepared by the International Bureau
(WIPO document BCP/CE/V/4)

1. Subject to the differences indicated in the following paragraph, topics covered by the proposals and the comments received by the International Bureau are listed in the order of the 10 topics determined by the Assembly of the Berne Convention as the topics to be covered by the Committee (see document BCP/CE/IV/2, paragraph 5).

2. The differences are the following:

(i) the topic of the "right of rental" follows–and is presented in close connection with–the topic of the "distribution right, including importation right," since the Committee also discussed these rights in that manner at its fourth session (see document BCP/CE/IV/2, paragraphs 45 to 84 and document BCP/CE/IV/3, paragraphs 47 to 71);

(ii) the topic of what the proposals and comments of the United States of America refer to as "reproduction by transmission" and what the proposals and comments of Australia refer to as "transmission right" is mentioned after the topics of distribution right, importation right and rental right since, as the proposal and comments of the United States of America indicate, this topic, according to, at least, certain positions, relates to the right of reproduction and, in close connection with it, to the right of distribution;

(iii) the topics of "technological measures," and "rights management information" follow the topic of "enforcement of rights," since the related questions (sometimes referred to as "technical enforcement") were also discussed by the Committee at its fourth session as specific aspects of the enforcement of rights (see document BCP/CE/IV/2, paragraph 95 to 98, and document BCP/CE/IV/3, paragraphs 87 to 96).

3. The following list of topics refers to the source and the relevant paragraphs of the proposals and comments received.

4. The three sets of proposals and the related comments cover the following topics and are shown in the comparative table in the following order:

A. Computer programs:
EC 14 and 15
USA 17
AUS 8 to 16

B. Data bases:
EC 9, 16 and 17
USA 18
AUS 17

C. Non-voluntary licenses for the sound recording of musical works:
EC 18
USA 19

D. Non-voluntary licenses for primary broadcasting and satellite communication:
EC 19
USA 19
AUS 18 to 21

E. Distribution right, including importation right and rental right:

E.1. Distribution right, in general:
EC 20
USA 9
AUS 22, 23 and 25

E.2. Importation right:
EC 12
USA 10
AUS 22 and 25

E.3. Rental right:
EC 21
USA 20
AUS 22, 24 and 26

F. "Reproduction by transmission" and "Transmission" rights:
USA 8
AUS 27 to 32

G. Duration of the protection of photographic works:
EC 22
AUS 33

H. Communication to the public by satellite broadcasting:
EC 10
USA 21

I. Enforcement of rights:
EC 8 and Annex 2
USA 7 and 16
AUS 34 to 36 and Annex

J. Technological measures:
USA 11 and 12

K. Rights management information:
USA 14

L. National treatment:
EC 10
USA 6

European Community and its Member States

Treaty-language proposal:

"Computer programs are protected as literary works within the meaning of Article 2 of the Paris Act of the Berne Convention. Such protection applies to the expression in any form of a computer program.

"It shall be a matter for legislation in the Countries parties to this protocol to provide for limitations or exceptions to the exclusive rights in a computer program. These limitations or exceptions shall be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. This provision shall not permit limitations or exceptions that derogate from existing obligations under the Paris Act of the Berne Convention"(see EC 14).

Comment: This provision should be considered of a declaratory nature (see EC 15).

United States of America

Treaty-language proposal:

"Computer programs are protected as literary works within the meaning of Article 2 of the Paris Act of the Berne Convention.

"Such protection applies to the expression in any form of a computer program.

"It shall be a matter for legislation in the Countries parties to this Protocol to provide for limitations or exceptions to the exclusive rights in a computer program. These limitations and exceptions shall be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right holder. This provision shall not permit limitations or exceptions that derogate from existing obligations under the Paris Act of the Berne Convention" (see USA 17).

Australia

Treaty-language proposal:

"Computer programs are protected as literary works under the Berne Convention" (see AUS 8 and the comments in AUS 14 to 16).

Comment:

The nature of the provision should be left unresolved. However, either interpretation is acceptable if that were the view of the overwhelming majority (see AUS 11 to 13).

European Community and its Member States

Treaty-language proposal:

Collections of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations are protected as such.

"Such protection does not extend to the data or the material itself and is without prejudice to any rights existing in the data or material contained in the collection" (see EC 16).

Comment:

This provision should be considered of a declaratory nature (see EC 17).

Concerning a new right for the maker of a database, independently from the protection granted under copyright, a discussion paper will be submitted later. "The aim of this document is to serve as a basis for the discussions in the Committee ... and will be submitted without prejudice to the final views the European Community and its Member States might adopt on this matter in the future.

The document should not be considered as a proposal to include provisions relating to this specific '*sui generis*' rights in the possible Berne Protocol" (see EC 9).

United States of America

Treaty-language proposal:

"Collections of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations are protected as such.

"Such protection does not extend to the data or the material itself and is without prejudice to any rights subsisting in the data or material contained in the collection" (see USA 18).

Comment:

"There must be a serious consideration of how to provide for a *sui generis* unfair extraction right to supplement copyright protection ... [M]any valuable factual-oriented databases may be denied copyright protection ... [I]t is worthwhile to consider how a right such as the unfair extraction right proposed in the EU database directive could protect such databases" (see USA 18).

Australia

Comment:

Provision in the protocol is considered unnecessary since original data bases are already protected as literary works under Article 2(1) of the Berne Convention. However, if it were the will of the majority of the Committee of Experts, Australia would not oppose the possibility of a treaty language proposal affirming the obligation to protect databases that are works (see AUS 17).

C. Non-voluntary Licenses for the Sound Recording of Musical Works

European Community and its Member States

Treaty-language proposal:

"Within three years of ratifying or adhering to the Protocol, Contracting Parties shall no longer apply the provisions of Article 13 of the Paris Act of the Berne Convention" (see EC 18).

United States of America

Comment:

"We are prepared to continue discussion on the elimination of the mechanical license—the compulsory license for the use of musical works in sound recordings ... However , ... great care must be taken to ensure that there is minimal disruption to established business practices relying on the existence of such compulsory licenses. Consequently, any possible elimination ... would have to be evaluated considering the entirety of the provisions contained in both the Protocol and the New Instrument. This would be a major concession for the United States of America, since elimination of the mechanical license is supported by neither the music nor the recording industry" (see USA 19).

Australia

D. Non-voluntary Licenses for Primary Broadcasting and Satellite Communication

European Community and its Member States

Treaty-language proposal:

"Within three years of ratifying or adhering to the Protocol, Contracting Parties shall no longer apply the provisions of Article 11*bis*(2) of the Paris Act of the Berne Convention in respect of the broadcasting of a work, the rebroadcasting of the broadcast of a work, and the cable retransmission of a broadcast originating in another contracting party" (see EC 19).

United States of America

Comment:

"We are prepared to continue discussion on the elimination of ... compulsory licensing in respect of original broadcasting, either by terrestrial means or by satellite. However, ... great care must be taken to ensure that there is minimal disruption to established business practices relying on the existence of such compulsory licenses. Consequently, any possible elimination ... would have to be evaluated considering the entirety of the provisions contained in both the Protocol and the New Instrument" (see USA 19).

Australia

European Community and its Member States

Treaty-language proposal:

"Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public (distribution) of originals and copies of their works through sale or other transfer of ownership" (see EC 20).

United States of America

Comment:

"The Protocol and New Instrument should include express provisions on the important issue of distribution rights. These provisions should secure the right of first public distribution on a territorial basis, in all of the countries party to either Agreement. Such provisions should also provide for the possibility of limited exceptions to the right of distribution and the right of importation. It could include a general provision based on Article 9(2) of the Berne Convention that permits limited exceptions, as long as their grant does not unreasonably prejudice the interests of the rights owner in the normal exploitation of the work or sound recording" (see USA 9). This is considered also to be a basis for the recognition of a right of importation (in respect of which arguments are put forward in USA 10).

Australia

Treaty-language proposal:

"(1) Subject to paragraphs (2) to (7), authors of literary and artistic works protected by the Berne Convention and this Protocol shall have the exclusive right to authorize the distribution by sale or otherwise to the public of tangible copies of their works.

"(2) The right provided for in paragraph (1) shall be confined to the first act of distribution to the public and, except as regards the right provided for in Article 14*ter* of the Paris Act of the Berne Convention, shall not extend to the second or subsequent sale or other transfer of ownership of copies in any country of or outside the Berne Union.

"(3) Contracting Parties may, however, by legislation restrict the circumstances giving rise to exhaustion of the right provided for in paragraph (1) to an act of distribution in the territory of any other country.

"(4) In addition to the right provided for in paragraph (1) and under Article 14 of the Paris Act of the Berne Convention, owners of copyright in cinematographic works and authors of computer programs shall have the exclusive right of authorizing the commercial rental to the public of copies of their works except, in the case of computer programs, where the program is not the essential object of the act of rental.

European Community and its Member States

United States of America

Australia

"(5) In addition to the right provided for in paragraph (1), authors of literary and musical works shall have the right to authorize the rental of copies of sound recordings of their works.

"(6) Where rental has not lead to widespread reproduction of cinematographic works and sound recordings causing material impairment of the right of reproduction of the cinematographic works and works included in those recordings, Contracting Parties may by legislation, determine

(i) that the exclusive right provided for in paragraph (4), does not apply to cinematographic works; and
(ii) not to apply the right provided for in paragraph (5), provided however that authors shall have at least the right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by a competent authority.

"(7) It shall be a matter for each Contracting Party to determine the extent, if any, to which, and the conditions under which, the rights in this Article shall be extended to any lending of tangible copies of literary and artistic works other than as provided in paragraphs (4) and (5)" (see AUS 22 and the relating comments in AUS 23 to 26).

E.2. Importation Right

European Community and its Member States

Comment:

"The European Community and its Member States consider that detailed study should be made of the economic effects and the legal nature of an importation right" (see EC 12).

United States of America

Reference:

See the relevant elements of the remarks under point (E.1.), above.

Australia

Reference:

See paragraph (3) of the treaty-language proposal quoted under point (E.1.), above, and the related comments in AUS 25, according to which Australia is against an obligation to grant importation right, but wishes to make provision "for national or domestic exhaustion at the option of Contracting States."

E.3. Rental Right

European Community and its Member States

Treaty-language proposal:

"Authors of literary and artistic works shall enjoy the exclusive right of authorizing the rental of originals and copies of their works even after their distribution by or pursuant to an authorization of the author"(see EC 21).

United States of America

Comment:

"The United States supports the inclusion of provisions on rental of computer programs as embodied in the TRIPS Agreement and rental rights for musical works embodied in sound recordings. We believe that obligations in respect of rental rights in motion pictures are not appropriate because the need for such rental rights has not justified. However, it may be possible to consider rental rights for cinematographic works in both analog and digital media of fixation with a TRIPS-type exception for copying that does not impair the right of reproduction" (see USA 20).

Australia

Reference:

See paragraphs (4) to (7) of the treaty-language proposal quoted under point (E.1.), above, and the relating comments in AUS 24 and 26.

F. "Reproduction by Transmission" and "Transmission Right"

European Community and its Member States

United States of America

Comment:

"The Committees of Experts should consider the recognition of a digital 'transmission' right ... because of its serious implications for the continued effectiveness of the reproduction right ensured in Article 9 of the Berne Convention" (see USA 8).

Australia

Treaty-language proposal:

"In addition to the rights already provided for in the Berne Convention and subject to any limitations on those existing rights, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public by wire of their works" (see AUS 27 and the related comments in AUS 28 to 32).

G. Duration of the Protection of Photographic Works

European Community and its Member States

Treaty-language proposal:

"In respect of photographic works, Contracting Parties will apply, instead of the provisions of Article 7(4) of the Paris Act of the Berne Convention, the provisions of Articles 7(1), (3) and (5) to (8) of the same Act" (see EC 22).

United States of America

Australia

Treaty-language proposal:

"In respect of photographic works, the Contracting Parties agree to apply the provisions of Article 7(1), (3) and (5) to (8) of the Paris Act of the Berne Convention and not Article 7(4)" (see AUS 33).

European Community and its Member States

Comment:

EC 10 contains the following general remarks: "On all other points of the Agenda of the Committee of Experts on which no specific submissions are being made herewith, it is proposed that future discussions take place on the basis of the agreement reached at previous meetings of the Committee of Experts and on the relevant paragraphs in the memoranda prepared by the International Bureau." Communication to the public by satellite broadcasting is one of such points on the agenda of the Committee. Concerning the "agreement reached at previous meetings of the Committee" in this respect, see document BCP/CE/IV/3, paragraphs 84 to 86, and, concerning "the relevant paragraphs in the memoranda prepared by the International Bureau," see document BCP/CE/IV/2, paragraphs 88 to 91.

United States of America

Comment:

"Further discussion of this issue is needed before determining whether it should be dropped from the agenda or if it is ripe for the establishment of some international standards" (see USA 21).

Australia

I. ENFORCEMENT OF RIGHTS

European Community and its Member States

Reference to treaty-language proposal:

Such a proposal is reproduced in document BCP/CE/V/3, Annex 2. As indicated in EC 8, "[t]he proposal is based on the enforcement provisions of the TRIPS Agreement (Articles 41 to 61 of the Agreement) and includes the technical amendments necessary to make it part of the Berne Protocol."

United States of America

"[T]he TRIPS enforcement provisions should be removed from the Protocol and New Instrument unless they apply only to intellectual property standards not included in the TRIPS Agreement" (see USA 7).

"[W]e can accept proposals that reiterate the TRIPS obligations with only those drafting changes necessary to adapt them to a purely intellectual property agreement" (see USA 16).

Australia

Reference to treaty-language proposal:

Such a proposal is reproduced in document BCP/CE/V/3, Annex. As indicated in AUS 34, the Annex "is a document showing how it is suggested that the TRIPS text on enforcement might be adapted for the purpose of the Berne Protocol. The intention has been to make only technical amendments to the TRIPS enforcement provisions that would be necessary for such adaptation."

J. Technological Measures

European Community and its Member States

United States of America

Comment:

"Provisions to prohibit decoders and anti-copying prevention devices and services should be considered for inclusion. Such provisions could prohibit the making available to the public goods or services the primary purpose of which is to defeat technical security measures" (see USA 11, and the comments made there and in USA 12). "[T]he Berne Protocol and the New Instrument should include provisions to prohibit the importation, manufacture, and distribution of devices, as well as the provision of services that defeat hardware- or software-based anti-copying systems" (see USA 13).

Australia

K. Rights Management Information

European Community and its Member States

United States of America

Comment:

"In the future, the rights management information associated with a work or sound recording–such as the name of the copyright owner or producer and the terms and conditions for uses of the work or sound recording–may be critical to the efficient operation and success of the GII. The public should be protected from fraud in the creation or alteration of such information. Therefore, the Protocol and the New Instrument should include a prohibition of the fraudulent inclusion of such management information and the fraudulent removal or alteration of such information" (see USA 14).

Australia

European Community and its Member States

Comment:

EC 10 contains the following remarks: "On all other points of the Agenda of the Committee of Experts on which no specific submissions are being made herewith, it is proposed that future discussions take place on the basis of the agreement reached at previous meetings of the Committee of Experts and on the relevant paragraphs in the memoranda prepared by the International Bureau."

National treatment is one of such points on the Agenda of the Committee. Concerning the "agreement reached at previous meetings of the Committee" in this respect, and, concerning "the relevant paragraphs in the memoranda prepared by the International Bureau," see document BCP/CE/IV/2, paragraphs 99 to 107.

United States of America

Comment:

"The United States continues to believe that national treatment must be the basis for protection in intellectual property agreements. National treatment must apply to the obligations established in any agreement in WIPO. The author or rights holder should be able to realize fully the economic benefits flowing from the free exercise of his or her rights in any country party to the Protocol or New Instrument. In respect of any work, this is required by Article 5 of the Berne Convention. To do otherwise in either a Berne Protocol or another agreement on copyright protection would be contrary to Article 20 because it would be a derogation of rights existing under Berne and not be an agreement to 'grant to authors more extensive rights than those granted by the Convention' as provided for under Article 20. To the extent that we have agreed that the principles of the New Instrument should follow those of the Berne Convention, to do otherwise in respect of related rights, would be contrary to the letter and the spirit of the Convention" (see USA 6).

Australia

ADDITIONAL OBSERVATIONS OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

Text of the Observations
(WIPO document BCP/CE/V/5)

On July 19, 1995, the International Bureau received (in English) the document whose text is reproduced below.

The letter transmitting the document contains the following passage (translated from the French original): "We wish to remind you that this document should not be considered to be a proposal for the inclusion of provisions concerning this special, *sui generis* right in a possible Protocol to the Berne Convention. The aim of the document is simply to serve as a basis for the discussion on this matter and is presented without prejudice as to the final positions that the European Community and its Member States might adopt in the future."

The "Sui Generis" right provided for in the Proposal for a Directive on the legal protection of databases

1. *Introduction*

1.1 The need to protect databases which do not qualify for protection under copyright because of the lack of originality has already been discussed within the Committee of Experts. The Committee agreed that the protection of such databases should be considered and that the question of the appropriate legal instrument for including such protection should be left for later consideration (see report of the fourth session of the Committee. Document: BCP/CE/IV/4).

The Committee of Experts had already been informed that the European Community was examining a draft directive on the legal protection of databases which sets out to create a *sui generis* right to be granted to the manufacturer of a non-original database.

1.2 Since the last meeting of the Committee of Experts, work in the European Community has made considerable progress. The Council of Ministers of the European Union adopted a Common Position on 10 July 1995.

The Common Position will now be submitted for second reading to the European Parliament under the legislative procedure established in Article 189b of the European Community Treaty (the so-called "co-decision procedure").

1.3 Therefore, it must be kept in mind that the legislative process is still underway and the final text of the Directive might well contain some amendments to the text of the Common Position. However, the European Community and its Member States consider that it could be useful for the continuation of the discussions to inform the Committee of Experts of the main characteristics of the new *sui generis* right included in the Common Position.

2. *Main provisions*

2.1 The forthcoming Directive provides for legal protection of databases in any form, i.e. electronic and non-electronic databases. It also provides for a definition of databases, i.e. "a collection of works, data or other independent materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means."

2.2 The forthcoming Directive has two major objectives:

(a) to harmonise copyright protection applicable to the structure of databases, i.e. to "databases, which by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation";
(b) to create a new right which protects the investor against unauthorised extraction[1] and/or reutilisation[2] of the whole or a substantial part of the contents of the database.

2.3 The main feature of this future Directive is undoubtedly the creation of this exclusive new economic right protecting substantial investments made by manufacturers of databases. This legal innovation is crucial, as the development of databases requires the investment of considerable human, technical and financial resources whilst, at the same time, such databases can be copied at a fraction of the cost needed to develop them independently. Hence unauthorised access to a database and removal of its contents constitute acts which can have the gravest economic and technical consequences.

2.4 The *sui generis* right will be granted to the manufacturer of a database to ensure protection of any substantial investment in obtaining, verifying or presenting the contents of a database. The substantial character of the investment is considered from a qualitative or quantitative point of view. This protection is granted independently of the eligibility of

[1] "Extraction" means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form.

[2] "Re-utilisation" means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

the database for protection by copyright. It does not extend to the individual works, data or other materials contained in a database and is without prejudice to any copyright or other right subsisting in the contents.

2.5 It should be noted that the *sui generis* right does not comprise insubstantial parts of a database. Therefore, the maker of a database, which is made available to the public, may not prevent a lawful user of the base from extracting and reutilising insubstantial parts for any purpose whatsoever.

Member States will have the option to provide for a restricted number of exceptions to the *sui generis* right, enabling the lawful users of a database, which is made available to the public, to extract and/or reutilise a substantial part of the contents without the authorisation of the maker. The exceptions cover the following cases:

- extraction for private purposes of the contents of a non-electronic database;
- extraction for the purposes of illustration for teaching or scientific research;
- extraction and/or reutilisation for the purposes of public security or the proper performance of an administrative or judicial procedure.

The draft instrument ensures the protection of the basic rights of the lawful user. thus rendering contractual provisions to the contrary null and void. Nevertheless, lawful users may not perform acts which unreasonably prejudice the legitimate interests of the maker of the database or of holders of a copyright or related right in respect of the contents of the base. It creates a delicate balance between the interests of database manufacturers, their competitors, third party right holders, and society at large.

2.6 The *sui generis* right can be transferred, assigned or licensed by contract. The protection is granted to European Community nationals or residents, firms established under the laws of a Member State and with their registered office, central administration or principal place of business within the Community. It may be extended to third country nationals on the basis of reciprocity.

2.7 The term of *sui generis* protection extends to 15 years from manufacture. A new substantial investment will entail an additional 15-year term.

As regards application in time, *sui generis* protection pursuant to the Directive's provisions shall also be available in respect of databases manufactured less than 15 years prior to the date of entry into force of the Directive, to the extent that they fulfill the requirements for such protection.

Permanent Committee on Industrial Property Information (PCIPI)

PCIPI Working Group on Search Information (PCIPI/SI)

Fifteenth Session
(Geneva, June 12 to 23, 1995)[1]

The following 18 members of the PCIPI/SI were represented at the session: Belgium, Canada, Denmark, Finland, France, Germany, Japan, Norway, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States of America, European Patent Office (EPO).

The Working Group dealt with 47 IPC (International Patent Classification) revision projects on the program for the 1994-95 biennium, of which 22 belonged to the mechanical field, 12 to the chemical field and 13 to the electrical field. Sixteen revision projects were completed.

The Working Group discussed patent documents that could be used for training in classifying and the existing training examples that should be updated according to the sixth edition of the IPC. Informative observations relating to eight training examples were approved.

The Working Group finalized consideration of the classification request submitted by the Egyptian Patent Office and approved certain consequential changes to the IPC. The Working Group also considered questions relating to the official catchword indexes to the IPC and agreed to changes in the procedure of preparing them, so as to substantially improve their contents.

[1] For a note on the previous session, see *Industrial Property and Copyright*, 1995, p. 114.

WIPO Consultation Forum for Non-Governmental Organizations on the Protection and Management of Copyright and Neighboring Rights in Digital Systems

(Geneva, June 23, 1995)

The following 17 international non-governmental organizations were represented: Agency for the Protection of Programs (APP), Association of European Performers' Organizations (AEPO), Business Software Alliance (BSA), European Broadcasting Union (EBU), European Group representing Organizations for the Collective Administration of Performers' Rights (ARTIS-GEIE), Groupement européen des sociétés d'auteurs et compositeurs (GESAC), International Group of Scientific, Technical and Medical Publishers (STM), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Organization for Standardization (ISO), International Publishers Association (IPA), International Video Federation (IVF), LX Internacional.

Representatives were provided with the opportunity to discuss and share information concerning SID (*S*ource *ID*entification) codes for the protection of compact discs, combinations of identifying numbers and data bases, voluntary registration and deposit systems, possibly in conjunction with an on-line service, and possible legal regulation at the national and international levels regarding technical means for the protection of rights and management of copyright information in the digital environment. It was agreed that the date for the next meeting of the Consultation Forum on this matter would not be set until after the joint sessions, to be held in September 1995, of the Committees of Experts on a Possible Protocol to the Berne Convention and a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms. The Consultation Forum was, however, of the opinion that the sources and techniques of licensing multimedia productions should be one of the items on the agenda at its next meeting.

Registration Systems Administered by WIPO

Patent Cooperation Treaty (PCT)

Training and Promotion Meetings With PCT Users

Japan. In June 1995, a WIPO official had discussions on greater use of the PCT in Japan with government officials, representatives of patent departments of several Japanese industrial enterprises in Nagoya, Osaka and Tokyo, and with representatives of the Japan Patent Attorneys Association (JPAA), also in Tokyo.

Also in June 1995, the same WIPO official gave presentations on the PCT at three PCT seminars. The first seminar was organized by the Japanese Patent Office (JPO) in Nagoya and was attended by some 100 participants. The second and third seminars, also organized by the JPO in Osaka and Tokyo, were attended by some 220 participants and some 600 participants, respectively. The participants in each of the three meetings were mainly patent administrators from industry, the patent profession and research organizations.

Slovakia. In June 1995, a WIPO official gave a presentation on the PCT at a Euro-PCT seminar organized jointly by the European Patent Office (EPO) and the Centre for International Industrial Property Studies (CEIPI) in Bratislava. The seminar was attended by 17 participants from the private sector and industry and from the national Industrial Property Office.

United States of America. In June 1995, two WIPO officials and a WIPO consultant from the United States of America gave an update on the latest PCT developments to a group of some 65 persons which included patent attorneys and administrators, in Wilmington (Delaware); they spoke at an advanced PCT roundtable organized by a private enterprise for about 30 patent administrators from industry and law firms, also in Wilmington; they gave special PCT training in the functions of receiving Office, International Searching Authority, International Preliminary Examining Authority and designated/elected Office, to some 60 government officials in Washington, D.C.; they conducted an advanced PCT seminar organized by the Boston Patent Law Association (BPLA) in Boston (Massachusetts), which was attended by about 70 participants, mainly patent attorneys and administrators; and they conducted a PCT seminar organized for a private company in Rahway (New Jersey), which was attended by about 45 participants, mostly patent attorneys and administrators.

Computerization Activities

EASY (Electronic Application SYstem) Project. In June 1995, a WIPO official attended a trilateral USPTO/JPO/EPO experts meeting concerning the EASY project, held at the United States Patent and Trademark Office (USPTO) in Washington, D.C. Discussions at the meeting dealt, among other matters, with the legal aspects of electronic filing. The WIPO official also discussed with government officials further cooperation between WIPO and the USPTO aimed at strengthening the development of the EASY filing software.

Madrid Union

Training and Promotion Meetings With Users of the Madrid System

Denmark. In June 1995, a government official had discussions with WIPO officials in Geneva on preparations for the entry into force of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and visited the International Trademark Registry.

Republic of Moldova. In June 1995, a government official had discussions with WIPO officials in Geneva on various questions concerning the international registration of marks.

Slovenia. In June 1995, a government official visited WIPO to receive theoretical and practical training in the administrative procedures under the Madrid Agreement.

Swaziland. In June 1995, Mr. Andrias Mlungisi Mathabela, Registrar General, held discussions with WIPO officials in Geneva on the advantages of the Madrid system for the international registration of marks for his country.

Tajikistan. In June 1995, two government officials visited WIPO to receive training in the administrative procedures under the Madrid Agreement.

Computerization Activities

Italy. In June 1995, a government official was briefed on WIPO's data bases used under the Madrid system and had discussions with WIPO officials in Geneva on the possible exchange of data by electronic means between the International Bureau and the Italian Patent and Trademark Office.

Hague Union

Advisory Meeting of Users of the Hague System

(Geneva, June 16, 1995)

The Meeting was attended by some 50 participants from the national industrial property offices of the Netherlands, Romania, Slovenia and Switzerland, one regional office (Benelux Designs Office (BBDM)), four non-governmental organizations (American Bar Association (ABA), American Intellectual Property Law Association (AIPLA), Compagnie nationale des conseils en propriété industrielle (CNCPI), International Council of Societies of Industrial Design (ICSID)) and representatives of depositors and industrial property agents.

The International Bureau gave an overview of its current activities regarding the system under the Hague Agreement Concerning the International Deposit of Industrial Designs, including the ongoing revision work, and of its plans regarding the possible electronic publication of international industrial designs on CD-ROM. The said plans were received favorably. Some suggestions were made to further improve administrative procedures for the international deposit of industrial designs. It was also suggested that the alphabetical table of owners of international deposits, which had so far been published once a year, be published in each monthly issue of the *International Designs Bulletin*. The new version of the *Bulletin*, fully bilingual since March 1995, was also presented at the Meeting.

Training and Promotion Meetings With Users of the Hague System

Mongolia. In June 1995, two government officials undertook a study visit to WIPO to receive training in the administrative procedures under the Hague Agreement and were also briefed by WIPO officials on the advantages of Mongolia's accession to some of the WIPO-administered treaties.

Romania. In June 1995, a government official visited WIPO to receive training in the administrative procedures under the Hague Agreement and the Locarno Agreement Establishing an International Classification for Industrial Designs. He was also briefed by WIPO officials on the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

Slovenia. In June 1995, a government official visited WIPO to study the processing of international deposits of industrial designs under the Hague Agreement and was also briefed by WIPO officials on the Locarno, Nice and Vienna Agreements.

WIPO Arbitration Center

WIPO Mediation Programs

Following the WIPO Training Programs on Mediation in Intellectual Property Disputes held at WIPO in May 1995, an informal WIPO Mediation Interest Group was constituted by a number of participants in those programs, with a view to promoting the use of mediation and to practicing mediation techniques. The Group met for the first time at WIPO on June 27, 1995, to discuss its objectives and future work. It was attended by eight participants and two WIPO officials.

Other Activities

Australia. In June 1995, a WIPO official made a presentation on the WIPO Arbitration Center at the Conference on Intellectual Property in the Age of Convergence and Innovation, organized by a private enterprise in Sydney.

Also in June 1995, a government official had discussions with WIPO officials in Geneva on various mediation matters.

Activities of WIPO Specially Designed for Developing Countries

Africa

Training Courses, Seminars and Meetings

WIPO National Seminar on Copyright and Neighboring Rights (Namibia). On June 5 and 6, 1995, WIPO organized the above Seminar in Windhoek, in cooperation with the Government of Namibia. The Seminar was attended by about 50 participants, including government officials, musicians, graphic artists, publishers, librarians, broadcasters and attorneys. Presentations were made by two WIPO consultants from Ghana and Switzerland, a representative of the International Federation of Reproduction Rights Organizations (IFRRO) and a WIPO official.

Burkina Faso. In June 1995, WIPO organized a special training course on the practical aspects of the collective management of copyright at the Copyright Office of Burkina Faso (BBDA) in Ouagadougou for four government officials from the Congo, Mali, Mauritania and Togo. The training course was provided by a WIPO consultant from Switzerland and officials of the BBDA.

Economic Commission for Africa (ECA). In June 1995, a WIPO official made a presentation on cooperation between African countries and WIPO at the Twelfth Meeting of the Conference of African

Ministers of Industry, held in Gaborone under the auspices of the ECA.

Organization of African Unity (OAU). In June 1995, a WIPO official attended the 62nd Session of the Council of Ministers and the 31st Conference of Heads of State and Government of the OAU, held in Addis Ababa. On that occasion, the WIPO/OAU gold medal award ceremony was held and presided over by the President of the Transitional Government of Ethiopia and current Chairman of the Assembly of Heads of State and Government of the OAU. The selected winner of the 1995 WIPO/OAU invention gold medal award was a national of Nigeria. The winner will also receive a cash award of US$5,000.

Also in June 1995, four WIPO officials participated in a Meeting on Technical Assistance to Africa in the Implementation of the Results of the Uruguay Round in Geneva. On that occasion, a WIPO official made a presentation on WIPO's technical assistance to African countries in this respect.

Assistance With Training, Legislation and Modernization of Administration

Benin. In June 1995, a WIPO official undertook a mission to Cotonou to install a workstation offered by WIPO to the government and to train the staff of the National Industrial Property Center (CENAPI) in its use.

Cameroon. In June 1995, Mr. Obi-Okpun Wan-Obi Osang, Director of Industry, had discussions with WIPO officials in Geneva on cooperation between Cameroon and WIPO, including the preparations for the subregional seminar on industrial property to be organized in Yaoundé in October 1995.

Eritrea. In June 1995, the International Bureau sent to the government authorities, at their request, a draft industrial property law with a commentary.

Ethiopia. In June 1995, a WIPO official held discussions with government officials in Addis Ababa on the possible accession of Ethiopia to the WIPO Convention, the industrial property general introductory course for African English-speaking countries, to be organized in Addis Ababa in September 1995, and the strengthening of cooperation between Ethiopia and WIPO.

Also in June 1995, the International Bureau prepared and sent to the government authorities, at their request, comments and suggestions on the Proclamation Concerning Inventions, Minor Inventions and Industrial Designs, and draft Implementing Regulations including draft schedules of fees and forms.

Kenya. In June 1995, a WIPO official undertook a mission to Nairobi to install a workstation offered by WIPO to the Government and to train government officials in its use.

Nigeria. In June 1995, a government official held discussions with the Director General and other WIPO officials in Geneva on further cooperation between Nigeria and WIPO in the field of copyright and neighboring rights.

South Africa. In June 1995, Ms. Louise Marie van Greunen, Registrar of Patents, Trade Marks, Copyright and Designs, and another government official held discussions with the Director General and other WIPO officials in Geneva on future cooperation activities between South Africa and WIPO.

Organization of African Unity (OAU). In June 1995, the International Bureau transmitted to the Permanent Representative of Tunisia in his capacity as representative of the then Chairman of the OAU a draft study on the compatibility with obligations under the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the national intellectual property laws of the 16 African countries which were members of the World Trade Organization (WTO) as on March 29, 1995. The study had been requested by the Permanent Representative of Tunisia, on behalf of the countries concerned. The 16 countries were: Côte d'Ivoire, Gabon, Ghana, Kenya, Mauritius, Morocco, Namibia, Nigeria, Senegal, South Africa, Swaziland, Tunisia, Uganda, United Republic of Tanzania, Zambia, Zimbabwe.

Arab Countries

Training Courses, Seminars and Meetings

WIPO Arab Regional Seminar on Industrial Property (Tunisia). From June 19 to 22, 1995, WIPO organized the above Seminar in Tunis, in cooperation with the Government of Tunisia. The Seminar was attended by 13 government officials from Bahrain, Djibouti, Egypt, Jordan, Lebanon, Libya, Morocco, Qatar and Saudi Arabia and 50 local participants from government, university and private

circles. Presentations were made by three WIPO consultants from Egypt and Jordan and two WIPO officials.

WIPO Subregional Seminar on Industrial Property and Licensing, Technology Transfer and Promotion of Innovation for the Countries of the Gulf Cooperation Council (GCC) (Kuwait). From June 5 to 7, 1995, WIPO organized that Seminar in Safat, in cooperation with the Government of Kuwait. The Seminar was attended by eight government officials from Bahrain, Oman, Qatar and Saudi Arabia and some 120 local participants from the government and private sectors. Presentations were made by two WIPO consultants from Germany and Switzerland, an expert from Kuwait and two WIPO officials.

Assistance With Training, Legislation and Modernization of Administration

Egypt. In June 1995, two government officials from the Academy of Scientific Research and Technology (ASRT) visited WIPO to study the Patent Cooperation Treaty (PCT) and discussed with the Director General and other WIPO officials Egypt's possible accession to the PCT.

Also in June 1995, Mr. Mohamed Ezz El Din Al Toukhy, President of the Agency for the Development of Innovations and Inventions (ADII), had discussions with WIPO officials in Geneva on the strengthening of the activities of that Agency.

Jordan. In June 1995, the International Bureau sent to the government authorities, at their request, a draft industrial property law with a commentary.

Kuwait. In June 1995, two WIPO officials held discussions with government leaders and officials in Kuwait City on Kuwait's possible accession to the WIPO Convention, the revision of the country's industrial property legislation and the reinforcement of intellectual property teaching at university level in Kuwait.

Lebanon. In June 1995, the International Bureau sent to the government authorities, at their request, a draft industrial property law with a commentary.

United Arab Emirates. In June 1995, a WIPO consultant from Syria undertook a mission to Abu Dhabi to assist the Trade Mark Section in reviewing and updating working methods and administrative procedures, as well as in the administration and enforcement of the Trade Mark Law.

Asia and the Pacific

Training Courses, Seminars and Meetings

WIPO Asian Regional Seminar on University Relations With Industry in Respect of Inventions and Other Intellectual Creations and Their Commercialization (China). From June 12 to 15, 1995, WIPO organized that Seminar in Beijing, in cooperation with Peking University and the United Nations Development Programme (UNDP). The Seminar was attended by 13 participants from government, university, research and industrial circles of Bangladesh, India, Indonesia, Iran (Islamic Republic of), Malaysia, Mongolia, Pakistan, the Philippines, the Republic of Korea, Singapore, Sri Lanka, Thailand and Viet Nam, and some 100 participants from the same circles in China. Papers were presented by five WIPO consultants from Australia, the Czech Republic, Denmark and the United States of America, four speakers from India, the Philippines, the Republic of Korea and Singapore who were also participants in the Seminar, and five experts from China. Two WIPO officials also participated. On the occasion of the Seminar, a ceremony was held to inaugurate the School of Intellectual Property of Peking University.

WIPO Subregional Seminar on the Role of Industrial Property Technology Transfer Arrangements in the Development of Small and Medium-Sized Enterprises (Mongolia). On June 14 and 15, 1995, WIPO organized that Seminar in Ulaanbaatar, in cooperation with the Government of Mongolia. Eight government officials and representatives of enterprises from Bhutan, China, Laos and Viet Nam, and 50 local participants from government and business circles attended the Seminar. A WIPO consultant from Germany, two WIPO officials, two local speakers and a participant/speaker from China presented papers.

WIPO National Seminar on Intellectual Property (Bhutan). From June 21 to 23, 1995, WIPO organized that Seminar in Thimphu, in cooperation with the Government of Bhutan. Fifty-seven participants from government and private circles attended the Seminar. Presentations were made by two WIPO consultants from India and Slovenia and two WIPO officials.

WIPO/Viet Nam National Seminars on Copyright and Neighboring Rights (Viet Nam). On June 26 and 27

and 29 and 30, 1995, WIPO organized two Seminars in Hanoi and Ho Chi Minh City, respectively, in cooperation with the Government of Viet Nam. The two Seminars were attended by some 125 participants from government circles, authors, composers, writers, artists, journalists, dancers, film producers and lawyers. Presentations were made by a WIPO consultant from Japan, an expert from Australia, two representatives of the International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of the Phonographic Industry (IFPI), and two WIPO officials.

Assistance With Training, Legislation and Modernization of Administration

EC-ASEAN Patents and Trademarks Program. In June 1995, a WIPO official and a WIPO consultant from France undertook a mission, under the European Commission (EC)-Association of South East Asian Nations (ASEAN) Patents and Trademarks Program, to Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. They had discussions with government officials and obtained trademark data for the preparation of a computerized system for the storage and search of figurative elements of marks for the trademark offices of the ASEAN countries.

Also in June 1995, three WIPO officials participated, in Brussels, in a tripartite review meeting of the said Program, along with EC and European Patent Office (EPO) officials. The meeting reviewed the activities undertaken so far and discussed the future activities under the Program, including its possible extension.

Bhutan. In June 1995, two WIPO officials and a WIPO consultant from Slovenia visited Thimphu and advised the Government on the country's intellectual property legislation and the possible creation of an intellectual property system.

China. In June 1995, two WIPO officials held discussions in Beijing with government officials from the State Administration for Industry and Commerce (SAIC) on the modernization of trademark operations in China, and China's intended accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. The same two WIPO officials also held discussions with government officials from the State Education Commission on the teaching of intellectual property in China.

Also in June 1995, three consultants appointed by the EC had discussions with WIPO officials in Geneva on a possible intellectual property cooperation project for China to be financed by the EC.

India. In June 1995, six government officials went on a WIPO-organized visit to study trademark computerization and management at the United States Patent and Trademark Office in Washington, D.C., the United Kingdom Patent Office in Newport and WIPO in Geneva. The visit was financed under the UNDP-financed country project for modernizing the administration and making more effective use of trademarks. Also in June 1995, WIPO appointed a national expert on computerization for a period of seven months under the same project. Still in June 1995 and under the same project, a WIPO consultant from Australia undertook a mission on computerization to the Trade Marks Registry in Bombay.

Indonesia. In June 1995, Mr. Bambang Kesowo, Vice Cabinet Secretary, met with the Director General and discussed matters of mutual cooperation between Indonesia and WIPO, including a possible review of the practice of substantive examination of patent applications.

Later in the same month, Mr. Nico Kansil, Director General of the Directorate General of Copyrights, Patents and Trademarks (DGCPT), and another government official met with the Director General and other WIPO officials in Geneva and presented the plan for the modernization of the DGCPT under the EC-ASEAN Patents and Trademarks Program. They also discussed the industrial property situation in the country, including also the question of the substantive examination of patent applications.

Japan. In June 1995, two government officials from the Japanese Patent Office (JPO) and four WIPO officials held discussions in Geneva under the funds-in-trust arrangement concluded between the Government of Japan and WIPO. The draft workplan of activities in 1995 and 1996 was discussed and finalized.

Mongolia. In June 1995, two WIPO officials held discussions in Ulaanbaatar with government leaders and officials on strengthening the industrial property system in Mongolia.

Papua New Guinea. In June 1995, a government official held discussions with WIPO officials in Geneva on matters of mutual cooperation, including the country's possible membership of WIPO.

Philippines. In June 1995, the International Bureau sent to the government authorities, at their request, comments on the latest versions of the draft legislation on patents and trademarks.

Republic of Korea. In June 1995, a government official had discussions with WIPO officials in Geneva on questions related to the possible accession of that country to the Berne Convention for the Protection of Literary and Artistic Works.

Thailand. In late June and early July 1995, a WIPO consultant from Australia undertook, under the EC-ASEAN Patents and Trademarks Program, a mission to Bangkok on computerization and management of the Department of Intellectual Property.

Latin America and the Caribbean

Training Courses, Seminars and Meetings

Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA). In June 1995, two WIPO officials and a WIPO consultant from Venezuela attended the Fourth Extraordinary Meeting of Heads of Intellectual Property Offices of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama convened by the SIECA Permanent Secretariat in Tegucigalpa to discuss and approve the WIPO-prepared Draft Implementing Regulations (and its Uniform Forms) of the Protocol of Amendment to the Central American Agreement for the Protection of Industrial Property (Marks and Other Distinctive Signs).

WIPO National Workshop on the Protection of Industrial Property in the Field of Biotechnology (Mexico). From June 14 to 16, 1995, WIPO organized that Workshop in Mexico City jointly with the Mexican Institute of Industrial Property (IMPI) and the EPO. It was attended by about 60 participants from the industrial, commercial, scientific and academic sectors of Mexico. Presentations were made by three WIPO consultants from the EPO, four lecturers from Mexico, an official of the International Union for the Protection of New Varieties of Plants (UPOV) and a WIPO official.

Regional Seminar on the Implementation of the TRIPS Agreement in Latin America and the Caribbean (Venezuela). In June 1995, two WIPO officials made presentations at that Seminar, organized by the Latin American Economic System (SELA) in Caracas. The Seminar was attended by 70 participants from government and private sectors of countries in the region.

Assistance With Training, Legislation and Modernization of Administration

Joint Project of WIPO, the Spanish Patent and Trademark Office (OEPM) and the EPO on the Issue of a CD-ROM Product Containing the First Pages of Latin American Patents and Patent Applications (DOPALES-PRIMERAS). In June 1995, the CD-ROM DOPALES-PRIMERAS, published by WIPO, OEPM and the EPO, containing information on the first pages of patents granted and patent applications filed in 1991 in 18 Latin American countries, were sent to the industrial property offices of the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

Argentina. In June 1995, a WIPO consultant from Chile visited the Directorate of Technology, Quality and Industrial Property in Buenos Aires, to advise on the computerization of its operations.

Chile. In June 1995, government officials visited WIPO in Geneva and held discussions with the Director General and other WIPO officials on mutual cooperation in the field of industrial property and on Chile's possible accession to further international treaties administered by WIPO.

Ecuador. In June 1995, a WIPO consultant from Chile undertook a mission to Quito to advise the National Directorate of Industrial Property on the computerization of its working procedures.

Jamaica. In June 1995, Mr. Patrick Robinson, Solicitor General, held discussions with WIPO officials in Geneva on the strengthening of Jamaica's intellectual property legislation.

Mexico. In June 1995, two WIPO consultants from Canada and France undertook a mission to Mexico City to assess, under the country project, the present status of computerization of IMPI's operations.

Paraguay. In June 1995, two WIPO consultants from Chile and Uruguay visited Asunción to advise, under the country project, the Directorate of Industrial Property on the computerization of its operations.

Also in June 1995, a WIPO consultant from Venezuela undertook a mission to Asunción, under the country project, to discuss a draft new copyright law with government officials.

Trinidad and Tobago. In June 1995, the International Bureau sent to the government authorities, at their request, suggestions for updating the trademark legislation.

World Bank. In June 1995, two WIPO officials had discussions with an official from the World Bank, in Geneva, on WIPO's development cooperation activities and possible intellectual property projects in Latin America and the Caribbean.

Development Cooperation (in General)

Training Courses, Seminars and Meetings

WIPO Training Seminar on Searching and Examination (Madrid, Munich, Geneva). In June 1995, WIPO, the EPO and OEPM organized a training seminar in Madrid, Munich and Geneva; it was attended by 15 government officials from Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Uruguay and Venezuela. Presentations were made by officials of the three organizing institutions.

WIPO Academy (Geneva). From June 12 to 23, 1995, WIPO organized in Geneva a session of the WIPO Academy in English. The aim of the program was to inform the participants, referred to as "fellows," of the main elements and current issues relating to intellectual property, present those elements and issues in such a way as to highlight the policy considerations behind them and thereby enable the fellows, after their return to their respective countries, to better participate in the formulation of government policies on intellectual property questions. Thirteen government officials from Bahrain, Botswana, Cameroon, Egypt, Ethiopia, Ghana, Jamaica, Nigeria, South Africa, Sudan, Swaziland and Zimbabwe attended the session. The coordinator of the session was Mr. James Slattery from the United States of America; presentations were made by 10 WIPO consultants from Germany, India, Slovenia, Switzerland and the United States of America, as well as by WIPO officials.

Assistance With Training, Legislation and Modernization of Administration

Islamic Educational, Scientific and Cultural Organization (ISESCO). In June 1995, Mr. Abdulaziz Bin Othman Altwaijri, Director General of ISESCO, and another ISESCO official held discussions with the Director General and other WIPO officials on forthcoming joint activities in favor of ISESCO member countries.

WIPO Medals

In June 1995, WIPO medals were awarded to two Moroccan inventors (one woman and one man) at the First World Exhibition of Inventions and Innovations in Morocco, organized in Casablanca.

Activities of WIPO Specially Designed for Countries in Transition to Market Economy

Regional Activities

WIPO Regional Seminar for the Central Asian Countries on Copyright and Neighboring Rights (Kazakstan). From June 28 to 30, 1995, WIPO organized the said Seminar, in Almaty, in cooperation with the Government of Kazakstan and the Kazak State Agency for Copyright and Neighboring Rights. The Seminar was attended by 12 participants from government copyright circles from Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, as well as by about 80 participants from the government and private sectors of Kazakstan. Presentations were made by nine experts from France, Germany, Kazakstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan, the United Kingdom and Uzbekistan and by three WIPO officials.

Central and Eastern European Countries. In June 1995, a WIPO official attended, in Varna (Bulgaria), the VIth Coordination Meeting of the European Communities' (EC) Regional Industrial Property Programme for Central and Eastern Europe (PHARE-RIPP) which is being implemented by WIPO and the European Patent Office (EPO). Discussions mainly concerned the TRACES (Common Trademark Register) ROMARIN-clone CD-ROM publication project.

Also in June 1995, two WIPO officials discussed with a representative of the Groupement européen des sociétés d'auteurs et compositeurs (GESAC) in Paris the coordination of WIPO's activities in Central and Eastern Europe with those of GESAC, which are financed by the European PHARE Programme.

Commonwealth of Independent States (CIS). In June 1995, two WIPO officials participated, in Minsk, in a Symposium on Regional Cooperation in Patent Protection, organized by the EPO in cooperation with WIPO, for some 40 senior staff of CIS patent offices. One of the WIPO officials presented a paper on the interface between the Patent Cooperation Treaty (PCT) and the Eurasian Patent Convention.

Interstate Council for the Protection of Industrial Property (ICPIP). In June 1995, three ICPIP officials had discussions with the Director General and other WIPO officials in Geneva on the convening of the first meeting of the Administrative Council of ICPIP, and on WIPO's assistance in the elaboration of the Patent, Administrative and Financial Instructions under the Eurasian Patent Convention.

National Activities

Lithuania. In June 1995, Mr. Rimvydas Naujokas, Director of the State Patent Bureau, had discussions with WIPO officials in Geneva on questions relating to cooperation between Lithuania and WIPO.

Russian Federation. In June 1995, two government officials and a representative of industry had discussions with the Director General and other WIPO officials in Geneva on the Eurasian Patent Convention as a future regional system for patent protection, particularly in the CIS countries, and on the importance of promoting new adherences to that Convention.

Also in June 1995, the International Bureau prepared and sent to the competent committees of the Parliament of the Russian Federation, at their request, observations on draft provisions in the Civil Code of the Russian Federation on the protection of intellectual property rights.

Slovakia. In June 1995, the International Bureau prepared and sent to the government authorities, at their request, a draft law on copyright and neighboring rights.

Also in June 1995, a WIPO official participated as a speaker at a national copyright seminar, organized by GESAC, with the support of the European PHARE Programme, in Bratislava.

Contacts of the International Bureau of WIPO With Other Governments and With International Organizations

National Contacts

WIPO Symposium on Industrial Property Protection and Development in Turkey. On June 19 and 20, 1995, WIPO organized that Symposium in Ankara, in cooperation with the Turkish Patent Institute and with the assistance of the United Nations Development Programme (UNDP). The Symposium was attended by some 350 participants including patent agents, academics, judges, enterprise representatives and officials of several ministries; two WIPO officials also attended. Papers were presented by four WIPO consultants from Austria, Germany, Spain and Turkey, government officials from Turkey and by one of the WIPO officials.

Andorra. In June 1995, a government advisor to the Andorran Government on trademarks and trademark automation discussed a draft law on the use of emblems of States and intergovernmental organizations with WIPO officials in Geneva.

Australia. In June 1995, a WIPO official met with government officials in Canberra to discuss issues related to intellectual property in Australia, in particular trademarks and industrial designs, as well as to the Asia Pacific Economic Cooperation (APEC) and WIPO's work program and activities.

France. In June 1995, two WIPO officials undertook a mission to Paris to discuss with government officials and representatives of the International Confederation of Societies of Authors and Composers (CISAC), French Standards Association (AFNOR), the Society of Authors and Composers of Dramatic Works (SACD), the Society of Authors, Composers and Music Publishers (SACEM) and the Society of Filmmakers (SRF), the protection and management of copyright and neighboring rights in digital systems.

Portugal. In June 1995, a WIPO official undertook a mission to Lisbon and had discussions with government officials and representatives of the Portuguese Society of Authors (SPA) on cooperation between Portugal and WIPO in assisting Portuguese-speaking African countries (Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe) in the field of copyright and neighboring rights.

Spain. In June 1995, a WIPO official undertook a mission to Madrid and had discussions with government officials and representatives of the General Authors' Society of Spain (SGAE), on cooperation between Spain and WIPO in assisting Latin American countries in the field of copyright and neighboring rights.

Switzerland. In June 1995, the Director General participated, as a member, in a meeting of an international jury to select the winner of an international competition for the redevelopment of the Place des Nations, a square in Geneva. The jury was constituted by the Government of the Republic and Canton of Geneva.

Turkey. In June 1995, a WIPO official had discussions with government officials in Ankara on matters of mutual interest, particularly the new national legislation on trademarks, patents, industrial designs and appellations of origin.

Also in June 1995, a WIPO official participated in a tripartite review meeting on the ongoing UNDP-financed country project, held in Ankara. The meeting was also attended by government and UNDP officials. Still in June 1995, a WIPO consultant from Austria undertook a mission to Ankara to advise the Turkish Patent Institute, under the said country project, on electronic data processing.

United Nations

United Nations 50th Anniversary. In June 1995, the Director General and three other WIPO officials attended a ceremony organized by the Geneva authorities to mark, with the participation of the Swiss federal authorities, the start of the celebrations, in Geneva, for the 50th anniversary of the United Nations.

Economic and Social Council (ECOSOC). In June 1995, two WIPO officials attended the 1995 regular session of ECOSOC, in Geneva.

Consultative Committee on Administrative Questions (Personnel and General Administrative Questions) (CCAQ(PER)). In June 1995, the Director General and another WIPO official attended a meeting of the CCAQ, in Geneva.

Intergovernmental Organizations

European Patent Office (EPO). In June 1995, a WIPO official attended the 57th meeting of the Administrative Council of the EPO, held in Munich.

United Nations Educational, Scientific and Cultural Organization (UNESCO). In June 1995, a WIPO official attended the tenth session of the Intergovernmental Committee under the Universal Copyright Convention, in Paris.

World Trade Organization (WTO). In June 1995, the Chairman of the WTO Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and a WTO official visited the Director General to discuss with him and other WIPO officials plans for cooperation between WIPO and WTO.

Other Organizations

Asociación Literaria y Artística para la Defensa del Derecho de Autor (ALADDA). In June 1995, a WIPO official participated in and made a presentation on primary and secondary broadcasting under the Berne Convention for the Protection of Literary and Artistic Works and on the preparatory work for a Possible Protocol to the Convention, at study days organized by ALADDA in Barcelona (Spain).

Belgo-Luxembourg Business Club in Switzerland. In June 1995, a WIPO official made a presentation on WIPO, its objectives and its activities to some 30 members of that Club in Geneva.

Centre national de la cinématographie (CNC) (France). In June 1995, two WIPO officials had discussions with officials of CNC, in Paris, concerning the international registration of audiovisual works.

Danish Copyright Association. In June 1995, a WIPO official made a presentation on international copyright developments at the eighth Nordic Copyright Symposium, organized by the said Association in Rønne (Denmark).

European Communities Trade Mark Association (ECTA). In June 1995, a WIPO official made a presentation on the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) and the Trademark Law Treaty (TLT) at the 14th ECTA annual meeting, held in Cannes (France).

European Group representing Organizations for the Collective Administration of Performers' Rights (ARTIS-GEIE). In June 1995, two representatives of ARTIS-GEIE undertook a mission to Geneva and discussed with the Director General and other WIPO officials WIPO's development cooperation activities and its other future activities in the field of collective management of rights in the digital environment.

International Association for the Protection of Industrial Property (AIPPI). The XXXVIth Congress of AIPPI was held in Montreal from June 25 to 30, 1995. About 3,000 members of AIPPI and 800 accompanying persons from nearly 70 countries, as well as a number of representatives of governments, intergovernmental organizations and non-governmental organizations participated.

WIPO was represented by its Director General and five other WIPO officials.

At the opening ceremony, the Director General of WIPO delivered the following speech:

"It is, as always, a most welcome occasion for the World Intellectual Property Organization to address a meeting of AIPPI.

This is particularly true when the meeting is a Congress, the most important gathering of your Association, occurring only once every three years.

Many of the items on the agenda of AIPPI and on the agenda of the World Organization are the same.

This is both natural and useful.

It is natural because, basically, our objective is the same, namely the improvement of the protection of industrial property rights, particularly on the international level.

And it is useful since your Association represents the interests of both the owners of industrial property rights and the representatives of such owners and your worldwide membership consists of foremost specialists in the field of industrial property. Consequently, following your deliberations and receiving advice from you make the World Organization's work particularly practical and particularly realistic. This is why I said that our contacts are useful.

Since our last encounter at the Copenhagen Executive Committee meeting of AIPPI, just one year has passed.

And yet, during this relatively short period, several events have taken place which are of mutual interest to us.

I shall mention six such events: the TLT, the planned PLT, the Madrid Protocol, the PCT, the WIPO Arbitration Center and the TRIPS Agreement.

First, the Trademark Law Treaty, or TLT. The Diplomatic Conference held last October adopted that Treaty. It was a most important event. The TLT is a treaty of great practical significance for

trademark owners since it simplifies and harmonizes many aspects of national trademark procedures. It establishes standardized forms which every trademark office has to accept for applications for registration, for the appointment of agents, for the transfer of ownership, for changes in names and addresses and for the correction of mistakes. Requiring the legalization of signatures is prohibited. *One* application suffices even if the goods or services belong to several classes.

The TLT is now open for ratification. It will come into force when the number of ratifications reaches five; hopefully, in 1996.

Second, the Patent Law Treaty or PLT. As you know, a Diplomatic Conference started in 1991 but could not continue because the United States of America was not ready to participate on the basis of the agenda which included the principle of "first-to-file." But a most promising breakthrough took place a month ago when, in a big consultative meeting of WIPO–in which, naturally, your Association participated–a plan for the continuation of the patent harmonization effort was drawn up.

According to that plan, the proposals that have been under inconclusive consideration by the 1991 Diplomatic Conference would be put on ice for at least the next two years and the drawing up of a draft treaty on procedural and formality questions would be explored. A good part of such questions would be of the same kind as were resolved, for trademarks, in the TLT.

WIPO looks forward to AIPPI's advice on exactly what to tackle and how.

Third, the Madrid Protocol. One of the main objectives of this Protocol is to open the international trademark registration system–more than 100-years old–to marks originating in countries having an Anglo-Saxon trademark system.

The ice is broken, since the United Kingdom ratified the Protocol two months ago. We hope that other countries, including Canada, will soon do the same.

The Protocol is likely to become operational in less than one year.

Fourth, the Patent Cooperation Treaty or PCT. It has now 79 countries as members. The number of international patent applications filed under the PCT is presently around 3,000 per month. Almost half of the European patent applications are filed *via* the PCT.

The PCT system is a proven, economical and safe system for seeking patent protection for a given invention in several countries. It has been tried, and it is used every day by many members of AIPPI.

Fifth, the WIPO Arbitration Center. This Center opened last October. Many AIPPI members have offered that they be included in the list of potential arbiters since this is a mediation and arbitration system specially conceived for controversies involving intellectual property disputes.

A special workshop at the present AIPPI Congress will deal with our Arbitration Center.

Sixth, and last, the Agreement on Trade-Related Aspects of Intellectual Property, or TRIPS, one of the fruits of the Uruguay Round of GATT. It entered into force on the first day of this year.

The Secretariat of WIPO is working on a study analyzing the differences between the Paris and Berne Conventions on the one hand, and the TRIPS Agreement, on the other hand. The study will be available next September. Our study should also be useful for practitioners, as the members of your Association are. We also advise, on request, individual governments on the changes that are required in their national laws when the TRIPS Agreement will bind them.

Ladies and Gentlemen,

Just before closing my remarks, may I say a word in respect of Canada, since we are in Canada.

We are full of admiration for the achievements of Canada in the field of industrial property legislation in the last years.

The Patent Act of 1987 introduced a large number of innovations, among them the principle of "first-to-file." The Intellectual Property Law Improvement Act of 1993 provided further important amendments to the intellectual property statutes. So also did the 1993 laws implementing the NAFTA Agreement, introducing protection for integrated circuits, abolishing compulsory licenses for pharmaceuticals and establishing the Canadian Intellectual Property Office as a self-operating agency.

Doubtless, members of the Canadian Group of AIPPI had a decisive influence. Allow me, please, to congratulate them.

And I also congratulate them and, among them, most particularly Mr. David G. Vice and Mrs. Joan Clark, the hosts of this perfectly organized Congress.

I am sure that I speak in the name of all your guests when I offer you, Mr. President and Madam, and all the members of the Canadian Group of AIPPI, our sincere and warm thanks and our best wishes for the success of this Congress."

The AIPPI Congress dealt in plenary sessions with the following questions: effective protection against unfair competition under Article 10*bis* of the Paris Convention of 1883; introduction of new and harmonization of existing utility model protection systems; methods and principles of novelty evaluation in patent law; evaluation of confusion in trade-

mark law; patents and protection of the environment; legal aspects of merchandising.

During the same period, workshops covered such topics as infringement of protected computer software; intellectual property aspects of GATT; regional trade agreements and intellectual property; copyright in motion pictures and videotape recordings; damages and other financial remedies for patent infringement; arbitration of intellectual property disputes; standardization of products and patent rights; customs seizure of counterfeited goods.

The Executive Committee elected Mr. Peter Dirk Siemsen (Lawyer, Rio de Janeiro) as the new President of AIPPI, and Mr. Luiz Leonardos (Lawyer, Rio de Janeiro) as Executive President. Mr. Teartse Schaper (Lawyer, The Hague) was elected Deputy Reporter General, in addition to Mr. Bruno Phélip (Industrial Property Attorney, Paris). Mr. Vincenzo Pedrazzini (Industrial Property Attorney, Zurich) was elected Deputy Secretary General.

The Executive Committee and the Council of Presidents of AIPPI held several meetings during the Congress. At the conclusion of those meetings, the Executive Committee adopted a number of resolutions. The texts of those resolutions which concern WIPO's work are the following:

Resolutions Adopted

[Excerpts]

Harmonization of Certain Provisions of the Legal Systems for Protecting Inventions

"AIPPI

1. *has taken note* of the results of the Consultative Meeting for the Further Preparation of the Diplomatic Conference for the Conclusion of the Patent Law Treaty, organized by WIPO from May 8 to 12, 1995 in Geneva;

2. *has taken note* of the recommendation adopted at the end of that meeting (WIPO document PLT/CM/4, paragraph 67) recommending another approach for promoting harmonization and to study a new draft treaty aimed at harmonization, particularly of matters concerning the formalities of national and regional patent applications;

3. *acknowledges* the progress being made in the United States of America on selected harmonization issues, *nevertheless deeply regrets* the position taken by the United States of America to avoid considering for the time being resumption of negotiations on the basic proposal contained in WIPO document PLT/DC/69;

4. *confirms* its previous Resolutions pertaining to patent harmonization;

5. *reiterates* its endorsement of using the basic proposal contained in WIPO document PLT/DC/69 in the future negotiations;

6. *recognizes* the practical importance, for the users of the patent system, of the approach recommended by the Consultative Meeting;

7. *nevertheless feels* that such an approach is only an interim solution and that negotiations on the basic proposal should be resumed at an appropriate time;

8. *in consequence, recommends* that, at this point in time, harmonization efforts should concentrate on formalities and matters of practical importance such as those included in the recommendation of the Consultative Meeting (signatures, changes in names and addresses, change in ownership, correction of mistakes, observations in case of intended refusal, representation, address for service, contents of at least the request part of the application, and use of model international forms), and also further items relating to formalities such as conditions for granting a filing date, unity of invention, restoration of rights, mention of inventor, translation of priority documents, formalities concerning recordal of licenses and procedural time limits."

(Resolution on Question No. 89)

Harmonization of Formal Requirements for Trademark Applications, Registrations and Amendments Thereof

"AIPPI

– *is delighted* at the signature by numerous states of the Trademark Law Treaty which is directed at harmonizing and simplifying administrative formalities concerning trademarks, a Treaty which was framed in accordance with the Resolution adopted by AIPPI at the Council of Presidents of Luceme in 1991;

– *emphasizes* the interest of industrialists and businessmen in seeing the Treaty come into force as quickly as possible; and

– *consequently invites* the governments that have signed the Treaty to have it ratified with the minimum delay."

(Resolution on Question No. 92D)

*Effective Protection Against Unfair Competition Under Article 10*bis *of the Paris Convention of 1883*

"AIPPI *has taken into consideration*:

At the meeting of the Executive Committee in Copenhagen 1994, AIPPI adopted a Resolution on Q 115 in which it defined as unfair competition any act contrary to fair business practices and dealt with the three categories of acts of unfair competition expressly referred to in Article 10*bis*(3) of the Paris Convention (acts of such nature as to create confusion, allegations of such nature as to discredit a competitor and indications which are liable to mislead the public), and furthermore with three cases not expressly mentioned in Article 10*bis*, namely dilution, slavish or quasi-slavish imitation or copying and the violation of a trade secret.

The present Resolution deals with certain additional aspects of slavish imitation and similar cases and of the violation of a trade secret, and refers to a number of other typical acts which under certain circumstances are regarded as unfair in a number of countries.

There exist many other business practices which sometimes are expressly considered to be unfair competition in one or more countries. However, in view of the different traditions in different countries it would be difficult to establish generally applicable recommendations for all these cases. As for the other numerous situations which can be imagined but never be completely covered by any more or less exhaustive list of unfair practices, one must therefore rely on the general rule that any act contrary to fair business practices should be prohibited.

1. *Violation of Trade Secrets*

In its Copenhagen Resolution, AIPPI expressed its view that the use or disclosure without the consent of its proprietor, of a

trade secret received from a person to whom it was entrusted or who obtained it improperly, constitutes an act of unfair competition if the user knew or should have been aware of this fact.

This Resolution deals with the situation where the trade secret was received in good faith.

AIPPI *observes* that:

1.1 in general the use or disclosure of a trade secret received in good faith from a person, to whom it was entrusted or who obtained it improperly, is not considered to be an act of unfair competition. This corresponds to the minimum standard set by the GATT/TRIPS Agreement according to which the acquisition of undisclosed information by a third party is contrary to honest commercial practices if the third party knew, or was grossly negligent in failing to know, that such practices were involved in the acquisition;

1.2 in certain countries the use or disclosure of a trade secret acquired in good faith can nevertheless be prohibited as from the moment that the acquirer becomes aware that unfair practices were involved in the acquisition; the proprietor may also be able to ask for compensation;

1.3 however, such prohibition, even if in principle applied, is excluded if, as a consequence of the use by the third party, the trade secret has been disclosed to the public. Otherwise everybody else could use the information and only the person who acquired it in good faith would be prohibited from such use.

AIPPI *believes* that:

1.4 subject to 1.6, the use or disclosure of a trade secret by a third party who acquired it in good faith does not constitute an act of unfair competition;

1.5 if, as a consequence of the use by the third party, the trade secret is disclosed to the public, it has lost its secret character. Consequently everybody is free to use it;

1.6 if the trade secret has not been disclosed to the public through the use of the third party, who acquired it in good faith, the proprietor can require that the third party not disclose it to the public. Whether, and under what conditions, the third party can continue using it, should depend on all circumstances of fact, such as, e.g., his having invested substantially in the use of the trade secret.

2. *Slavish Imitation and Similar Cases*

In its Copenhagen Resolution AIPPI stated that slavish or quasi-slavish imitation of a product or service which is not protected by a specific intellectual property right is contrary to honest business practices if it creates a risk of confusion. This is a consequence of the general principle that any act which is likely to create confusion is prohibited. The question whether any other act of slavish or quasi-slavish imitation or of direct appropriation should be prohibited is not dealt with in a number of jurisdictions, in others it is answered in different ways. The following observations can therefore only be guidelines for a possible approach to the problem:

AIPPI *observes* that:

2.1 the great majority of the groups does not believe that slavish or quasi-slavish imitation or direct appropriation should be generally prohibited;

2.2 a majority of the groups believes that slavish or quasi-slavish imitation or direct appropriation should in principle be allowed; only under additional specific circumstances should the imitation or appropriation be considered unfair, such as

- creation of confusion,
- parasitic behavior,
- exploitation of reputation,
- improperly hindering the competitor in the exercise of his business,

and/or

taking into consideration all or some of the following criteria:

- as concerns the imitated product or service,

its originality or distinctiveness, investment, duration and success on the market, degree of reputation, functionality and

- as concerns the imitator,

absence of investment or direct appropriation, intentional or systematic imitation, the availability of other technical or marketing solutions, etc.;

2.3 a minority believes that protection, limited in time, should be given against slavish or quasi-slavish imitation, independently from such other requirements, for fashion articles of short-life character possessing the necessary originality. Some groups believe that such special treatment of fashion articles is not justified. The law of one country affords the protection against slavish imitation of configurations of articles not common to such articles for a period of three years, independently from other requirements;

2.4 one group believes that slavish copying should generally be considered as presumptive evidence of parasitism. Another group believes that slavish imitation should only be prohibited if it may cause confusion or damage the distinctive quality of the imitated product or services;

2.5 most groups do not distinguish between slavish or quasi-slavish imitation and direct appropriation in the application of the above principles. Direct appropriation is, however, sometimes considered to be more likely to be unfair than slavish or quasi-slavish imitation.

AIPPI *believes* that

2.6 slavish or quasi-slavish imitation and direct appropriation of a product or service are acts of unfair competition, not only if they cause confusion but also if they exploit the reputation of the imitated product or service or substantially damage its distinctive quality;

2.7 under such circumstances no undue and unlimited monopoly right is given but a concrete unfair business practice is prohibited;

2.8 slavish or quasi-slavish imitation of a product or service does not constitute an act of unfair competition to the extent that it is necessary to the technical function of the product or service;

2.9 national law may provide that other circumstances such as those mentioned in 2.2 justify a prohibition of slavish or quasi-slavish imitation of a product or a service.

3. *Other Acts or Business Practices Which Under Certain Circumstances May Be Considered to Be Unfair*

AIPPI *observes* that

3.1 there are other acts or business practices which, while not likely to create a risk of confusion, to unjustifiably denigrate a competitor or to mislead the public, may be considered unfair. Among these are predatory pricing, inducement to breach of contracts, interference with a competitor's business, violation of regulations, and invasion of privacy. These other acts or business practices also involve consideration of the laws on contracts, antitrust, labor and consumer protection, and of international treaties.

AIPPI *believes* that

3.2 the adoption of positions with regard to those acts or business practices under the law of unfair competition requires a more thorough study of the relationship of that law to the mentioned fields of law with the context of specific factual circumstances.

AIPPI accordingly *decides*

3.3 to continue the study of such other acts or business practices as may constitute unfair competition."

(Resolution on Question No. 115)

International Chamber of Commerce (ICC). In June 1995, a WIPO official attended the annual meeting of the Working Group on Arbitration and Intellectual Property of the ICC International Court of Arbitration, held in Paris.

International Council on Archives (ICA). In June 1995, a WIPO official attended the XXIst session of the Section of International Organizations of ICA, held in New York.

International Federation of Musicians (FIM)/International Federation of Actors (FIA)/International Federation of the Phonographic Industry (IFPI). In June 1995, a WIPO official attended a FIM/FIA/IFPI conference on "The Administration of Rights of Performers and Producers of Phonograms in the Digital Era," held in Hamburg (Germany).

International Law Association (ILA). In June 1995, the Director General and three other WIPO officials participated in a meeting of the International Trade Law Committee of the ILA, held on the premises of WIPO, and spoke on WIPO's current and future activities and, in particular, the draft Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property and the WIPO Arbitration Center.

International Publishers Association (IPA)/International Group of Scientific, Technical and Medical Publishers (STM)/International Publishers Copyright Council (IPCC). In June 1995, officials from the above organizations jointly visited WIPO in Geneva and had discussions with WIPO officials concerning the impact of digital technology on copyright and related WIPO activities.

International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU)/International Federation of Trade Unions of Audio-Visual Workers (FISTAV). In June 1995, a WIPO official attended the second ISETU/FISTAV World Broadcasting Trade Union Conference, held in Geneva.

Société civile pour l'administration des droits des artistes et musiciens interprètes (ADAMI). In June 1995, Mr. François Parrot, Secretary General, and another representative of ADAMI held discussions with the Director General and other WIPO officials in Geneva on cooperation between WIPO and ADAMI in assisting developing countries in the field of neighboring rights.

Software Publishers Alliance (SPA). In June 1995, a WIPO official made a presentation on the impact of digital technology on copyright and the preparation of a Protocol to the Berne Convention at the Sixth Annual Conference of SPA, in Cannes (France).

Miscellaneous News

National News

Andorra. The Law on Trademarks of May 11, 1995, entered into force on May 24, 1995.

Denmark. The Law on Copyright and Neighboring Rights of June 14, 1995, entered into force on July 1, 1995.

Slovenia. The Law on the Protection of Topographies of Integrated Circuits of March 30, 1995, entered into force on April 29, 1995.

The Law on Copyright and Related Rights of March 30, 1995, entered into force on April 29, 1995.

Switzerland. The Federal Law on Patents for Inventions of June 25, 1954, as last amended by the Federal Law of December 16, 1994, was further amended by the Federal Law of February 3, 1995, which will enter into force on September 1, 1995.

The Federal Law on Industrial Designs of March 30, 1900, was amended by the Federal Law of December 16, 1994, which entered into force on July 1, 1995.

The Federal Law on the Protection of Trademarks and Indications of Source of August 28, 1992, was amended by the Federal Law of December 16, 1994, which entered into force on July 1, 1995.

Calendar of Meetings

WIPO Meetings

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

1995

September 25 to October 3 (Geneva) — **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Sixth Series of Meetings)**

All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years.
In the sessions in 1995, the Governing Bodies will, *inter alia*, review and evaluate WIPO's activities undertaken since July 1993, and decide the program and budget of the International Bureau for the 1996-97 biennium.
Invitations: States members of WIPO and the Paris and Berne Unions and, as observers, other States members of the United Nations and certain organizations.

October 18 to 20 (Naples, Italy)

WIPO World Forum on the Protection of Intellectual Creations in the Information Society

The World Forum–to be organized in cooperation with the Italian Government and to be held in the *Palazzo Reale* at Naples–will take place at a decisive stage of the preparation of new norms for the protection of copyright and neighboring rights, and the introduction of new techniques for the management of such rights, in response to the challenges of digital technology. It will mostly deal with the concrete, practical aspects of these norms and techniques as well as with the delicate questions arising from the conflicts between the transborder nature of global digital networks and the territoriality of copyright.
Invitations: Governments, selected intergovernmental and non-governmental organizations and–against payment of a registration fee–any members of the public.

November 6 to 10 (Geneva)

Committee of Experts of the Nice Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Seventeenth Session)

The Committee will examine and consider the proposals concerning the amendments or changes to the International Classification of Goods and Services for the Purposes of the Registration of Marks.
Invitations: States members of the Nice Union and, as observers, States members of the Paris Union or of WIPO not members of the Nice Union, and certain organizations.

November 13 to 16 (Geneva)

Committee of Experts on Well-known Marks

The Committee will study questions concerning the application of Article 6*bis* of the Paris Convention (e.g., whether that Article applies also where the well-known mark is not actually used in the country in which its protection is claimed) and the conditions, as well as scope of protection, in particular, in respect of famous or well-known marks, against dilution and/or undue exploitation of the goodwill acquired by such marks. Moreover, it will study the feasibility of setting up, under the aegis of WIPO, a voluntary international information network for the exchange of information among countries concerning marks that may be considered to be well known or famous.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

December 15 (a.m.) (Geneva)

Information Meeting for Non-Governmental Organizations on Intellectual Property

Participants in this informal meeting will be informed about the recent activities and future plans of WIPO in the fields of industrial property and copyright and their comments on the same will be invited and heard.
Invitations: International non-governmental organizations having observer status with WIPO.

UPOV Meetings

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

1995

October 11 to 13 (Geneva)

Technical Committee

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

October 16 and 17 (Geneva)

Administrative and Legal Committee

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

October 18 (Geneva)

Consultative Committee (Fiftieth Session)

Invitations: Member States of UPOV.

October 19 (Geneva)

Council (Twenty-Ninth Ordinary Session)

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