

RECORDS
OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY
ON THE INTERNATIONAL REGISTRATION
OF AUDIOVISUAL WORKS

Geneva, 1989



**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

**RECORDS
OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY
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EDITOR'S NOTE

The Records of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works held in Geneva, from April 10 to 20, 1989, contains documents relating to that Conference which were issued before, during and after the Conference.

The final text--that is the text as adopted and signed--of the Treaty and the Regulations thereunder appears on the right-hand (odd number) pages of the first part of this volume (up to page 49). On the opposite, left-hand (even number) pages (up to page 48) appears the text of the drafts of the said Treaty and Regulations as presented to the Diplomatic Conference. In order to facilitate the comparison of the drafts with the final texts, those pages do not contain in full the text of the drafts but they merely indicate where the texts are identical or specify the slight differences existing between the drafts and the final texts.

Page 33 contains the list of States that signed the Treaty by the date until which it was open for signature (that is, December 31, 1989).

Page 53 contains the text of the Final Act adopted and signed by the Diplomatic Conference and the list of States that signed the Final Act on April 20, 1989.

The part entitled "Conference Documents" (pages 55 to 113) contains three series of documents distributed before and during the Diplomatic Conference: "IRAW/DC" (12 Documents), "IRAW/DC/DC" (1 document) and "IRAW/DC/INF" (3 documents).

The Rules of Procedure of the Diplomatic Conference appear on pages 60 to 74.

The part entitled "Summary Minutes" (pages 117 to 255) contains the summary minutes of the Plenary of the Diplomatic Conference and of the Main Committee of the latter. Those minutes were written in their provisional form by the International Bureau on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional minutes were then made available to the speakers with the invitation to make suggestions for changes where desired. The final minutes, published in this volume, take such suggestions into account.

The part entitled "Participants" (pages 257 to 278) lists the individuals who represented governments (pages 259 to 273), intergovernmental organizations other than the World Intellectual Property Organization (page 274), international non-governmental organizations (pages 274 and 275) and the World Intellectual Property Organization (page 275). (The report of the Credentials Committee appears on pages 107 to 109). That part also lists the officers of the Diplomatic Conference and the officers and members of the committees of the Diplomatic Conference (pages 276 to 278).

Finally, these Records contain five different indexes (pages 279 to 336).

The first two (pages 281 to 309) are indexes relating to the subject matter of the Treaty and the Regulations under the Treaty. The first of those two indexes (Index A) lists by number each Article of the Treaty and each Rule of the Regulations and indicates, under each of them, the number which the Article or Rule had in the drafts presented to the Conference, the pages where the text of the draft and the final text of the Article or Rule appear in these Records, the pages where the written proposals for amendments to the Article or Rule are reproduced, and, finally, the serial numbers of those paragraphs of the summary minutes which reflect the discussion on and adoption of the Article or Rule. The second index (Index B) is a catchword index, which lists alphabetically the main subjects dealt with in the Treaty and the Regulations. After each catchword, the number of the Article or Rule in which the particular subject is dealt with is indicated. By consulting Index A under the Article or Rule thus indicated, the reader will find the references to the pages where that provision appears and to the paragraph numbers of the minutes where it is treated.

The third index (pages 311 to 317) is an alphabetical list of States showing, under the name of each State, where to find the names of the members of its delegation as well as the written proposal for amendments submitted and the interventions made on behalf of that State and referring to the signature of the Treaty and the Final Act on behalf of that State where such a signature took place.

The fourth index (pages 319 and 320) is an alphabetical list of Organizations showing, under the name of each Organization, where to find the names of the observers representing it, as well as the interventions made on its behalf.

The fifth index (pages 321 to 336) is an alphabetical list of the participants indicating, under the name of each individual, the State or Organization which he represented, as well as the place in these Records where his name appears together with that of the State or Organization represented by him, as an officer of the Conference or as an officer or a member of a Committee, as a speaker in the Plenary or Main Committee or as a plenipotentiary signing the Treaty or the Final Act of the Diplomatic Conference.

Geneva, 1990

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TREATY
ON THE INTERNATIONAL REGISTRATION
OF AUDIOVISUAL WORKS

Draft of the Treaty
as presented to the Diplomatic Conference

Text of the Treaty
as adopted by the Diplomatic Conference

SIGNATORIES

DRAFT

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ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKSContents

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TREATY
ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

Contents

Preamble

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- Article 11: Becoming Party to the Treaty
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- Article 15: Signature and Languages of the Treaty
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[Same as in the Text of the Treaty as adopted by the Diplomatic Conference (hereinafter referred to as "the Final Text"), except that, in the draft text of the Treaty as presented to the Diplomatic Conference (hereinafter referred to as "the Draft"), the third sentence reads as follows: "to contribute to the fight against piracy of protected works, performances, phonograms and broadcasts;".]

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 1

[Same as in the Final Text, except that, in the Draft, the title of the article reads as follows: "Establishment of a Union".]

Article 2

"Audiovisual Work"

[Same as in the Final Text, except that, in the Draft, the words corresponding to the words "a series of fixed related images" appearing in the Final Text read as follows: "the fixation of a series of related images".]

Article 3

The International Register

(1) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

The Contracting States

Desirous to increase the legal security in transactions relating to audiovisual works and thereby

to enhance the creation of audiovisual works and the international flow of such works and

to contribute to the fight against piracy of audiovisual works and contributions contained therein;

Have agreed as follows:

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 1

Establishment of the Union

The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for the international registration of audiovisual works (hereinafter referred to as "the Union").

Article 2

"Audiovisual Work"

For the purposes of this Treaty, "audiovisual work" means any work that consists of a series of fixed related images, with or without accompanying sound, susceptible of being made visible and, where accompanied by sound, susceptible of being made audible.

Article 3

The International Register

(1) [Establishment of the International Register] The International Register of Audiovisual Works (hereinafter referred to as "the International Register") is hereby established for the purpose of the registration of statements concerning audiovisual works and rights in such works, including, in particular, rights relating to their exploitation.

(2) [Setting Up and Administration of the International Registry] The International Registry of Audiovisual Works (hereinafter referred to as "the International Registry") is hereby set up for the purpose of keeping the International Register. It is an administrative unit of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the International Bureau" and "the Organization," respectively).

(3) [Location of the International Registry] [Alternative A: The International Registry shall be located in Austria as long as a treaty to that effect between the Republic of Austria and the Organization is in force. Otherwise, it shall be located in Geneva.] [Alternative B: The International Registry shall be located in Geneva.]

(4) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "by a natural person or legal entity" appearing in the Final Text read as follows: "by a person".]

(5) [Same as in the Final Text.]

Article 4

Legal Effect of the International Register

[Same as in the Final Text.]

(3) [Location of the International Registry] The International Registry shall be located in Austria as long as a treaty to that effect between the Republic of Austria and the Organization is in force. Otherwise, it shall be located in Geneva.

(4) [Applications] The registration of any statement in the International Register shall be based on an application filed to this effect, with the prescribed contents, in the prescribed form and subject to the payment of the prescribed fee, by a natural person or legal entity entitled to file an application.

(5) [Eligibility for Being an Applicant] (a) Subject to subparagraph (b), the following shall be entitled to file an application:

(i) any natural person who is a national of, is domiciled in, has his habitual residence in, or has a real and effective industrial or commercial establishment in, a Contracting State;

(ii) any legal entity which is organized under the laws of, or has a real and effective industrial or commercial establishment in, a Contracting State.

(b) If the application concerns a registration already effected, it may also be filed by a natural person or legal entity not satisfying the conditions referred to in subparagraph (a).

Article 4

Legal Effect of the International Register

(1) [Legal Effect] Each Contracting State undertakes to recognize that a statement recorded in the International Register shall be considered as true until the contrary is proved, except

(i) where the statement cannot be valid under the copyright law, or any other law concerning intellectual property rights in audiovisual works, of that State, or

(ii) where the statement is contradicted by another statement recorded in the International Register.

(2) [Safeguard of Intellectual Property Laws and Treaties] No provision of this Treaty shall be interpreted as affecting the copyright law, or any other law concerning intellectual property rights in audiovisual works, of any Contracting State or, if that State is party to the Berne Convention for the Protection of Literary and Artistic Works or any other treaty concerning intellectual property rights in audiovisual works, the rights and obligations of the said State under the said Convention or treaty.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 5Assembly

(1)(a) [Same as in the Final Text, except that, in the Draft, the title of the paragraph reads as follows: "Composition and Expenses."]

(b) [Same as in the Final Text.]

(c) [Same as paragraph (2) in the Final Text, except that, in the Draft, the following words appear in square brackets at the end of this subparagraph "[once the International Register becomes self-supporting]."]

(2) [Tasks] (a) [The first line of the subparagraph and its items (i) to (vi) are the same as in paragraph (3) in the Final Text.]

(vii) [Same as in the Final Text, except that, in the Draft, the words ", and decide from time to time the membership of," do not appear.]

[In the Draft, there is no provision corresponding to item (viii); consequently items (ix) and (x) of paragraph (3)(a) in the Final Text correspond to items (viii) and (ix) of paragraph (2)(a) in the Draft.]

CHAPTER II
ADMINISTRATIVE PROVISIONS

Article 5

Assembly

(1) [Composition] (a) The Union shall have an Assembly that shall consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(2) [Expenses of Delegations] The expenses of each delegation shall be borne by the Government which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each Contracting State, which shall be paid from the funds of the Union.

(3) [Tasks] (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) exercise such tasks as are specially assigned to it under this Treaty;

(iii) give directions to the Director General of the Organization (hereinafter referred to as "the Director General"), concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) determine the program and adopt the biennial budget of the Union, and approve its final accounts;

(vi) adopt the financial regulations of the Union;

(vii) establish, and decide from time to time the membership of, a consultative committee consisting of representatives of interested non-governmental organizations and such other committees and working groups as it deems appropriate to facilitate the work of the Union and of its organs;

(viii) control the system and amounts of the fees determined by the Director General;

(ix) determine which States other than Contracting States and which intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) [Same as in the Final Text.]

(3) [Same as paragraph (4) in the Final Text.]

(4) [Same as paragraph (5) in the Final Text.]

(5) [Same as paragraph (6) in the Final Text.]

(6) [Same as paragraph (7) in the Final Text.]

(7) [Same as paragraph (8) in the Final Text.]

(8) [Same as paragraph (9) in the Final Text.]

Article 6

International Bureau

[Same as in the Final Text.]

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(4) [Representation] A delegate may represent, and vote in the name of, one State only.

(5) [Vote] Each Contracting State shall have one vote.

(6) [Quorum] (a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of the decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence.

(7) [Majority] (a) Subject to Article 8(2)(b) and Article 10(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

(8) [Sessions] (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the Contracting States or on the Director General's own initiative.

(9) [Rules of Procedure] The Assembly shall adopt its own rules of procedure.

Article 6

International Bureau

(1) [Tasks] The International Bureau shall:

(i) perform, through the International Registry, all the tasks related to the keeping of the International Register;

(ii) provide the secretariat of revision conferences, of the Assembly, of the committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union;

(iii) perform all other tasks specially assigned to it under this Treaty and the Regulations referred to in Article 8 or by the Assembly.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

Article 7Finances

(1) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

(3) [Meetings Other Than Sessions of the Assembly] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [Role of the International Bureau in the Assembly and Other Meetings] (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.

(b) The Director General or a staff member designated by him shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [Revision Conferences] (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.

(b) The Director General may consult with intergovernmental and non-governmental organizations concerning the said preparations.

(c) The Director General and staff members designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(d) The Director General or a staff member designated by him shall be ex officio secretary of any revision conference.

Article 7

Finances

(1) [Budget] (a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) [Coordination with Other Budgets] The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) [Same as in the Final Text, except that, in the Draft, in item (iii), the word "voluntary" appears in front of the word "donations."]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text.]

(6) [Same as in the Final Text.]

(7) [Same as in the Final Text.]

Article 8

Regulations

[Same as in the Final Text.]

(3) [Sources of Income] The budget of the Union shall be financed from the following sources:

(i) fees due for registrations and other services rendered by the International Registry;

(ii) sale of, or royalties on, the publications of the International Registry;

(iii) donations, particularly by associations of rights holders in audiovisual works;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) [Self-Supporting Financing] The amounts of fees due to the International Registry and the prices of its publications shall be so fixed that they, together with any other income, should be sufficient to cover the expenses connected with the administration of this Treaty.

(5) [Continuation of Budget; Reserve Fund] If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous period, as provided in the financial regulations. If the income exceeds the expenses, the difference shall be credited to a reserve fund.

(6) [Working Capital Fund] The Union shall have a working capital fund which shall be constituted from the income of the Union.

(7) [Auditing of Accounts] The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 8

Regulations

(1) [Adoption of Regulations] The Regulations adopted at the same time as this Treaty are annexed to this Treaty.

(2) [Amending the Regulations] (a) The Assembly may amend the Regulations.

(b) Any amendment of the Regulations shall require two-thirds of the votes cast.

(3) [Conflict between the Treaty and the Regulations] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

(4) [Administrative Instructions] The Regulations provide for the establishment of Administrative Instructions.

CHAPTER III

REVISION AND AMENDMENT

Article 9Revision of the Treaty

[Same as in the Final Text.]

Article 10Amendment of Certain Provisions of the Treaty

(1)(a) [Same as in the Final Text, except that, in the Draft, the references to Article 5(6) and (8) and Article 7(5) to (7) appear as references to Article 5(5) and (7) and Article 7(4)(b) to (6).]

(b) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

CHAPTER III

REVISION AND AMENDMENT

Article 9Revision of the Treaty

(1) [Revision Conferences] This Treaty may be revised by a conference of the Contracting States.

(2) [Convocation] The convocation of any revision conference shall be decided by the Assembly.

(3) [Provisions That Can Be Amended Also by the Assembly] The provisions referred to in Article 10(1)(a) may be amended either by a revision conference or according to Article 10.

Article 10Amendment of Certain Provisions of the Treaty

(1) [Proposals] (a) Proposals for the amendment of Article 5(6) and (8), Article 6(4) and (5) and Article 7(1) to (3) and (5) to (7) may be initiated by any Contracting State or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2) [Adoption] (a) Amendments to the provisions referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

(3) [Entry Into Force] (a) Any amendment to the provisions referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly.

(c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

CHAPTER IV

FINAL PROVISIONS

Article 11Becoming Party to the Treaty

[Same as in the Final Text.]

Article 12Entry Into Force of the Treaty

[Same as in the Final Text.]

Article 13Reservations to the Treaty

(1) [Same as in the Final Text, except that, in the Draft, the title of the paragraph is "No Reservation", and the words "(1) [No Reservation] Subject to paragraph (2)" are in square brackets.]

(2) [Same as in the Final Text, except that, in the Draft, this paragraph is in square brackets.]

CHAPTER IV

FINAL PROVISIONS

Article 11Becoming Party to the Treaty

(1) [Adherence] Any State member of the Organization may become party to this Treaty by:

- (i) signature followed by the deposit of an instrument of ratification, acceptance or approval, or
- (ii) the deposit of an instrument of accession.

(2) [Deposit of Instruments] The instruments referred to in paragraph (1) shall be deposited with the Director General.

Article 12Entry Into Force of the Treaty

(1) [Initial Entry Into Force] This Treaty shall enter into force, with respect to the first five States which have deposited their instruments of ratification, acceptance, approval or accession, three months after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

(2) [States Not Covered by the Initial Entry Into Force] This Treaty shall enter into force with respect to any State not covered by paragraph (1) three months after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession unless a later date has been indicated in the instrument of ratification, acceptance, approval or accession. In the latter case, this Treaty shall enter into force with respect to the said State on the date thus indicated.

Article 13Reservations to the Treaty

(1) [Principle] Subject to paragraph (2), no reservation may be made to this Treaty.

(2) [Exception] Any State, upon becoming party to this Treaty, may, in a notification deposited with the Director General, declare that it will not apply the provisions of Article 4(1) in respect of statements which do not concern the exploitation of intellectual property rights in audiovisual works. Any State that has made such a declaration may, by a notification deposited with the Director General, withdraw it.

Article 14Denunciation of the Treaty

[Same as in the Final Text.]

Article 15Signature and Languages of the Treaty

[Same as in the Final Text.]

Article 16Depository Functions

[Same as in the Final Text.]

Article 14

Denunciation of the Treaty

(1) [Notification] Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) [Effective Date] Denunciation shall take effect one year after the day on which the Director General has received the notification.

(3) [Moratorium on Denunciation] The right of denouncing this Treaty provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which this Treaty enters into force with respect to it.

Article 15

Signature and Languages of the Treaty

(1) [Original Texts] This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(2) [Official Texts] Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(3) [Time Limit for Signature] This Treaty shall remain open for signature at the International Bureau until December 31, 1989.

Article 16

Depositary Functions

(1) [Deposit of the Original] The original of this Treaty and the Regulations shall be deposited with the Director General.

(2) [Certified Copies] The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations, to the Governments of States entitled to sign this Treaty.

(3) [Registration of the Treaty] The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) [Amendments] The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of the Contracting States and, on request, to the Government of any other State.

Article 17Notifications

[Same as in the Final Text, except that, in the Draft, the reference to Article 13 is in square brackets.]

- . -

Article 17Notifications

The Director General shall notify the Governments of the States members of the Organization of any of the events referred to in Articles 8(2), 10(2) and (3), 11, 12, 13 and 14.

- . -

IN WITNESS WHEREOF, the undersigned being duly authorized thereto, have signed this Treaty. Done at Geneva, this twentieth day of April, one thousand nine hundred and eighty-nine.*

AUSTRIA (Erik Nettel); BRAZIL, December 7, 1989 (Rubens Ricupero); BURKINA FASO (André Roch Palenfo); CANADA, December 21, 1989 (de Montigny Marchand); CHILE (Luis Escobar Cerdá); EGYPT, May 3, 1989 (Moustapha Omar); FRANCE (Jean-David Levitte); GREECE, December 29, 1989 (Euripides Kerkinos); GUINEA (Cécé Alexandre Loua); HUNGARY (György Boytha); INDIA (Bal Krishen Zutshi); MEXICO, July 6, 1989 (Miguel Marín-Bosch); PHILIPPINES, April 25, 1989 (Hector K. Villarroel); POLAND, December 29, 1989 (Zdzislaw Czeszejko-Sochacki); SENEGAL, May 2, 1989 (Alioune Séne); UNITED STATES OF AMERICA, (Harvey J. Winter; Marybeth Peters); YUGOSLAVIA, December 29, 1989 (Marko Kosin).

* Editor's Note: All signatures were affixed on April 20, 1989, unless otherwise indicated

REGULATIONS
UNDER THE TREATY
ON THE INTERNATIONAL REGISTRATION
OF AUDIOVISUAL WORKS

Draft of the Regulations
as presented to the Diplomatic Conference

Text of the Regulations
as adopted by the Diplomatic Conference

REGULATIONS
UNDER
THE TREATY ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

Contents

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- Rule 2: Application
- Rule 3: Processing of the Application
- Rule 4: Date and Number of the Registration
- Rule 5: Registration
- Rule 6: The Gazette
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- Rule 8: Fees
- Rule 9: Administrative Instructions

Rule 1: Definitions

[The first line and items (i) to (v) and (viii) are the same as in the text of the Regulations as adopted by the Diplomatic Conference (hereinafter referred to as "The Final Text").]

(vi) [Same as in the Final Text, except that, in the Draft of the Regulations as presented to the Diplomatic Conference (hereinafter referred to as "the Draft"), the word "audiovisual" appears in front of the words "work or works".]

(vii) [Same as in the Final Text, except that, in the Draft, the words "as the case may be" appear at the end of this item.]

REGULATIONS
UNDER
THE TREATY ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

Contents

- Rule 1: Definitions
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- Rule 4: Date and Number of the Registration
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- Rule 8: Fees
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Rule 1: Definitions

For the purposes of these Regulations,

(i) "Treaty" means the Treaty on the International Registration of Audiovisual Works;

(ii) "International Register" means the International Register of Audiovisual Works established by the Treaty;

(iii) "International Registry" means the administrative unit of the International Bureau that keeps the International Register;

(iv) "work" means audiovisual work;

(v) "work-related application" means an application that identifies an existing or future work at least by its title or titles and requests that statements in respect of the interest of an identified person or identified persons in or concerning that work be registered in the International Register; "work-related registration" means a registration effected pursuant to a work-related application;

(vi) "person-related application" means an application that requests that statements in respect of the interest of the applicant, or of a third person identified in the application, in or concerning one or more existing or future work or works, described but not identified by its or their title or titles, be registered in the International Register; "person-related registration" means a registration effected pursuant to a person-related application. A work shall be considered as being described when, in particular, the person who or legal entity which has made, or is expected to make, the work is identified;

(vii) "application" or "registration"--unless qualified as "work-related" or "person-related"--means both a work-related and a person-related application or registration;

(ix) [Same as in the Final Text, except that, in the Draft, the words "as the case may be" appear at the end of this item.]

(x) [Same as in the Final Text, except that, in the Draft, the reference is "Article 5(2)(a)(vii)" rather than Article 5(3)(a)(vii).]

Rule 2: Application

(1) [Same as in the Final Text.]

(2) [Language] Any application shall be in the English language.

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text.]

(5) [Title or Description of the Work] (a) Any work-related application shall indicate the title or titles of the work. When a title is in a language other than English or in a script other than the Latin script, it shall be accompanied by a literal translation into English or a transliteration into Latin script, as the case may be.

(b) [Same as in the Final Text.]

(6) [Same as in the Final Text.]

(7) [Interest of the Applicant] (a) [The first sentence is the same as in the Final Text, while, in the Draft, the second sentence reads as follows: "Where the interest consists of a right of exploitation of the work, the nature of the right (for example, right of reproduction, right of distribution, right of public performance, right of broadcasting, right of rental, right of dubbing, right of subtitling, right of colorization) and the territory (for example, city, region, country, continent) for which the right belongs to the applicant shall also be indicated."]

(viii) "applicant" means the natural person who or the legal entity which filed the application; "holder of the registration" means the applicant once the application has been registered;

(ix) "prescribed" means as prescribed in the Treaty, in these Regulations or in the Administrative Instructions;

(x) "Consultative Committee" means the consultative committee referred to in Article 5(3)(a)(vii) of the Treaty.

Rule 2: Application

(1) [Forms] Any application shall be filed by using the appropriate prescribed form.

(2) [Language] Any application shall be in the English language or in the French language. As soon as the International Register is financially self-supporting, the Assembly may determine the other language in which applications may be filed.

(3) [Name and Address of Applicant] Any application shall indicate, as prescribed, the name and address of the applicant.

(4) [Name and Address of Third Persons Referred to in the Application] Where an application refers to a person or legal entity other than the applicant, the application shall indicate, as prescribed, the name and address of such person or legal entity.

(5) [Title or Description of the Work] (a) Any work-related application shall indicate at least the title or titles of the work. When a title is in a language other than English or French or in a script other than the Latin script, it shall be accompanied by a literal translation into English or a transliteration into Latin script, as the case may be.

(b) Any person-related application shall describe the work.

(6) [Reference to Existing Registration] When the application relates to a work which is the subject matter of an existing work-related registration, or to a work which is described in an existing person-related registration, the said application shall, whenever possible, indicate the registration number of the said registration. If the International Registry finds that such an indication would be possible but was not given in the application, it may, itself, indicate such number in the registration, subject to noting in the International Register that the indication comes from the International Registry rather than the applicant.

(7) [Interest of the Applicant] (a) In any work-related application, the application shall indicate the interest of the applicant in or concerning the work, whether existing or future. Where the interest consists of a right of exploitation of the work, the nature of the right and the territory for which the right belongs to the applicant shall also be indicated.

(b) In any person-related application, the application shall indicate the interest of the applicant in or concerning the described, existing or future, work or works, in particular any right that limits or negates, for the benefit of the applicant or another person, the right of exploitation of the work or works (for example, the rights or obligations resulting, for the applicant or for another person, from mortgage, lien, injunction, seizure, bankruptcy, legal incapacity, death).

(c) [Same as in the Final Text, except that, in the Draft, the subparagraph is in square brackets.]

(8) [Same as in the Final Text, except that, in the Draft, after the word "derivation", the following words appear in brackets: "(sale, license, inheritance, etc.)".]

(9) [Accompanying Documents and Identifying Material] (a) [The first sentence is the same as in the Final Text, while, in the Draft, the second sentence reads as follows: "Any such document in a language other than English or French shall be accompanied, in English, by an indication of the nature and essence of the document; otherwise, the International Registry shall treat the document as if it has not been attached."]

(b) [Same as in the Final Text.]

(10) [Same as in the Final Text, except that, in the Draft, the word "existing" appears in front of the word "original."]

(11) [Same as in the Final Text.]

(12) [Representation] (a) [Same as in the Final Text, except that, in the Draft, there is a second sentence which reads as follows: "Where the signature is missing, the appointment shall be considered as non-existing."]

(b) [Same as in the Final Text.]

(c) [Same as in the Final Text.]

(b) In any person-related application, the application shall indicate the interest of the applicant in or concerning the described, existing or future, work or works, in particular any right that limits or negates, for the benefit of the applicant or another person, the right of exploitation of the work or works.

(c) Where the interest is limited in time, the application may express such a limit.

(8) [Source of Rights] Where a work-related application concerns a right in the work, the application shall indicate, where the right originally vested in the applicant, that fact, or, where the right is derived from a natural person or legal entity other than the applicant, the name and address of such person or entity and the legal cause of the derivation.

(9) [Accompanying Documents and Identifying Material] (a) Any application may be accompanied by documents supporting the statements contained in the application. Any such document in a language other than English or French shall be accompanied, in English, by an indication of the nature and essence of the document; otherwise, the International Registry shall treat the document as if it had not been attached.

(b) Any application may be accompanied by material, other than documents, susceptible of identifying the work.

(10) [Statement of Veracity] The application shall contain a statement to the effect that the statements contained therein are, to the knowledge of the applicant, true, and that any accompanying document is an original or is a true copy of an original.

(11) [Signature] The application shall be signed by the applicant or by his representative appointed as provided in paragraph (12).

(12) [Representation] (a) Any applicant or holder of the registration may be represented by a representative who may be appointed in the application, in a separate power of attorney relating to a specific application or registration, or in a general power of attorney, signed by the applicant or holder of the registration.

(b) A general power of attorney enables the representative to represent the applicant or holder of the registration in connection with all the applications or registrations of the person having given the general power of attorney.

(c) Any appointment of a representative shall be in force until it is revoked in a communication signed by the person who made the appointment and addressed to the International Registry or until it is renounced by the representative in a communication signed by the representative and addressed to the International Registry.

(d) [Same as in the Final Text.]

(13) [Same as in the Final Text.]

Rule 3: Processing of the Application

(1) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

(d) The International Registry shall address to the representative any communication intended for the applicant or holder of the registration under these Regulations; any communication so addressed to the representative shall have the same effect as if it had been addressed to the applicant or holder of the registration. Any communication addressed to the International Registry by the representative shall have the same effect as if it had originated with the applicant or holder of the registration.

(13) [Fees] For each application, the applicant shall pay the prescribed fee, which must reach the International Registry not later than the day on which the application is received by the International Registry. If the fee reaches the International Registry within 30 days from the date on which the application was actually received by the International Registry, the application shall be considered as having been received by the International Registry on the date on which the fee reaches the International Registry.

Rule 3: Processing of the Application

(1) [Corrections] If the International Registry notices what it believes to be an inadvertent omission, two or more statements conflicting with each other, a mistake of transcription, or another obvious error, in the application, it shall invite the applicant to correct the application. Any correction by the applicant must, in order to be taken into consideration, reach the International Registry within 30 days from the date of the invitation to correct the application.

(2) [Giving Possibility to Remove Contradictions] (a) Where, in the opinion of the International Registry, any statement contained in an application is in contradiction to any statement that, on the basis of an earlier application, is the subject matter of an existing registration in the International Register, the International Registry shall immediately,

- (i) where the applicant is also the holder of the existing registration, send him a notification asking him whether he wishes to either modify the statement contained in the application or apply for the modification of the statement that is subject matter of the existing registration,
- (ii) where the applicant and the holder of the existing registration are not the same, send a notification to the applicant asking him whether he wishes to modify the statement contained in the application and, at the same time, send a notification to the holder of the existing registration asking the said holder whether--in case the applicant does not wish to modify the statement appearing in the application--he wishes to apply for the modification of the statement in the existing registration.

The registration of the application shall be suspended until a modification is submitted that, in the opinion of the International Registry, removes the contradiction, but for no longer than 60 days from the date of the said notification or notifications, unless the applicant asks for a longer period, in which case it will be suspended until the expiration of that longer period.

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text, except that, in the Draft, the word "International" does not appear in the title of the paragraph.]

Rule 4: Date and Number of the Registration

[Same as in the Final Text.]

(b) The fact that the International Registry failed to notice the contradictory nature of a statement shall not be considered as removing that nature of the statement.

(3) [Rejection] (a) In the following cases, the International Registry shall, subject to paragraphs (1) and (2), reject the application:

(i) where the application does not contain a statement which, on the face of it, shows that the requirements of Article 3(5) of the Treaty are met;

(ii) where, in the opinion of the International Registry, the application does not relate to a work, whether existing or future;

(iii) where the application does not meet any of the requirements of Rule 2(2), (3), (4), (5), (7)(a) and (b), (8), (10), (11) and (13).

(b) The International Registry may reject the application where the application does not fulfill the prescribed conditions as to its form.

(c) No application shall be rejected for any reason other than those referred to in subparagraphs (a) and (b).

(d) Any decision of rejection under this paragraph shall be communicated in writing by the International Registry to the applicant. The applicant may, within 30 days from the date of the communication, request in writing the International Registry to reconsider its decision. The International Registry shall reply to the request within 30 days from the date of receipt of the said request.

(4) [Notice in the International Register of Receipt of the Application] If, for any reason, the International Registry, within three working days from the receipt of the application, does not register the application, it shall enter into the data base of the International Registry, open for consultation to the public, the essential elements of the application, and an indication of the reason for which no registration has taken place and, if the reason is related to paragraphs (1), (2)(a) or (3)(d), an indication of the measures taken under any of those provisions. If and when the registration is effected, the said entry in the data base shall be erased.

Rule 4: Date and Number of the Registration

(1) [Date] The International Registry shall allot, subject to Rule 2(13), as the filing date, to each application, the date of receipt of the application. Where the application is registered, it shall be given, as registration date, the filing date.

(2) [Number] The International Registry shall allot a number to each application. If the application refers to a work whose title appears in an existing work-related registration, or which is described in an existing person-related registration, the number allotted shall also contain the number of that registration. Any registration number shall consist of the application number.

Rule 5: Registration

[Same as in the Final Text.]

Rule 6: The Gazette

(1) [Same as the first sentence in the Final Text. The second sentence in the Final Text does not appear in the Draft.]

(2) [Same as in the Final Text.]

Rule 7: Inquiries

[Same as in the Final Text.]

Rule 5: Registration

(1) [Registration] Where an application is not rejected, all the statements contained therein shall, as prescribed, be registered in the International Register.

(2) [Notification and Publication of the Registration] Any registration effected shall, as prescribed, be notified to the applicant and published in the Gazette referred to in Rule 6.

Rule 6: The Gazette

(1) [Publication] The International Registry shall publish a gazette ("the Gazette") in which it shall indicate the prescribed elements in respect of all registrations. The Gazette shall be in English, provided that elements concerning applications that were filed in French shall also be in French.

(2) [Sale] The International Registry shall offer, against payment, both yearly subscriptions to the Gazette and single copies of the Gazette. The amount of the prices shall be fixed in the same manner as the amount of the fees is fixed according to Rule 8(1).

Rule 7: Inquiries

(1) [Information and Copies] The International Registry shall, against the payment of the prescribed fee, furnish information concerning any registration and certified copies of any registration certificate or document concerning such registration.

(2) [Certificates] The International Registry shall, against the payment of the prescribed fee, furnish a certificate answering questions about the existence, in the International Register, of statements concerning specific matters in any registration or any document or material that has been attached to the application.

(3) [Inspection] The International Registry shall, against the payment of the prescribed fee, allow the inspection of any application, as well as of any document or material that has been attached to the application.

(4) [Monitoring Service] The International Registry shall, against the payment of the prescribed fee, give written information, during the period for which the fee was paid, on all registrations effected in respect of given works or given persons during that period. The information shall be sent promptly after each registration is effected.

(5) [Computerized Memory] The International Registry may input into computer memory all or part of the contents of the International Register, and, in performing any of the services referred to in paragraphs (1) to (4) or in Rule 3(4), it may rely on that memory.

Rule 8: Fees

(1) [Fixing of the Fees] The amount of any fees shall be fixed, and may be amended, by the Director General after consultation of the Consultative Committee. The Assembly may instruct the Director General to change the said amount.

[In the Draft, there is no provision corresponding to paragraph (2) of Rule 8 of the Final Text.]

(2) [Same as paragraph (3) in the Final Text.]

(3) [Same as paragraph (4) in the Final Text.]

Rule 9: Administrative Instructions

[Same as in the Final Text.]

Rule 8: Fees

(1) [Fixing of the Fees] Before determining the system and amounts of the fees, and before making any changes in that system or amounts, the Director General shall consult the Consultative Committee. The Assembly may instruct the Director General to change the said system, the said amounts, or both.

(2) [Reduction of Fees for Applicants from Developing Countries] The amounts of the fees shall be reduced initially by 15% where the applicant is a natural person who is a national of, or a legal entity which is organized under the laws of, a Contracting State that is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations. The Assembly shall periodically examine the possibility of increasing the percentage of the said reduction.

(3) [Entry into Effect of Changes in the Fees] Any increase in the amounts of the fees shall not be retroactive. The date of the entry into effect of any change shall be fixed by the Director General or, where the change is on instruction by the Assembly, by the Assembly. Such date shall be indicated when the change is published in the Gazette. It shall not be sooner than one month after the publication in the Gazette.

(4) [Currency and Manner of Payment] The fees shall be paid in the prescribed manner and in the prescribed currency or, if several currencies are admitted, in the currency that the applicant chooses among the said currencies.

Rule 9: Administrative Instructions

(1) [Scope] (a) The Administrative Instructions shall contain provisions concerning details in respect of the administration of the Treaty and these Regulations.

(b) In the case of conflict between the provisions of the Treaty or these Regulations and those of the Administrative Instructions, the former shall prevail.

(2) [Source] (a) The Administrative Instructions shall be drawn up, and may be modified, by the Director General after consultation of the Consultative Committee.

(b) The Assembly may instruct the Director General to modify the Administrative Instructions, and the Director General shall modify them accordingly.

(3) [Publication and Entry into Force] (a) The Administrative Instructions and any modification thereof shall be published in the Gazette.

(b) Each publication shall specify the date on which the published provisions come into effect. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Gazette.

FINAL ACT
OF THE DIPLOMATIC CONFERENCE

FINAL ACT
OF THE
DIPLOMATIC CONFERENCE FOR THE CONCLUSION
OF THE TREATY ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

In accordance with the decisions by the General Assembly of the World Intellectual Property Organization (WIPO) made at its ninth and tenth sessions (1987 and 1988), and following preparations by the member States of WIPO and by the International Bureau of WIPO, the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works was held from April 10 to 20, 1989, at the headquarters of WIPO at Geneva.

The Diplomatic Conference adopted the said Treaty which was opened for signature on April 20, 1989.

IN WITNESS WHEREOF, the undersigned, being Delegates of the States members of the World Intellectual Property Organization (WIPO) participating in the Diplomatic Conference, have signed this Final Act. Done at Geneva, this twenty day of April, one thousand nine hundred and eighty-nine in the English and French languages.

Argentina, Austria, Burkina Faso, Canada, Chile, Colombia, Czechoslovakia, Democratic People's Republic of Korea, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Hungary, India, Israel, Italy, Japan, Liechtenstein, Mexico, Pakistan, Panama, Philippines, Portugal, Spain, Sweden, Switzerland, Tunisia, Turkey, United States of America, Uruguay, Yugoslavia.

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS "IRAW/DC", "IRAW/DC/DC" and "IRAW/DC/INF" SERIES

Document Number	Source	Subject
IRAW/DC/1	The Committee of Experts for the preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works	Draft Agenda
IRAW/DC/2	The Committee of Experts for the preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works	Draft Rules of Procedure
IRAW/DC/3	The Director General of WIPO	"The Basic Proposal" for the Treaty and Regulations submitted, under Rule 29(1) of the Draft Rules of Procedure
IRAW/DC/3 Add. 1	The Director General of WIPO	Amendment to the Basic Proposal
IRAW/DC/4	The Director General of WIPO	Seat of the International Registry and initial financing
IRAW/DC/5	The Plenary of the Diplomatic Conference	Rules of Procedure. Text adopted by the Diplomatic Conference
IRAW/DC/6	The Delegation of Hungary	Proposals concerning Rules 1(v) and (vi) and 2(5)(a) of the Draft Regulations

Document Number	Source	Subject
IRAW/DC/7	The Working Group established by the Main Committee and consisting of the Delegations of Austria, Columbia, France and India	Proposal concerning languages and fees
IRAW/DC/8	The Drafting Committee	Draft Treaty and Draft Regulations submitted to the Main Committee
IRAW/DC/9	The Credentials Committee	Report (Prepared by the Secretariat of the Conference)
IRAW/DC/10	The Main Committee	Treaty and Regulations adopted by the Diplomatic Conference on April 18, 1989
IRAW/DC/11	The Plenary of the Diplomatic Conference	Final Act adopted by the Diplomatic Conference on April 18, 1989
IRAW/DC/12	The Secretariat of the Conference	Signatures. Memorandum by the Secretariat of the Conference (Treaty; Final Act)
IRAW/DC/DC/1	The Secretariat of the Conference	Draft Treaty and Regulations submitted to the Drafting Committee
IRAW/DC/INF/1 Rev.	The Secretariat of the Conference	List of participants
IRAW/DC/INF/2	The Secretariat of the Conference	Officers and Committees
IRAW/DC/INF/3	The Secretariat of the Conference	Final list of Documents of the Diplomatic Conference

IRAW/DC/1

December 20, 1988 (Original: English)

Source: THE COMMITTEE OF EXPERTS

Draft Agenda of the Diplomatic Conference established by the Committee of Experts for the Preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works

1. Opening of the Conference by the Director General of WIPO
2. Consideration and adoption of the Rules of Procedure
3. Election of the President of the Conference
4. Consideration and adoption of the agenda
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Consideration of the first report of the Credentials Committee
9. Opening declarations by Delegations and Representatives of Observer Organizations
10. Consideration of the texts proposed by the Main Committee
11. Consideration of the second report of the Credentials Committee
12. Adoption of the Treaty and of the Regulations
13. Adoption of any recommendation, resolution, agreed statement or final act
14. Closing declarations by Delegations and Representatives of Observer Organizations
15. Closing of the Conference by the President*

[End]

* Immediately after the closing of the Conference, the Treaty will be open for signature.

IRAW/DC/2

December 20, 1988 (Original: English)

Source: THE COMMITTEE OF EXPERTS

Draft Rules of Procedure of the Diplomatic Conference established by the Committee of Experts for the Preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works

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* These draft Rules of Procedure will apply as provisional Rules of Procedure until the Diplomatic Conference adopts its Rules of Procedure under the relevant item of the agenda. According to Rule 34(1), such adoption requires a majority of two-thirds.

[IRAW/DC/2, continued]

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[IRAW/DC/2, continued]

CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION, SECRETARIAT

Rule 1: Objective and Competence

(1) The objective of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works (hereinafter referred to as "the Conference") is to negotiate and adopt, on the basis of the drafts contained in document IRAW/DC/3, a Treaty on the International Registration of Audiovisual Works (hereinafter referred to as "the Treaty") and Regulations under the Treaty (hereinafter referred to as "the Regulations").

(2) The Conference, meeting in Plenary, shall be competent to:

(i) adopt these Rules of Procedure (hereinafter referred to as "these Rules") and to make any amendments thereto;

(ii) adopt its agenda;

(iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;

(iv) establish such committees and working groups as are provided for in these Rules;

(v) adopt the Treaty and the Regulations;

(vi) adopt any recommendation or resolution whose subject matter is germane to the Treaty or to the Regulations;

(vii) adopt any agreed statements to be included in the Records of the Conference;

(viii) adopt any final act of the Conference;

(ix) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of:

(i) delegations of the States members of the World Intellectual Property Organization (WIPO),

(ii) delegations of the States members of the United Nations other than those referred to in item (i),

(iii) representatives of intergovernmental and non-governmental organizations invited to the Conference.

(IRAW/DC/2, continued]

(2) Hereinafter, delegations referred to in paragraph (1)(i) are called "Member Delegations," delegations referred to in paragraph (1)(ii) are called "Observer Delegations," and representatives of organizations referred to in paragraph (1)(iii) are called "representatives of Observer Organizations." The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term "Delegations" does not include the representatives of Observer Organizations.

(3) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the International Bureau of WIPO (hereinafter referred to as "the International Bureau").

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Composition of Delegations

Each Delegation shall consist of one or more delegates and may include alternate delegates and advisors. Each Delegation shall have a Head of Delegation and may have an Alternate or Deputy Head of Delegation.

[IRAW/DC/2, continued]

Rule 5: Representatives of Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials.

(2) Full powers shall be required for signing the Treaty. Such powers may be included in the credentials.

(3) Credentials and full powers shall be issued by the Head of the State or Government, or by the Minister responsible for external affairs.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them. Such letter or document shall be signed by the Head (Director General, Secretary General, or President) of the organization concerned.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, if possible not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference, meeting in Plenary. Such decision shall be made as soon as possible and, in any case, before the adoption of the Treaty.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

[IRAW/DC/2, continued]

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of five members elected by the Conference, meeting in Plenary, from among the Member Delegations.

Rule 12: Main Committee and Working Groups

(1) The Conference shall have a Main Committee. The Main Committee shall consist of all the Member Delegations. It shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the Treaty, the Regulations and any recommendation, resolution or agreed statement referred to in Rule 1(2)(vi) and (vii).

(2) The Main Committee may establish such working groups as it deems useful. In establishing them, it shall define their tasks. The number of the members of any working group shall be decided by the Main Committee, which shall elect them from among the Member Delegations.

Rule 13: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of four members elected by the Conference, meeting in Plenary, from among the Member Delegations, as well as, ex officio, the Chairman of the Main Committee.
- (3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee. The Drafting Committee shall not alter the substance of texts submitted to it, but shall coordinate and review the drafting of all texts approved by the Main Committee, and shall submit the texts so reviewed for final approval to the Main Committee.

Rule 14: Steering Committee

- (1) The Steering Committee of the Conference shall consist of the President of the Conference, the Chairman of the Credentials Committee, the Chairman of the Main Committee and the Chairman of the Drafting Committee. Its meetings shall be chaired by the President of the Conference and, in his absence, by the Chairman of the Main Committee.
- (2) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.
- (3) The Steering Committee shall propose for adoption by the Conference, meeting in Plenary, the text of any final act of the Conference.

[IRAW/DC/2, continued]

CHAPTER IV: OFFICERS

Rule 15: Officers

(1) The Conference, meeting in Plenary and presided over by the Director General of WIPO, shall elect its President, and, presided over by its President, shall elect six Vice-Presidents.

(2) The Credentials Committee, the Main Committee and the Drafting Committee shall each have a Chairman and two Vice-Chairmen.

(3) Each of the bodies mentioned in paragraphs (1) and (2) shall elect its officers from among the delegates of States whose Delegations are its members. The Main Committee shall elect the officers of any working group.

(4) Precedence among the Vice-Presidents and Vice-Chairmen shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order, beginning with the name of the State drawn by lot by the President of the Conference.

Rule 16: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of the body (the Conference, meeting in Plenary, the committee or working group) to be chaired by him, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

(2) If all the officers of a body are absent from any meeting of that body (Conference, meeting in Plenary, committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 17: Replacement of President or Chairman

If, for the rest of the duration of the Conference, the President or any Chairman is unable to perform his functions, a new President or Chairman shall be elected.

Rule 18: Vote by Presiding Officer

(1) No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall vote. Another member of his Delegation may vote in the name of his Delegation.

(2) Where the Presiding Officer is the only member of his Delegation, he may vote, but only after all other Delegations have voted.

[IRAW/DC/2, continued]

CHAPTER V: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the Conference, meeting in Plenary, and shall be constituted by one-half of the Member Delegations participating in the Conference.

(2) A quorum shall not be required in the meetings of committees and working groups.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the meeting the limiting of time to be allowed to speakers, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers, or the closure of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 22: Precedence

(1) Member Delegations asking for the floor shall generally be accorded precedence over Observer Delegations asking for the floor, and either shall generally be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence during discussions relating to the work of his committee or working group.

(3) The Director General of WIPO or his representative may be accorded precedence for making statements, observations or suggestions.

[IRAW/DC/2, continued]

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

(2) A Member Delegation which under paragraph (1) rises to a point of order may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, it may be decided to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or a representative of an Observer Organization has used up its or his allotted time, the Presiding Officer shall call it or him to order without delay.

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have signified their wish to speak and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after he has decided to close the list of speakers, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal according to the provisions of Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be accorded to one Member Delegation supporting and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

[IRAW/DC/2, continued]

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

(2) Any member Delegation which has been given the floor on a procedural motion may only speak on that motion and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal and Proposals for Amendment

(1) Document IRAW/DC/3 containing the draft Treaty and the draft Regulations shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Member Delegation may propose amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (the Conference, meeting in Plenary, the committee or working group). The Secretariat shall distribute copies to the Delegations and the representatives of Observer Organizations represented in the body concerned. As a general rule, a proposal for amendment shall be considered and discussed or put to the vote in any meeting only if copies of it have been distributed at least three hours before it is called up for consideration. The Presiding Officer may, however, permit the consideration and discussion of a proposal for amendment even though copies have not been distributed or have been distributed less than three hours before it is called up for consideration.

Rule 30: Decisions on Competence

(1) If any Member Delegation moves that a proposal, duly seconded, should not be considered by the Conference because it is outside the competence of the Conference, such a motion shall be decided by the Conference, meeting in Plenary, and shall be put to the vote before the proposal is called up for discussion.

(2) If the motion referred to in paragraph (1) is made in a body other than the Conference, meeting in Plenary, it shall be referred for decision to the Conference, meeting in Plenary.

[IRAW/DC/2, continued]

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before voting on it has commenced, provided that no amendment to that motion or proposal has been proposed by another Member Delegation. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body (the Conference, meeting in Plenary, a committee or working group), it may not be reconsidered by that body, unless so decided by the majority applicable under Rule 34(1)(iii). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote and shall represent and vote only in the name of its State.

Rule 34: Required Majorities

(1) All decisions of all bodies (the Conference, meeting in Plenary, the committees and working groups) shall require a simple majority, except that the following decisions shall require a majority of two-thirds:

- (i) adoption of these Rules,
- (ii) adoption of any amendments to these Rules,
- (iii) decision to reconsider, under Rule 32, a matter decided, and
- (iv) adoption of the Treaty.

(2) In determining whether the required majority has been attained, only affirmative and negative votes shall be counted, and express abstentions, non-voting or absence during the vote shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if it is seconded by at least one other Member Delegation.

[IRAW/DC/2, continued]

(2) Voting on any question shall be by show of hands unless any Member Delegation, supported by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the State whose name is drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit any Member Delegation to explain its vote or abstention either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of a proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered to have been rejected as a whole.

Rule 38: Voting on Proposals for Amendment

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendment relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or the original text shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to, or delete from, a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, the body (the Conference, meeting in Plenary, the committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

[IRAW/DC/2, continued]

Rule 40: Equally Divided Votes

(1) If a vote is equally divided on matters that require adoption by simple majority other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated if the nomination is maintained until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any body (the Conference, meeting in Plenary, the committee or working group) shall be in English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other three languages.

(2) Any Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention into English, French, Russian or Spanish. Interpretation into the other of the said languages by the interpreters of the Secretariat may be based on the interpretation given in one of the said languages.

(3) Any committee or working group may, if none of its members objects, decide to waive interpretation or to limit it to fewer languages than those referred to in paragraphs (1) and (2).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the Plenary meetings of the Conference and of the meetings of the Main Committee shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the making available of such minutes, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in English or French. Such proposal shall be distributed by the Secretariat in English and French.

(2) Reports of the committees and working groups and information documents of the Secretariat shall be distributed in English and French.

[IRAW/DC/2, continued]

(3)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English or French; if the speaker has used another language, his intervention shall be rendered in English or French as may be decided by the International Bureau.

(b) The final summary minutes shall be made available in English and French.

(c) The text of the Treaty, of the Regulations and of any recommendation or resolution, agreed statement or final act adopted by the Conference shall be made available in the languages in which it is adopted.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committee

The Plenary meetings of the Conference and the meetings of the Main Committee shall be open to the public, unless the Conference, meeting in Plenary, or the Main Committee, as the case may be, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of any committee other than the Main Committee and the meetings of any working group shall be open only to the members of the committee or working group concerned and the Secretariat.

CHAPTER IX: OBSERVERS

Rule 46: Observers

(1) Observer Delegations and representatives of Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committee.

(2) Representatives of any Observer Organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference, meeting in Plenary, and in meetings of the Main Committee, on questions within the scope of their activities.

(3) Written statements submitted by Observer Delegations or by representatives of Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which such statements are made available.

[IRAW/DC/2, continued]

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Amendments to the Rules of Procedure

With the exception of the present Rule, these Rules may be amended.

CHAPTER XI: FINAL ACT

Rule 48: Final Act

If a final act is adopted, it shall be open for signature by any Member Delegation.

[End]

IRAW/DC/3

January 25, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

"The Basic Proposal" for the Treaty and Regulations

Editor's Note: This document contains the text of the Draft Treaty and the Draft Regulations and the Notes referring to them. In the following, only the Notes to the Draft Treaty and to the Draft Regulations are reproduced, including the first part of the Notes entitled "Background" that describes the preparatory work leading to the Diplomatic Conference. The text of the Draft Treaty and of the Draft Regulations are reproduced in this volume on pages 10 to 48 (even numbers).

Background

1. 1981. The idea of an international register of audiovisual works was first mentioned during the "WIPO Worldwide Forum on Piracy of Sound and Audiovisual Recordings" which was organized by the World Intellectual Property Organization (hereinafter referred to as "WIPO") at the headquarters of WIPO in Geneva in March 1981 (WIPO publication 640).

2. 1983. In his proposals for the program of WIPO for the biennium 1984-1985, the Director General of WIPO proposed to the Governing Bodies of WIPO that the following activity be carried out by WIPO in the said biennium: "the International Bureau [of WIPO] would prepare, with the help of outside consultants, convene and service a meeting of a committee of governmental experts to advise it on the setting up, at the International Bureau of WIPO, of an international register of audiovisual recordings (cinematographic works,

[IRAW/DC/3, continued]

recordings of television programs, etc.), it being understood that the use of such register would be voluntary and that the provisions setting up the register would under no circumstances make recordal in the register a condition for protection of copyright or neighboring rights but would be merely intended as a means of facilitating proof of the existence of the audiovisual recording on the date on which the request for recordal was filed." (WIPO document AB/XIV/2, Annex A). This proposal was adopted by the Governing Bodies of WIPO.

3. 1984. In accordance with the program quoted above, the Director General of WIPO convened, in cooperation with the International Federation of Film Producers Associations (FIAPF), a Group of Consultants on the Advisability of Setting Up and International Register of Audiovisual Works. The Group of Consultants met at the headquarters of WIPO in July 1984.

4. The Group of Consultants--consisting of nine experts in their personal capacity and six representatives of FIAPF--"unanimously held that it was necessary and therefore highly desirable and urgent to establish an international register of audiovisual works" (document WIPO/FILMREG/I/4, paragraph 10). The Group of Consultants also expressed its advice on the desirable contents of the proposed international register; the draft Treaty and Regulations contained in the present document are very similar to that advice. As to the legal effect of international registrations, the Group of Consultants did not go as far as the present Draft Treaty does: whereas that Draft requires that Contracting States recognize that the registration of any statement (subject to certain, carefully defined exceptions) recorded in the international register must be considered to be true until the contrary is proved, that is, creates a rebuttable presumption (sometimes referred to as "prima facie evidence"), the Group of Consultants merely expressed the expectation that "courts would gradually accept uncontested registered facts as prima facie evidence" (document WIPO/FILMREG/I/4, paragraph 18). This was an obvious weakness in the views of the Group of Consultants which, as will be seen, has later undergone a complete change.

5. It was noted that any international register should be established and administered by WIPO and that it should be "self-supporting, that is, wholly financed from the fees paid by applicants and inquiring parties" (document WIPO/FILMREG/I/4, paragraph 19) rather than by contributions by Governments. The Director General of WIPO drew the attention of the Group of Consultants to the fact that "in order to cover the expenses of the registry during the initial period during which there would be no or only insufficient revenues in fees, an initial investment would be necessary which would have to come from sources other than WIPO's budget, such as contributions by prospective users' associations" (document WIPO/FILMREG/I/4, paragraph 19, emphasis supplied).

6. In order to further verify the extent of the interest of prospective users' associations in an international register and the readiness, if any, of such associations to advance the funds necessary to cover the initial investment required for setting up such a register, the Director General of WIPO had several discussions with representatives of such associations in Geneva and in New York in 1984. Although, in the conversations, they showed interest, they failed to confirm it in writing and made no proposals for the initial financing.

7. 1985. Nevertheless, because an express denial of interest was also not forthcoming, the Director General of WIPO proposed, in the document containing

[IRAW/DC/3, continued]

the draft program and budget for the 1986-87 biennium--document that was distributed in May 1985 (WIPO document AB/XVI/2, Annex A)--that the study of the possibilities of establishing an international register be continued. This proposal was adopted by the Governing Bodies in September 1985 (WIPO document AB/XVI/23, paragraph 109).

8. 1986. The associations of the potential users of an international registry did not give, during this year and the earlier part of 1987, any official sign of their interest or their readiness to cover the initial financing.

9. 1987. Consequently, the Director General of WIPO, in his proposals of May 1987 for the program of WIPO for the biennium 1988-89, stated that "the efforts for creating an international register of audiovisual recordings will, because of lack of sufficient interest by the motion picture industry, not be pursued" (WIPO document AB/XVIII/2, Annex A). However, the Governing Bodies of WIPO were of a different opinion and in their September 1987 sessions invited the Director General to make a new attempt and convene a diplomatic conference for the adoption of a treaty that would set up an international register of audiovisual works (WIPO document AB/XVIII/14, paragraphs 111 and 140).

10. 1988. For preparing such a diplomatic conference, the Director General of WIPO convened two meetings in 1988.

11. The first met in March 1988 at the headquarters of WIPO under the name of "Committee of Experts on the Establishment of an International Register of Audiovisual Works." Thirty-six States and nine non-governmental organizations participated.

12. The Committee of Experts considered, on the basis of drafts prepared by the Director General of WIPO (WIPO document IRAW/I/2), the possible contents of a treaty and regulations. Its suggestions were taken into consideration when the revised drafts, for the Preparatory Meeting of November/December 1988 (see paragraph 14, below), were drawn up in October 1988.

13. The Committee of Experts also heard, for the first time, of an idea concerning the initial financing of the establishment of the International Registry. Although making no concrete proposals, the Delegation of Austria expressed the idea that its Government might be ready to advance the necessary funds, provided the seat of the International Registry was Vienna (WIPO document IRAW/I/4).

14. The other meeting held in 1988 was convened under the name "Committee of Experts for the Preparation of the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works" and took place at the headquarters of WIPO from November 28 to December 2, 1988. Thirty-one States, one intergovernmental organization and nine non-governmental organizations participated.

15. The Preparatory Committee had new drafts of the proposed Treaty and Regulations before it, prepared by the Director General of WIPO on the basis of the deliberations of the Committee of Experts of March 1988. The Draft Treaty and the Draft Regulations presented in the present document for the consideration of the Diplomatic Conference are based on the discussions of the Preparatory Committee.

[IRAW/DC/3, continued]

16. The Preparatory Committee also established, on the basis of a proposed text submitted to it by the Director General of WIPO, the drafts of the agenda and the rules of procedure of the Diplomatic Conference. The said drafts are contained in documents IRAW/DC/1 and 2.

17. 1989. As to the questions of the seat and initial financing of the International Register, the Director General of WIPO had several contacts, during the period between March 1988 and January 1989, with representatives of the Governments of Austria and Switzerland. Those matters will be the subject of a separate document (WIPO document IRAW/DC/4) that is expected to issue towards the end of February 1989.

Notes on the Draft Preamble

101. The Treaty would establish an international register of audiovisual works, to be kept by the World Intellectual Property Organization, for recording, mainly, statements concerning rights (who owns them? in which countries?) in such works (Article 3(1)). The statements registered would generally have to be considered true unless and until the contrary is proved (Article 4(1)).

102. Since in most cases the statements will be true, and no one will attempt to prove that they are not true, the register will create increased legal security. It would increase legal security for the owner of the right since he could put on notice everyone (in his own country as well as in the foreign countries party to the proposed Treaty) that he is the owner. Furthermore, it would increase legal security for the prospective assignees and licensees of the owner, since they could assume that they deal with the person who has the right to assign and license.

103. Such legal security will enhance creative activity since it holds out the promise that the creators of audiovisual works will be able to enjoy the fruits of their labors, and it will enhance the international flow of audiovisual works since the owner will more willingly assign or license the exploitation, in foreign countries, of his rights when he has a reasonable expectation that, in case of controversy, he will be in an easier position to prove his rights than he would be without the International Register.

104. The possibility of a simple and unexpensive way of proving one's rights--the raison d'être of an international register--will be particularly useful when the owner of the rights asks law-enforcement agencies, specially in countries which are not his own and which, therefore, he knows less, to act against persons who are pirating his works. The rights violated by pirates may be not only those of the authors of the audiovisual works but also those of the performers who perform in them, of the phonogram producers who derive phonograms from them and of the broadcasters who include them in their broadcasts.

105. These are the underlying thoughts of the three paragraphs of the preamble of the proposed Treaty.

[IRAW/DC/3, continued]

Notes on Draft Article 1

106. This Article provides for the establishment of a "Union" consisting of the States which become party to the Treaty. Similar Unions were created by the Paris Convention for the Protection of Industrial Property ("Paris Union"), the Berne Convention for the Protection of Literary and Artistic Works ("Berne Union") as well as by a number of special agreements within the framework of the Paris Union, in particular, the Patent Cooperation Treaty ("PCT Union"), the Madrid Agreement for the International Registration of Marks ("Madrid Union"), the Hague Agreement for the International Deposit of Industrial Designs ("Hague Union"), the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration ("Lisbon Union") and the Trademark Registration Treaty ("TRT Union"). The latter five, generally referred to as "Registration Unions," provide for the international registration and/or publication, by the International Bureau of WIPO, of applications for patents for inventions, of trademarks, of industrial designs, and of appellations of origin. The proposed Union would provide for similar international services as far as audiovisual works are concerned and would be the sixth "Registration Union" administered by WIPO.

107. Each of the existing five Registration Unions has its own governing body (the Assembly) and its own budget and accounts, and the International Bureau is the executive and administrative organ of the Unions. Furthermore, each of the existing five Registration Unions is "self-supporting," that is, its expenses are covered by the fees paid by the users of its services rather than by the governments of the member States.

108. The proposed Treaty would be similar. The provisions on the Assembly of the Union, the International Bureau and the finances of the Union are contained in Articles 5 to 7 of the Treaty.

Notes on Draft Article 2

109. This Article contains a definition of the notion of "audiovisual work" for the purposes of the Treaty. "Work" means a creation of intellect in the artistic field. It must be a "fixation," which, today, is characteristically a fixation on films, disks or tapes, but which may be now, or in the future, also on something other than film, disk or tape. Although the term to be defined is an audiovisual work, sound is not an essential element so that, for example, silent cinematographic works are covered by it. Although one could opt for the definition requiring that the images convey the sensation of motion (in which case, one could insert, after the words "related images," the words "which convey the sensation of motion"), the proposed definition opts for the contrary so that, for example, a series of slides (with or without accompanying words or other sounds) would constitute an audiovisual work. The intended use (e.g., showing in cinemas or on television) is of no significance in this context. It is also to be noted that the application for registration will be rejected if, in the opinion of the International Registry, the application does not relate to an audiovisual work (Rule 3(3)(a)(ii)). Finally, it is to be noted that it is indifferent whether there are rights protected by copyright or so-called neighboring rights in the audiovisual work in all, some or none of the Contracting States.

[IRAW/DC/3, continued]

Notes on Draft Article 3

110. Ad paragraph (1): This paragraph provides for the establishment of the International Register of Audiovisual Works (called "the International Register"). The paragraph also sets out the purpose of the Register which is to record statements concerning audiovisual works and rights in such works, particularly rights relating to their exploitation. The concept "audiovisual work" is defined in Article 2.

111. One of the main reasons for establishing a register of audiovisual works is the need to keep track of who is the beneficiary of which rights in which territories, something that is of increasing importance nowadays when the exploitation of audiovisual works, particularly feature films and television films, are of international dimensions. The main rights in audiovisual works are the right of reproduction, the right of distribution and the right of public performance (for instance, in cinemas or on television). Those rights can be assigned or licensed to different persons and for different territories. The International Register is established mainly for the purpose of recording, before or after the creation or release of any audiovisual work, statements about the identity of the work and about the original owner or owners of the various rights in the work. Furthermore, an important purpose of the Register is to reflect any changes which may occur in the ownership of those rights and to contain information as regards the licensing of the rights. Still, another important purpose of the Register is to reflect any limitation that the owner of the rights may be subject to as a consequence of, for example, a bank loan or tax lien.

112. Ad paragraph (2): This paragraph provides for the setting up of the International Registry of Audiovisual Works ("the International Registry") for the purpose of keeping the International Register. The International Registry is, in other words, the name of the service which runs the International Register. That service is an administrative unit of the Secretariat ("the International Bureau") of WIPO..

113. Ad paragraph (3): This paragraph determines the location of the Registry. It contains two alternatives, one providing for location in Vienna and one providing for location in Geneva. Details concerning the first alternative will be contained in a separate document (IRAW/DC/4).

114. Ad paragraph (4): This paragraph sets out the basic principle that registration of statements in the International Register presupposes the filing of an application to this effect, with the prescribed contents, in the prescribed form and subject to the payment of the prescribed fee. "Prescribed" means fixed in the Treaty, the Regulations or the Administrative Instructions. The contents and the form of the application are prescribed in draft Rule 2 and the fees are prescribed in draft Rule 8. Paragraph (5) specifies which persons are entitled to file an application for registration.

115. Ad paragraph (5): This paragraph determines the eligibility for being an applicant, that is, the entitlement to file applications.

116. Subparagraph (a) gives the criteria applicable when the application does not concern a registration already existing. At least one of the criteria has to be met, in such a case, to be entitled to file an application. The criteria are partly different according to whether the applicant is a natural person (item (i)) or a legal entity (item (ii)).

[IRAW/DC/3, continued]

117. A natural person is entitled to file applications in any of four cases, namely, if the person (a) is a national of a Contracting State, (b) is domiciled in a Contracting State, (c) has his habitual residence in a Contracting State, or (d) has a real and effective industrial or commercial establishment in a Contracting State. Some criteria exist, for example, in treaties in the intellectual property field. Thus, the criteria mentioned under (a) and (c) appear in Article 3(1) and (2) of the Berne Convention, and the criteria mentioned under (b) and (d) appear in Article 3 of the Paris Convention.

118. A legal entity is entitled to file applications in any of two cases. One is when the entity is organized under the laws of a Contracting State, for example, a corporation established according to the local law and registered in the register of companies set up by such law. The other one is when the entity in question has a real and effective industrial or commercial establishment in such a State. The latter criterion exists also in the Paris Convention (Article 3).

119. Subparagraph (b) deals with the situation where the application concerns a registration already effected. Anybody, even an applicant not meeting any of the criteria set out in subparagraph (a), may file such an application.

120. The reason for allowing only nationals, etc., of a Contracting State--and not anybody--to file what could be briefly called the "first" application concerning an audiovisual work (i.e., the case covered by subparagraph (a)) is that it is necessary to motivate States to adhere to the Treaty. Otherwise, States would have no reason to adhere to the Treaty and to accept the obligation of giving a certain evidentiary value to international registrations. On the other hand, it would not serve the natural aim of the International Register's completeness and transparency if only the nationals, etc., of Contracting States were allowed to file what could be briefly called "subsequent" applications (i.e., those covered by subparagraph (b)). On the contrary, anybody should be allowed to file subsequent applications. Otherwise, if the transfer, license, etc., is made for the benefit of a person who is not a national, etc., of a Contracting State, such person could not address an application to the International Register. In such a case--unless the initial applicant asks himself for the registration of the transfer or license--the Register could no longer reflect the real legal situation because it would continue to show the transferor and the licensor as the full owner of rights which he no longer has.

Notes on Draft Article 4

121. Ad paragraph (1): This paragraph deals with the legal effect of the International Register. The rule--subject to two exceptions--is that "each Contracting State undertakes to recognize that a statement recorded in the International Register shall be considered as true until the contrary is proved." Such recognition will bind everyone to whom the law of any Contracting State applies, in particular its government and its courts. In other words, the Treaty would create a rebuttable presumption to the effect that the statements registered in it are true. Such evidentiary value of

[IRAW/DC/3, continued]

statements contained in a register is a well-known legal effect at the national level and is recognized as regards, for instance, the Public Register of Cinematography and the General Public Register of Works, both in Italy, the Copyright Register in Mexico and the Copyright Register in the United States of America.

122. As indicated, the rule is subject to two exceptions.

123. The first exception, contained in item (i), is that the evidentiary effect does not apply where the statement cannot be valid under the copyright law or any other law concerning intellectual property rights in audiovisual works. Such other laws are characteristically laws on so-called neighboring rights of the State in which the evidentiary effect would otherwise apply. For example, if the statement registered in the International Register says that the applicant is the original owner of the copyright in a given State but the applicant is a person who, under the copyright law of that State, cannot be the owner of copyright--for example because he is the national of a country whose nationals cannot, in the said State, acquire copyright, or because he is the producer (rather than the author) of the audiovisual work and, according to the law of the said State, producers cannot (but only authors can) be the original owners of copyright--the statement will not have the legal effect provided for in paragraph (1). As to other rights, for example, if the statement registered in the International Register says that the applicant, being an actor in the audiovisual work, has a right of reproduction but the law of the Contracting State does not recognize a right of reproduction of actors, the statement will not have the legal effect provided for in paragraph (1).

124. The second exception, contained in item (ii), is that the evidentiary effect does not apply if the statement is contradicted by another statement already recorded in the International Register. It is to be hoped that the appearance, in the Register, of contradictory statements will rarely occur, the more so as the Regulations contain provisions aiming at securing that only statements that are true be recorded in the International Register. In particular, applications may and should be accompanied by documents supporting the statements contained in the applications (Rule 2(9) of the Regulations), and all applications must contain a declaration to the effect that the statements contained therein are true and that copies of any accompanying document are true copies (Rule 2(10)). Furthermore, the International Registry must invite the applicant to correct inadvertent omissions, contradictory statements or other obvious errors (Rule 3(1)), and where, in the opinion of the International Registry, any statement contained in an application is in contradiction to any previous entry in the International Register, the International Registry must inform the applicant and any other party concerned, giving them the possibility to remove the contradiction (see Rule 3(2)(a)).

[IRAW/DC/3, continued]

125. Ad paragraph (2): This paragraph contains a safeguard clause in relation to copyright law and any other law covering intellectual property rights in audiovisual works. The Treaty is not a treaty on copyright or on other intellectual property rights in audiovisual works. It does not establish obligations for the States party to it as far as copyright or such other rights are concerned. This fact is confirmed by the paragraph under consideration. This safeguard clause is of importance, for example, in relation to the provisions of Article 15 of the Berne Convention which provides that "(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity. (2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work. (3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work."

126. The presumptions of authorship included in Article 15 of the Berne Convention are, naturally, binding only for the countries party to that Convention.

Notes on Draft Article 5

127. The Article contains provisions concerning the governing body of the Union created under the Treaty, namely, the Assembly. Most of the proposed provisions are the same or strongly resemble the corresponding provisions concerning the Assemblies of other Unions administered by WIPO.

128. Ad paragraph (1): Subparagraphs (a) and (b) are of the usual kind and are self-explanatory. Subparagraph (c)--without the words within square brackets--follows the system existing in the Madrid Union concerning the International Registration of Marks. The words within square brackets would be an innovation.

129. Ad paragraph (2): All provisions, except the one contained in subparagraph (a)(vii), are of the usual kind and seem to be self-explanatory. The said subparagraph provides for the establishment of a consultative committee consisting of representatives of interested non-governmental organizations. Such a committee is considered important in order to achieve a close cooperation between the Union and the main prospective users of the Registry, particularly the film and television industries. The composition and the tasks of that committee as well as certain other matters concerning that committee are proposed to be dealt with in a decision of the Assembly which should be adopted as soon as the Assembly starts functioning.

[IRAW/DC/3, continued]

130. The following is the draft of such a decision:

"The Assembly of the Union established by the Treaty on the International Registration of Audiovisual Works (hereinafter referred to as "the Assembly" and "the Treaty," respectively),

"Considering that Article 5(2)(a)(vii) of the Treaty provides that the Assembly "shall establish a consultative committee consisting of representatives of interested non-governmental organizations,"

"Decides the establishment of the said consultative committee under the name of "Consultative Committee of Non-Governmental Organizations of the International Registry of Audiovisual Works" (hereinafter referred to as "the Consultative Committee") and

"Decrees the following concerning the Consultative Committee:

"1. Composition. (a) The non-governmental organizations listed in Annex I [reserved] shall be the initial members of the Consultative Committee.

"(b) The Assembly may, from time to time, modify the membership of the Consultative Committee.

"2. Tasks. The Consultative Committee shall have the following tasks:

"(i) to advise the Director General in respect of the practical implementation by the International Registry of the Treaty, the Regulations and the Administrative Instructions;

"(ii) to suggest to the Director General changes in the Regulations and the Administrative Instructions as well as in the kinds, amounts and method of payment of fees payable to the International Registry;

"(iii) to express its views on all amendments, proposed by the Director General, to the Regulations before he submits the drafts of any proposed amendments to the Assembly;

"(iv) to express its views on all amendments that the Director General plans to make in the Administrative Instructions and on all changes that the Director General plans to make in the kinds, amounts and method of payment of the fees.

"3. Report to the Assembly. The Director General shall report to the Assembly any suggestion made by the Consultative Committee and not followed by him.

"4. Rules of Procedure. (a) The Rules of Procedure of the Consultative Committee are contained in ... [reserved].

"(b) The Assembly may, at any time, modify the Rules of Procedure of the Consultative Committee. Proposals for modification may be made by any Contracting State and by the Director General."

[IRAW/DC/3, continued]

131. It is to be noted that a preparatory meeting, consisting of States that will have signed the Treaty, might be convened by the Director General, as many times as necessary, between the date of the signature and the date of the entry into force of the Treaty in order to suggest the composition of the Consultative Committee, and to comment on the proposals that the Director General will have made on the draft rules of procedure of the Consultative Committee as well as on the draft Administrative Instructions, in particular on the kinds, amounts and method of payment of the fees. The Director General has proposed, in his draft program and budget for the 1990-91 biennium, that he be authorized to convene such preparatory meetings (see WIPO document AB/XX/2, Annex A, item PRG.02(5)).

132. Ad paragraphs (3), (4) and (5): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

133. Ad paragraphs (6), (7) and (8): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 6

134. Ad paragraphs (1), (2) and (3): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

135. Ad paragraphs (4) and (5): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 7

136. The provisions contained in this Article are of the usual kind and seem to be self-explanatory.

137. Ad paragraph (3): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory.

138. Ad paragraph (4): Subparagraph (a) of this paragraph expresses the requirement that the Union must be self-supporting and defines what "self-supporting" means. The main corollary of a Union with self-supporting finances is that States party to it will not be asked to pay, and will not have to pay, contributions to the Union. Subparagraph (b) is of the usual kind and seems to be self-explanatory.

139. Ad paragraphs (5) and (6): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 8

140. The provisions contained in this Article are of the usual kind and seem to be self-explanatory.

[IRAW/DC/3, continued]

Observations Concerning a Possible Provision on
the Jurisdiction of the International Court of Justice

141. It should be noted that the draft Treaty does not contain any provision on the settlement of disputes through the International Court of Justice. This is so because it is believed that such a provision is not necessary in this Treaty and it is unlikely that it would be used in practice because of the high costs of any procedure before the International Court of Justice and because experience shows that no use has ever been made of such a provision where it exists in intellectual property treaties. If, however, the Diplomatic Conference considers such a provision desirable, it could be worded as follows:

"Settlement of Disputes

"(1) [International Court of Justice] Any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

"(2) [Declarations] Each Contracting State may, at the time it signs this Treaty or deposits its instrument of ratification, accession, acceptance or approval, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such Contracting State and any other Contracting State, the provisions of paragraph (1) shall not apply. Any Contracting State having made a declaration may, at any time, withdraw it by notification addressed to the Director General."

Such wording would be the habitual one and seems to be self-explanatory.

Notes on Draft Article 9

142. Ad paragraphs (1) and (2): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

143. Ad paragraph (3): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory. The provisions referred to in Article 10(1)(a) concern the quorum in the Assembly (Article 5(5)), the periodicity of sessions of the Assembly (Article 5(7)), the International Bureau (Article 6(4) and (5)) and finances (Article 7) with the exception of the provision on self-supporting financing (Article 7(4)(a)).

[IRAW/DC/3, continued]

Notes on Draft Article 10

144. Ad paragraph (1): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory. The subject matter of the provisions referred to in this paragraph are indicated in the note accompanying Article 9(3), above.

145. Ad paragraph (2): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory.

146. Ad paragraph (3): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 11

147. Ad paragraph (1): Only States members of WIPO would be eligible to become party to the Treaty because membership in WIPO is an expression of interest in the promotion of legal security, on the international level, in transactions that, characteristically, are subject matters of intellectual property rights (see the Introduction to the Treaty). On the other hand, absence from WIPO may be interpreted as a sign of lack of interest in the promotion of the said legal security. In any case, WIPO has 123 members (on March 8, 1989) which include all the States that might have been interested in adhering to the Treaty. In other respects, the provision is of the usual kind and seems to be self-explanatory.

148. Ad paragraph (2): The provisions contained in this paragraph are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 12

149. Ad paragraph (1): It is believed that five would be a number of Contracting States that normally would make the International Register worthwhile using by the interested industries. Naturally, the number could be lower if the first adherences come from the States in which the number of works produced is the highest in the world and, conversely, it could be higher if the first adherences come from the States in which the number of works produced is relatively low. Otherwise, the provisions contained in the paragraph are of the usual kind and seem to be self-explanatory.

150. Ad paragraph (2): The provision contained in this paragraph is of the usual kind and seems to be self-explanatory.

Notes on Draft Article 13

151. This Article deals with the question of reservations to the Treaty. Two alternatives are proposed. According to the first one, this Article would consist of one paragraph (without a number), namely of the following: "No reservations may be made to this Treaty." According to the second alternative, this Article would consist of two paragraphs, i.e., the texts appearing between square brackets.

[IRAW/DC/3, continued]

152. Under the second alternative, there would be one (and no more) case in which a State could make a reservation. The permitted reservation would relate to the evidentiary value of international registrations as far as "statements which do not relate to the exploitation of rights in audiovisual works" (emphasis supplied) are concerned. Examples of such statements would be statements referring to the constitution of mortgages or liens.

Notes on Draft Article 14

153. Ad paragraphs (1) and (2): The provisions contained in these paragraphs are of the usual kind and seem to be self-explanatory.

154. Ad paragraph (3): This paragraph provides for a moratorium on denunciation: the right to denounce the Treaty cannot be exercised by any Contracting State before the expiration of five years from the date on which it becomes bound by the Treaty. Similar provisions exist in other treaties administered by WIPO, for example in the Berne (Stockholm and Paris) Convention (Article 35(4)). It is a useful provision to provide a reasonable security in respect of the initial financing of the setting up of the International Registry and to leave enough time for prospective users to test the usefulness of the international registration system.

Notes on Draft Article 15

155. The provisions contained in this Article are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 16

156. The provisions contained in this Article are of the usual kind and seem to be self-explanatory.

Notes on Draft Article 17

157. The provision contained in this Article is of the usual kind and seems to be self-explanatory.

Notes on Draft Rule 1

201. This Rule contains definitions. Some of the definitions flow from the Treaty itself, such as "Treaty," "International Register," "International Registry" and "Consultative Committee," contained in items (i) to (iii) and (x). The others are established specifically for the purpose of the Regulations. Most of the definitions seem to be self-explanatory. It is to be noted that the definition of "audiovisual work," which is of fundamental importance for the operation of the Treaty, is contained in Article 2 of the Treaty itself.

[IRAW/DC/3, continued]

202. It should be noted that there exists, as indicated in items (v) and (vi), two types of applications, namely applications that are "work-related" and applications that are "person-related". The former means an application that identifies an audiovisual work by its title or titles, whereas the latter merely describes the work without indicating its title, for example, "all the works that producer company X has produced in 1988 and may produce in 1989." The work to which a work-related application or a person-related application applies can be a work which is already existing or it can be a future work.

203. Statements in person-related applications may refer not only to the applicant but also to another person who has to be identified in the application and they may refer to, for instance, the rights or obligations of the applicant or another person resulting from mortgage, lien, injunction, seizure, bankruptcy, legal incapacity or death (see Rule 2(7)(b)). For example, producer X receives a loan from bank Y, and debtor-producer X gives, as security, a lien to creditor-bank Y, on the copies of the audiovisual work or all the income that it (the debtor-producer) will derive of all the audiovisual works (not identified by titles) that it will produce in the year 1990. The application may be filed by X, or it may be filed by Y. In either case, there will be two persons named in the application, namely X and Y. The second sentence of item (vi) refers to the maker as the person or legal entity through whose identification the work is considered described. Such a person or legal entity may, however, also be, e.g., the person or legal entity (distributor, etc.) who or which has commissioned the work.

Notes on Draft Rule 2

204. Ad paragraph (1): "Prescribed" means prescribed by the Administrative Instructions (see Rule 9). The Administrative Instructions will contain the forms and will provide for the possibility of transmitting the application by telefax. There will be different forms for different situations, and the applicant will have to use the "appropriate" form, that is, the form that corresponds to the given situation. The Administrative Instructions will make it possible to file, subject to certain conditions (fees, etc.) one application in respect of several (existing or future) works. An application may--but need not--be rejected if it does not fulfill the prescribed conditions as to its form (Rule 3(3)(b)).

205. Ad paragraph (2): Non-compliance with this provision entails the rejection of the application (Rule 3(3)(a)(iii)).

206. Ad paragraph (3): The Administrative Instructions will contain detailed provisions on how the name and the address of the applicant should be indicated. If the name and address are not indicated as prescribed, the application will be rejected (Rule 3(3)(a)(iii)).

207. Ad paragraph (4): The observations contained in the preceding paragraph apply here, too.

208. Ad paragraph (5): Non-compliance with this provision entails the rejection of the application (Rule 3(3)(a)(iii)).

[IRAW/DC/3, continued]

209. Ad paragraph (6): Non-compliance with this provision does not entail the rejection of the application.

210. Ad paragraph (7): The applicant has to indicate his interest in the registration he applies for. The paragraph contains two subparagraphs.

211. Subparagraph (a) refers to the indication of interest in work-related applications. The interest which the applicant may have in the audiovisual work can be of various types, such as the ownership of the copyright in the work or the fact that the applicant is the maker or producer of the work, or the lender of funds for the making of it. Where the right is a right of exploitation, the nature of that right and the territory for which it belongs to the applicant must also be indicated.

212. Subparagraph (b) refers to the indication of interest in person-related applications.

213. Non-compliance with the requirements of (a) or (b) will entail the rejection of the application (Rule 3(3)(a)(iii)).

214. Subparagraph (c) is placed within square brackets to show that its insertion in the proposed Treaty is not considered to be indispensable. Since the applicant may ask for the registration of any statement, he may also, if he so wishes, ask for the registration of a statement covering the duration or the date of expiration of his interest.

215. Ad paragraph (8): This provision is intended to assure that the Registry shows, where the right is original (rather than acquired ("derived") from another person), that fact, and where it is acquired ("derived") from another person (rather than being original), the identification (name and address) of that other person and the legal cause--whether contractual (sale, licensing, etc.) or non-contractual (inheritance, bankruptcy, etc.)--of the derivation. In other words, in the latter case, the Registry will show what the interested circles call "the chain of rights," and, in the former case, that the possible creation of a chain of rights has not started although the registration will, if other registrations are following, become a (usually the first) link of such a chain. It is to be noted that a chain of rights, as transpiring from the International Registry, does not have to start with a registration asked for by a person who is the original owner of the right (i.e., the person in whom the right originally vests); it may start with a registration asked for by a person who has derived his right from another person. It is also to be noted that when the right is a derived right and the applicant is the beneficiary of the derivation (assignee, licensee, etc.) the credibility of the statement contained in the application will be much stronger if the application is accompanied by a document (e.g., the copy or the extract of the contract of assignment or licensing) reflecting the legal cause or where the application is countersigned, or is accompanied by an appropriate declaration signed, by the person from whom the right is derived (assignor, licensor, etc.). Non-compliance with this provision entails the rejection of the application (Rule 3(3)(a)(iii)).

[IRAW/DC/3, continued]

216. Ad paragraph (9): This paragraph consists of two subparagraphs.

217. Subparagraph (a) deals with documents "supporting the statements contained in the application." Contracts transferring or licensing rights concerning the exploitation of the audiovisual work, and extracts of such contracts, are typical examples of such documents. Other such documents are decisions, or excerpts from decisions, by courts, arbitration tribunals or government authorities (such as copyright registration certificates of the United States Copyright Office or other national registries). See also paragraph (10), in fine.

218. Subparagraph (b) deals with material (other than documents) "susceptible of identifying the work." Such material may be a film, tape or disk, constituting the totality or part of the audiovisual work. Or it may be still photographs of characteristic scenes.

219. Ad paragraph (10): Non-compliance with this provision entails the rejection of the application (Rule 3(3)(a)(iii)).

220. Ad paragraph (11): Non-compliance with this provision entails the rejection of the application (Rule 3(3)(a)(iii)). The Administrative Instructions will deal with the question of signature when the application is transmitted by telefax.

221. Ad paragraph (12): This provision seems to be self-explanatory.

222. Ad paragraph (13): This provision seems to be self-explanatory. The amount of the fees will be set as provided in Rule 8.

Notes on Draft Rule 3

223. This Rule concerns the examination of the application by the International Registry. The matters that the International Registry examines are the following:

- (i) certain mistakes (paragraph (1)); they are susceptible of correction (paragraph (1));
- (ii) conflicting statements in the application (paragraph (1)); they are susceptible of correction (paragraph (1));
- (iii) statements in contradiction with statements already registered in the International Register (paragraph (2)); they are susceptible of adjustment (paragraph (2));
- (iv) entitlement of the applicant to file the application (Article 3(5) of the draft Treaty); lack of entitlement results in rejection (paragraph (3)(a)(i));
- (v) relation to one or more works (Articles 2 and 3(1) of the draft Treaty); lack of such relation results in rejection (paragraph (3)(a)(ii));

[IRAW/DC/3, continued]

- (vi) use of form (Rule 2(1)); disrespect of form may result in rejection (paragraph (3)(b));
- (vii) language (Rule 2(2)); wrong language results in rejection (paragraph (3)(a)(iii));
- (viii) names and addresses (Rule 2(3) and (4)); lack of proper indication results in rejection (paragraph (3)(a)(iii));
- (ix) title or description of the work (Rule 2(5)); lack of furnishing title or description results in rejection (paragraph (3)(a)(iii));
- (x) reference to existing registrations (Rule 2(6)); if missing, may be furnished by the International Registry itself (Rule 2(6));
- (xi) interest of the applicant (Rule 2(7)); lack of indication results in rejection (paragraph (3)(a)(iii));
- (xii) source of rights (Rule 2(8)); lack of indication results in rejection (paragraph (3)(a)(iii));
- (xiii) language of any accompanying document (Rule 2(9)); wrong language results in disregard of the document (Rule 2(9));
- (xiv) statement of veracity (Rule 2(10)); lack results in rejection (paragraph (3)(a)(iii));
- (xv) signature (Rule 2(11)); lack results in rejection (paragraph (3)(a)(iii));
- (xvi) appointment of a representative (Rule 2(12)(a)); lack of signature results in disregard of appointment (Rule 2(12)(a));
- (xvii) payment of fees (Rule 2(13)); lack results in rejection (paragraph (3)(a)(iii)).

224. Ad paragraph (1): If no correction is made within the prescribed time-limit, the statements contained in the application will be recorded as appearing in the application.

225. Ad paragraph (2): If the contradiction is not removed within the prescribed time limit, the statement contained in the application will be recorded as appearing in the application, and both that statement and the statement that it contradicts (and which appears in an existing registration) will not benefit of the evidentiary value of internationally registered statements (see Article 4(1)(ii) of the Treaty).

226. Ad paragraph (3): Subparagraph (a) sets out the cases in which the International Registry must reject the application. Those cases are of three kinds, two of which (subparagraph (a)(i) and (ii)) refer to non-compliance with provisions in the Treaty, and one (subparagraph (a)(iii)) to non-compliance with provisions in the Rules.

[IRAW/DC/3, continued]

227. Subparagraph (b) deals with the only case where the International Registry is merely empowered (rather than obliged) to reject the application. It is the case where the application does not fulfill the prescribed conditions as to its form. One of those conditions is contained in Rule 2(1). Others will be specified in the Administrative Instructions.

228. Subparagraph (c) is intended to give assurances to the applicant that for reasons not specified in subparagraphs (a) and (b) no application may be rejected.

229. Subparagraph (d) is self-explanatory.

230. Ad paragraph (4): This paragraph contains provisions about what may be called "provisional registration." According to Rule 5(1), all statements contained in an application which is not rejected must be registered in the International Register. However, where an invitation to correct (paragraph (1)), a notification giving the possibility to remove contradictions (paragraph (2)), a late payment of the fee (Rule 2(13)), or any other reason delays immediate registration, it is still necessary that the public be informed of the existence of a pending application which may or may not mature into a registration. The paragraph secures that such information will be available.

Notes on Draft Rule 4

231. Ad paragraph (1): Rule 2(13) provides that, where the fee is received by the International Registry later than the application (but not later than 30 days after the receipt of the application), the application must be considered as having been received on the date on which the fee is received. Consequently, in such a case, the date of receipt of the fee (rather than the date of receipt of the application) will be the filing date.

232. Ad paragraph (2): This paragraph provides, among other things, that, in certain cases, the application number must "contain" the number of another registration. This could be achieved, for example, by allotting to the application the number of the other registration supplemented by a sub-number. The solution will be specified in the Administrative Instructions.

Notes on Draft Rule 5

233. Ad paragraph (1): The details of the registration will be prescribed in the Administrative Instructions.

234. Ad paragraph (2): The details of the notification and publication will be prescribed in the Administrative Instructions.

Notes on Draft Rule 6

235. Ad paragraph (1): The date to be published will be specified in the Administrative Instructions.

[IRAW/DC/3, continued]

236. Ad paragraph (2): Rule 8(1) provides that the amount of the fees is fixed by the Director General after consultation of the Consultative Committee but that the Assembly may instruct the Director General to change the amounts so fixed.

Notes on Draft Rule 7

237. Ad paragraphs (1), (2), (3) and (4): These provisions seem to be self-explanatory. The fees will be fixed in the Administrative Instructions.

238. Ad paragraph (5): Rule 3(4) deals with what might be called "provisional registration."

Notes on Draft Rule 8

239. Ad paragraph (1): The fees are, in particular, those referred to in Rule 2(13) and in Rule 7. The Consultative Committee consists of representatives of interested non-governmental organizations; it is established by the Assembly (see Article 5(2)(a)(vii) of the draft Treaty).

240. Ad paragraph (2): The words "instruction by the Assembly" refer to the instruction mentioned in the second sentence of paragraph (1).

241. Ad paragraph (3): The currency or currencies will be specified, and the manner of payment will be prescribed, in the Administrative Instructions.

Notes on Draft Rule 9

242. According to Article 8(4) of the draft Treaty, "the Regulations provide for the establishment of Administrative Instructions." This Rule does just that. The provisions contained in it seem to be self-explanatory.

[End]

IRAW/DC/3 Add. 1

February 20, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Amendment to the Basic Proposal

1. Article 3(3) of the Basic Proposal contained in WIPO document IRAW/DC/3, page 13, is hereby replaced by the following:

"(3) [Location of the International Registry] The International Registry shall be located in Austria as long as a treaty to that effect between the Republic of Austria and the Organization is in force. Otherwise it shall be located in Geneva."

2. The reasons for this amendment of the Basic Proposal are given in WIPO document IRAW/DC/4 of the same date as the present document.

[End]

IRAW/DC/4

February 20, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Seat of the International Registry and Initial Financing

1. The "Basic Proposal for the Treaty and Regulations" concerning the Treaty on the International Registration of Audiovisual Works, contained in document IRAW/DC/3, dated January 25, 1989, provides, as far as the location of the International Registry is concerned, for two alternatives in draft Article 3(3): Alternative A says that "The International Registry shall be located in Vienna as long as a treaty to that effect between the Republic of Austria and the [World Intellectual Property] Organization is in force. Otherwise, it shall be located in Geneva," whereas Alternative B says that "The International Registry shall be located in Geneva."

2. The introduction of the said document says that "As to the questions of the seat and initial financing of the International Register, the Director General of WIPO had several contacts, during the period between March 1988 and January 1989, with representatives of the Governments of Austria and Switzerland. Those matters will be the subject of a separate document (WIPO document IRAW/DC/4) that is expected to issue towards the end of February 1989" (paragraph 17). The present document is the document in question.

3. The contacts with the Government of Austria resulted in an agreement between the Government of Austria and the Director General of WIPO. The agreement is reflected in a draft Treaty between Austria and WIPO and a draft exchange of letters between the Federal Minister for Foreign Affairs of Austria and the Director General of WIPO. If the Diplomatic Conference of April 1989 in Geneva is successful, that is, the Treaty on the International Registration of Audiovisual Works is concluded (hereinafter referred to as "the Geneva Treaty") and if it includes words corresponding to Alternative A (rather than Alternative B (see paragraph 1, above)), the Government of Austria will submit the Austria-WIPO Treaty for ratification to the Austrian Parliament, and the Director General will submit the Austria-WIPO Treaty for approval to the General Assembly of WIPO when it meets in September 1989. The text of the Austria-WIPO Treaty and the text of the letters that would be exchanged when the Treaty is concluded are attached to the present document as Annex I and Annex II.

4. Those texts provide in essence that Austria would give loans of up to 22 million Austrian schillings (approximately 2.7 million Swiss francs) to WIPO to cover the costs of the initial investments (mainly for a computer system and optical disc system) and to cover that part of the cost of running the International Register which could not be covered from that Register's income. The loans would be free of interest. There is no time limit set for their repayment. They would have to be repaid from and only from the excess revenue of the International Register, that is, revenue exceeding the expenditure. In other words, repayment would be due only if and when there is excess revenue. In exchange, WIPO would set up the International Registry in Austria. The place would be Laxenburg, a town just outside (some 5 kilometers from) the municipal boundaries of the Austrian capital.

[IRAW/DC/4, continued]

5. It is essential for the smooth starting of the International Register that the necessary equipment and a small staff be in place and ready to work as soon as the Geneva Treaty will enter into force. A step by step starting is not inconceivable but would be full of inconveniences and delays that could discredit the International Register during its initial period of functioning, a period during which the International Register will have to prove its efficiency and acquire the trust of the interested circles without which it cannot be successful.

6. Naturally, the success of the International Register will, to a large extent, depend on the amount of the registration fees: the lower they are, the more applicants will use the Register. It is because of this consideration that, during the discussions in various WIPO meetings in 1987 and 1988, it was repeatedly emphasized both by governmental delegations and by observer organizations representing the potential users of the International Registry that that Registry could be located outside Geneva only if its running will not cost more--and, consequently, the fees payable by its users will not be higher--than what its running would cost and what the fees would be if the International Registry was located in Geneva. The International Bureau has made detailed and careful estimates of the expected costs in Geneva and the expected costs in Austria. The calculations for a year--in which the Register would be self-supporting--appear in Annex III of this document. Those estimates show that the total amount of the costs would be the same--and therefore the amount of the fees would be the same--in either of the two locations. This is so because the amount of the costs that would be higher in Geneva than in Austria is the same as the amount of the costs that would be lower in Geneva than in Austria. The costs that would be higher in Geneva are the cost of the salaries and the cost of rental and maintenance of premises. The costs that would be higher in Austria are the cost of telecommunications and the cost of travel caused by the physical distance between the Geneva headquarters and the Laxenburg branch office.

7. In the discussions between representatives of the Swiss Government and the Director General (the last of which took place on February 9, 1989), the former expressed their strong preference for the International Registry's establishment in Geneva. They, however, made no proposals for interest-free advances to WIPO without a time limit for their repayment by WIPO.

8. Under the circumstances, the only viable solution seems to be to accept the generous offer of the Austrian Government. It is hoped that the General Assembly of WIPO will accept that offer in September 1989 when the Austria-WIPO Treaty and the exchange of letters will be submitted to it for approval.

9. As a consequence of the situation described in the preceding paragraphs, a situation that was confirmed only after the Basic Proposal was prepared, the Director General has withdrawn Alternative B of Article 3(3) in the draft Geneva Treaty and suggests--in document IRAW/DC/3 Add.1 issued under the same date as the present document--that the Diplomatic Conference consider only Alternative A, substituting in it "Austria" for "Vienna" (in order to take into account the fact that, according to information recently received from the Government of Austria, the International Registry would be located in

[IRAW/DC/4, continued]

Laxenburg rather than Vienna and this will be reflected in the Austria-WIPO Treaty). Accordingly, Article 3(3) in the draft Geneva Treaty would read as follows: "The International Registry shall be located in Austria as long as a treaty to that effect between the Republic of Austria and the Organization is in force. Otherwise, it shall be located in Geneva."

10. It is to be noted that, if the Diplomatic Conference adopts the text proposed in the preceding paragraph to be the text of Article 3(3) of the Geneva Treaty, it will not have decided where the International Registry will be located. That text would make it possible for the General Assembly of WIPO to choose between two locations: Austria (Laxenburg) or Geneva. The choice would be exercised not by the Diplomatic Conference but by the General Assembly by approving, or refusing the approval of, the Austria-WIPO Treaty: if the General Assembly (and the Austrian Parliament) approves the Austria-WIPO Treaty, the International Registry will be located in Austria; if the General Assembly (or the Austrian Parliament) does not approve the Austria-WIPO Treaty, the International Registry will be located in Geneva.

11. Finally, it should be noted that the role of WIPO, its International Bureau, the new Union created by the Geneva Treaty and the Assembly of that Union will be the same whether the International Registry is located in Austria or in Geneva. This is so because, in either case, the International Registry will be an administrative unit of the International Bureau which is under the control of the Governing Bodies of WIPO and the Unions administered by WIPO. Thus, in particular, the financial and staff regulations of WIPO will apply to the financial management of, and the staff working in, the International Registry. For example, the decision who should be employed to work in the International Registry will be decided by the Director General of WIPO, and no one else.

ANNEX I

DRAFT TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION ON LOCATING IN (REPUBLIC OF AUSTRIA) THE INTERNATIONAL REGISTRY OF AUDIOVISUAL WORKS

Article 1

(1) The World Intellectual Property Organization shall set up in (the Republic of Austria) the International Registry of Audiovisual Works established by the Treaty on the International Register of Audiovisual Works of April 21, 1989 (hereinafter referred to as "the International Registry"). The International Registry is an administrative unit of the International Bureau of the World Intellectual Property Organization.

[IRAW/DC/4, continued]

(2) The Republic of Austria agrees to the setting up and maintenance of the International Registry in and shall accord, in respect of the International Registry, to the World Intellectual Property Organization the same status that it accords to the other organizations of the United Nations system located in Austria. To this effect, an agreement regarding the seat of the International Registry and the regulation of questions arising as a result thereof shall be concluded between the Republic of Austria and the World Intellectual Property Organization.

Article 2

(1) The Republic of Austria shall, to the extent that the income of the Union established by the said Treaty ("the Union") is expected to be insufficient to cover the financial obligations of that Union, advance the amounts needed to meet the said financial obligations.

(2)(a) The World Intellectual Property Organization shall, on behalf of the Union, reimburse to the Republic of Austria the amounts received by it as advances from the Republic of Austria under paragraph (1). The advances shall be free of interest. Reimbursements shall be effected in instalments. The amount of each instalment, and the time at which the payment of the instalment is to be effected, shall depend on the financial situation of the Union.

(b) The details of the transfer of the advances and the reimbursement of the advances shall be fixed by common agreement between the competent authorities of the Republic of Austria and the Director General of the World Intellectual Property Organization.

Article 3

(1) The fees payable by the users of the International Register of Audiovisual Works shall be fixed and collected in the currency of the Republic of Austria and shall be payable to the International Registry.

(2) The accounts of the International Registry shall be kept by the World Intellectual Property Organization in Austrian currency at the premises of the International Registry.

(3) The competent authorities of the Republic of Austria may appoint, at their expense, a special auditor of the accounts of the International Registry. The said auditor shall have access to all the financial records of the International Registry and shall have the right to report his findings and advice direct to the competent authorities of the Republic of Austria or to the Director General of the World Intellectual Property Organization or to both.

Article 4

(1) Any dispute between the Republic of Austria and the World Intellectual Property Organization ("the parties") concerning the interpretation or application of this Treaty, and any supplemental agreement

[IRAW/DC/4, continued]

thereto, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators.

(2) One of the arbitrators shall be appointed by the Republic of Austria. One of the arbitrators shall be appointed by the Director General of the World Intellectual Property Organization. The third arbitrator, who shall be also the chairman of the arbitral tribunal, shall be appointed by the two arbitrators appointed by the two parties.

(3) Notwithstanding paragraph (2), if one of the parties ("the first party") fails to appoint an arbitrator within three months from having received notification of the appointment by the other party of an arbitrator, the arbitrator that should have been appointed by the first party shall be appointed, at the request of the other party, by the President of the International Court of Justice. If, within three months from the appointment of the two arbitrators, they fail to appoint the third arbitrator, the President of the International Court of Justice shall, on the request of either party, appoint the third arbitrator.

Article 5

The present Treaty shall enter into force upon the Contracting Parties having notified each other of the completion of the procedures required, for each of them, to be bound by it.

Article 6

(1) The present Treaty may be terminated by common agreement of the Contracting Parties. Such agreement shall fix the date of the termination.

(2) The present Treaty may be terminated by denunciation by either Contracting Party if the other Contracting Party has seriously violated any of its essential obligations.

(3) The Republic of Austria may terminate the present Treaty by denunciation if it finds that the amounts of the advances that it would have to pay are excessive.

(4) Unless the Contracting Parties agree otherwise, any denunciation under paragraph (2) shall take effect at the end of the calendar year subsequent to the calendar year during which the notice of denunciation was given by the denouncing Contracting Party and received by the other Contracting Party, whereas denunciation under paragraph (3) shall take effect six months after the Republic of Austria notifies its intention to denounce the Treaty.

- - -

Done at, in two originals, in the German and English languages, each text being equally authentic, on this ... day of, 1989.

For the Republic of Austria:

For the World Intellectual
Property Organization:

[IRAW/DC/4, continued]

ANNEX II

DRAFT EXCHANGE OF LETTERS

A. Draft Letter from the Federal Minister for Foreign Affairs of the Republic of Austria to the Director General of WIPO

Sir,

I have the honor to refer to the Treaty between the Republic of Austria and the World Intellectual Property Organization (WIPO) on Locating in (Republic of Austria) the International Registry of Audiovisual Works established by the Treaty on the International Register of Audiovisual Works (hereinafter referred to as "the Austria-WIPO Treaty") and to propose the following which, if accepted by you, will constitute the details referred to in Article 2(2)(b) of the Austria-WIPO Treaty.

Granting of Advances

(1) WIPO shall, at reasonable intervals, communicate in writing to the Federal Ministry of Education, Arts and Sports (hereinafter referred to as "the Ministry") the amounts of the advances it expects to need, generally for periods of three months each, for the Union created by the Treaty of April 21, 1989, on the International Register of Audiovisual Works (hereinafter referred to as "the Union") and shall request that the amount needed for the period the request relates to be transferred to its account with a bank designated by the Ministry. Normally, separate requests shall be made for each of the periods January-March, April-June, July-September and October-December, and each request shall be submitted at least two months before the starting of the three-month period it relates to. In addition, a budget estimate for each calendar year shall be submitted prior to that calendar year by WIPO to the Ministry within a reasonable period of time to be fixed by the Ministry.

(2) Each request for an advance shall be accompanied by a detailed estimation prepared by WIPO of the expected income and expenditure of the Union for the period to which it relates.

(3) For any given financial period, the share of the Union in the "common expenses" of WIPO shall not exceed fifteen percent (15%) of the expenditure of the Union for that period. "Financial period" means the budgetary period of the Union, that is, a two-year period starting with a year of even number (1990/1991, 1992/1993, etc.).

(4) Each request for an advance shall also be accompanied by the written observations of the special auditor appointed by the Ministry pursuant to Article 3(3) of the Austria-WIPO Treaty, provided that if such observations are not made available by the said auditor within two weeks counted from his receiving the draft of the request from WIPO, the request may be submitted without such observations.

[IRAW/DC/4, continued]

(5) The requested amount shall be transferred by the Ministry to WIPO by the starting date of each three-month period referred to in paragraph (1), above.

(6) The amount of the advances by the Republic of Austria to WIPO pursuant to Article 2 of the Austria-WIPO Treaty is expected to be 22,000,000 Austrian Schillings. In the event that the Republic of Austria is of the view that the said amount will be exceeded, it may denounce the said Treaty pursuant to paragraphs (3) and (4) of Article 6 thereof.

Reimbursement of Advances

(7) The reimbursement of the advances shall start once the accounts of the Union for a given financial period show that the income of that period exceeded the expenses.

(8) It is expected that the International Registry will develop in a way that the reimbursement of advances will start in the sixth year after the year in which the International Registry is opened.

(9) The expenses of each financial period shall include an amount that will be a payment towards the working capital fund of the Union. Such payment shall be equal to ten percent (10%) of the income of the Union in that financial period. The working capital fund shall be considered as completed when the total amount of the payments reaches one-third of the expenses of the then current financial period.

(10) Once the income of any financial period exceeds the expenses (including the amount paid towards the working capital fund) of that period, a part of the excess of income over expenses (surplus) shall be paid into the reserve fund of the Union. The amount of the said part shall be fixed, in the light of the evolution and expected evolution of the finances of the Union, by common agreement between the Ministry and the Director General of WIPO. If no such agreement is reached, the amount shall be ten percent (10%) of the excess of the income over expenses (surplus).

(11) The amount of any excess of income over expenses (surplus) that is not payable into the reserve fund in accordance with paragraph (10) shall be paid to the Republic of Austria as an instalment of the reimbursement of advances until such time as the advances made have been repaid.

(12) Any reimbursement instalment shall be made within six months after the expiration of a financial period whose results enable WIPO to make a reimbursement.

(13) Reimbursement shall be suspended if, for any subsequent financial period, the expenses of the Union exceed the income of that Union.

(14) If reimbursement is suspended under paragraph (13), reimbursement shall start again once the conditions referred to in paragraph (11) are again satisfied.

[IRAW/DC/4, continued]

(15) Advances and reimbursements shall be effected in Austrian currency.

(16) WIPO shall furnish to the auditor referred to in Article 3(3) of the Austria-WIPO Treaty all the information and facilities needed for a smooth and efficient exercise of his tasks.

Accept, Sir, the assurances of my highest consideration.

B. Draft Reply to the Above Letter

Sir,

I have the honor to refer to your letter of today's date, which reads as follows:

[text of letter from the Federal Minister for Foreign Affairs of the Republic of Austria to the Director General of WIPO]

The World Intellectual Property Organization accepts the above proposal.

Accept, Sir, the assurances of my highest consideration.

ANNEX III

COSTS IN AUSTRIA AND GENEVA

1. The table appearing below shows the estimated expenditure of the future International Register of Audiovisual Works in a typical year, that is, in a year where the volume of business will be such that the Register will be, from a financial point of view, self-supporting.

2. It should be noted that the costs in Vienna or Laxenburg are calculated in Austrian schillings since most of the costs would be payable in Austrian currency. However, their present equivalent in Swiss francs, at the rate of 8.26 Austrian schillings equals one Swiss franc, is also indicated in order to allow easier comparison.

3. Explanations of the differences, if any, in costs are indicated on the next page.

[IRAW/DC/4, continued]

<u>Expenses for one year</u>	<u>Austria (Vienna or Laxenburg)</u>	<u>Geneva</u>
	(Equivalent <u>000 ASch</u>)	<u>000 Sfr</u>
Staff Expenses		
- International Registry	(7,300)	880
- Common WIPO Services	(1,800)	220
Sub-total	<u>(9,100)</u>	<u>1,100</u>
		<u>1,200</u>
Travel on Official Business	(1,200)	140
Conferences	(250)	30
Consultants	(350)	40
Printing	(1,800)	220
Computer/Optical Disk Operations	(1,300)	160
Rental and Maintenance of Premises	(1,200)	150
Communications	(800)	100
Supplies and Materials	(200)	20
Payment towards Working Capital Fund	(1,800)	220
Unforeseen	(200)	20
Total Expenditure	<u>(18,200)</u>	<u>2,200</u>
	<u>=====</u>	<u>=====</u>
		<u>2,200</u>

4. Staff Expenses. As salary scales (under the United Nations "common system" of salaries) are lower in Austria than in Geneva, the total staff expenses are expected to be lower in Austria than in Geneva. For either location, the number of posts would be the same, since the same overall amount of work would have to be undertaken. The estimates relate to 12 posts. The distribution of the posts would, however, be different in the two locations. For the International Registry located in Austria, there would be ten full posts in Austria, plus the equivalent of two posts for the so-called "common services" in Geneva (involving many small fractions of posts for senior management, financial supervision, translating and reproducing documents for, and servicing, the meetings of the Assembly of the Union, etc.). For the International Registry located in Geneva, there would be six full posts in the International Registry itself plus the equivalent of six posts for the common services (the latter providing also personnel, finance, building maintenance, and other general administrative services (which, in Austria, would be largely handled by the incumbents of four of the ten full posts in the International Registry itself.)).

[IRAW/DC/4, continued]

5. Travel on Official Business. Locating the International Registry in Austria would involve also travel to and from Geneva. That is why this item is higher for Austria than for Geneva.

6. Rental and Maintenance of Premises. Such costs will be lower in Austria, since the average cost of rental or purchase is lower in Austria than in Geneva.

7. Communications. Such costs will be higher in Austria because of the need for communications between Austria and Geneva.

- . -

8. In view of the fact that the total amount of the costs would be the same in the two locations, the fees would, too, be the same in the two locations. Those fees would thus yield the same income in the two locations.

[End]

IRAW/DC/5

April 10, 1989 (Original: English/French)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Rules of Procedure of the Diplomatic Conference

Editor's Note: The Rules of Procedure adopted by the Diplomatic Conference on April 10, 1989, are those set forth in document IRAW/DC/2 and reproduced on pages 60 to 74, above.

[End]

IRAW/DC/6

April 12, 1989 (Original: English)

Source: THE DELEGATION OF HUNGARY

Proposals by the Delegation of Hungary

RULES 1(v) AND (vi) AND 2(5)(a) OF THE DRAFT REGULATIONS

1. Replace Rule 1(v) by the following text:

"(v) 'work-related application' means any application that identifies an existing work by its title or titles, its maker and principal director as well as the year of its production, or a future work by its proposed title or

[IRAW/DC/6, continued]

titles, maker and principal director, if designated, and the scheduled year of its production, and requests that statements in respect of the interest of an identified person or identified persons in or concerning that work be registered in the International Register; 'work-related registration' means a registration effected pursuant to a work-related application."

2. Replace the second sentence of Rule 1(vi) by the following text:

"A work shall be considered as being described when, in particular, the person who or legal entity which has made, or is expected to make, the work, and its principal director, are identified;"

3. Replace the first sentence of Rule 2(5)(a) by the following text:

"(a) Any work-related application shall indicate, in relation to existing works, its title or titles, maker and principal director, and the year of its production, and, in relation to a future work, its proposed title or titles, the fact that it has not yet been produced, its prospective maker and principal director, if designated, as well as the scheduled year of its production."

4. Add the following sentence at the end of Rule 2(5)(a):

"If a specified work has already been registered, subsequent applications may refer merely to the number allotted to that registration."

[End]

IRAW/DC/7

April 17, 1989 (Original: English)

Source: THE WORKING GROUP ESTABLISHED BY THE MAIN COMMITTEE

Proposal of the Working Group established by the Main Committee and consisting of the Delegations of Austria, Colombia, France and India

LANGUAGES AND FEES

A. Rule 2(2) should read as follows:

"(2) [Languages] Any application shall be in the English language or in the French language. As soon as the International Register is financially self-supporting, the Assembly may indicate to the Director General the additional languages in which applications may be filed."

B. In paragraphs (5) and (9) of Rule 2, after the word "English," where it appears for the first time, the words "or French" should be inserted.

C. Rule 6(1) should read as follows:

"(1) [Publication] The International Registry shall publish a Gazette ("the Gazette") in which it shall indicate the prescribed elements in respect of all registrations. The Gazette shall be in English, provided that elements concerning applications that were filed in French shall also be in French."

[IRAW/DC/7, continued]

D. The following paragraph should be inserted in Rule 8, after paragraph (1):

"[Reduction of Fees for Applicants from Developing Countries] The amounts of the fees shall be reduced initially by 15% where the applicant is a natural person who is a national of, or a legal entity which is organized under the laws of, a Contracting State that is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations. The Assembly shall periodically examine the possibility of increasing the percentage of the said reduction."

[End]

IRAW/DC/8

April 18, 1989 (Original: English/French)

Source: THE DRAFTING COMMITTEE

Draft Treaty and Draft Regulations submitted to the Main Committee

The Drafting Committee met under the chairmanship of Mrs. Karin Hökborg (Sweden) on April 18, 1989, and submitted to the Main Committee the Draft Treaty and the Draft Regulations as contained in this document.

Editor's Note: This document contains the text of the Draft Treaty and the Draft Regulations as submitted to the Main Committee by the Drafting Committee. It is not reproduced in this volume. In the following are indicated only the differences between this text and the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 11 to 49 of these Records):

Draft Treaty

1. In the Preamble of the Draft Treaty, the third sentence reads as follows: "to contribute to the fight against piracy of protected works, performance, phonograms and broadcasts; ."
2. Article 2: In the Draft Treaty, the words corresponding to the words "a series of fixed related images" appearing in the Final Text read as follows: "the fixation of a series of related images."
3. Article 3(4): In the Draft Treaty, the words corresponding to the words: "by a natural person or legal entity" appearing in the Final Text read as follows: "by a person."
4. Article 5(1)(a): In the Draft Treaty, the title corresponding to the title "Composition" in the Final Text reads as follows: "Composition and Expenses."
5. Article 5(1)(c): In the Draft Treaty, the text of this subparagraph is the same as in the Final Text, except that the following words "[once the International Register becomes self-supporting]" appear in square brackets at the end of this subparagraph.

[IRAW/DC/8, continued]

6. Article 5(2)(a): In the Draft Treaty, the first line of this subparagraph and its items (i) to (vi) are the same as in Article 5(3)(a) in the Final Text.
7. Article 5(2)(a)(vii): In the Draft Treaty, the text of this item is the same as in the Final Text, except that the words "and decide from time to time the membership of," do not appear in the Draft.
8. Article 5(2)(a)(viii): In the Draft Treaty, there is no provision corresponding to this item; consequently, items (ix) and (x) of paragraph (3)(a) in the Final Text correspond to items (viii) and (ix) of paragraph (2)(a) in the Draft.
9. Article 7(3)(iii): In the Draft Treaty, the text of this item is the same as in the Final Text, except that the word "voluntary" appears in front of the word "donations."
10. Article 10: In the Draft Treaty, the text of this Article is the same as in the Final Text, except that, in the draft, the references to Article 5(6) and (8) and Article 7(5) to (7) appear as references to Article 5(5) and (7) and Article 7(4)(b) to (6).
11. Article 13: The text of this Article is the same as in the Final Text, except that, in the Draft, the title of the first paragraph is "No Reservation" and that the words "(1) [No Reservation] Subject to paragraph (2)" are in square brackets.
12. Article 17: The text of this Article is the same as in the Final Text, except that, in the Draft, the reference to Article 13 is in square brackets.

Draft Regulations

1. Rule 1: In the Draft Regulations, the first line and items (i) to (v) and (viii) are the same as in the Final Text of the Regulations. The text of item (vi) is the same as in the Final Text, except that the word "audiovisual" appears in front of the words "work or works." The words "as the case may be" appear in the Draft at the end of items (vii) and (ix). The text of item (x) is the same as in the Final Text, except that the reference is Article 5(2)(a)(vii) rather than Article 5(3)(a)(vii).
2. Rule 2(7)(a): The first sentence of this subparagraph is the same as in the Final Text, while, in the Draft the second sentence reads as follows: "Where the interest consists of a right of exploitation of the work, the nature of the right (for example, right of reproduction, right of distribution, right of public performance, right of broadcasting, right of rental, right of dubbing, right of subtitling, right of colorization) and the territory (for example, city, region, country, continent) for which the right belongs to the application shall also be indicated."
3. Rule 2(8): The text of this paragraph is the same as in the Final Text except that, in the Draft, after the word "derivation" the following words appear in brackets: "(sale, license, inheritance, etc.)."

[IRAW/DC/8, continued]

4. Rule 2(9): The first sentence of this paragraph is the same as in the Final Text, while, in the Draft, the second sentence reads as follows: "Any such document in a language other than English shall be accompanied in English, by an indication of the nature and essence of the document; otherwise, the International Registry shall treat the documents as if it had not been attached."
5. Rule 2(10): The text of this paragraph is the same as in the Final Text, except that, in the Draft, the word "existing" appears in front of the word "original."
6. Rule 2(12): The text of this paragraph is the same as in the Final Text, except that, in the Draft, there is a second sentence which reads as follows: "Where the signature is missing, the appointment shall be considered as non-existing."
7. Rule 6(1): The text of this paragraph is the same as in the Final Text, except that the second sentence in the Final Text does not appear in the Draft.
8. Rule 8: In the Draft, there is no provision corresponding to paragraph (2) of the Final Text. The paragraphs (2) and (3) of the Draft correspond to paragraphs (3) and (4) of the Final Text.

[End]

IRAW/DC/9

April 18, 1989 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Report (Prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on April 10, 1989, by the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works (hereinafter referred to as "the Conference"), met on April 18, 1989.

Composition

2. The Delegations of the following States members of the Committee attended the meeting: Egypt, Philippines, Soviet Union, Spain, Uruguay.

Officers

3. The Committee unanimously elected Mrs. Delia Menez-Rosal (Philippines) as Chairman and Mr. Manuel Perez del Arco y Segura (Spain) and Mr. Boris V. Smirnov (Soviet Union) as Vice-Chairmen.

[IRAW/DC/9, continued]

Examination of Credentials, etc.

4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on April 10, 1989 (hereinafter referred to as "the Rules of Procedure"), the Committee examined at its meeting the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 by the Delegations of States members of the World Intellectual Property Organization (WIPO) participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as "Member Delegations"), the Delegations of States members of the United Nations, other than those that are members of WIPO, participating in the Conference in accordance with Rule 2(1)(ii) (hereinafter referred to as "Observer Delegations"), and the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "representatives of Observer Organizations").

Delegations

5. The Committee found that the credentials and full powers presented by the Member Delegations of Austria, Burkina Faso, Chile, Czechoslovakia, Denmark, France, German Democratic Republic, Greece, Guinea, Holy See, Hungary, India, Italy, Liechtenstein, Philippines, Portugal, Spain, Switzerland, United States of America and Yugoslavia (20) were in due form in accordance with Rule 6 of the Rules of Procedure.

6. (a) The Committee found that the credentials presented by the Member Delegations of Canada, Democratic People's Republic of Korea, Finland, Germany (Federal Republic of), Japan, Libya, Monaco, Sweden, Turkey, United Kingdom and Uruguay (11) were in due form in accordance with Rule 6 of the Rules of Procedure.

(b) The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

7. The Committee noted that communications, in telex form, containing credentials and full powers had been received from the Governments of Mexico and Tunisia and that communications, in telex form, containing credentials had been received from the Governments of Argentina and Pakistan. The Committee was of the view that such communications could be accepted, as the case may be, as credentials and full powers or as credentials, on the understanding that the originals thereof would be received in due course.

8. The Chairman of the Committee brought to the attention of the Committee the communication of the Delegation of Pakistan, addressed to the President of the Conference, in which the Delegate of Pakistan stated its reservation regarding the credentials of the Delegation of Afghanistan for reasons which had already been stated by the Delegation of Pakistan at the last session of the United Nations General Assembly and by which the Delegation of Pakistan requested that its reservation be reflected in the report of the Credentials Committee.

[IRAW/DC/9, continued]

9. The Delegation of the Soviet Union said that the statement in the communication of the Delegation of Pakistan was groundless and drew attention to Rule 2(2) of the Rules of Procedure pursuant to which States members of the United Nations may send delegates to the Conference. The Delegation of the Soviet Union said that, as concerns the substance of the statement of the Delegation of Pakistan, there was no doubt that the seat of Afghanistan at the United Nations is filled by the sole and legitimate Government of Afghanistan. It is for that reason that the Delegation of the Soviet Union rejected the statement of the Delegation of Pakistan and regarded it as a continuation of the position of the Government of Pakistan in its attempts to undermine the agreements which had been reached in Geneva and which were directed to a peaceful solution of the Afghanistan problem.

Representatives of Observer Organizations

10. The Committee found that the letters or documents of appointment presented by the representatives of the following Observer Organizations were in due form in accordance with Rule 7 of the Rules of Procedure: (a) United Nations Educational, Scientific and Cultural Organization (Unesco), Commission of the European Communities (CEC) (2); (b) All Union Corporation Sovexportfilm (SEF), Association for the International Collective Management of Audiovisual Works (AGICOA), European Broadcasting Union (EBU), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Film Producers Associations (FIAPF), International Federation of Phonogram and Videogram Producers (IFPI) (8).

Further Procedure

11. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

Report

12. The Committee authorized the Secretariat to prepare the report of the Committee for submission by its Chairman to the Conference, and authorized the Chairman to examine and to report to the Conference upon any further credentials, full powers and letters or other documents of appointment which might be presented by Delegations and representatives of Observer Organizations after the close of its meeting and during the remainder of the Conference.

(End]

IRAW/DC/10	April 18, 1989 (Original: English/French)
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Source: THE MAIN COMMITTEE

Treaty and Regulations adopted by the Diplomatic Conference on April 18, 1989

Editor's Note: This document contains the texts of the Treaty and the Regulations as adopted by the Main Committee on April 18, 1989. They are not reproduced hereunder. In the following are indicated only the differences between these texts and the final texts adopted by the Diplomatic Conference on April 18, 1989 (see the odd numbered pages from 11 to 49 of these Records).

Draft Treaty

1. In Article 5, paragraph (1), the title is "[Composition and Expenses]"; the second paragraph is "(2) [Tasks]."

2. In Article 7, paragraph (3), item (iii), the word "right" is spelt without an "s" at the end.

3. In Article 7, paragraph (4)(a) is headed "[Self-Supporting Financing]" and paragraph (4)(b) [Continuation of Budget; Reserve Fund]. Article 7, paragraph (5) and (6) concern "[Working Capital Fund]" and "[Auditing of Accounts]", respectively.

4. Article 10. The wording of paragraph (1) of this Article is, in the Draft, as follows:

"(1) [Proposals] (a) Proposals for the amendment of Article 5(5) and (7), Article 6(4) and (5) and Article 7(1) to (3) and (4)(b) to (6) may be initiated by any Contracting State or by the Director General."

Draft Regulations

1. In Rule 1, item (vi), the word "audiovisual" between the words "future" and "work" appears in the Draft.

2. In Rule 1, item (x), the reference is, in the Draft, "Article 5(2)(a)(vii)" rather than "Article 5(3)(a)(vii)."

3. In Rule 8, the second sentence is, in the Draft, as follows: "The Assembly may instruct the Director General to change the said system and amounts."

[End]

IRAW/DC/11

April 18, 1989 (Original: English/French)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Final Act adopted by the Diplomatic Conference on April 18, 1989

Editor's Note: This document contains the text of the Final Act as adopted by the Plenary of the Diplomatic Conference on April 18, 1989; it is reproduced on page 53 of these Records.

[End]

IRAW/DC/12

April 20, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Signature. Memorandum by the Secretariat of the Conference (Treaty; Final Act)

The following States signed, on April 20, 1989, the following instruments adopted at the Diplomatic Conference:

1. TREATY ON THE INTERNATIONAL REGISTRATION OF AUDIOVISUAL WORKS

Austria, Burkina Faso, Chile, France, Guinea, Hungary, India, United States of America.

2. FINAL ACT

Argentina, Austria, Burkina Faso, Canada, Chile, Colombia, Czechoslovakia, Democratic People's Republic of Korea, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Hungary, India, Israel, Italy, Japan, Liechtenstein, Mexico, Pakistan, Panama, Philippines, Portugal, Spain, Sweden, Switzerland, Tunisia, Turkey, United States of America, Uruguay, Yugoslavia.

[End]

IRAW/DC/DC/1

April 20, 1989 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Drafts submitted to the Drafting Committee by the Secretariat of the Conference (Treaty and Regulations)

Editor's Note: This document contains the text of the Draft Treaty and the Draft Regulations submitted to the Drafting Committee by the Secretariat of the Conference. It is not reproduced hereunder. The text is identical to the text of the Draft Treaty and the Draft Regulations as submitted to the Main Committee by the Drafting Committee. They are reproduced on pages 10 to 48 of these Records (even numbers).

[End]

IRAW/DC/INF/1 Rev.	April 20, 1989 (Original: English/French)
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Source: THE SECRETARIAT OF THE CONFERENCE

List of participants

Editor's Note: This document contains the list of participants. It is not reproduced here. For the list of participants, see pages 259 to 275 of these Records.

[End]

IRAW/DC/INF/2	April 20, 1989 (Original: English/French)
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Source: THE SECRETARIAT OF THE CONFERENCE

Officers and Committees

Editor's Note: This document contains a list of officers and members of the Plenary, the Main Committee, the Credentials Committee, the Drafting Committee and the Steering Committee. For the full list of officers of the Conference, see pages 276 to 278 of these Records.

[End]

IRAW/DC/INF/3	April 20, 1989 (Original: English/French)
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Source: THE SECRETARIAT OF THE CONFERENCE

Final List of Documents of the Diplomatic Conference

Editor's Note: This document contains the final list of documents of the Diplomatic Conference. It is not reproduced here. For the full list of the Conference documents, see pages 57 and 58 of these Records.

[End]

SUMMARY MINUTES

PLENARY OF THE DIPLOMATIC CONFERENCE

President: Mr. E. Nettel (Austria)

Secretary: Mr. H. Olsson (WIPO)

<u>First Meeting</u>
<u>Monday, April 10, 1989</u>
<u>Morning</u>

Opening of the Conference

1.1 Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference for the Conclusion of the Treaty on the International Registration of Audiovisual Works and welcomed the participants.

1.2 He referred to the draft agenda of the Diplomatic Conference (document IRAW/DC/1) noting that the first three items consisted of the opening of the Conference, the consideration and adoption of the Rules of Procedures, and the election of the President of the Conference. He stated that, for those three items, he would preside over the meeting. Once, however, the President of the Conference was elected, that person would take over the chair.

1.3 He briefly summed up the background of the proposed International Register, noting that it was an idea first discussed in 1981. Between 1981 and 1984, there were discussions under the auspices of WIPO where the representatives of the film industry also participated. Those discussions had revealed that there was a desire to have an international register of audiovisual works to increase the legal security of the rights holders and to contribute to the fight against piracy. However, there had been three difficulties, two which had been substantive and legal, and one which had been practical and financial. The first substantive legal question had been whether or not the Treaty should contain an article on the evidentiary value of the International Register. The second substantive legal question had been related to the so-called chain of rights, that was, to what extent should the chain of rights be verifiable on the basis of international registration. On the practical, financial side the question had been who would finance the setting up of the International Register. From the beginning, it had been understood that the Register would be self-supporting and that States party to the Treaty would not have any financial obligations. Consequently, the draft Treaty did not impose any financial obligations on States. Originally, the interested parties had been expected to provide the initial financing to set up the Register; that, however, had not been forthcoming. Thus, in 1987, in the discussions of the Governing Bodies of WIPO, which fixed the program and budget for the years 1988-1989, he had proposed abandoning the undertaking.

Many countries during that meeting asked, however, if there should not be further attempts at creating an international register of audiovisual works. Several of the non-governmental organizations, representing the future users also had a positive attitude. Therefore, the Governing Bodies decided that the International Bureau should undertake preparations for a diplomatic conference. In 1988, WIPO convened two meetings, one in March and one in November. In the March meeting, the Government of Austria announced that it was considering the possibility of providing the initial financing. In the November meeting, a degree of consensus was reached on the thorny questions of substance, namely the evidentiary value of statements in the Register and the issue of verifying the chain of rights.

1.4 He then referred to the documents submitted to the Diplomatic Conference and drew the attention of the delegations to Article 3(3) of the draft Treaty which provided that the seat of the Registry would be in Austria, unless an agreement between Austria and WIPO did not come into existence or had expired. He stated that the Diplomatic Conference was not requested to approve the draft agreement between Austria and WIPO. Both Austria and WIPO had to submit the agreement to their respective appropriate bodies for approval.

Adoption of the Rules of Procedure

1.5 Having concluded his introduction, he turned to item 2 on the draft agenda, the "Consideration and adoption of the Rules of Procedure." To the question whether there was any comment on the draft Rules of Procedure, no delegation asked for the floor.

1.6 The Rules of Procedure were adopted without discussion.

Election of the President of the Conference

1.7 He then turned to item 3 on the draft agenda which called for the election of the President of the Diplomatic Conference. He pointed out that the Rules of Procedure provided for 20 officer seats: the President of the Conference, six Vice-Presidents, a Credentials Committee with five members, the Main Committee which had to elect a Chairman and two Vice-Chairmen, the Drafting Committee with four members, plus, ex officio, the Chairman of the Main Committee. He made two suggestions. He said that there could be a small group of delegates, preferably not more than six, to constitute an ad hoc nominations committee, which would meet and propose a list of officers. Alternatively, a tentative list, prepared by the International Bureau, could be distributed. The meeting would be suspended so that all delegations could study the tentative list, consult with each other, agree or suggest changes. He asked if any delegation would like to support either of the proposals or suggest a third one.

2. Mr. WINTER (United States of America) supported the proposal for a small ad hoc nominations committee.

3. Mr. NDOYE (Senegal) supported the idea of a small committee composed of the representatives of the various geographical regions and language groups.

4. Mr. BOYTHA (Hungary) said that his Delegation was in favor of the second option, i.e., distributing a tentative list and suspending the meeting so that delegations could confer. Such a list could then be discussed in the plenary, so that all States could express their views. He also said that the two proposals could be combined.

5. Mr. NETTEL (Austria) stated that both proposals were acceptable to his Delegation and noted that they could be combined. He said that the tentative slate of officers could be given to a small committee. That committee could then fairly quickly propose a final slate.

6. Mr. BOGSCH (Director General of WIPO) stated that it appeared that there was support for the constitution of a small ad hoc nominations committee. He said that the United States of America, Senegal and Hungary, having already made suggestions concerning the procedure, could serve on that group and asked three additional countries to volunteer.

7. Mr. LADSOUS (France) volunteered his Delegation for the small ad hoc nominations committee.

8. Mr. MORFÍN PATRACA (Mexico) stated that his Delegation would be willing to participate in the small committee.

9. Mr. ZUTSHI (India) said that his Delegation would like to participate in the committee.

10.1 Mr. BOGSCH (Director General of WIPO) said that his tentative number of six had been reached and proposed that the six members of the ad hoc nominations committee be the United States of America, Senegal, Hungary, France, Mexico and India, noting that he had named them in the order they had spoken.

10.2 It was so decided.

10.3 The small ad hoc nominations committee was requested to meet, and the Director General of WIPO suspended the meeting.

[Suspension]

11. Mr. BOGSCH (Director General of WIPO) resumed the meeting and said the ad hoc nominations committee proposed Mr. Nettel (Austria) as President of the Diplomatic Conference. He asked the delegations whether they could accept the proposal. As there was no objection, he declared that Mr. Nettel of Austria had been elected President of the Diplomatic Conference. He then congratulated him and asked him to occupy the chair designated for the President.

12.1 The PRESIDENT thanked all of the delegations and said that it was a great honor for his country and for himself to have been elected as President. He expressed his gratitude to the Director General and congratulated the International Bureau of WIPO for the excellent preparation for the meeting.

Adoption of the Agenda

12.2 He then turned to item 4 of the draft agenda which concerned the adoption of the agenda. He noted that the first three items had already been dealt with, and asked if any delegations wished to take the floor to propose any amendments to the proposed agenda.

12.3 Since no delegation took the floor, the President declared that the agenda was adopted as contained in document IRAW/DC/1.

Election of the Vice-Presidents of the Conference

12.4 He then took up item 5 on the agenda, the "Election of the Vice-Presidents of the Conference." He read the names of the six delegates proposed by the ad hoc nominations committee and suggested consideration of the complete list. There were no objections to his proposal, and no objections were made to the slate. He, therefore, declared that Mr. Boytha (Hungary), Mr. Zutshi (India), Mr. Fortini (Italy), Mr. Morfin Patraca (Mexico), Mr. Ndoye (Senegal) and Mr. Winter (United States of America) were elected Vice-Presidents of the Conference.

Election of the Members of the Credentials Committee

12.5 Item 6 on the agenda concerned the election of the members of Credentials Committee. The President read the names of the five States proposed by the ad hoc nominations committee and suggested the consideration of the entire list. Since no other proposal was made or modifications suggested, he declared that the representatives of Egypt, the Philippines, the Soviet Union, Spain and Uruguay were elected members of the Credentials Committee.

Election of the Members of the Drafting Committee

12.6 Item 7 on the agenda concerned the election of the members of the Drafting Committee. There were no objections to the slate proposed by the ad hoc nominations committee, and the President declared the following delegates elected: Mr. Kerever (France), Mrs. Vaidya (India), Mrs. Hökborg (Sweden) and Ms. Peters (United States of America).

Invitation to an Observer Organization to Attend the Conference

13. Mr. BOGSCH (Director General of WIPO) said that he had received a request from the Soviet Union that the All Union Corporation of Sovexportfilm be invited to participate as a non-governmental organization. He asked the Conference to authorize him to extend that invitation.

14.1 The PRESIDENT asked the Conference if it had any objections to the All Union Corporation Sovexportfilm taking part in the deliberations of the Conference. Noting none, he declared the agreement of the Conference to authorize that organization's participation in observer status.

Postponement of the First Report of the Credentials Committee

14.2 He stated that item 8 on the agenda was the "Consideration of the first report of the Credentials Committee." However, since the Committee had not yet had an opportunity to meet, the first report of the Committee could only take place later. (In respect of the first report of the Credentials Committee, see paragraphs 45 to 54.)

14.3 He then turned to item 9 on the agenda "Opening declarations by Delegations and Representatives of Observer Organizations," and invited such declarations.

Opening Declarations

15.1 Mr. WINTER (United States of America) congratulated the President on his election. He said that it was a pleasure for the United States to participate in the development of a treaty on a worldwide international registration system of audiovisual works, which, hopefully, would be acceptable to a large number of countries.

15.2 He said that such a system would serve as an efficient means against piracy of audiovisual works. Piracy was a major problem facing American films overseas; for example, the motion picture industry of the United States estimated its losses overseas, from piracy of their audiovisual works, at approximately one billion dollars a year. The proposed International Register would not eliminate the piracy problem; however, a systematic, comprehensive, dependable international register with a timely gazette would be useful in alleviating piracy: those who dealt in motion pictures and those who were involved in enforcement would know who owned what rights, in what country, and for what time period.

15.3 He then referred to the two preparatory meetings where the level of registration fees had been mentioned as a critical issue by many countries and non-governmental organizations. He said that his Delegation had noted with satisfaction the following statement in document IRAW/DC/4, paragraph 6: "the success of the International Register will, to a large extent depend on the amount of the registration fees: the lower they are, the more applicants will use the Register."

15.4 He made three points. First, his country had a national register of works protected by copyright including audiovisual works, and it was the view of his Delegation that the International Register should complement and not adversely affect the operations of national registers. That view had been forcefully affirmed by the International Bureau of WIPO. Second, he said that the International Registry was to be self-supporting, with income resulting from registration fees, the sale of publications, such as the Gazette, and fees paid by persons requesting information from the Register. That principle was clearly established in Article 7 of the draft Treaty on finances. Third, he mentioned that the use of the International Register was completely voluntary; motion picture producers and others would determine whether they wished to use the Register. In conclusion, he noted that the draft Treaty and Regulations were generally acceptable to the United States of America. He stated, however, that his Delegation would have specific comments and proposals on certain Articles and Rules.

16.1 Mr. LÄNGLE (Austria) congratulated the President and all the other officers of the Diplomatic Conference on their elections in the various committees. He thanked both the Director General and the International Bureau of WIPO for the excellent preparation and organization of the Diplomatic Conference.

16.2 He recalled that Austria had been among the countries which originally proposed the establishment of an international register of audiovisual works. He stated that Austria believed that such an international register would greatly increase the security of international transactions concerning audiovisual works, would be very helpful in identifying rights owners, and would provide a useful instrument for combatting piracy regarding such works. The International Register of Audiovisual Works would enhance cultural creativity and promote the production and international exchange of such works. For those reasons, the Delegation of Austria noted its satisfaction with the efforts undertaken by WIPO.

16.3 As to the financing of the International Register, he explained that, during its initial period, there were two possibilities. The first was a gradual system. Under such a system, the International Register would first have to collect fees, and then use those fees for equipping and manning the International Register. The second possibility was launching the International Register with initial investment. He reminded the Conference that that second possibility was offered by Austria. Discussions between the Director General and the Government of Austria had resulted in an agreement which was reflected in a draft treaty between Austria and WIPO. That agreement had received the formal approval of the Austrian Federal Government.

16.4 He mentioned that, if the International Register was set up in Austria, Austria would advance the necessary funds by extending loans, on the one hand, to cover the costs of the initial investment and, on the other, to cover those costs of running the International Register which could not be initially covered by the income of the Register. He emphasized that there was no doubt that launching the International Register with an initial investment would be preferable since the reaction of the International Bureau of WIPO to early applications for international registrations could be immediate. The International Bureau would be able to register applications as soon as they arrived, if the necessary equipment and staff were in place when the Treaty entered into force. In contrast, a gradual system would seem to entail a lot of inconveniences and delays that could discredit the International Register during its initial period of operation. He pointed out that it was the initial period of functioning that would be decisive for the future success of the Register. In the initial period, the Register must demonstrate its efficiency and obtain the trust of interested circles. He stated that his Delegation was aware of the fact that only the General Assembly of WIPO, in September 1989, could take the final decision on the seat and the initial financing of the International Register. He was, however, hoping that the Diplomatic Conference would adopt a text that would enable the General Assembly of WIPO to accept the offer of the Austrian Government and to approve the draft Treaty between Austria and WIPO.

17. Mrs. MÖLLER (Federal Republic of Germany) congratulated the President and the other officers of the Conference on their election. She stated that the hopes and wishes associated with the International Register were great; the film industry valued it as an effective means of combatting piracy. Piracy was an ever growing menace which threatened the interests of rights owners and distributors of intellectual creations. The task of fighting piracy was an urgent one. She said her Delegation saw WIPO as playing a predominant role in that fight which would be promoted by the establishment of the International Register. She, therefore, wished the Conference much success.

18.1 Mr. MARCHAND (Canada) stated that his country was pleased to be associated with the creation of the International Register of Audiovisual Works. He noted that the draft Treaty was the result of several years of hard work, and he congratulated the International Bureau of WIPO and its Director General, as well as the Committee of Experts which had met in preparation for the Conference. He also congratulated the International Bureau of WIPO for the assistance it had given at the international level to the cultural industries, whose vitality was extremely important to the economic, social, and cultural development of each country.

18.2 The International Register would constitute a new international instrument which would promote the protection of intellectual property rights in audiovisual works. His country recognized the importance of the Register which would allow rights owners to register their audiovisual works; that would facilitate the collection of royalties and assist in the protection of rights where, because of new technology, the means of communication were increasing and piracy was becoming more difficult to combat. The Register would contribute to the development of the film and videographic industry and assist in the fight against piracy.

18.3 He stated that the Conference should pay particular attention to the evidentiary value that was to be given to statements recorded in the Register, and it should carefully examine the problem of contradictory statements between the International Register and national registers.

18.4 With respect to the language of the Register, he said that Canada had two official languages and all international treaties that it had adhered to were both in English and French. Therefore, his Delegation would support any proposal to include French as an official language of the Register.

19.1 Mr. NDOYE (Senegal) thanked all the delegations which had supported his election as Vice-President of the Diplomatic Conference; he considered that as recognition of his country's contribution to the protection of intellectual property at the international level. He congratulated the President of the Conference and the other elected officers.

19.2 He pointed out that the International Register would assist in the fight against piracy and mentioned that, in his country, there had been considerable progress in that area. Audiovisual works, he stated, needed special protection. It was most important that the rights owners be able to stop piracy, and it was also important to see that the investors in such works were duly compensated.

19.3 He thought that the costs of registration must not be too high; otherwise, they would penalize rights owners with low revenues. In essence, high fees would be discriminatory. In that regard, the question of language should be carefully studied. It was important to increase the range of the International Register, and his country, for example, would only adhere to the Treaty if the statements could also be made in French.

20. Mr. BOYTHA (Hungary) congratulated the President and all other elected officers. He stated that the Government of Hungary had been in favor of a treaty on the international registration of audiovisual works since the concept was mentioned during the 1981 WIPO Worldwide Forum on Piracy of Sound and Audiovisual Recordings. He congratulated WIPO on its efforts and warmly welcomed the generous offer of Austria in respect of the initial financing of the Register. He emphasized that the Hungarian Government considered the proposed Treaty as an important new instrument that would strengthen the position of rights holders and would augment the existing protection accorded to authors and other owners of copyright.

21.1 Mrs. HÖKBORG (Sweden) congratulated the President and the other elected officers. She also congratulated the Director General and his staff for the excellent documents which would provide the basis for the discussion.

21.2 Her Delegation was most appreciative of the generous offer of the Austrian Government, and it supported the establishment of an international register of audiovisual works because it could fulfill several useful and important purposes. Those included providing information on the identification of rights holders, which would facilitate the clearance of

rights and the dissemination and use of audiovisual works, and giving a certain legal effect to statements entered into the Register, which would increase the legal security of transactions. The combination of available information and increased security would promote audiovisual business and be a positive factor in the creation and dissemination of audiovisual works.

21.3 With regard to the legal effect of statements recorded in the Register, she said that for States with a system of what was often called "free evaluation of evidence," the acceptance of such a legal effect would be somewhat difficult because it would be an exception to the general rules on evidence. She noted, however, that, in her country, such deviations had occurred in other fields of law, e.g., transport law. Thus, deviations were possible. The Swedish Film Institute had, *inter alia*, responded positively on the concept of the International Register. She expressed her hope that the Register would also have the effect of combatting piracy in the audiovisual field.

22. Mr. KAMINAGA (Japan) congratulated the President and the other elected officers. He also expressed the appreciation of his Delegation to the International Bureau of WIPO for its strenuous efforts in preparing excellent documents. He said that although his Delegation had some doubts as to whether or not the International Register would in fact meet the objectives stated in the draft preamble, his Delegation was prepared to contribute to the elaboration of the provisions of the proposed treaty. He stressed the importance of a register that was voluntary and self-supporting, and which did not affect the protection of copyright.

23.1 Mr. AVERSA (Italy) congratulated the President on his election; he thanked and congratulated the Director General for having taken all necessary steps over the past few years to create an international register. His country had first raised the idea of such a register at the Worldwide Forum on Piracy of Sound and Audiovisual Recordings in 1981. It supported, therefore, the establishment of the proposed Register and the conclusion of the proposed Treaty. His Delegation believed that the Register would increase the legal security of transactions of rights in audiovisual works, and could assist in promoting the use of such works, especially regarding their exploitation by new technological means. The Register would also be useful in combatting piracy of audiovisual works.

23.2 With regard to the question of languages, his Delegation believed that a solution should be found that was in harmony with the bilingual tradition of international conventions, and, therefore, the use of both English and French should be allowed.

23.3 Finally, he gave special thanks on behalf of his country to Austria for its generous financial offer.

24.1 Mr. ZUTSHI (India) joined the other delegations in congratulating the President on his election, and the Director General and the International Bureau of WIPO for the preparation of the excellent documents.

24.2 He stated that the Conference was at the threshold of a new and meaningful phase of international cooperation in combatting piracy of audiovisual works. The International Register would have a positive impact on the international trade in audiovisual works. He said the world watched with wonder and fascination what transformation technology had brought about in the audiovisual field. At the same time, authors, producers, and other rights owners had become alarmed by the havoc created by the misuse of technology. The incalculable losses to creators of audiovisual works from rampant piracy was not only a threat to the film and audiovisual industry, but it discouraged and smothered human creativity and its expression. A concerted attack was necessary at the international level to assist in the elimination of piracy. The International Register was not a magic wand which would eliminate all causes, mechanisms, and effects of piracy in one stroke. Nevertheless, the Indian Delegation believed it was an important first step and the enforcement of rights should be much easier.

24.3 He said that India was the largest single producer of cinematographic works in the world; its films were exported to more than 90 countries. He declared that, over the last decade, the revenue earnings from exports had declined, while the number of films being exported had increased. That decline in revenue was due to piracy. Because of that, rights holders in India had set up a new organization called the Indian Federation Against Copyright Theft.

24.4 He concluded his remarks with comments about the fee schedule. He stated that the registration fees must be kept at the lowest possible level, and the needs of small independent producers in developing countries must be taken into account.

25.1 Mrs. KOSKINEN (Finland) congratulated the President and the other elected officers. She also congratulated the Director General and the International Bureau of WIPO. She noted that it was only in September 1987 that the Governing Bodies asked that the work on the International Register continue, and, in less than two years, two meetings of experts and a diplomatic conference had been achieved. She recalled that Finland had been one of the countries asking for the continuation of the work on the International Register, and her Delegation was pleased to see that many of the issues that caused some difficulty during the preparatory period had been resolved. She cited the provision concerning contradictory statements as an example. Her Delegation supported the establishment of the International Register.

25.2 She explained that her country, like Sweden, had a system of "free evaluation of evidence." However, like in Sweden, deviations from that system were possible.

25.3 She stressed the need for a complete Register. In that context, she referred to the possible impact by the fee system on the use of the Register. If the cost of registrations, especially for subsequent registrations, was too high compared to the benefit, no sufficient amount of data would be entered into the Register. And unless the Register was as complete as possible, it

would not be very useful. In that context, she strongly supported the idea, and wished to stress the importance of the role, of the Consultative Committee, which should be composed of representatives of producers and rights holders.

26.1 Mr. VAJNAR (Czechoslovakia) congratulated the President and the other delegates that had been elected as officers. He thanked the Director General and the International Bureau of WIPO for the perfect preparation for the Diplomatic Conference. His country welcomed the creation of the International Register and agreed that it should be voluntary and self-supporting, and that statements that were registered should be treated as true until the contrary was proved.

26.2 The Register should be financially independent, and he, therefore, welcomed the offer of the Austrian Government. He said that the fees should not be too high and should be differentiated, inter alia, according to the age of the work.

27.1 Mr. HERTEL (German Democratic Republic) congratulated the President on his election. He said that his country had always supported the establishment of an international register of audiovisual works. His Delegation was convinced that the International Register would have positive effects on the protection of authors. It also believed that the Register would promote the international exchange of audiovisual works as well as the economic, intellectual and cultural relations.

27.2 He expressed some doubts about the proposed consultative committee which would be limited to non-governmental organizations. He referred to the fact that the Berne and Paris Unions had Executive Committees consisting of representatives of Member States. Therefore, he suggested that the setting up of a similar committee of the proposed Union could be considered. Such a committee would not exclude close cooperation with interested non-governmental organizations.

28. Mr. MORFÍN PATRACA (Mexico) congratulated the President on his election. He stressed that the fees must be reasonable and, thus, they should promote the objectives of the Register. High fees would inhibit the use of the Register and make it impossible for a number of producers from countries with less favorable economic conditions to register. He said the possibility of using the Spanish language, which would also facilitate the use of the Register, should be considered along with the possibility of also using the French language.

29.1 Mr. GROSSENBACHER (Switzerland) congratulated the President on his election and the International Bureau of WIPO for having provided such excellent documents for the Diplomatic Conference. Those documents took into account the views of the interested parties and the needs of the cinematographic industry. His country, he noted, had been active in the

process of creating the Register, and it always supported any effort which would assist in the fight against piracy. The aims of the International Register were goals that greatly interested his country. His country believed that, at the international level, the proposed Treaty would promote cultural exchanges, facilitate and promote access to audiovisual works, and increase the legal security in transactions.

29.2 He stated that his country had considered certain issues and problems identified by some organizations that represented producers and authors. Those included, *inter alia*, the amount of the registration fees, the question of languages, and the legal and practical effect of shifting the burden of proof by giving evidentiary value to statements recorded in the Register. He noted that with regard to the legal security of transactions of rights, the benefits would be increased if a large number of countries adhered to the Treaty.

30. Mr. YDE (Denmark) said that his country welcomed the initiative to set up a register which could contribute to increasing the legal security in international transactions and to the fight against piracy of audiovisual works. He noted that his country had a firmly established tradition for the "free evaluation of evidence," and that might cause a problem with regard to the legal effect to be given to registered statements.

31. Mr. KOSIN (Yugoslavia) offered his congratulations to the President and to the other elected officers. He expressed his thanks to the Director General and the International Bureau of WIPO for the excellent preparation for the Diplomatic Conference; he also thanked the Austrian Government for its offer to provide initial funding for the International Register. The establishment of the International Register should, he said, spur international cooperation and assist in creating favorable conditions for the further development of audiovisual works, which would serve the interests of the whole international community. The International Register would lead to a higher degree of legal security in the trade of audiovisual works. He thought that such a register was important in countries with only a modest audiovisual industry, such as his country. It could assist in the development of a country's own audiovisual industry. By providing information on the owners of rights in audiovisual works, it would also be possible to prevent piracy. His Delegation appreciated that the Treaty did not create any new obligations concerning the rights in audiovisual works.

32. Mr. LECAT (France) congratulated the elected officers. He stated that the draft Treaty and Regulations were the result of tremendous work done by the International Bureau of WIPO over the past several years in cooperation with governments and the various interested organizations. The proposed text was a good one reflecting a proper balance between the various interests and, thus, a consensus among States should be achievable. He noted, however, that some provisions could be improved, and stressed that his country attached great importance to the issue of the language of the Register.

33.1 Mr. PALENFO (Burkina Faso) congratulated the officers that had been elected and the Director General and the International Bureau of WIPO for the work that had been done to bring to fruition the establishment of the International Register of Audiovisual Works. The creation of intellectual works was only encouraged if authors enjoyed full legal protection and were guaranteed adequate compensation for their work. The development of culture was important in his country, and audiovisual works were an important aspect of his country's cultural development. Moreover, they played an important role in educating the public.

33.2 He stated that, in 1969, a week-long event in which African films were shown was organized in Ouagadougou. That had led to the creation of the "Panafrican Festival of Films" (FESPACO) now held on a regular basis in Ouagadougou. The festival had resulted in the discovery of new talents and in the popularization of new cinematographic works.

33.3 His Government supported the establishment of the International Register. The Register would certainly increase the legal security in transactions, assist in the international exchange of audiovisual works and contribute in the fight against piracy.

33.4 He stated that his country would be ready to sign the Treaty if the application fees were low and if applications could also be made in French.

34. Mr. AMELA (Togo) congratulated the President on his election and the Director General and the International Bureau of WIPO on the quality of the documents prepared for the meeting. The Diplomatic Conference was an important occasion for his country, and his country gave its entire support to the conclusion of the proposed Treaty. The Treaty would provide a proper framework to encourage the nationals of his country to create more audiovisual works. That was because the Treaty would increase the legal security in commercial transactions of audiovisual productions, assist in the fight against piracy, and improve the standard of living of creators and other rights owners. To meet the goals of the Treaty, his Government asked that the situation of developing countries be taken into account when the fees were established. With regard to the languages, he asked that French be accepted as a language of the Register. He said some countries had had to renounce their own language and adopt another as their official language. Those countries should not be required to use yet a third language.

35. Mr. TROMBETTA (Argentina) congratulated the President and all the other elected officers. His Delegation believed that the creation of an audiovisual register under the auspices of WIPO was a positive step which would promote legal security of transfers of rights. It would also promote efficiency in the exercise of those rights and would assist in making transactions transparent. His Delegation also believed that the Register would be useful in combatting piracy and would promote the creation of audiovisual works. He stressed that certain principles should be respected. The first principle was that the Register should be voluntary; the second one was that the fees must be reasonable; the third one was that the Register must be self-supporting; and, finally, the fourth one was that registration should not constitute any right; it should rather be considered a mere declaration by an applicant that a right existed.

36. Mr. ALGAN (Turkey) congratulated the President and the elected officers on their election, thanked the Austrian Government for its generous offer, and supported the proposal to have the Register in Austria.

37. Mr. MOKHTARZADA (Afghanistan) addressed his congratulations to the President of the Conference and to the other elected officers. He also congratulated WIPO for its efficient work. He underlined the positive results of the various preparatory meetings and commended the documents for their excellent quality. His country was in favor of the conclusion of the Treaty because it would assist in the fight against piracy and also increase legal security of transactions. The information in the Register would be important for users, rights owners, investors and insurers. The Register could show what rights were existing and what countries they were applicable in. His country believed that the registration system had to be attractive to both small and as big producers. It should, however, be financially self-supporting. Registration should not be compulsory but should rather be voluntary.

38. Mr. MARTIN (Commission of the European Communities (CEC)) congratulated the President and the other elected officers. He said his organization welcomed the initiative to set up the proposed Register the more so because it had also considered the question of a register for some time. The Commission's Green Paper on copyright had mentioned the idea of a register as a means to combat piracy. Because of the WIPO initiative, his organization had shelved, for the time being, any further consideration of a Community register. He offered his organization's assistance in setting up the proposed WIPO Register.

39.1 Mr. BRISSON (FIAPF) congratulated the President on his election and also congratulated the other elected officers. He thanked the International Bureau of WIPO, and especially the Director General, for the excellent preparatory work which included the meetings of the committees of experts. He recalled that his organization had originated the idea of the Register, but it was because of the efforts of the Director General that a Diplomatic Conference to create the Register was being held. He also expressed his organization's sincere thanks to the Government of Austria for its generous and exceptional offer.

39.2 He noted that there was a serious video piracy problem; however, there were additional problems as well. Those included the various new media and the use of new technology to exploit audiovisual works. Those new global forms of exploitation had lead to the realization that there was some uncertainty about the ownership of the various rights. Piracy and the uncertainty of ownership of rights were the main motivating forces behind the creation of an international register. In addition, the proposed Register would increase the legal security of commercial transactions. He noted that, in that area, developed and developing countries had common interests.

40.1 Mr. CORBET (CISAC) congratulated the President and the other officers on their election to their respective positions. His organization, he said, was very concerned about piracy, and it had always supported measures that would combat it. He thanked the Director General for having taken the initiative to establish the International Register of Audiovisual Works.

40.2 His organization believed the following points were important. The International Register must not prejudice the rights of authors that were provided by the various countries in their national laws. Moreover, the International Registry should take all necessary steps to see that the statements that were being registered were accurate and correct. Finally, despite the requirement that the Register be self-supporting, the level of fees must be low enough to allow authors to file when necessary.

41.1 Mr. ORF (IFPI) stated that his organization was pleased that the International Register was about to become a reality and congratulated WIPO for its excellent work. His organization strongly supported the proposed Register; indeed, it had supported the concept from the beginning. He noted that with the advent of music videos, the record industry became an audiovisual industry.

41.2 He stressed the importance of a registration system that was simple and inexpensive. The system must satisfy not only major film companies but also small and medium sized independent producers, including those who produced music videos. Any step that made the Register more expensive should be avoided; for example, the number of working languages must not be increased. He stated that, if the Register was not used by rights owners because it was too expensive or too bureaucratic, the efforts of the past years would have been in vain.

42. Ms. BURNETT (EBU) congratulated the President and the other officers of the Diplomatic Conference on their election. She stated that the proposed International Register could be of interest to broadcasters. To be of real practical value, the Register would have to accomplish three things. First, it would have to provide a full picture of the rights owners. Second, the fees would have to be reasonable. Third, the statements recorded in the Register must have legal effect.

43. Mr. VACHER-DESVERNAIS (BIEM) congratulated the President and the other officers of the Diplomatic Conference on their respective elections. He thanked the Director General and the International Bureau of WIPO for their important and excellent work. His organization supported the statements made by CISAC on the draft Treaty and Regulations. It also stressed that the Treaty would assist in the fight against piracy, help in the circulation of audiovisual works, and provide better legal security for transactions. He noted that his organization was interested in the fee structure and the issue of the languages to be used in the Register.

44. The PRESIDENT thanked all of the speakers for their kind and flattering words towards him and the other officers of the Diplomatic Conference. He then closed the general debate of the Conference and announced that the Main Committee would meet after a coffee break.

Second Meeting
Tuesday, April 18, 1989
Afternoon

The First Report of the Credentials Committee

45. The PRESIDENT opened the second meeting of the plenary of the Diplomatic Conference. He noted that the Conference had for consideration the following items on the agenda: the first report of the Credentials Committee, the text proposed by the Main Committee, the adoption of the Treaty and of Regulations, and the adoption of any recommendation, resolution, agreed statement or final act. He asked the Chairman of the Credentials Committee, Mrs. Menez-Rosal of the Philippines, to present the report.

46. Mrs. MENEZ-ROSAL (Chairman of the Credentials Committee) stated that the Credentials Committee, which consisted of the Delegations of Egypt, the Philippines, Spain, the Soviet Union, and Uruguay, had met and adopted a report, which was contained in document IRAW/DC/9. She said the Committee had examined the credentials and full powers of the delegations of States and the letters or other documents of appointment of representatives of Organizations present at the Conference. The States whose credentials and full powers met the requirements of Rule 6 of the Rules of Procedure were listed in paragraph 5 of the said document. Similarly, those with acceptable credentials were listed in paragraph 6. States whose full powers or credentials were received in the form of a telex were listed in paragraph 7. She announced that the original of the credentials and full powers for Mexico had been received by the International Bureau of WIPO; therefore, Mexico should be included in paragraph 5. The organizations whose letters or other documents of appointment were in order were listed in paragraph 10. Paragraphs 8 and 9 contained the statements of the Delegations of Pakistan and the Soviet Union concerning the credentials of Afghanistan.

47. Mr. BOGSCH (Director General of WIPO) pointed out that, with regard to paragraphs 8 and 9 of the report of the Credentials Committee, the report showed there were no credentials for either Afghanistan or the Soviet Union.

48. Mr. HAMDANE (Lebanon) stated that he had received a telex from his Government accrediting him for the Diplomatic Conference. He explained that he had not yet received his credentials because of the situation in his country; he hoped they would reach his mission before the end of the Conference.

49. The PRESIDENT asked the Delegate of Lebanon to give a copy of the telex to the International Bureau of WIPO. He then summarized the report of the Credentials Committee and proposed deleting paragraphs 8 and 9 thereof.

50. Mr. FORTINI (Italy) supported the proposal to delete paragraphs 8 and 9 from the report of the Credentials Committee because neither Afghanistan nor the Soviet Union were listed as countries which had presented credentials.

51. Mr. MOKHTARZADA (Afghanistan) stated that, with regard to the position taken by the Delegation of Pakistan, which was reflected in paragraph 8 of the Credentials Committee's report, his country's position and response had been clearly expressed in the last session of the General Assembly of the United Nations Organization.

52.1 The PRESIDENT noted that there were no objections to his proposal to delete paragraphs 8 and 9 from the report of the Credentials Committee.

52.2 It was so decided.

53. Mr. NDOYE (Senegal) informed the Conference that his Government was taking the necessary steps, and hopefully he would present his credentials to the International Bureau of WIPO before the end of the Diplomatic Conference.

54.1 The PRESIDENT asked the Conference to adopt the report, as amended. He noted that the report authorized the Chairman of the Credentials Committee to examine any new credentials that were submitted before the end of the Conference.

54.2 He stated that the report of the Credentials Committee, as amended, was adopted.

Consideration of the Texts Proposed by the Main Committee. Adoption of the Treaty and Regulations

54.3 The PRESIDENT turned to items 10 and 12 on the agenda, the "Consideration of the texts proposed by the Main Committee" and "Adoption of the Treaty and the Regulations." Rather than reading all of the text, he asked the Director General to summarize the changes proposed by the Main Committee (document IRAW/DC/10).

55.1 Mr. BOGSCH (Director General of WIPO) read out the changes in the English text.

55.2 The changes in the draft Treaty were as follows:

(1) In Article 5, paragraph (1), the title had been changed to "Composition;" and the words "and expenses" had been stricken.

(2) In Article 5, paragraph (1), the subparagraph designated by the letter "c" had been changed to paragraph (2) and given the title "Expenses of Delegations."

(3) The remaining paragraphs of Article 5 had been renumbered by adding one to each. Thus, (2) had become (3), (4) had become (4), etc.

(4) In Article 7, paragraph (3), item (iii), the word "right" had been changed to "rights"; thus, an "s" had been added.

(5) Article 7, paragraph (4), had been limited to self-supporting financing. Thus, the letter (a) had been deleted, and subparagraph (b) had been changed to paragraph (5). The remaining paragraphs of Article 7 had been renumbered. Thus, paragraph (5) had become paragraph (6), and paragraph (6) had become paragraph (7).

(6) Because of the changes in numbering in the Treaty, the numerical references in Article 10, paragraph (1), subparagraph (a), had been changed so that it read as follows: "Proposals for the amendment of Article 5(6) and (8), Article 6(4) and (5) and Article 7(1) to (3) and (5) to (7) may be initiated by any Contracting State or the Director General."

55.3 The changes in the draft Regulations were as follows:

(1) In Rule 1, item (vi), the first word on the fourth line, i.e., "audiovisual," had been stricken.

(2) In Rule 1, item (x), the reference to Article 5(2)(a)(vii) of the Treaty had been changed to Article 5(3)(a)(vii).

(3) In Rule 8, paragraph (1), the title had been changed from "Fixation of the Fees" to "Fixing of the Fees." The last sentence of that paragraph had been changed to read "The Assembly may instruct the Director General to change the said system, the said amounts, or both."

56.1 Mr. CURCHOD (Secretary of the Drafting Committee (WIPO)) read out the changes in the French text.

57. The draft Treaty and the draft Regulations, as amended, were adopted by consensus.

Adoption of the Final Act

58.1 The PRESIDENT turned to the next item on the agenda, the "Adoption of any recommendation, resolution, agreed statement, or final act." He stated that a draft text of a final act had been presented to the Conference by the Director General. That text was as follows: "In accordance with the decisions by the General Assembly of the World Intellectual Property Organization made at its ninth and tenth sessions (1987 and 1988), and following preparations by the member States of WIPO and by the International Bureau of WIPO, the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works was held from April 10 to 20, 1989, at the headquarters of WIPO in Geneva. The Diplomatic Conference adopted the said Treaty which was opened for signature on April 20, 1989." He explained that the final act was usually signed by all Delegations participating and being duly authorized to participate in the Conference. A full power was not needed to sign the final act. He noted that no Delegations wished to take the floor and proposed that the text of the final act be adopted.

58.2 It was so decided.

58.3 He informed the Delegations that the third and last meeting of the plenary of the Diplomatic Conference would take place at 17.00 on April 20, 1989, and closed the second meeting of the plenary.

<u>Third Meeting</u>
<u>Thursday, April 20, 1989</u>
<u>Afternoon-Evening</u>

Closing Declarations

59. The PRESIDENT opened the last meeting of the plenary of the Diplomatic Conference. The agenda included the additional report of the Chairman of the Credentials Committee and the closing statements. Since the Chairman of the Credentials Committee had not arrived, he started with the closing statements.

60. Mr. SANKEY (United Kingdom) congratulated the President and the Chairmen of the committees on their impressive and efficient accomplishments which resulted in the successful conclusion of a treaty. He expressed his thanks to the Director General and the International Bureau of WIPO for the smooth operation of the preparatory meetings and the Conference. He said that his Government had not participated fully in the Conference; however, his Delegation welcomed the outcome and recognized the potential importance of the Register to the audiovisual industry. The Register would provide a new and valuable service to both developed and developing countries and would serve as a means of furthering international trade in audiovisual works. His country would not yet embark on the changes that might be required in his country's domestic legislation to ratify the Treaty; however, it would follow with interest the future evolution of the Register.

61.1 Mr. LÄNGLE (Austria) expressed his country's great satisfaction with the results of the Conference. Thanks to a spirit of compromise, solutions had been found to difficult problems. His Government was particularly pleased that the text of the Treaty would allow the Governing Bodies of WIPO, in September 1989, to accept the offer made by Austria concerning the initial financing and to have the seat of the Register in Austria.

61.2 He thanked the officers of the Diplomatic Conference for the work in seeing to it that the Conference ended successfully. He also thanked the Director General and the International Bureau of WIPO for their guidance, assistance and competence, thereby making the Conference a complete success. Finally, he thanked the interpreters for their excellent work.

62. Mr. ESCOBAR CERDA (Chile) referred to the difficult negotiations that resulted in a successful compromise and congratulated the delegations for their spirit of compromise. His Delegation believed that the International Register would contribute to the fight against piracy and strengthen the legal

security of transactions. The Treaty might also facilitate the access to audiovisual works by developing countries. His Delegation congratulated the President, the Chairman of the Main Committee, the other officers, the Director General, and the International Bureau of WIPO for their excellent work.

63.1 Mr. ZUTSHI (India) expressed his Delegation's congratulations to the President of the Conference and the Chairman of the Main Committee, for the roles they had played in bringing about a satisfactory conclusion to the Conference. He expressed his thanks to the Director General, who had, with his usual perceptibility and skill, enabled the Conference to move forward. His Delegation also appreciated the spirit of cooperation which had prevailed among the delegations in pursuit of their common interests. He said his Delegation saw the Treaty as the significant beginning of a great enterprise. The creation of the International Register was important, and, if it was used extensively, it would be a good beginning for international cooperation in fighting the menace of audiovisual piracy. The effectiveness of the Register would be enhanced proportionately as more and more countries ratified the Treaty. He announced that his country would sign the Treaty, and he called upon all who were interested in promoting human creativity and innovation, especially in the field of audiovisual works, to also become members of the Union created by the Treaty. The Treaty enabled producers and rights holders to strengthen their ownership rights and any claims in pursuance of those rights in States party to the Treaty simply by registering with the International Register. The very existence of the Register and the Gazette might have some impact on piracy.

63.2 From the beginning, his Delegation had emphasized that, to be viable, the fees must be low, and his Delegation had in that context made a plea on behalf of developing countries. His Delegation was, therefore, extremely pleased to see that those concerns had been accommodated. He referred to the compromise that had been reached that allowed French as a language of the Register, with the possibility of adding additional languages when the Register became self-supporting, and to the 15% preferential discount for applicants from developing countries party to the Treaty, which underlined that the principle of special and differentiated treatment for developing countries was relevant and applicable in the context of intellectual property protection.

63.3 He concluded by saying that, when he returned to India, he would have the privilege of conveying to India's film industry that it now had another weapon in the ever increasing fight against piracy. His Delegation had no doubt that the Register would, over the course of time, provide much needed protection to creators of audiovisual works, and such protection would in turn foster greater creativity.

64. Mr. MORFÍN PATRACA (Mexico) congratulated the President, the various officers, the Director General, the International Bureau of WIPO and the Delegations for the work they had done in a spirit of cooperation. He referred to the inscription of the cupola at the WIPO headquarters building, which was written by the Director General, and which reads: "Human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions." He said that the Treaty was born in that spirit.

65. Mr. PALENFO (Burkina Faso) stated that the adoption of the Treaty by consensus was extremely significant and represented a success which would benefit the cultural industries, particularly the cinematographic industry, as well as the international community. He congratulated the Director General and the International Bureau of WIPO for their great knowledge, human qualities and their high quality of work which had led to the establishment of such an important international treaty. He also thanked the Government of Austria for its generous offer, and congratulated the President of the Conference, who had presided with such diplomacy, as well as the Chairman of the Main Committee, who had helped to solve many problems.

66. Mr. BOYTHA (Hungary) said that a new Union was going to be born in the field of intellectual property, and Hungary had decided to sign the text as adopted by the Conference. He gave its thanks to the Director General and the International Bureau of WIPO, to the Chairman of the Main Committee who had so efficiently presided over the meeting of the Committee, to all Delegations and representatives of non-governmental organizations who had cooperated so well and participated in a spirit that had led to appropriate compromises. He hoped that the Treaty would enter into force quickly. He again thanked the Government of Austria for its generous offer which would allow the Register to be fully functional at the beginning. He said he was convinced that the Director General would succeed in developing, in cooperation with the Consultative Committee, the necessary administrative procedures and operations, which would be satisfactory to all the potential users, both for authors and for producers from both industrialized and developing countries. His country considered the Treaty as a new instrument which would strengthen the international protection of the rights of authors and other owners of copyright in audiovisual works. He said that the enjoyment of such rights could only be effective if legal measures were taken to improve the conditions of proper exercise and enjoyment of those rights.

67. Mr. KAMINAGA (Japan) congratulated the President on the successful result of the Diplomatic Conference, which was born in a spirit of cooperation. He also thanked the Chairman of the Main Committee and the other officers, and conveyed his Delegation's sincere appreciation to the Director General and the International Bureau of WIPO, not only for the preparation of the excellent documents, but also for their work throughout the Conference. He noted his country's great interest in promoting the protection of audiovisual works and, therefore, its interest in the Treaty.

68. Mrs. DANIEL (Canada) congratulated the President of the Conference and the Chairman of the Main Committee for their exceptional work. She also thanked the Chairman of the Drafting Committee and the members of the working group that had crafted the compromise to resolve the problem of the languages and the fees. The work of that group had been instrumental to the success of the Conference. She gave her Delegation's special thanks to the Director General and the International Bureau of WIPO for their excellent work. Her Delegation was pleased to have participated in the Conference, and it was sure that the Register would help the film and video industries of Canada.

69. Mr. WINTER (United States of America) recalled that his country had supported the project from the beginning. He said that the Treaty would establish a new and unique international registration system for audiovisual works, which would be of substantial benefit to the creators and users of audiovisual works. Since audiovisual works were created and distributed in both developing and developed countries, the Treaty would have significance for all countries. He noted that audiovisual works were important; they were most representative of a country's culture. Unquestionably, the most serious problem facing producers of audiovisual works was piracy. His country believed that time would show that the WIPO International Register of Audiovisual Works was a bold, innovative and effective measure which assisted in the fight against piracy. He congratulated the President of the Conference, the Chairman of the Main Committee, the Delegates, the non-governmental organizations, the Director General and the International Bureau of WIPO for their outstanding accomplishments. He concluded by stating that the United States of America would sign the Treaty because the Treaty would contribute to the protection of audiovisual works throughout the world.

70. Mrs. HÖKBORG (Sweden) congratulated the Director General of WIPO and expressed her Delegation's appreciation for the excellent way in which the Conference had been conducted. She especially thanked the Chairman of the Main Committee for guiding the participants through the problem areas so that a good result could be achieved. She also thanked the International Bureau for its hard and excellent work. She concluded by stating that her Delegation looked forward to a treaty with many ratifications.

71. Mrs. KOSKINEN (Finland) said that her country was one of the nine which, in September 1987, urged the Director General to continue the work on the International Register of Audiovisual Works. Therefore, her Delegation was extremely pleased by the achievement of the Diplomatic Conference. She thanked the Director General and the International Bureau of WIPO, who had shown, in the past year and a half, and again in the Diplomatic Conference, their superb efficiency. She congratulated the Chairman of the Main Committee and the President of the Conference. She said that her Delegation believed that the Register would be an efficient tool which would facilitate court cases. That, however, was not the only purpose of the Register; its function as an informational database of rights owners was most important. New media and new technologies continued to make the trade of audiovisual works more international and more complex. She concluded by stating that her Delegation hoped that many countries would soon adhere to the Treaty because the more complete the Register was the safer was the trade in audiovisual works.

72. Mr. CANO (Colombia) congratulated the Director General and the International Bureau of WIPO. He also congratulated the President of the Conference and thanked the Government of Austria for its generous offer concerning the initial financing of the Register. His country noted with approval the goals of the International Register which were set forth in the preamble of the Treaty. He said his Delegation was pleased that the Treaty did not create any conflicts with national law, and that an appropriate solution had been found concerning the problem of languages which also respected the principle that the Register should be self-supporting. Thus, as soon as the Register was self-supporting, additional languages might be included. His Delegation was also pleased with the provision that allowed preferential fees to applicants from developing countries.

73. Mr. LOUA (Guinea) congratulated the President of the Conference, the Chairman of the Main Committee, the Director General and the International Bureau of WIPO for their excellent work. He thanked the Austrian Government for its financial offer. He noted that the legal security of commercial transactions of creative works, in general, and audiovisual works in particular, was of increasing concern to many States because of the growth of piracy. He said that the International Register provided another means for the fight against piracy. Therefore, he applauded the Treaty, and said that the date of the adoption of the Treaty was another significant date in the history of WIPO. His country would take the necessary steps to give effect to the Treaty, because it was convinced that the Treaty would promote the creation of audiovisual works.

74. Mr. CHOI (Republic of Korea) thanked the President for his excellent guidance during the Conference. He also thanked the Director General and the Chairman of the Main Committee, for their unceasing efforts in assuring a successful conclusion of the Conference. The establishment of the new International Register would be a significant step in the fight against piracy. It would also assure that information about the ownership of audiovisual works would be published at frequent intervals. The Treaty now reflected the wishes of the governments by providing for a self-supporting register, with simple registration procedures and flexibility concerning the fees. He stated that his country produced a large number of audiovisual works, including feature films; therefore, his country would consider actively participating in the International Register.

Additional Report of the Credentials Committee

75. The PRESIDENT gave the floor to the Vice-Chairman of the Credentials Committee for an additional, final report.

76. Mr. PEREZ DEL ARCO y SEGURA (Vice-Chairman of the Credentials Committee) gave the report in the absence of the Chairman of the Committee. He said that, since the April 18 session of the Plenary when the Credentials Committee had delivered its report, the following credentials had been received and examined: the credentials of Israel (in the form of an original document); the credentials of Panama and Colombia (in facsimile form); the credentials of Egypt (in the form of a telex); and the credentials of the observer Delegation of Afghanistan (in the form of a telex).

77. The said report was noted and approved.

Closing of the Conference

78.1 The PRESIDENT congratulated and thanked the Director General and the International Bureau of WIPO. He also thanked all the other officers of the Conference and all of the delegations, who made his task an easy one and made the Conference a success. He said that he had attended quite a few conferences, and wished to compliment WIPO on its atmosphere which he found

especially charming and which allowed constructive problem-solving. He thanked the interpreters, whose voices, he said, he had known for 25 years, and who included a number of his friends. He concluded by saying that the Treaty would be very helpful to producers and users of audiovisual works, and he was proud to have played a role in the shaping of the Treaty.

78.2 He then announced that the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works was closed.

MAIN COMMITTEE OF THE DIPLOMATIC CONFERENCE

Chairman: Mrs. M. Möller (Federal Republic of Germany)

Secretary: Mr. M. Ficsor (WIPO)

First Meeting
Monday, April 10, 1989
Afternoon

Election of the Chairman and Vice-Chairman

79.1 Mr. BOGSCH (Director General of WIPO) declared open the first meeting of the Main Committee. He announced that, under Rule 15(2) fo the Rules of Procedure, the Main Committee had to elect the Chairman and two Vice-Chairmen. The ad hoc nominations committee proposed Mrs. Möller, Federal Republic of Germany, as the Chairman and Mr. Grossenbacher, Switzerland, and Mr. Trombetta, Argentina, as Vice-Chairmen. He noted that there was no objection to that proposal.

79.2 He, therefore, declared that the proposed three delegates were elected Chairman and Vice-Chairman, respectively, of the Main Committee. He then congratulated them and asked Mrs. Möller to take the chair.

80. The CHAIRMAN said it was a great honor to be elected chairman and thanked all the delegates for the confidence and trust they had placed in her. She said she hoped any problems would be sorted out in a spirit of good cooperation and with the intention of achieving a final result which could be accepted by the majority, if not by all countries. She announced that she would open the discussion with the articles of the draft Treaty and return to the preamble at the end. (In respect of the discussions of the preamble, see paragraphs 406 to 424.) She asked the Director General to explain Article 1.

Article 1: Establishment of the Union

81. Mr. BOGSCH (Director General of WIPO) explained that Article 1 provided that the States party to the Treaty--referred to as the Contracting States--constituted a Union for the International Registration of Audiovisual Works, which would hereinafter be referred to as the Union. All WIPO treaties started with such a provision.

82.1 The CHAIRMAN opened the discussion on Article 1. There were no comments, and Article 1 was adopted without discussion as it appeared in the draft.

Article 2: "Audiovisual Work"

82.2 The CHAIRMAN then opened the discussion on Article 2 and gave the floor to the Director General.

83. Mr. BOGSCH (Director General of WIPO) said that Article 2, which had been discussed many times in the past, defined the concept of an audiovisual work. The proposed definition was that "audiovisual work" was any work that consisted of the fixation of a series of related images with or without accompanying sound and which was susceptible of being made visible, and where accompanied by sound, was susceptible of being made audible. He recalled that, at previous meetings, it had been noted that it was a curious thing that a work that could not be heard was considered as an "audio" work. However, it was clear that silent motion pictures should be within the subject matter of the Register.

84. Mr. LECAT (France) suggested that the definition of audiovisual work in Article 2 be amended to read "a series of fixed related images" instead of "the fixation of a series of related images." He then raised the problem of works, such as writings, that could be considered to consist of a series of related images when embodied, for example, in a CD-ROM (Compact Disc Read Only Memory). He questioned whether such works should be within the subject matter of the Register. If not, the requirement of movement (motion) should be added to the definition.

85. Mr. NDOYE (Senegal) said that he shared the views of the Delegation of France and stressed that new technologies must be anticipated and taken into consideration in the definition of audiovisual work. He supported the idea of including the requirement of a sensation of motion in the definition.

86. Mr. BOGSCH (Director General of WIPO) stated that the proposal concerning the wording of the definition made by the Delegation of France could be left to the Drafting Committee. With regard to the issue concerning whether or not the definition should require that the images convey a sensation of motion, he said such a requirement could be added; however, the solution proposed in the draft Treaty was to the contrary. As drafted, a series of slides (with or without accompanying sounds) would constitute an audiovisual work. He noted that that issue had been discussed at the preparatory meetings of the Committee of Experts; the proposed definition reflected the views expressed during those meetings. Finally, with regard to the issue of anticipating new technology in the definition, he noted that the definition did not refer to the format or carrier of audiovisual works.

87. Mr. LECAT (France) said he agreed with the Director General of WIPO that the question of the exact language should be referred to the Drafting Committee. With respect to the substantive question, he believed that, based on the explanations that had been given, the definition could be modified so that certain difficulties were resolved. He said that one could envision fixed images which were in their content only text; for example, text embodied in a CD-ROM. However, that embodiment was merely a means of giving access to the text. Such a work was not an audiovisual work; it was the equivalent of a series of photographs of textual documents.

88. Mr. BOGSCH (Director General of WIPO), in response to the example given by the French Delegation, said the text of a newspaper would not be considered an image, even if photographed, because otherwise a newspaper would be considered an audiovisual work. It was not intended that the Register should include books and newspapers.

89. Mr. NDOYE (Senegal) stated that he was satisfied with the explanations given by the Director General.

90. Mr. GERO (Canada) stated that the previous interventions showed that the definition in Article 2 could be read by different people in different ways, and he, therefore, suggested that it might need some clarification. He said that the word "fixation" caused his Delegation some problem because under the Canadian Copyright Law, it meant any embodiment. Thus, it could be a paper embodiment and could cover a newspaper or a book. He said the definition should be modified so that it was clear that books and newspapers were not within the subject matter of the Register. A way to solve the problem might be to refer to projection of images or use by a machine of some sort, whether it be mechanical or electronic. The main point was that the form of fixation would not be one that one could just pick up and look at, one needed a machine to see the image.

91.1 Mr. BOGSCH (Director General of WIPO) said that the inclusion of the condition that one could show the images on a screen or otherwise did not solve the problem because newspapers and books could also be shown on a screen. Indeed they were frequently shown on television, e.g., in the form of "teletext." He added that the question the Delegation of Canada had raised was in a way answered in paragraph 109 of the notes to "the Basic Proposal" (document IRAW/DC/3) where it was said that one could solve the problem by inserting the words "which convey the sensation of motion." If one had page after page of a text, one did not have a sensation of motion, one rather had a sensation of turning pages. The "motion" that was required was motion inside the series of images, giving the impression that something was moving.

91.2 He said he would not oppose the inclusion of the words "which convey the sensation of motion" in the definition. They were not there, however, because, at previous meetings, the majority of the delegations had stated they did not want it. He said that as a result of the present discussion, perhaps it would be decided to put those words back in the definition.

92. Mr. GERO (Canada) said that the only problem with including the sensation of motion in the definition was that it would rule out slide shows, unless one could consider the movement from one slide to the other a "motion."

93. Mr. BOYTHA (Hungary) said the first question to be decided was whether or not slides were to be included in the Register. His Delegation favored including a series of slides since that was a typical form of audiovisual works. In such case, the words "susceptible of being made visible by a machine or device" should be replaced with the words "intended to be made visible by a machine or device." That would exclude books and newspapers because they were not intended to be made visible by a machine or device.

94. Mr. BOGSCH (Director General of WIPO) noted that the change proposed by the Delegation of Hungary did not solve the problem since text was frequently published in the form of microfiche and that could only be read by means of a machine or a device.

95. Mr. BOYTHA (Hungary) responded by stating that microfiche was generally a copy and not an original. A book or a newspaper was originally published on paper and converted to microfiche for storage reasons. He admitted that it was difficult to define an audiovisual work, and all definitions contained some ambiguity. However, he believed that the definition in the draft, with the exception of the substitution of the word "susceptible" by "intended," could be helpful.

96. Ms. PETERS (United States of America) recalled that, at previous meetings, her Delegation had stated its preference for a broad definition that included a series of slides and it still preferred such a definition. She pointed out that text was frequently published only in microfiche or electronic form. Under the law of the United States, theoretically, all such works might be classified as "audiovisual works." The United States law, however, made a distinction between literary works and audiovisual works. Books and newspapers in electronic form or microform were not intended to be considered audiovisual works. For registration purposes, the United States Copyright Office had taken the position that, to register a work as an audiovisual work, there had to be some pictorial images. A work consisting entirely of textual images had to be registered as a literary work. She concluded by saying she believed there would always be issues raised by new technologies, and her Delegation was satisfied with the definition as proposed.

97. Mr. AVERSA (Italy) recalled that during the preparatory meetings of the Committee of Experts the issue under discussion had been resolved in favor of including series of slides. He suggested that the question should be referred to the Drafting Committee.

98. Mr. DOZORTSEV (Soviet Union) stated that his Delegation agreed with the proposed definition of audiovisual works. He noted, with approval, that cinematographic works without sounds were also considered audiovisual works, even though that was not in complete harmony with the word "audiovisual." In light of that, he wondered whether if it might not be useful to state that works consisting of sounds without images were not audiovisual works.

99. Mr. BOGSCH (Director General of WIPO) said that there were two possible solutions. The first possible solution, which had been supported by several delegations, was that the definition would remain as originally proposed. Then, if there was some difficulty in interpreting it, the Regulations could make it clear that books could not be registered. The second possible solution was to include the requirement of motion in the definition. That would exclude slide shows. He said the present discussion was similar to the previous ones. There were advocates of the motion concept, and there were Delegations which preferred a definition which would include slide shows. He stressed that the definition in the draft Treaty would not affect any national law. A country could define an audiovisual work as narrowly and as broadly as possible. He recommended leaving the definition as it was and said that practice would show whether the definition was appropriate or not.

100. The CHAIRMAN referred to the two possible solutions mentioned by the Director General, and stated that she was in favor of leaving the definition as it stood. She said that her country's laws did not contain many definitions, because it was considered that it was better to leave definitions to practice and common understanding.

101. Mr. WINTER (United States of America) said that his Delegation could accept the definition as it was.

102. Mrs. KOSKINEN (Finland) stated that her Delegation was in favor of leaving the text as it was.

103. Mr. ZUTSHI (India) stated that his Delegation would also prefer the definition as it was.

104. Mr. OYAMA (Japan) stated that his Delegation supported the text as it was.

105. Mrs. HÖKBORG (Sweden) stated that her Delegation preferred leaving the definition as it was.

106. Mr. LECAT (France) said his Delegation was in agreement with the view expressed by the Delegation of the Soviet Union that sounds without images were excluded but not images without sounds.

107. Mr. BOGSCH (Director General of WIPO) stated that, in accordance with the requests of the Delegations of the Soviet Union and France, the record would show that sound fixations or sound recordings without images were not audiovisual works.

108. Mr. NETTEL (Austria) said that his Delegation believed that the draft text made it quite clear that sounds alone could not be considered audiovisual works; a sound is not an image. His Delegation favored the proposed text in the draft Treaty.

109. The CHAIRMAN noted that there was a general support for the definition in the draft Treaty, and stated that, if there was no opposition expressed, she considered Article 2 adopted.

110. Article 2 was adopted as appearing in the draft.

Article 3: The International Register

111. The CHAIRMAN opened the discussion on Article 3, paragraph (1) [Establishment of the International Register] and gave the floor to the Director General.

112. Mr. BOGSCH (Director General of WIPO) said that that paragraph set out the purpose of the Register, which was to register statements concerning audiovisual works and the rights in such works, including, in particular, rights related to their exploitation. This provision had to be read together with Article 4, paragraph (2), which stated that the International Register had no effect on copyright laws or treaties. Consequently, registration or lack of registration of statements concerning rights had no effect on the existence of rights.

113. Mr. NDOYE (Senegal) stated that it should be made clear that the International Register constituted only a data bank, and that the question of ownership of rights would be resolved by copyright laws.

114. Mr. BOGSCH (Director General of WIPO) indicated that his previous explanations were in full harmony with the observation of the Delegate of Senegal, that was to say, that neither registration nor the absence of registration would affect the copyright in an audiovisual work. He drew the attention of the Main Committee to the contents of Article 4(2) which reflected that principle.

115.1 The CHAIRMAN stated that registration of statements concerning rights could not establish rights where none existed. Since no other delegation sought the floor, she announced that Article 3, paragraph (1) was adopted as appearing in the draft.

115.2 The CHAIRMAN opened the discussion on Article 3, paragraph (2) [Setting up and Administration of the International Registry] and gave the floor to the Director General.

116. Mr. BOGSCH (Director General of WIPO) said that paragraph (2) set up the International Registry as an administrative unit of the International Bureau of WIPO. That administrative unit would be similar to the other administrative units in WIPO, i.e., the administrative units of the Patent Cooperation Treaty, of the Madrid Agreement concerning the International Registration of Marks, and of the Hague Agreement concerning the International Deposit of Industrial Designs. The proposed administrative unit would be the fourth such administrative unit of the International Bureau. Paragraph (2) had another significance, namely that the finances of the International Register would be completely independent from the finances of the other unions.

117. The CHAIRMAN said that Article 3, paragraph (2) was self-explanatory and noted that no delegation had asked for the floor.

118. Article 3, paragraph (2) was adopted without discussion as appearing in the draft.

119. The CHAIRMAN opened the discussion on Article 3, paragraph (3) [Location of the International Registry] and gave the floor to the Director General.

120.1 Mr. BOGSCH (Director General of WIPO) referred to document IRAW/DC/3 Add.1, which amended "the Basic Proposal" (document IRAW/DC/3); Article 3, paragraph (3) now provided that the International Register would be located in Austria as long as a treaty to that effect was in force between WIPO and the Republic of Austria, and, otherwise, it would be located in Geneva. He also referred to his memorandum on the "Seat of the International Registry and Initial Financing" (document IRAW/DC/4), which gave considerable details about the negotiations between WIPO and the Government of Austria. He noted that, as far as WIPO was concerned, for the treaty between Austria and WIPO to go into effect, the approval of the Governing Bodies of WIPO would be required.

120.2 He added that his memorandum also contained a comparison of the costs of the Register in Geneva and Austria. The study on the costs in both places showed that there was no difference between the two locations. That was because some items were more expensive in Geneva, while others were more expensive in Austria.

120.3 He reminded the Delegations that the agenda of the Diplomatic Conference did not include the decision on whether or not the treaty between Austria and WIPO should be accepted and signed by WIPO. Rather, the Conference had to decide whether to accept the text of Article 3, paragraph (3) as reflected in IRAW/DC/3 Add.1.

121. Mrs. HOKBORG (Sweden) stated that the text was acceptable to her Delegation.

122. Mr. BOYTHA (Hungary) said the amended text was acceptable to his Delegation.

123. Mr. NETTEL (Austria) thanked all of the Delegations who had supported the idea of establishing the Registry in Austria.

124. Mr. PALENFO (Burkina Faso) said that his Delegation supported the amended draft text.

125. Mr. WINTER (United States of America) said that, as he had mentioned in an earlier meeting, the policy of the United States Government was that all activities of international organizations should be located at the headquarters of that organization. However, his Delegation had studied the Director General's memorandum (document IRAW/DC/4) very carefully and had noted the Director General's assurance that the costs of the Register in Geneva and Austria would be comparable. Therefore, his Delegation would accept the text as proposed in document IRAW/DC/3 Add.1.

126. Mr. OYAMA (Japan) said his Delegation saw no objection in locating the International Registry in Austria, and expressed his appreciation to the Austrian Government for its generous offer of loans to cover the cost of the initial investment for the Register. He added that all appropriate measures should be taken to avoid any inconvenience which might arise from the fact that the International Registry would be located outside the WIPO headquarters.

127. Mr. AVERSA (Italy) stated that, in light of the remarks made by the Director General, his Delegation agreed with the text appearing in document IRAW/DC/3 Add.1.

128. Mr. GERO (Canada) added his Delegation's appreciation to Austria for its generous offer to cover the initial costs of the Register. He said that his Delegation could support the amended text.

129. Mr. ZUTSHI (India) said his Delegation was pleased to associate itself with the modified text appearing in document IRAW/DC/3 Add.1, and it was highly appreciative of the generous offer of the Government of Austria to provide financial assistance. He noted that he was pleased to see that the cost of having the Register in Austria was comparable to what it would cost in Geneva, and, therefore, would not lead to any additional burden on the users of the Register.

130. Mrs. KOSKINEN (Finland) said that her Delegation supported the text as amended. She noted that her Delegation had some hesitation about placing the Register outside of Geneva; however, since the costs seemed to be comparable, her Delegation did not oppose the location of the Register in Austria. She thanked the Government of Austria for its generosity.

131. Mr. GROSSENBACHER (Switzerland) said that he was surprised that a system of progressive financing was not acceptable as a first step, since it created the least burden on the users of the system. He said that he mentioned that because it was related to the question of languages. The multilingual International Bureau of WIPO in Geneva would not have any difficulty in dealing with several languages; thus, a multilingual Register would not be more expensive if located in Geneva. He said that he believed that there probably would be an increase in the cost if the Register were located in Austria. He added that his Delegation recognized that the generous offer made by the Austrian Government made possible full initial financing. If all the Delegations believed that such a financial arrangement was the most desirable, his Delegation would not, of course, oppose it. His Delegation would regret, however, the transfer of WIPO activities to countries other than Switzerland. Finally, he noted that it was the Governing Bodies of WIPO which would make the final decision on the location of the Register.

132. Mr. YDE (Denmark) said his Delegation supported the text as amended and expressed his appreciation for the generous offer made by Austria.

133. Mr. LECAT (France) said his Delegation associated itself with some of the remarks of the Delegation of Switzerland, especially with the remarks about the effect of the cost of additional languages if the Register were not located in Geneva.

134. Mr. NETTEL (Austria) again expressed his gratitude to the delegations for their kind words about his country and its offer. He added that Austria had bilingual staffs, and the Registry would not be the first international unit whose headquarters were in Austria.

135.1 The CHAIRMAN noted that no delegation wanted to take the floor, and stated that Article 3, paragraph (3), as appearing in document IRAW/DC/3 Add. 1 was adopted.

135.2 The CHAIRMAN then turned to Article 3, paragraph (4) [Applications] and gave the floor to the Director General.

136. Mr. BOGSCH (Director General of WIPO) said that Article 3, paragraph (4), stated the obvious, but it needed to be in the text of the Treaty. An application with the prescribed contents, in the prescribed form, filed by an eligible person and accompanied by the prescribed fee was required before registration could be effected. In that context, "prescribed" meant

prescribed in the Treaty, the Regulations and the Administrative Instructions. The proposed Regulations, which would be adopted by the Diplomatic Conference, would be subject to modification by the Assembly of the new Union. The same was true for the forms. The question of how the fees were to be set would be dealt with later. Who was entitled to file an application was the subject of paragraph (5).

137. Mrs. HÖKBORG (Sweden) referred to the last words in paragraph (4), "by a person entitled to file an application," and to paragraph (5) which defined who was entitled to file. She pointed out that paragraph (5) said "any natural person" and "any legal entity." She suggested that paragraph (4) be amended to read "by a person or legal entity entitled to file an application."

138. The CHAIRMAN agreed with the suggestion of the Delegation of Sweden.

139. Mr. BOGSCH (Director General of WIPO) said that the language should rather read "by a natural person or a legal entity" because a legal entity was a legal person. He suggested referring the question to the Drafting Committee because the proposed amendment might have an impact on other expressions in the draft Treaty and the draft Regulations.

140. The CHAIRMAN noted that no other delegation wanted to take the floor, and she held that there was agreement with the proposal of the Director General to refer paragraph (4) to the Drafting Committee to deal with the issue of referring both to natural persons and legal entities.

141. Article 3, paragraph (4) was adopted in substance subject to possible wording amendment by the Drafting Committee in respect of the issue mentioned in the preceding paragraph.

142. The CHAIRMAN opened the discussion on Article 3, paragraph (5) [Eligibility for Being an Applicant] and gave the floor to the Director General.

143.1 Mr. BOGSCH (Director General of WIPO) noted that paragraph (5) had two subparagraphs: (a) and (b). Subparagraph (a) stated when the applicant had to have certain connections with a Contracting State. Subparagraph (b) covered the circumstances when no such connection was required. Thus, subparagraph (a) provided that, subject to subparagraph (b), those who were entitled to file an application were: "any natural person who is a national of, is domiciled in, has his habitual residence in, or has a real and effective industrial or commercial establishment in, a Contracting State," and "any legal entity which is organized under the laws of, or has a real and effective industrial or commercial establishment in, a Contracting State." He noted that the proposed text had been taken, in part, from existing treaties administered by WIPO.

143.2 Subparagraph (b) dealt with applications relating to a pre-existing registration. In such a case, there were no restrictions: anybody could file an application. That subparagraph covered the situation where an original registration had been made by a national of a Contracting State but some of the rights of the original registrant had been transferred to a national of a State which was not a Contracting State. In such a case, an application could be filed by the licensee from the non-Contracting State to reflect his rights. Such an application should be acceptable because otherwise the Register would not accurately reflect the entire picture; the Register would be incomplete and could be misleading.

144. Mr. DOZORTSEV (Soviet Union) supported what had been said by the Director General. However, he wondered whether or not there should be further study on situations where rights in audiovisual works were originally owned by a person who was a national of a Contracting State but then those rights were transferred to another person and that other person wanted to register statements.

145. Mr. BOGSCH (Director General of WIPO) responded by saying that the text did not say what interest the original applicant had to have in the audiovisual work. It did not say that the original applicant had to be the producer, although in most cases it probably would be the producer who would make the initial registration. The applicant, simply, must have some interest in the work.

146. Mr. ORF (IFPI) asked what the effect of subparagraph (b) of Article 3(5) was on Article 4(1)(ii). He said, as he understood it, a national of a non-Contracting State could make a subsequent application. Thus, almost anyone in the world could file a subsequent application which contained statements that contradicted those statements that had been registered, thereby making the original application invalid.

147. Mr. BOGSCH (Director General of WIPO) said that the answer was that the two provisions dealt with completely different subjects. The question under discussion was only who was entitled to file initial and subsequent applications. Paragraph (5) did not deal with the legal effect of registered statements; that was another matter to be discussed in respect of Article 4.

148. Mr ORF (IFPI) said he understood from the response of the Director General that, in order to contradict a statement already in the Register, the criteria for being an applicant set out in subparagraph (a) of Article 3(5) did not have to be met.

149. Mr. BOGSCH (Director General of WIPO) answered that a statement could be contradicted only if that statement was already in the Register, and subparagraph (b) made it clear that, to file a subsequent application which might contradict a statement, the applicant did not have to have any connections with a Contracting State.

150. Mr. CORBET (CISAC) wondered whether, in addition to the territorial criteria, it might not be possible to go further and require an applicant who was not the author to justify his right. Thus, on the application form, a person who was not the author would have to show that he was entitled to file because the rights had been transferred to him.

151. Mr. BOGSCH (Director General of WIPO) referred to Rule 2(7) [Interest of the Applicant] and said that an applicant was required to show his interest in the work. The International Registry, however, would not verify that interest. Any person having an interest in a work who believed that registered statements were untrue could file an application contradicting those statements.

152.1 Mr. LECAT (France) referred to the French text of Article 3(5)(a)(i), and said it would be more appropriate if the text read as follows: "toute personne physique qui est ressortissante d'un Etat contractant ou qui a son domicile ou sa résidence habituelle ou un établissement industriel ou commercial effectif;" that would clearly show that domicile and residence were alternatives.

152.2 He also said that his Delegation had originally been against any provision limiting initial applications because it believed that the data base should be comprehensive. His Delegation, however, saw the wisdom of the proposed text and supported it.

153. Mr. NAVARRO GONZALEZ (Spain) said that his Delegation was in agreement with the proposed text with respect to both first applicants having connections to member countries and subsequent applicants not having to meet such conditions. He also agreed with the wording amendment proposed by the Delegation of France.

154. Mr. BOGSCH (Director General of WIPO) suggested that the wording amendment be referred to the Drafting Committee.

155. Mr. WINTER (United States of America) agreed with the Director General. He stated, however, that the proposed text was acceptable to his Delegation.

156. Article 3, paragraph (5) was adopted subject to possible wording amendment by the Drafting Committee.

Article 4: Legal Effect of the International Register
Article 13: Reservations to the Treaty

157. The CHAIRMAN opened the discussion on Article 4.

158. Mr. GERO (Canada) said that, for his Delegation, the substance of Article 4 would depend upon the substance of Article 13. He, therefore, proposed discussing the two articles together.

159. Mr. NDOYE (Senegal) said that he also preferred to take Articles 4 and 13 together.

160. The CHAIRMAN agreed with the proposal made by the Delegate of Canada and supported by the Delegate of Senegal. She, therefore, suggested discussing both articles together and deferring that discussion until the following day.

161. It was so decided. (Continued at paragraph 162.)

Second Meeting
Tuesday, April 11, 1989
Morning

Article 4: Legal Effect of the International Register

Article 13: Reservations to the Treaty (Continued from paragraph 161.)

162. The CHAIRMAN opened the meeting and turned to the discussions on Articles 4 and 13. She proposed that Article 4, paragraph (2) [Safeguard of Intellectual Property Laws and Treaties] be discussed first because the principle that the Treaty did not affect copyright law or any other intellectual property law was not controversial, and could quickly be adopted. She gave the floor to the Director General to explain paragraph (2).

163. Mr. BOGSCH (Director General of WIPO) said that, although it was not strictly necessary to spell out that the present Treaty did not affect any provision of any copyright law or copyright treaty, a provision stating that principle was included as a precautionary measure. It was clear that registration was a formality, and, under the Berne Convention, copyright protection must be free from any formality. Article 4, paragraph (1) made it clear that registration under the Treaty was not considered a condition of copyright protection. The Treaty was not a treaty on copyright or on intellectual property rights, and paragraph (2) confirmed that by stating that neither the copyright laws of a country nor the existing or future copyright or other intellectual property treaties would be influenced by the Treaty.

164. Mr. OYAMA (Japan) stressed that his Delegation fully agreed with the principle set in Article 4, paragraph (2) which provided that no provision of the Treaty should be interpreted as affecting the copyright laws and treaties. His Delegation considered that, in the Contracting States which were also party to the Berne Convention, the presumptive effect under Article 15 of the Berne Convention prevailed over the presumptive effect under Article 4, paragraph (1) of the proposed Treaty.

165. Mr. BOGSCH (Director General of WIPO) confirmed that the interpretation of the Delegate of Japan was correct. If there was any conflict between Article 15 of the Berne Convention and the present Treaty, Article 15 of the Berne Convention prevailed by virtue of paragraph (2).

166. Mr. AVERSA (Italy) said that Article 4, paragraph (2) was a very important provision and that his Delegation was in favor of the text as drafted, because it stated clearly that no copyright convention would be affected. Therefore, he said Article 14bis of the Berne Convention, which concerned the ownership of cinematographic works, was not affected either.

167. Mrs. HÖKBORG (Sweden) stated that Article 4, paragraph (2) contained a useful provision, and noted that, although it did not have to be spelled out in the Treaty, it should be understood that the proposed Treaty did not affect any other law either, for instance, the law on mortgages or the law on inheritances.

168. Mr. LECAT (France) made an observation concerning the wording in the French text of Article 4, paragraph (2). He said that the word "ni" should be substituted for "ou" in the middle of the sentence of that paragraph.

169. The CHAIRMAN suggested adopting the English text of Article 4, paragraph (2), and referring the French text of that paragraph to the Drafting Committee.

170. It was so decided.

171. The CHAIRMAN turned to Article 4, paragraph (1) [Legal Effect] and Article 13 and gave the floor to the Director General.

172.1 Mr. BOGSCH (Director General of WIPO) stated that the text of Article 4, paragraph (1) had been the subject of long and profound discussions at the preparatory meetings, which was understandable because that paragraph dealt with the evidentiary value of the statements recorded in the Register. Under that provision, the statements were to be considered as true until the contrary was proved. Thus, the statements were not conclusive evidence, just evidence which was good as long as the contrary was not proved.

172.2 There were two instances when the evidentiary value would not be given. The first was where the statement could not be true under the copyright law or any other intellectual property law of the State party to the Treaty. He gave the example of a producer who registered a statement in the International Register that he owned the copyright in all countries because of the fact that he was the producer. In some countries, the producer would be the initial copyright owner, while, in others, the various creative authors would be the initial owners. The copyright law of a country would determine who the initial copyright owner was.

172.3 The second situation, when the presumptive effect would not be given, was when one statement in the International Register was contradicted by another statement in the International Register. Here, the registration of the second statement destroyed the prima facie effect initially accorded to the first statement.

172.4 The issue of conflicts raised questions about the scope of the examination of applications, and he suggested that the discussion on that issue should be postponed until Rules 2 and 3 of the Regulations were taken up. He noted that several provisions of those rules were intended to promote the reliability of the Register; for example, the applicant must state the source of his right and whether the right was originally vested in him or was derived from another. If the right was derived from another, then he must state from whom he had obtained the right and describe the legal means by which he obtained it. Thus, every bald statement would not be accepted; there were certain requirements for putting statements into the Register.

172.5 He noted that a previous discussion of Article 4, paragraph (1) had led to the inclusion of Article 13, paragraph (2). The Delegation of the United Kingdom and several other Delegations had stated that giving the prima facie effect to all statements would not be acceptable in their countries and asked for the possibility of a limited reservation. In principle, reservations were not a good thing in a treaty because all countries were not on the same footing; some countries undertook more obligations than others. However, the question of whether to allow any reservations was an open one; therefore, Article 13, paragraph (2) was in square brackets. Although he hoped it would not be needed, if there were countries that insisted on it, the brackets could be deleted.

172.6 Article 13, paragraph (2) in essence stated that the legal effect of Article 4, paragraph (1) might be limited to statements concerning rights of exploitation. Thus, the evidentiary effect of the Treaty could be limited to what was essential in the Treaty, namely the rights of exploitation.

173. Mr. FERNAU (Federal Republic of Germany) noted that there were some limits on the examination of the merits of statements by the International Bureau of WIPO and said that his Delegation saw a danger with respect to Article 4, paragraph (1), subparagraph (ii). Users might try to jeopardize the legal effects of previous statements by entering a contradictory statement if such statements would be entered into the Register without in depth examination. Whether the provisions contained in the Regulations safeguarded that only true statements would be registered in the Register was a question that remained still open.

174. Mr. NDOYE (Senegal) indicated that further study was needed to find out whether, in his country, the legal effect given to the statements in the Register would pose problems, e.g., in respect of the burden of proof. Therefore, at the given stage of the debate, he said he should express certain reservations in respect of the draft text.

175. Mr. KITANI (Japan) said that his Delegation had some difficulty in accepting the presumptive evidentiary value under the national legal system of his country to the breadth of statements permitted. His Delegation considered that Contracting States should at least be allowed to restrict the scope of the evidentiary value, and he requested that the square brackets in Article 13, paragraph (2) be removed. Furthermore, his Delegation believed that it was most important to assure the veracity of the statements contained in the applications in order to achieve the effectiveness of the Registry; therefore, all appropriate steps should be taken to assure such veracity.

176. Mr. AVERSA (Italy) said that his Delegation agreed with the proposed text of Article 4, paragraph (1), subparagraphs (i) and (ii). He said that it was not simply a question of proof, but of presumption which was rebuttable. He added that, in that specific context, the Treaty was flexible and provided room for interpretation at the national level.

177.1 Mr. GERO (Canada) made three points. First, he supported the Delegation of Japan in its view that Article 13, paragraph (2) was vital, noting that Canada had a federal system of government, and that the Federal Government of Canada would have difficulty making commitments beyond those relating to intellectual property rights. Canada, therefore, would require the reservation in paragraph (2).

177.2 Secondly, he suggested that the Drafting Committee might want to consider clarifying the scope of the reservation, and he specifically suggested inclusion of the words "intellectual property" so that the paragraph read that the presumption might not apply to statements which did not concern "the exploitation of intellectual property rights in audiovisual works."

177.3 Thirdly, he noted that the relationship between the International Register and national registers was not specifically addressed in the Treaty. He said that the text might be changed to clarify the relationship and, e.g., the text of Article 4(1)(i) could read "where the statement cannot be valid under the copyright law, or any other law or register concerning intellectual property rights in audiovisual works, of that State."

178. Mr. TROMBETTA (Argentina) stated that, at first, he had some doubts concerning possible conflicts between national copyright laws and obligations imposed by Article 4. However, he found, after a thorough analysis, that paragraphs (1)(i) and (2) contained all of the necessary guarantees so that conflicts would be avoided. He stated that it was clear that national copyright laws could remain completely intact, and the Treaty would not create any inconvenience.

179.1 Mr. ZUTSHI (India) said that his Delegation considered Article 4, read with Article 13, to be the very heart of the Treaty. He emphasized that Article 4, paragraph (1) only provided for the recognition of a prima facie evidentiary value, which, as it was drafted, did not envisage any changes in the national legislation of any sovereign State in regard to matters covered by copyright law.

179.2 On the basis of the exception envisaged under Article 13, paragraph (2), even the evidentiary value of the statements could be limited to the statements concerning exploitation rights. He said that, in the view of his Delegation, that was the minimum that could be required if the Register was to have any practical value.

180. Mrs. RENAUDIN (France) recalled that, as a matter of principle, the French Government was not in favor of having reservations in any treaty, and it did not envisage making, a priori, reservations on the basis of Article 13. Thus, the Delegation of France was in favor of the deletion of Article 13, paragraph (2). However, taking into account the remarks made by the Director General and the apparent necessity of such reservations, in order not to diminish the substance of the Treaty, it was ready to go along with the majority.

181.1 Ms. PETERS (United States of America) stated that her country would prefer a treaty without reservations. However, her Delegation believed that it was important for as many countries as possible to adhere to the Treaty. In that light, her country was prepared to accept the limited reservation permitted in Article 13, paragraph (2).

181.2 Additionally, her Delegation supported Article 4, paragraph (1) as drafted. She noted that the United States of America was familiar with the concept of prima facie evidence, and that, her country's national register issued certificates that were entitled to prima facie evidentiary weight; that, in general, merely shifted the burden of proof. Such a presumption was essential to the International Register; that was what United States film companies wanted. She noted that conflicts did arise in the United States registration system. The United States Copyright Office did not resolve conflicts. Either the parties worked it out or courts decided. She suggested that such a system was appropriate for the International Registry. In the United States of America, when a court decided who an owner was, there was a procedure for recording that fact in the United States Copyright Office. She said the International Register could develop similar procedures.

182. Mr. BOYTHA (Hungary) thought that Article 4 was the most important part of the proposed Treaty. He agreed with the text as proposed; however, to accomodate the concerns of the Delegation of Canada concerning possible conflicts between entries in the International Register and a national register, he would agree with completing Article 4, paragraph (1)(ii) by adding at the end: "or by a statement in the national register of that State, if any."

183. Mr. NAVARRO GONZALES (Spain) stated that he considered Article 4, and particularly paragraph (2), appropriately drafted. The text made sure that all inconveniences could be avoided and made it clear that national law would be applied.

184. Mr. TELIČKA (Czechoslovakia) asked who would decide when the contrary was proved, and in what forum.

185. Mr. BOGSCH (Director General of WIPO) answered that, if there was litigation, the courts would decide. If there was no litigation, the parties could reach agreement. But if they could not and the issue had to be decided, one would have to go to the courts.

186. Mrs. KOSKINEN (Finland) said that statements in the Register must be considered as true until the contrary was proved; thus, even untrue statements would have the same evidentiary value. Therefore, all the efforts to ensure the correctness of information should be studied carefully. However, if the statement could not be valid under the copyright law of the country in question, the evidentiary value would not apply. That was in conformity with the safeguard clause of Article 4, paragraph (2) which stated that, no provision in the Treaty could alter, either enlarge or diminish, the copyright protection of the national copyright law. Therefore, her Delegation supported the text of the Article 4, paragraph (1), and accepted Article 13 with the possibility for a reservation.

187. Mr. MORFÍN PATRACA (Mexico) noted his concern about intentional false statements. He said he understood that it would be difficult to impose an obligation in the Treaty which would require the imposition of penal sanctions, but penal sanctions applied at national level could greatly increase the credibility of the statements that were registered.

188. Mrs. HÖKBORG (Sweden) stated that Article 4 was the cornerstone of the Treaty. It was her understanding that many different statements and documents could be entered into the International Register, e.g., statements that limited certain rights of exploitation due to mortgages, liens and loans. Although she agreed that those statements should be given prima facie weight concerning the rights and interests in the audiovisual work, no legal action should be brought about in respect of the mortgages, loans, etc., as a result of registering such statements. E.g., a mortgage should not be foreclosed on the basis of a statement in the International Register. She stated that the reservation provided in Article 13, paragraph (2) might take care of her concern.

189. Mr. YDE (Denmark) recalled that his country had welcomed the Treaty and its purposes, as described in the preamble of the draft. He added that to have Article 4 without the possibility of the reservation in Article 13, paragraph (2), would cause legal problems in his country, and, therefore, his Delegation supported Article 13, paragraph (2).

190. Mr. GERO (Canada) returned to the question of the preeminence of national registers versus the International Register. He said Article 4, paragraph (1), subparagraph (ii) might read "or a register created under a State's own national law, if any."

191. Mr. BOGSCH (Director General of WIPO) asked the Canadian Delegation whether Canada had a national register, and, if it did, whether it thought that there was a problem concerning contradictions between Canada's national register and the International Register. He added that he saw some danger in referring to national registers and making national registers superior to the International Register. That would mean that everybody would have to consult the national registers to know whether there was any legal effect to statements in the International Register; if there were any provisions in the national copyright law on the legal effect of the national register, the national law would apply. The proposed Treaty did not annul the effect of national law. If a country had a national registration system for copyright, the safeguard clause of Article 4 would apply.

192. Mr. GERO (Canada) responded that Canada did have a national register, created under its law. He asked what would happen if there was a statement in the International Register that contradicted a statement in the national register, and the statement in the International Register was one that did not contradict the national law. In such a case, he questioned whether the statement in the International Register should have preeminence over the national register.

193. Mr. BOGSCH (Director General of WIPO) said that before going any further it was important to know what the effect of the Canadian Register was. He asked whether registration created ownership or a presumption of ownership.

194. Mrs. DANIEL (Canada) replied that the Canadian national register covered all types of works protected by copyright, and its use was optional. There was no examination but only a requirement of a signature and an attestation that the information given was true. The Canadian law provided for a presumption that the facts or information were true unless the contrary was proved. Thus, the Canadian national register was the same type as the one being proposed here. She noted that the problem of two contradictory statements within the International Register was covered; the Treaty said the presumption did not apply. The same problem, however, existed in relation to the Canadian national register and that question must be dealt with. The question was, if one had two equal presumptions, for example, as to who was the producer, and the International Register said it was Mr. X and the Canadian register said it was Mr. Y, what happened. She noted that she did not believe that a statement registered in the International Register was more valid than one registered in a national register. She stated that both should fall.

195. The CHAIRMAN stated that she saw the Canadian point, but wondered how often a contradiction between the International Register and a national register would occur. She noted that that could occur, but generally the statements in both registers would be identical.

196. Mr. DOZORTSEV (Soviet Union) stressed that the purpose of the Diplomatic Conference was to try and reach an agreement at the international level. That would be possible only if the representatives of the various governments understood that it would not be sufficient to merely describe the existing situation and to try to adapt the Treaty to it. Instead, to achieve the purposes set forth in the preamble of the Treaty, common solutions based on reasonable compromises were needed. He stated that Articles 4 and 13 offered an appropriate basis for such a compromise.

197. Mr. NDOYE (Senegal) said that a national system of registration of all categories of works existed in Senegal. It was a documentary system to answer any request at the level of authors' societies. He recalled that one of the main concerns of WIPO and of States, in general, was to fight against piracy. As an example of piracy, he mentioned piracy of videograms in certain countries where pirates managed to escape the vigilance of authors' societies. He wondered what would happen if a pirate duplicated a work without permission and then registered it with the International Registry. Taking into account such a possibility, the International Registry should take all possible precautions before making a registration.

198. Mr. BOGSCH (Director General of WIPO) assured the Delegate of Senegal that, as indicated in the Rules, any applicant would have to indicate his interest in or concerning the work and the source of his rights. If those statements, among others, were missing, the International Bureau of WIPO would refuse the application.

199.1 Ms. PETERS (United States of America) intervened to describe the United States Copyright Office experience with pirates. She stated that pirates did not register with the United States Copyright Office. That was because pirates operated underground; they were not willing to put information in a public register about who they were or where they could be found. The United States of America had a problem with fraudulent copyright certificates, that was, with people manufacturing what looked like an official certificate of the United States Copyright Office, but that, she said, was a very different problem.

199.2 The United States registration system was similar to that of Canada, i.e., the law afforded registrations prima facie evidentiary weight. She said, however, that her Delegation read Article 4, paragraph (2) of the Treaty as not affecting the copyright law, and, therefore, not affecting the weight given to the certificates of the United States Copyright Office. The United States copyright law provided that the facts stated in certificates would be prima facie valid if the registration was made within five years of the first publication. She said the Delegation of the United States of America saw little chance of a conflict because the United States certificates contained only a few facts, the title of the work, the author under United States law, the person or entity that owned all of the rights in the United States, the date of first publication, if any, the date when the work was completed, and,

if the work was a derivative work, a statement of the new material. She stated that she doubted that there would be many conflicts between the certificates of the Copyright Office and those of the proposed International Registry. However, if there was such a conflict, the court would have to resolve the conflict. She stated that, in any case, the Delegation of the United States of America saw no problem with the text as drafted.

199.3 She then asked Mr. BRENNAN (United States of America), as a representative of a film company who used the United States registration system, to add his observations.

199.4 Mr. BRENNAN (United States of America) said that pirates would not register with the International Register because the name and address of the applicant were required and that would provide police or civil authorities with the means to find them. With regard to statements that were truly contradictory, national courts would have to determine which statement would prevail. He noted that the International Registry would assist the trade in making filings but it would be up to the members of the trade to police the Register. They must actively review what was in the Register, read the Gazette, and take active measures to correct contradictory statements.

200. Mr. PALENFO (Burkina Faso) stated that his Government decided to participate in the Conference for the conclusion of the Treaty, because it was of the opinion that the establishment of the proposed register was needed, and it was necessary to give the registered statements a certain legal effect to make it effective. He said that his Delegation agreed with Article 4 as it stood; and, as regards Article 13, he stated he wanted the possibility of a reservation.

201. Mrs. HÖKBORG (Sweden) stated that her earlier intervention on Article 13 was intended to clarify and restrict the scope of reservations because she agreed with the Director General of WIPO that reservations could add confusion to the Treaty. She, therefore, supported the Canadian proposal, that Article 13, paragraph (2) should read "the exploitation of intellectual property rights." She said she would like a further restriction as to the kind of reservations that States could make. Her problem with that paragraph, she said, was the words "relate to." That expression could leave the field wide open as to the kind of reservations that could be made. Therefore, she proposed adjusting the text to say "in respect of statements which do not regard the exploitation of intellectual property rights." Such an amendment might restrict the scope of the reservations and would make it possible to exclude, e.g., statements referring to the constitution on mortgages or loans.

202. Mr. LECAT (France) thought that a great part of the difficulties linked to the legal effect was, inter alia, the possible contradiction between the statements in the International Register and those in a national register. The legal effect was a mere presumption, and, in the case of a contradiction, it was up to the national judge to resolve it. He drew the attention of the participants to the interesting statement of the Delegate of Mexico, and noted

that it would be logical for each Member State to apply penal sanctions to intentionally false statements. The Treaty could not directly provide penal sanctions or solve problems related to such sanctions. However, a general provision saying that Member States could penalize false statements could be envisaged.

203.1 Mr. BOGSCH (Director General of WIPO) noted that the question of penal sanctions had been considered at several previous meetings. The requirement of penal sanctions, however, had not been adopted, for at least three reasons. First, such a requirement would slow down the ratification process; there would be enormous delays in the various countries. That was especially true in federal States where the criminal jurisdiction was divided between the federal and local governments. Second, the principle of penal sanctions in relation to the International Register might evoke some resistance. Third, and that was the most important, from a practical point of view, it would be rare that a criminal court of a country could reach the person who had made false statements. What was involved was a worldwide register, and once an initial registration had been made, a citizen of any country might file an application.

203.2 With regard to the proposal by the Delegation of Sweden, he said that he personally found it acceptable, but he believed that the proposed text did not necessarily narrow the scope of the reservation, rather it could enlarge the scope. It should be thoroughly considered whether or not the proposed language restricted or enlarged the scope of the reservation.

204. Mr. NDOYE (Senegal) said that he was concerned with the same preoccupation as that of the Director General. He added that, as regards the presumption provided by Article 4, everybody knew that any proof had a relative value and was not absolute.

205. The CHAIRMAN commented on the issue of pirates using the Register. She agreed that pirates would not use it because they did not want to come to the attention of public authorities. Once a public authority had the name and address of a suspected pirate, he would face sanctions. So, she said, one need not fear that the Register might be used by pirates.

206. Mr. GROSSENBACHER (Switzerland) noted that the principle on which Article 4 was based had not been opposed up to now. His Delegation was a little bit surprised by that because, at the preparatory meetings, that kind of provision had caused difficulties for the Delegations of various States. He pointed out that those difficulties had lead several Delegations to propose some amendments to avoid conflicts between the presumptions under the proposed Treaty, on the one hand, and presumptions under national laws on legal proceedings and presumptions concerning statements in national registers, on the other hand. Certain Delegations wished to avoid such difficulties by using reservations; that was proof of the fact that the presumption in favor of statements in the International Register caused problems which came mainly from the fact that the content of the Register would go beyond the framework

of copyright law and concern a number of legal fields having an impact on copyright but being governed by other specific rules. Taking into account that situation, it seemed to the Swiss Delegation that one was aiming toward a compromise which would complicate the application of Article 4 by national courts. He indicated that his Delegation would need to make reservations. He remarked that Article 4 might keep those States which would only be interested in a worldwide register of audiovisual works as a data bank away from the Treaty. He added that his Delegation would certainly not oppose the majority which approved Article 4, but it would want the possibility of making reservations along the lines of the proposals of the Canadian and Swedish Delegations. It did, however, regret that a reservation which might compromise the universal character of the Register was needed.

207. Mr. NETTEL (Austria) said that the Austrian Ministry of Justice, which had looked at the text of the draft Treaty very carefully, could fully accept it, because the Austrian legal system contained the concept of rebuttable presumptions. As to the question of reservations, he stated he was not a friend of reservations in international treaties because they allowed different rights and obligations for States party to a treaty, a situation which was never desirable. On the other hand, the only way to gather enough States around an idea embodied in the Treaty was to give them the possibility of opting out on questions which were not too essential to the Treaty. Reservations might be used if they did not touch the heart of a Treaty. Therefore, if the only way to find common support for the Register was through some reservations, then they should be allowed. His Delegation also supported adding the words "intellectual property" before the word "rights" so that Article 13, paragraph (2) would read, "do not relate to the exploitation of intellectual property rights in audiovisual works." Finally, as to the idea of penal sanctions, he was of the view that no provision on such sanctions should be added to the Treaty. A requirement concerning penal sanctions could cause certain countries not to ratify the Treaty and that was not a desired result.

208. Mr. WINTER (United States of America) noted that the Delegation of the United States of America, at one of the earlier meetings, had raised the issue of penal sanctions, but there was no support whatsoever for such sanctions. His Delegation believed that putting an obligation in the Treaty to enact penal legislation would greatly delay the implementation of the Treaty, and his country would like to see the Treaty come into force as soon as possible. Since the United States of America, on the basis of its experience, did not believe that there would be any significant problems with deliberately false registrations, it would not support any provision which would impose an obligation on Member States to enact penal sanctions.

209. The CHAIRMAN summarized the debate. She noted that there was no question about the importance and necessity of Article 4, and said that Article 4 together with the principle stated in Article 13, paragraph (2), was favored by the Delegations. She also noted that there were some proposals made by the Delegations of Canada and Sweden, respectively. The first one was to insert in Article 13, paragraph (2) the words "intellectual property." The second proposal was also concerning Article 13, paragraph (2), where the words

"which do not relate to the exploitation" would be deleted and the words "which do not regard the exploitation" would be inserted instead. The third issue related to contradictory statements in the International Register and a national register. She noted that, in such a case, there were two equal rebuttable presumptions, and that was a problem to be solved by the national judge. She also noted that, in her country, the two rebuttable presumptions would cancel each other, and then the normal rules of procedure would apply. She proposed leaving the text as it was, adding nothing to the Treaty about conflicting registers, and leaving the question to the national courts.

210. Mr. BOGSCH (Director General of WIPO) supported the conclusions of the Chairman. He stated that he believed that it was the best solution if the Treaty remained as it was. If there were conflicts with a national register, the judge would have to decide.

211. Mr. GERO (Canada) said that his Delegation was also of the view that the proposed provisions of the Treaty should not be modified, but it also proposed that the record should clearly show that conflicting presumptions following from the Treaty, on the one hand, and from national law, on the other, would cancel themselves out.

212. The CHAIRMAN stated that the records would reflect what had been referred to by the Delegation of Canada. She added that, in her country, a judge would find that two rebuttable presumptions on the same subject cancelled each other out; moreover, she believed that would be the same in other countries.

213. Mr. GAMBOA-ALDER (Colombia) stated that the possible conflict between statements in the International Register and statements in a national register did not raise any difficulties for Colombia; moreover, they should not raise difficulties in other countries because the Treaty was very flexible in that respect. It was up to the national courts to settle any questions of possible conflicts. He said there were appropriate solutions to such problems in the legislation and case law of every country.

214. The CHAIRMAN repeated that if there were two presumptions in the same case, the judge of the Member State concerned would decide how he valued the proof. She added she assumed that such presumptions would cancel each other out.

215. Mr. GAMBOA-ALDER (Colombia) expressed his agreement with the views of the Chairman.

216. Mr. NDOYE (Senegal) said that, in countries like his, the judge was under the authority of the law only. In certain precise areas, his authority could not be questioned. In the case of a conflict between a national register and the International Register, it should be the national judge who should decide how the evidence was to be evaluated.

217. Mr. HAMDANE (Lebanon) voiced his hesitation about accepting as a kind of precedent that, when there was a conflict between national laws and an international regulation where the State was a party to such international regulation, the national laws or regulations could prevail. States that became party to the Treaty should accept the obligations under the Treaty, and the Treaty should prevail. He asked what would happen if there were nationals from different countries and there was a conflict between national registers of different countries party to the proposed Treaty.

218. The CHAIRMAN said that she doubted that different national registers would compete in a third country with the International Register. A national register had significance only in that country, while the International Register went beyond national borders.

219. Mr. GROSSENBACHER (Switzerland) was of the opinion that certain presumptions could neutralize the presumption under Article 4, depending on the national legislation. It could be a presumption which would not result from a possible national register but from a presumption provided in any field of national law. It could also be a presumption having the same effect as one resulting from a registration in the International Register, apart from any priority question of the registration. He thought that the question of priority should be clarified in the text of Article 4 or, at least, in the records.

220. Mr. BOGSCH (Director General of WIPO) drew attention to the earlier statement of the Delegate of India who said that Article 4 was the heart of the Treaty. He observed that, if one attacked the heart too much, and on all sides, it would have a heart attack; he expressed the view that further discussion on that issue would not be fruitful. He noted that once a controversy was before a judge, the judge would decide how much weight he would give a rebuttable presumption and whether the rebuttal would be easier if there was a contrary statement in the national register. That, he said, should reassure those countries that had national registers and who wanted their national registers to be, at least, on the same level as the International Register.

221. Mr. NDOYE (Senegal) stressed that as regards presumptions, the autonomy of the judge's conscience should absolutely be preserved, and found that the proposed Treaty was in harmony with that principle.

222. The CHAIRMAN reminded the delegates that the question of conflicts would arise in only a very small number of cases. It was appropriate to leave the issue to the national judge who had a case in front of him and who had a very good idea what was going on.

223. Mr. DOZORTSEV (Soviet Union) stressed the importance of Article 4. He said that that Article might cause some problems to countries who did not have legislation recognizing the principle of prima facie evidentiary value. Adherence to the Treaty could be difficult for such countries. He said that Article 13, paragraph (2), might overcome that obstacle and might facilitate such countries' accession. The scope of possible reservations should, however, be made absolutely clear to avoid any misunderstandings.

224. Mr. AVERSA (Italy) recalled that Article 15 of the Berne Convention established a presumption, and the national courts were left to give precise meaning to that. His Delegation was in favor of maintaining Article 4, paragraph (1) as it was in the draft Treaty. As regards Article 13, he pointed out that his Delegation was not in favor of reservations which would restrict the value of the Treaty, but he was ready to accept paragraph (2) as a compromise.

225. Mr. HAMDANE (Lebanon) asked what would be the consequences in a case where a national judge ruled in favor of a national register rather than the International Register. He noted he was referring only to a conflict of laws question, and wondered what would be the result on other countries party to that Treaty if the ruling of the national judge would be in favor of national register rather than of the International Register.

226. The CHAIRMAN stated that she did not think there would be a problem in other Member States. First, not all Member States had a national register, so if a case arose there, the International Register would prevail; moreover, each case must be treated according to the facts of the case, and it might well be that in one case, in the same country, the judge would say the International Register prevailed, and in another case he might say the national register prevailed. It was up to the judge. The judge had the ability to decide, and what a judge decided in one country would not bind or have influence on the judges in other countries. That was the result if the text was kept as it was.

227. Mr. WINTER (United States of America) suggested adjourning the discussion on the relationship of the International Register and national registers so that, during the lunch hour, everyone could reconsider the very important problems involved.

228. Mr. BOYTHA (Hungary) said his Delegation supported the proposal to adjourn the discussion.

229. Mr. GROSSENBACHER (Switzerland) also supported the proposal made by the Delegation of the United States of America.

230. The CHAIRMAN stated that, if there was no opposition, the discussion was adjourned and would be resumed at the meeting in the afternoon.

231. It was so decided. (Continued at paragraph 232.)

Third Meeting
Tuesday, April 11, 1989
Afternoon

Article 4: Legal Effect of the International Register
(Continued from paragraph 231)

232. The CHAIRMAN resumed the discussion on the above-mentioned provisions and opened the floor for additional statements on the relationship of national registers to the International Register.

233. Mr. WINTER (United States of America) said that his Delegation supported Article 4, paragraph (1) of the text as drafted. He said the United States Register was created under its national copyright law, and the certificates issued by the United States Copyright Office were entitled to prima facie evidentiary effect. His Delegation believed that what constituted contrary proof was to be determined by national courts; therefore, if there was a conflict between a national register and the International Register, each nation's court would apply its country's law, taking into account the safeguard clause of Article 4, paragraph (2), which stated that no provision of the Treaty should be interpreted as affecting the copyright law or any other law concerning intellectual property rights of any Contracting State.

234. Mr. GERO (Canada) noted for the record that Canada had the same interpretation as the United States of America.

235. Mr. NDOYE (Senegal) stated he entirely agreed with the opinion of the Delegation of the United States of America.

236. The CHAIRMAN called for a vote on the question of whether the text of Article 4, paragraph (1), should remain as it was. The vote was 31 for the text, 3 abstentions and none against.

237. Article 4, paragraph (1) was adopted as appearing in the draft.

238. Mr. HAMDANE (Lebanon) intervened to state for the record that he had not participated in the voting.

Article 13: Reservations to the Treaty

239. The CHAIRMAN declared that the next point was the proposal made by the Canadian Delegation to insert in Article 13, paragraph (2), in the third line, in the English text, before the words "rights," the words "intellectual property," so that the first sentence of the paragraph would read "Any State, upon becoming party to this Treaty, may, in a notification deposited with the Director General, declare that it will not apply the provisions of Article 4(1) in respect of statements which do not relate to the exploitation of intellectual property rights in audiovisual works."

240. The Canadian proposal was adopted.

241. The CHAIRMAN turned to the proposal made by the Swedish Delegate which was to amend the text of Article 13, paragraph (2) by replacing the words "do not relate" with "do not regard."

242. Mr. DOZORTSEV (Soviet Union) proposed that the Drafting Committee should try to make the meaning of Article 13, paragraph (2) clearer. He said that might be done by changing the double negatives that were presently in the text.

243. Mr. NETTEL (Austria) stated that he believed that the remark made by the Delegation of the Soviet Union might only concern the Russian text, because he did not find a double negative in the English text. Nevertheless, he supported the proposal that the text be submitted to the Drafting Committee to come up with a text that would be satisfactory to all.

244. Mrs. HÖKBORG (Sweden) stated that she had proposed that the word "relate" be substituted with the word "regard" to show that the legal effect of Article 4 would not be applied in respect of statements which did not regard the exploitation of intellectual property rights; however, the word "concern" could also be used. She stated that, in attempting to clarify the scope of the reservations in Article 13, paragraph (2), she might have actually widened the scope of the reservations permitted. However, she thought that it was important to state that the legal effect of statements in the Register should not apply, e.g., in a case concerning inheritance, where there was a dispute among heirs. She went on to state that she was not proposing that the text of the Treaty be changed to say that the legal effect of the Treaty would be limited to legal disputes arising under intellectual property laws and not under any other law, but she did want that clarification to be in the records. She noted that there were many different laws, and there were presumptions in some of those laws. She said she wanted it to be absolutely clear that those laws concerning subject matter other than intellectual property would not be affected by statements in the International Register.

245. Mr. BOGSCH (Director General of WIPO) said that the Delegation of Sweden had suggested a word--"concern"--which was even better than the word--"regard"--also proposed by her. He agreed that the best solution would seem to be to replace the word "relate" by the word "concern" in Article 13, paragraph (2).

246. Mr. ZUTSHI (India) recalled that there were two concerns which had been expressed. One concern, expressed by the Delegation of the Soviet Union, regarded the use of a double negative which resulted in the meaning not being entirely clear. The other was about the scope of the reservations. He proposed the following language, which could be referred to the Drafting

Committee: "Any State, upon becoming party to this Treaty, may, in a notification deposited with the Director General, declare that it will limit/confine the application of Article 4(1) in respect of statements relating to the exploitation of intellectual property rights in the audiovisual works."

247. Mr. BOGSCH (Director General of WIPO) agreed that that could be referred to the Drafting Committee. He noted that it was unusual to draft a reservation in any form other than a negative one, because in the case of a reservation one had to apply everything "except ...;" he said that the proposed language was clearer.

248. Mr. HAMDANE (Lebanon) intervened to question the voting on Article 4, paragraph (1) reminding the Delegations that his Delegation had not participated in the voting. He wondered how the votes had been counted.

249. Mr. BOGSCH (Director General of WIPO) explained that, in the Main Committee, only a simple majority was required. With regard to the said vote, he noted that there was no opposition and only the positive and negative votes were counted. Under the Rules of Procedure, abstentions did not count. Therefore, he said, the vote was unanimous under the Rules of Procedure. He also stated that, since the Credentials Committee had not yet made a report, everyone had a right to vote. He concluded by stating that he believed the vote was completely regular, and the vote was unanimous.

250. Mr. HAMDANE (Lebanon) stated that he believed that the amendment, according to the Rules of Procedure, required a two thirds majority of those voting. He referred to Rule 34 of the Rules of Procedure. He said the two thirds was determined by the number of affirmative and negative votes as well as by the number of declared abstentions. He requested the number of affirmative votes that had been cast.

251. The CHAIRMAN considered that there was a misunderstanding. Rule 34, paragraph 1(ii), dealt with the adoption of any amendment to the Rules of Procedure, not with amendments to "the Basic Proposal" made in the Main Committee.

252. Mr. BOGSCH (Director General of WIPO) confirmed the Chairman's statement. Rule 34 of the Rules of Procedure provided that all decisions of all bodies--including the Conference meeting in primary and the committees (and the Main Committee was one of the committees)--required a simple majority. He noted there were a few exceptions, none of which applied.

253. The CHAIRMAN suggested that the proposal made by the Delegations of the Soviet Union and India, regarding the elimination of the double negative in Article 13, paragraph (2) and the proposal of the Delegation of Sweden to replace the word "relate" by the word "concern" in the same paragraph should be further considered by the Drafting Committee, and stated that there was agreement on that solution.

254. Mr. GERO (Canada) asked whether the square brackets of Article 13 had been removed.

255. The CHAIRMAN replied that it was true that Article 13 was still in square brackets. However, there had been such an overwhelming majority in favor of removing the brackets in Article 13 that she held it that the removal of the brackets had been adopted by the majority. She stated she did not think a vote was necessary. She noted the nodding of agreement of the Delegations.

256. Article 13, with the brackets deleted, was adopted in substance, subject to changes--particularly to changes that might follow from the proposals mentioned under paragraph 253--which might be made in the Drafting Committee.

Article 5: Assembly

257. The CHAIRMAN turned to Article 5 and gave the floor to the Director General.

258. Mr. BOGSCH (Director General of WIPO) said Article 5 concerned the Assembly, the governing body of the Union. The Assemblies of the other Unions administered by WIPO were similar. A major exception was item (vii) of paragraph 2(a) [in the final text, paragraph 3(a)] which provided that the Assembly should establish a Consultative Committee, consisting of representatives of the interested non-governmental organizations, to facilitate the work of the Union. In accordance with Rules 8 and 9 of the Regulations, that Committee would give advice on the schedule of fees, the Administrative Instructions and the application forms. Item (vii) was indispensable because, although the Treaty would be concluded by the governments, the Register would serve mainly private interests and be used by private persons. In order to have a reasonable and workable system that satisfied the users, advice from the potential users of the Register was essential.

259.1 Mr. HERTEL (German Democratic Republic) said his Delegation would prefer an Executive Committee consisting of representatives of Member States, rather than a committee limited to non-governmental organizations. The establishment of an Executive Committee would not preclude close cooperation with interested non-governmental organizations.

259.2 He went on to say that there seemed to be a negotiating process between the Director General and the non-governmental organizations, and the governments were excluded. His Delegation feared that conflicts would result. His main concern was not a desire to establish an Executive Committee but to avoid conflicts between the Director General, the Assembly, the governments and the non-governmental organizations.

259.3 In case there was no support for an Executive Committee, he proposed amending Rules 8 and 9 of the Regulations. Rule 8 dealt with the fees; he recalled the general debate where many Delegations had expressed some concern over the amounts of the fees. Governments were interested in the question of the fees, and they should not be excluded from the decision on the level of the fees. He, therefore, proposed adding the following, "and after the approval of the Assembly," to the end of the first sentence of Rule 8, paragraph (1). He proposed the addition of the same wording to Rule 9, paragraph (2)(a).

259.4 He then proposed amending Article 5 by adding a new item to paragraph (2)(a) [in the final text, paragraph (3)(a)]; that item would become (viii) and read: "approve the fees and the Administrative Instructions." The subsequent items would have to be renumbered accordingly.

260. The CHAIRMAN stated that amendments only to Article 5 should be dealt with for the time being. The proposed amendments to Rules 8 and 9 would be discussed when those rules were before the Main Committee.

261.1 Mr. KITANI (Japan) said his Delegation had some doubts about the composition of the Consultative Committee. He asked why governmental representatives were excluded from that Committee.

261.2 He said his Delegation was also concerned with the expenditures of the Union and believed that they should be reduced as much as possible. Therefore, he proposed that the last part of Article 5, paragraph (1), subparagraph (c)--"except for the travel expenses and the subsistence allowance of one delegate for each Contracting State, which shall be paid from the funds of the Union [once the International Register becomes self-supporting]"--should be deleted.

262.1 Mr. BOGSCH (Director General of WIPO) said that the Union that was to be formed should be compared to the other registration unions. The Madrid Registration Union did not have an Executive Committee, and the Hague Industrial Design Registration Union had no Executive Committee. The Patent Cooperation Treaty provided for an Executive Committee, but the relevant provision had never been implemented. That was because the Assembly had found it very difficult to decide what the powers of the Committee should be and which countries should be selected to become members.

262.2 In reply to the remarks of the Delegation of the German Democratic Republic and to some extent to the Delegation of Japan, he said there would be no negotiations between the Director General and the Consultative Committee.

The Consultative Committee would only offer the opportunity to make suggestions. Moreover, no conflict with government interests seemed possible. After appropriate input from the Consultative Committee, the Director General set the fees and drew up the Administrative Instructions and application forms... The Assembly could, however, instruct him to modify them. Therefore, it was the Assembly that had the power of control. The Assembly could decide freely; it did not have to negotiate or agree with anyone.

262.3 On the composition of the Committee, a combination of governments and non-governmental organizations would be difficult. What was needed in that context was direct contact with the private organizations who knew the needs and wishes of their members. That input was absolutely necessary.

263.1 Mrs. HÖKBORG (Sweden) proposed deleting the brackets in Article 5, paragraph (1)(c)[in the final text, paragraph (2)]. She said it was important that the Register became self-supporting before the expenses of governments were paid for.

263.2 Then she asked for a clarification of the scope of Article 5, paragraph (2)(a)(vii) and (viii) [in the final text, paragraph (3)(a)(vii) and (ix)]. She wondered whether national as well as international organizations were intended to be covered by in the phrase "non-governmental organizations."

264.1 Mr. DOZORTSEV (Soviet Union) said that his Delegation agreed with paragraph (1), and, he proposed deleting the brackets in subparagraph (c) [in the final text, paragraph (2)].

264.2 Also, his Delegation agreed in general with paragraph (2) [in the final text, paragraph (3)]; he suggested, however, that some clarification concerning items (vi) and (vii) would be helpful. For example, the Assembly adopted the financial regulations of the Union; that was appropriate. The Main Committee might want to further consider whether the fee system, at least the basic principles of it, should not also be within the competence of the Assembly. Finally, he noted that "non-governmental organizations" could mean both national and international organizations. If that was the case, the question might be why government representatives could not also participate in the work of that Committee.

265.1 Mr. BOGSCH (Director General of WIPO) said that paying the travel cost of one delegate from each Contracting State was not a revolutionary idea. Those familiar with the United Nations system knew that, even in the General Assembly, several countries received travel costs for their delegations. In the Madrid Trademark Union, the expenses of one delegate from each Contracting State were paid. Such a provision assured the participation of countries that were not very rich, as well as countries that had exchange regulations which made travel from those countries difficult. Since all countries must be treated equally, even those countries that did not need their expenses paid would receive them.

265.2 With regard to the question of whether or not national organizations were included in the reference to non-governmental organizations, the draft language allowed for their participation. There might be important national organizations which did not belong to an international organization; that should not be an impediment to participation in either the Consultative Committee or the other meetings.

265.3 As to the fees, there was a two step process. The Director General would establish the fee system taking into account the suggestions he received from the Consultative Committee. The Assembly would have the power to instruct him to change the system or the amounts that had been provisionally established. Such a system was necessary because, at the beginning, the fee system would require frequent modifications. The number of future registrations was unknown. Also, the actual cost of processing registrations for the various types of works would need to be examined in light of actual experience. Frequent adjustments could thus be envisioned.

266.1 Mr. NETTEL (Austria) supported the concept of a Consultative Committee as proposed in the draft Treaty. He stressed that the Assembly which was composed of Member States was the real political body, and it had the power to make the necessary policy decisions. The Consultative Committee could see to it that the interests of the users were taken into account. An Executive Committee was not needed since States could express their views in the Assembly.

266.2 With respect to Article 5, paragraph (1)(c) [in the final text, paragraph (2)], he mentioned three alternatives. The first alternative was to follow the proposal of the Delegation of Japan, and delete the text after the word "except." Thus, no expenses would be paid; each government would bear the expenses of its delegation. The second alternative was to delete the brackets and pay the expenses only when the Register became self-supporting. The third alternative was to delete the text in the brackets and pay the expenses of one delegate from each Contracting State from the beginning. He stated that his Delegation could accept any of those alternatives. Its preference, however, was the first alternative, or, if that was not possible, the second alternative.

267. Mr. TELIČKA (Czechoslovakia) said that his Delegation would prefer removing the brackets at the end of the sentence in paragraph (1)(c) [in the final text, paragraph (2)] so that the travel expenses and subsistence of one delegate for each Contracting State would be paid from the funds of the Union once the International Register became self-supporting.

268. Mr. BOYTHA (Hungary) supported the proposals to delete the square brackets in paragraph (1)(c) [in the final text, paragraph (2)].

269. Mr. ZUTSHI (India) said the Delegate from the German Democratic Republic had raised a very important and fundamental issue, the role of the Contracting States in the administration of the Register. His Delegation

believed that the conceptual basis of the Treaty was that the Contracting States would establish a means whereby rights holders could increase the legal security in their transactions and have assistance in their fight against piracy. A basic premise was that Contracting States would not have to contribute anything to the administration of the Register. A corollary was that the Contracting States should not expect to get financial assistance from the Union. Therefore, although his Delegation would go along with a consensus on paragraph (1)(c) [in the final text, paragraph (2)], it preferred that no expenses were paid, even after the Register was self-supporting. The fees should be kept as low as possible to enable small producers to use the Register. Thus, his Delegation supported the proposal of the Delegation of Japan.

270. Mr. WINTER (United State of America) supported the proposal of the Delegation of Japan. It was necessary to keep the expenses of the Union as low as possible.

271. Mr. BOGSCH (Director General of WIPO) stressed that the purpose of the Treaty was not only to have the lowest possible fees but also to have the largest possible number of adherents. The Treaty would not be of much use if only a few countries ratified it. It was important to consider the developing countries and other countries that were far away from Geneva and encourage their participation.

272. Mr. PALENFO (Burkina Faso) supported the views of the Director General. He said it was important to take into account the situation of small countries located far away from the headquarters of WIPO which would not be able to attend meetings without some kind of financial assistance.

273. Mr. HAMDANE (Lebanon) agreed completely with the remarks of the Director General.

274.1 Mr. AVERSA (Italy) said his Delegation favored deleting the brackets in paragraph (1)(c) [in the final text, paragraph (2)]. It would be up to the Assembly to decide when the economic conditions of the Register were such that it would be considered self-supporting. The payment of travel expenses for one delegate from each Contracting State would encourage a larger participation of States; that, therefore, was in the interest of the producers of audiovisual works and users of the Register.

274.2 With regard to item (vii) of Article 5, paragraph (2) [in the final text, paragraph (3)], his Delegation supported the draft text. It believed that a Consultative Committee consisting of the representatives of national and international non-governmental organizations would be useful.

275. Mr. BOGSCH (Director General of WIPO) proposed a compromise. He suggested that the text of paragraph (1)(c) [in the final text, paragraph (2)] on expenses be modified to provide for the "allowance of one delegate for each Contracting State which so desires."

276. Mrs. GABR (Egypt) stated that the question of financing the travel expenses would not be a problem once the Register became self-supporting. She associated herself with the remarks of the Delegations of Burkina Faso and Lebanon, as well as with those of the Director General.

277. Mr. NDOYE (Senegal) said that his country and its authors' society, "Bureau sénégalais du droit d'auteur," had always made the necessary efforts and taken the required steps to participate in the various meetings that his country had been invited to. His Delegation regretted that financial problems would prevent governments or organizations from participating in meetings. Such governments and organizations had valuable advice to give.

278. The CHAIRMAN then summarized the interventions. Four countries wanted no travel expenses or subsistence allowance to be paid from the funds of the Union; however, two of those countries said they could accept such expenses being paid once the Register was self-supporting. Most of the delegations supported paying expenses once the Register was self-supporting. She asked the Director General, if in view of that, he wished to withdraw his compromise proposal.

279. Mr. ZUTSHI (India) said that he was opposed to the compromise proposal of the Director General. Rather than accept that compromise, he preferred to go along with the original proposal to pay the expenses of one delegate from each Contracting State.

280. Mr. WINTER (United States of America) said that his Delegation could accept the deletion of the brackets in paragraph (1)(c) [in the final text, paragraph (2)] in the interest of reaching a consensus.

281. Mr. BOGSCH (Director General of WIPO) said that he was withdrawing his compromise proposal and suggesting that the words in square brackets be deleted.

282. Mr. HAMDANE (Lebanon) supported the Director General's proposal to stop the sentence with the word "Union."

283. Mr. KITANI (Japan) said his Delegation could accept the proposed text of paragraph (1)(c) [in the final text, paragraph (2)] on the condition that the square brackets were removed.

284. Mr. HERTEL (German Democratic Republic) said that his Delegation supported deleting the text in the brackets.

285. Mr. FERNAU (Federal Republic of Germany) said that his Delegation would prefer to require Contracting States to pay the expenses of their delegations. The Register was to be financed by private users; therefore, travel costs should not be paid for from the funds of the Union. However, as a second best solution, his Delegation could live with the text of paragraph (1)(c) [in the final text, paragraph (2)] with the square brackets deleted. He then asked what would happen if, after a period in which the Register had been self-supporting, it ceased to be self-supporting; how then would that provision be interpreted.

286.1 Mr. BOGSCH (Director General of WIPO) responded that that was not contemplated. He was very optimistic; once the Register was self-supporting, it would remain self-supporting.

286.2 He then said that it was time to put the issue of paragraph (1)(c) [in the final text, paragraph (2)] to a vote.

287. The CHAIRMAN noted that the Director General had proposed that paragraph (1)(c) [in the final text, paragraph (2)] read as follows: "The expenses of each delegation shall be borne by the government which has appointed it, except for the travel expenses and subsistence allowance of one delegate for each Contracting State, which shall be paid from the funds of the Union," and put that proposal to vote. She added that in respect of the rest of paragraph (1), there seemed to be a general agreement.

288. Article 5, paragraph (1), subparagraph (a) and (b) were adopted, without discussion as appearing in the draft, while, subparagraph (c) [in the final text, paragraph (2)] was adopted by 17 votes to 0, as proposed by the Director General (see the preceding paragraph).

289. The CHAIRMAN then returned to paragraph (2) [in the final text, paragraph (3)] [Tasks].

290. Mr. TELICKA (Czechoslovakia) said that his Delegation would prefer to have, in the Treaty, a provision on the manner in which members of the Consultative Committee would be elected as well as on the number of such members.

291. Mrs. KOSKINEN (Finland) stressed the importance of the Consultative Committee. She recalled that her Delegation had been among those that had first suggested such a committee. Her Delegation agreed with the proposed text of paragraph (2) [in the final text, paragraph (3)].

292. Mr. BOYTHA (Hungary) said that his Delegation could accept paragraph (2) [in the final text, paragraph (3)] in its entirety, and it welcomed the establishment of a Consultative Committee composed of representatives of the film industry and also of representatives of authors. It was important to achieve close cooperation not only with the main prospective users of the registry in the film and television industries but also with authors who contribute to the making of audiovisual works. Consequently, the representatives of CISAC or BIEM, for example, should also be included in the Consultative Committee.

293. Mr. HAMDANE (Lebanon) asked whether the membership of the Consultative Committee would be open ended or selective. If there was to be a selection, what was the criteria to be used in selecting the organizations. He suggested establishing criteria and procedures for selecting non-governmental organizations.

294. Mr. BOGSCH (Director General of WIPO) agreed with the Delegation of Hungary, and said it was intended that authors' organizations be included. He responded to the Delegations of Czechoslovakia and Lebanon by proposing that the text of item (vii) be modified by inserting the following words after the word "establish:" "and decide from time to time the membership of." That would mean that the Assembly would have the sole and full power to decide what organizations were members, and it would expressly state that that membership could be modified in light of new developments.

295.1 Mr. WINTER (United State of America) asked for a clarification on item (vi) concerning two questions. The first question was whether the financial regulations would be adopted by a simple majority when the Treaty entered into force. And the second question was whether the use of the word "adopt" in that item meant that the financial regulations might be modified or revised from time to time by the Assembly. If the answers to his questions were yes, then his Delegation could accept Article 5, paragraph (2) [in the final text, paragraph (3)] as drafted.

295.2 The establishment of the Consultative Committee was extremely important to the operation of the Register; therefore, his Delegation accepted the Director General's amendment to item (vii).

296. Mr. BOGSCH (Director General of WIPO) confirmed that the understanding of the Delegation of the United State of America of item (vi) was in total accordance with the understanding of the International Bureau, and the answer to both questions of the United States Delegation was "yes."

297. Mr. NDOYE (Senegal) supported the Director General's proposal.

298. Mr. TELICKA (Czechoslovakia) said that his Delegation appreciated the Director General's clarification and supported his proposal.

299. Mr. ZUTSHI (India) said that the Indian Delegation endorsed all of Article 5, paragraph (2) [in the final text, paragraph (3)], and it particularly welcomed the establishment of a Consultative Committee. It also supported the modifications to item (vii) proposed by the Director General. In that context, however, he asked for a clarification concerning the nature of the draft decision included in paragraph 130 of the notes to the Basic Proposal (document IRAW/DC/3). He also asked for an explanation of the manner in which the Consultative Committee would be initially established.

300. Mr. BOGSCH (Director General of WIPO) explained that paragraph 130 of the notes was a draft decision which could be adopted by the Assembly when the Register started to function. The purpose of that paragraph was only to show the Diplomatic Conference the type of resolution and decision on the Consultative Committee that could be passed. It was not a resolution which was to be discussed and adopted by the Conference. He noted that the Annex which was referred to in point 4 of the draft decision contained in paragraph 130 of the notes, which would be a list of the non-governmental organizations that made up the Consultative Committee, would be part of the decision of the Assembly. With regard to the discretion of the Assembly, it could not decide that there would be no Consultative Committee. It could decide whether it would have five, twenty or sixty members and whether they would be national or international organizations, and if national, which countries they would come from.

301. Mr. AVERSA (Italy) said that his Delegation supported the proposal made by the Director General.

302. Mr. HAMDANE (Lebanon) agreed with the Director General's proposed amendment to item (vii). He then asked for a clarification concerning paragraph 131 of the notes. That paragraph referred to a preparatory meeting of States that would have signed the Treaty. He wondered how such States could make decisions which would obligate the future Contracting States.

303. Mr. BOGSCH (Director General of WIPO) said that paragraph 131 of the notes did not say that a preparatory meeting would take any decisions; the purpose of such a meeting would be rather to discuss and prepare proposals for the first meeting of the Assembly. The Assembly, made up of those States which had ratified or acceded to the Treaty, not those States that had only signed the Treaty, would vote and decided.

304. Mr. HAMDANE (Lebanon) said that after the Director General's explanations, he wondered whether the text should be amended to say "However, no decision shall be taken to this effect until the Assembly meets formally."

305. The CHAIRMAN stated that nobody could disagree with that point. No decision could be made until the Treaty was in force; that being evident, no modification of the text was necessary.

306. Mr. DOZORTSEV (Soviet Union) expressed the view that the establishment of the Consultative Committee should be done in two stages. The first stage should be the selection of non-governmental organizations whose representatives might become members of the Committee. For that purpose Article 5, paragraph (2)(a)(viii) [in the final text, paragraph (3)(a)(ix)] could be used under which the Assembly decided which non-governmental organizations were admitted to its meetings as observers. The second stage then could be that the Assembly elected the members of the Consultative Committee from the representatives of non-governmental organizations to which observer status had been granted.

307. Mr. HERTEL (German Democratic Republic) said that his Delegation associated itself with the proposal made by the Delegation of the Soviet Union. He then turned to the procedure to be used in deciding the fees. He proposed adding a new item (viii) which stated "approve the fees and the Administrative Instructions." He also supported the proposal of the Director General on the modification of item (vii), and he noted that he was no longer opposing the concept of the Consultative Committee. Finally, he asked for a clarification of the process of setting the fees.

308. Mr. BOGSCH (Director General of WIPO) explained that the plan, which was reflected in the Regulations and not in the Treaty, was that the fees would initially result from the consultation of the Director General with the Consultative Committee. After the consultation, the Director General would decide on the schedule of fees. If the Assembly did not agree with the schedule of fees, it would instruct the Director General to propose other fees. In other words, the ultimate decision on the fees was in the hands of the Assembly. That was reflected in item (i) which said that the Assembly shall "deal with all matters concerning the maintenance and development of the Union..." The only difference between the Basic Proposal and the proposal of the Delegation of the German Democratic Republic was that, under that proposal the fees could not be modified without the approval of the Assembly. Such an approach would not be practical, particularly in the beginning, when it would be necessary to modify the fee system frequently. Convening the Assembly in an extraordinary session to make small modifications in the fees would be too cumbersome a mechanism. He said that a minimum of confidence should be placed in the Director General. If the Director General propagated a completely unreasonable fee system, a Member State had the right to ask for an extraordinary session of the Assembly. The Assembly would then meet and instruct the Director General to modify the fees.

309. Mr. GAMBOA-ALDER (Colombia) referred to item (viii) [in the final text, item (ix)], and asked whether a country which was not a party to the Treaty could receive observer status on the basis of a previous request for such status.

310. Mr. BOGSCH (Director General of WIPO) answered that there was no need for a State to apply for observer status, and stressed that the text appeared in all of the Treaties administered by WIPO. The usual decision of the Assemblies was that all countries which were members of the United Nations were invited to participate as observers. That would likely be the decision also of the Assembly of the Union to be established under the proposed Treaty.

311. Mr. HAMDANE (Lebanon) supported the text on the fees. There could be an urgent need to change the fees before the Assembly met.

312.1 The CHAIRMAN said that she thought too much attention was being devoted to the question of the fees and, in particular, to the procedure in which they could be altered. In the early stages of the Register, it would be difficult

to accurately estimate what the fees should be or how many applications would be received. Convening an extraordinary session of the Assembly to modify the fees would be expensive. She pointed out that the Director General would consult with the Consultative Committee at the beginning and again before making any changes. Moreover, the Director General was also responsible to the Assembly.

312.2 She then adjourned the discussion on Article 5, paragraph (2) [in the final text, paragraph (3)] and stated that it would be resumed at the morning session the following day. (Continued at paragraph 313.)

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Morning

Article 5: Assembly (continued from paragraph 312)

313. The CHAIRMAN opened the meeting and continued the discussion on Article 5, paragraph (2) [in the final text, paragraph (3)].

314. Mr. DOZORTSEV (Soviet Union) said that he had originally expressed the view that the fees should usually be set by the Assembly. However, he now accepted that the system had to be flexible enough to allow for modifications between sessions of the Assembly. He suggested that perhaps the way to solve the problem was to provide that the Assembly initially fixed the fees but the Director General could thereafter modify them after consultation with the Consultative Committee.

315. Mr. BOGSCH (Director General of WIPO) pointed out that the Director General fixed the initial fees. The Consultative Committee only made suggestions and gave advice. Its agreement was not necessary. The Assembly eventually approved the fees.

316. Mr. HERTEL (German Democratic Republic) said he was satisfied with the Director General's explanations confirming that the Consultative Committee was not a decision making body and that the decisions were reserved for the Director General and, eventually, for the Assembly.

317. Mr. NDOYE (Senegal) asked whether a feasibility study could be undertaken by a working group which would take into account the conditions of certain countries, and, for example, moderate the fees according to the various categories of countries.

318. The CHAIRMAN said a feasibility study by a working group would be difficult when it was not known which countries would become members.

319. Mr. BOGSCH (Director General of WIPO) said that Rule 8 of the draft Regulations, stated very clearly that the Assembly could instruct the Director General to change the fees which he had set. To address the concerns of the Delegations of the Soviet Union and the German Democratic Republic, however, he proposed adding the following to the task of the Assembly: the Assembly shall "control the system and amount of the fees determined by the Director General." Control meant the ability to change the fees that he had set. The Assembly should correct any mistakes that had been made, but it should not take upon itself the thankless job of fixing the initial fees.

320. The CHAIRMAN thanked the Director General for his most helpful suggestion.

321. Mr. WINTER (United States of America) pointed out that the Register was basically for the motion picture industry and that industry would pay the fees. Therefore, the Consultative Committee was a key body, but its role was advisory only. The views of that committee were relevant and critical; it was, however, the Director General who set the fees and the Assembly which reviewed them. He said he understood the Soviet Union's proposal to be that the Assembly would be required to approve the fees, and if the fees needed to be modified in between sessions, an extraordinary session would be called. That was a very expensive process. Therefore, the United States Delegation strongly supported the draft text. It had the flexibility necessary to deal with the complex area of fees.

322. The CHAIRMAN asked the Delegate of the Soviet Union if the safeguard clause proposed by the Director General took care of his concerns.

323. Mr. DOZORTSEV (Soviet Union) said that the Director General's proposal was acceptable.

324. The CHAIRMAN then asked the Director General to restate his proposal.

325. Mr. BOGSCH (Director General of WIPO) said that his proposal was to create a new item between item (vii) and the present item (viii) as new item (viii); consequently the present item (viii) would become item (ix) and the present item (ix) would become item (x). The new item would add to the tasks of the Assembly the right to "control the system and amounts of the fees determined by the Director General."

326. Mr. HAMDANE (Lebanon) said that he wanted to be sure that the Consultative Committee would also reflect the views of users in developing countries.

327. The CHAIRMAN stated that the Contracting States would decide on the membership of the Consultative Committee, and it was hoped that developing countries would become members of the Treaty.

328. Mr. DOZORTSEV (Soviet Union) suggested adding to the text proposed by the Director General "in consultation with the Consultative Committee."

329. Mr. BOYTHA (Hungary) agreed with the substance of the remarks of the Delegation of the Soviet Union and to the proposal of the Director General. He said that it should be made clear that it was the Director General who fixed the fees, but also that he could do so only after consultation with the Consultative Committee. The details on fixing the fees should be dealt with when Rule 8 was discussed.

330. Mr. HAMDANE (Lebanon) associated his Delegation with the remarks of the Delegation of Hungary.

331. Mr. AVERSA (Italy) stated that his Delegation agreed with the Director General's proposal.

332. Mr. CANO (Colombia) said his Delegation recognized the importance of the Consultative Committee. It was critical to remember that the actual users of the Register--film producers and distributors--should have an appropriate forum to express their views. It was also crucial that users from developing countries be adequately represented in that Committee.

333. Mr. TELICKA (Czechoslovakia) supported the remarks of the Delegation of Hungary and stated that his Delegation would raise the further issues relating to the fees when Rule 8 was discussed.

334.1 The CHAIRMAN then summarized her understanding of what had been agreed on in paragraph (2)(a) [in the final text, paragraph (3)(a)], item (vii), the following text proposed by the Director General, would be inserted, after the word "establish," "and decide from time to time the membership of." After item (vii), the following new item (viii), also proposed by the Director General, would be inserted--and the present item (viii) and (ix) would be renumbered as items (ix) and (x)--"control the system and amounts of the fees determined by the Director General."

334.2 With regard to the composition of the Consultative Committee, both national as well as international non-governmental organizations were eligible for membership.

335. Article 5, paragraph (2) [in the final text, paragraph (3)] was adopted as amended according to the summary of the Chairman (see paragraph 332.1).

336. The CHAIRMAN then turned to Article 5, paragraphs (3) to (8) [in the final text, paragraphs (4) to (9)] [Representation; Vote; Quorum; Majority; Sessions; Rules of Procedure].

337. Mr. HAMDANE (Lebanon) asked for a clarification on paragraph 7 [in the final text, paragraph (8)] with regard to the convocation of the meeting of the Assembly every second calendar year. He wondered whether or not a certain time frame should be written into the Treaty.

338. The CHAIRMAN explained that several factors needed to be taken into consideration in setting the date for a meeting. Those included the availability of rooms and interpreters. Thus, it would be impossible to state an exact date. The Treaty provided that there would be a meeting every second year, and the Director General would convene it.

339. Mr. CANO (Colombia) asked for a clarification on paragraph (5)(b) [in the final text, paragraph (6)(b)], which dealt with the issue of quorum.

340. Mr. BOGSCH (Director General of WIPO) said that that paragraph was similar to the texts of most other treaties administered by WIPO. It meant that, if there was a lack of a quorum in any Assembly, a decision could still be made. The decision would become effective, however, only if, by correspondence with the Contracting States that were not present, the quorum and the required majority was reached.

341. The CHAIRMAN noted that there were no more observations on paragraphs (3) to (8) [in the final text, paragraphs (4) to (9)].

342. Article 5 paragraphs (3) to (8) [in the final text, paragraphs (4) to (9)] were adopted as appearing in the draft.

Article 6: International Bureau

343. The CHAIRMAN opened the discussion on Article 6, which dealt with the International Bureau of WIPO. She stated that no one wished to take the floor on that article.

344. Article 6 was adopted, without discussion, as appearing in the draft.

Article 7: Finances

345. The CHAIRMAN turned to Article 7, and gave the floor to the Director General.

346. Mr. BOGSCH (Director General of WIPO) said that the text was the usual one found in WIPO treaties with one exception, namely that, there were no contributions by the Contracting States. Instead, as provided in paragraph (4), the Register was to be self-supporting, and the amount of the

fees and the prices of the publications should be fixed so that they would be sufficient to cover the expenses connected with the administration of the Treaty.

347. The CHAIRMAN asked if any delegation wished to take the floor on paragraphs (1) through (3). She noted that no delegation wished to comment on those paragraphs.

348. Article 7, paragraphs (1) to (3) were adopted without discussion as appearing in the draft.

349. The CHAIRMAN opened the discussion on Article 7, paragraphs (4) to (6) [in the final text, paragraphs (4) to (7)].

350. Mr. KITANI (Japan) expressed his Delegation's satisfaction with the principle of self-supporting financing expressed in paragraph (4)(a) [in the final text, paragraph (4)]. He noted that that paragraph, considered in conjunction with Article 10(1), meant that there was no possibility of placing any financial burden on the Contracting States. For that reason, his Delegation supported the proposed text.

351. Mr. WINTER (United State of America) said his Delegation associated itself with the remarks of the Delegation of Japan.

352. Mr. CANO (Colombia) asked for a clarification of the philosophy of the reserve fund and the working capital fund provided for in paragraphs (4)(b) and (5) [in the final text, paragraphs (5) and (6)].

353. Mr. BOGSCH (Director General of WIPO) said that those concepts were found in all WIPO treaties. The working capital fund would serve as a bridge and provide liquidity during the transitional period, whereas, the reserve fund had to be taken into consideration when setting the fees. If there was a large reserve fund, then in the budget for the subsequent biennium it could be decided that some of the reserve could be used to defray the expenses of the Union and the fees could be reduced. He noted that WIPO was not a profit making organization; therefore, the reserve fund would be used to either reduce the fees or impose a smaller increase in the fees.

354. Mr. NDOYE (Senegal) said that his Delegation supported the principle of equal treatment; however, he urged that the special situation for producers from developing countries be taken into account when the fees were set.

355. Mrs. HÖKBORG (Sweden) said that her Delegation associated itself with the statement made by the Delegation of Japan.

356. Mr. PALENFO (Burkina Faso) said that his Delegation supported the statement of the Delegation of Senegal.

357. Mr. FERNAU (Federal Republic of Germany) recalled that the previous meetings of the Committee of Experts had asked that the details of the working capital fund and the reserve fund referred to in paragraphs (4)(b) and (5) [in the final text, paragraphs (5) and (6)] be spelled out in the financial regulations. His Delegation favored that proposal and, therefore, could accept the wording of the draft Treaty. He said that during the deliberations on the financial regulations, consideration should be given to fixing the upper limits of both funds.

358. Mr. MAKANERA (Guinea) said that his Delegation supported the statement of the Delegation of Senegal; the interests of producers in developing countries should be taken into account when the fees were fixed.

359. Mr. ZUTSHI (India) thanked the Director General for his explanations of the working capital and reserve funds. His Delegation agreed that it was necessary to provide bridging financing and to put the surpluses into the reserve funds. He stressed that fees should be kept to a minimum and strongly endorsed the self-supporting principle contained in Article 7(4)(a) [in the final text, paragraph (4)].

360. Mr. WINTER (United States of America) said that his Delegation generally agreed with the statement made by the Delegate of the Federal Republic of Germany concerning paragraphs (4)(b) and (5) [in the final text, paragraphs (5) and (6)]. He recalled that, at the second meeting of the Committee of Experts, the United States Delegation intervened on that matter, and it was agreed that the working capital fund would be covered in the financial regulations. His Delegation looked forward to the consideration of those regulations.

361. Mr. BOGSCH (Director General of WIPO) assured the Delegations of Senegal, Burkina Faso and Guinea that the situation of developing countries would be considered when the fees were fixed.

362. Mr. HAMDANE (Lebanon) supported the statement of the Delegation of Senegal.

363. Mr. GROSSENBACHER (Switzerland) said that his Delegation agreed with the statement made by the Delegation of Japan, and it underlined the importance of the self-supporting principle.

364. Mr. NETTEL (Austria) said that his Delegation could accept Article 7 in its entirety; the self-supporting nature of the Union was most important.

365. Mr. AVERSA (Italy) said that his Delegation supported the proposed text of Article 7, paragraphs (4) to (6) [in the final text, paragraphs (4) to (7)].

366. Mr. BOGSCH (Director General of WIPO) pointed out that many delegations had underlined the importance of self-supporting financing. The Union would not be self-supporting in the first years; this was why there was the Austrian offer.

367. The CHAIRMAN noted that no other delegation had asked for the floor.

368. Article 7, paragraphs (4) to (7) were adapted as proposed in the draft.

Article 8: Regulations

369. The CHAIRMAN turned to Article 8, and opened the floor for discussion.

370. Mr. HAMDANE (Lebanon) asked whether the Regulations were an integral part of the Treaty.

371. Mr. BOGSCH (Director General) said that the Regulations were annexed to the Treaty and would be adopted by the Diplomatic Conference. Once the Treaty came into effect, the Regulations would be controlled by the Assembly.

372. Mr. NETTEL (Austria) said that the Regulations were not an integral part of the Treaty: as the Director General had said, they were an annex. However, the Regulations had the same legal effect as the Treaty.

373. The CHAIRMAN noted that no other Delegation wished the floor.

374. Article 8 was adopted as appearing in the draft.

Article 9: Revision of the Treaty

375. The CHAIRMAN opened the discussion on Article 9.

376. Mr. BOGSCH (Director General) noted that Article 9 dealt with how the Treaty could be revised. This article referred to two possible ways of modifying the provisions of the Treaty. The first possible way was a revision conference, which Article 9 provided for. The second possible way, was provided in Article 10, which covered certain provisions which were of less importance and thus, could be revised outside of a revision conference by the Assembly. The provisions that might be covered by such a simplified way of modification were similar to those in other treaties administered by WIPO.

377. Article 9 was adopted without discussion as appearing in the draft.

Article 10: Amendment of Certain Provisions of the Treaty

378. The CHAIRMAN opened the debate on Article 10.

379. Mr. LADSOUS (France) proposed an amendment to Article 10, paragraph (3)(a). He suggested replacing the words "from three-fourths of the Contracting States" by the words "from the Contracting States." His Delegation said no State should be bound by an amendment that it did not agree with. If his proposal was accepted, certain language changes would be required in other paragraphs.

380. Mr. NETTEL (Austria) said that his Delegation understood the concerns of the Delegation of France. The text presented problems to States with Constitutions that required it to consent to a treaty it was to be bound to. Thus, the question was one of being bound by a treaty that one had not consented to. He noted, however, that many treaties contained provisions similar to the one under discussion.

381. Mr. BOGSCH (Director General) said the Austrian Delegation was correct in noting that the provision under discussion was not innovative. He pointed out that only certain provisions could be modified in that way; those provisions did not affect the rights or the obligations of States. No substantive provision could be modified; only procedural provisions could be changed.

382. Mr. HAMDANE (Lebanon) explained that his Delegation initially had some difficulties with Article 10. However, the explanation given by the Director General, his Delegation could accept the Article.

383. Mr. TELIČKA (Czechoslovakia) said that paragraph (3) reflected the usual international legal practice, and his Delegation supported entirely the Director general's explanation.

384. The CHAIRMAN noted that the proposal of the Delegation of France had not been supported by any other delegation, and there were no delegations requesting the floor.

385. Article 10 was adopted as appearing in the draft Treaty.

Article 11: Becoming Party to the Treaty

386. The CHAIRMAN opened the discussion on Article 11 and stated that there was no wish to take the floor.

387. Article 11 was adopted, without discussion, as it appeared in the draft.

Article 12: Entry into Force of the Treaty

388. The CHAIRMAN opened the discussion on Article 12.

389. Mr. BOGSCH (Director General of WIPO) said that that provision corresponded to similar provisions in other treaties.

390. Article 12 was adopted, without discussion, as it appeared in the draft.

[Article 13: Reservations to the Treaty] (See paragraphs 239 to 256)

Article 14: Denunciation of the Treaty

391. The CHAIRMAN turned to Article 14. She said that that was a very common provision in treaties, and was self explanatory, and stated that there was no wish to take the floor.

392. Article 14 was adopted, without discussion, as appearing in the draft.

Article 15: Signature and Languages of the Treaty

393. The CHAIRMAN opened the discussion on Article 15.

394. Mr. BOGSCH (Director General of WIPO) emphasized that that Article did not prejudge the language or languages of the Register. The only question dealt with in the Article was in what languages the Treaty should be signed. WIPO treaties were usually signed in English and French. He said that paragraph (2) [Official Texts] was somewhat innovative in that Arabic, German, Italian, Japanese and Portuguese were also specifically mentioned. Usually, only Russian and Spanish were mentioned in WIPO treaties in such a context.

395. Mr. HAMDANE (Lebanon) said that that was perhaps an innovation in WIPO treaties, but it was not in the United Nations system. There, the Arabic language was an official language.

396. Mr. NIÑO GOMEZ (Venezuela) said that it would be justified to also include the Spanish language in Article 15, paragraph (1) [Original Texts], in addition to English and French languages, because Spanish was a working language of WIPO and of the entire United Nations system.

397. Mr. BOGSCH (Director General) said there were no official languages in WIPO. The languages in WIPO were determined by what the International Bureau of WIPO could afford to pay for in respect of translations and interpretations. Increasingly more and more documents were produced in Spanish, Arabic, Chinese and Russian.

398. Mr. KITANI (Japan) said that his Delegation was pleased to see Japanese included in the draft Treaty as one of the languages in which official texts would be established. However, he suggested that official texts should be established only when it became necessary, that was after the countries concerned had adhered to the Treaty. Thus, his Delegation believed that specific languages should not be mentioned in paragraph (2).

399. The CHAIRMAN noted that the proposal made by the Delegation of Japan had not been supported, and that there were no more wishes to take the floor.

400. Article 15 was adopted as appearing in the draft.

Article 16: Depository Functions

401. The CHAIRMAN turned to Article 16, and stated that there was no wish to take the floor.

402. Article 16 was adopted, without discussion, as appearing in the draft.

Article 17: Notifications

403. The CHAIRMAN opened the discussion on Article 17, that was the last article of the Treaty. She announced that the square brackets around the reference to Article 13 should be deleted because that article had been adopted and stated that no delegation wished to take the floor.

404. Article 17 was adopted as proposed in the draft with the square brackets being deleted.

405. The CHAIRMAN noted that only one part of the Treaty had not been discussed yet, namely the preamble of the Treaty, in respect of which she adjourned the discussion to the next meeting of the Main Committee.
(Continued at paragraph 406.)

<p><u>Fifth Meeting</u> <u>Wednesday, April 12, 1989</u> <u>Afternoon</u></p>

The Preamble of the Treaty (continued from paragraph 405)

406. The CHAIRMAN opened the meeting and announced that the Conference had completed the work on the Articles of the Treaty; the preamble would now be the subject of the discussions.

407. Mr. BOGSCH (Director General of WIPO) read the proposed text of the preamble and said that the preamble, which was short and simple, was intended to merely place the Treaty in the context of intellectual property.

408. Mr. CORBET (CISAC) suggested adding an additional phrase between the first two sentences. That sentence would read: "to protect, in as effective a manner as possible, the rights of authors in their audiovisual works." He noted that that sentence was based on a similar sentence in the preamble to the Berne Convention. He said he was aware of the academic aspect of this proposal since the proposed Treaty was not a copyright treaty; however, he believed that the phrase suggested by him would be a recognition of the moral rights of authors of works recorded in the Register.

409. The CHAIRMAN said that the proposal made by the representative of CISAC needed to be endorsed by member delegations because the Rules of Procedure made it clear that non-governmental organizations could not make proposals.

410. Mr. AVERSA (Italy) said that his Delegation agreed with the proposal made by the representative of CISAC, therefore, his Delegation officially submitted the proposal to the Conference.

411. Mr. DOZORTSEV (Soviet Union) supported the statement suggested by CISAC and officially proposed by the Delegation of Italy.

412. Mr. PALENFO (Burkina Faso) said that his Delegation supported the proposal.

413. Mr. NDOYE (Senegal) supported the proposal outlined by the representative of CISAC and officially submitted by the Delegation of Italy.

414. Mr. BOGSCH (Director General of WIPO) raised the question of the compatibility of the proposed sentence with the provision in Article 4, paragraph (2) which stated that the Treaty did not affect copyright in any way.

415. Mr. LADSOUS (France) stated that his Delegation understood the concern expressed by the representative of CISAC and supported by other delegations. However, he was also concerned about the possible contradiction between the proposed sentence and the principle already reflected in the Treaty which said that copyright would not be affected by the Treaty. The idea suggested by the representative of CISAC might be expressed in a way that tied authors' rights and authors' protection to the fight against piracy.

416. The CHAIRMAN took the floor as the head of the Delegation of the Federal Republic of Germany and proposed new language tied, as the Delegation of France had suggested, to the fight against piracy. Thus, the sentence that referred to the fight against piracy could be amended to refer to audiovisual works, and the contributions contained in them. By referring to the contributions, authors and performing artists would be included.

417. Mr. BOYTHA (Hungary) said that his Delegation endorsed the proposal made by the representative of CISAC. His view was that neither legal security in transactions related to audiovisual works nor the fight against piracy could be achieved without increased protection of authors' rights. Consequently, the entire draft Treaty should serve to implement existing standards on the protection of authors' rights; since that was an important objective of the Treaty, it should be reflected in the preamble.

418. Mr. NETTEL (Austria) said that nothing should be in the preamble which was not borne out by the text of the Treaty itself. Therefore, he asked whether the proposed sentence could be supported by the text of the Treaty. Thus, if the proposed text could find support in the Treaty, it could be included; otherwise, it should not be added to the preamble.

419. Mr. ZUTSHI (India) said that he sympathized with the spirit behind the idea of incorporating in the preamble some thoughts about providing protection to the authors of audiovisual works. However, he was sure that the proposed language did not fit into the scheme of the Treaty. He suggested referring the matter to the Drafting Committee.

420. Mr. AVERSA (Italy) agreed that the Drafting Committee could deal with the question.

421. Mr. WINTER (United States of America) said that his Delegation did not believe that the Treaty should deal with copyrights, and that position had been emphasized at previous meetings. The position of authors could be taken into account in the composition of the Consultative Committee. He noted that the Treaty was not of a substantive nature, but rather of a technical, procedural nature. His Delegation did not believe that it was appropriate to include the sentence that had been originally suggested by the representative of CISAC in the preamble.

422. Mr. HAMDANE (Lebanon) said that he shared the view of the Delegation of the United States of America. Although he agreed with the proposal in principle, he could not support inserting it into the preamble.

423. The CHAIRMAN suggested that the question of the protection of authors should be dealt with in the third sentence of the preamble and the wording should be left to the Drafting Committee.

424. It was so decided. The preamble of the Treaty was adopted subject to an amendment to be proposed by the Drafting Committee as suggested by the Chairman (see the preceding paragraph).

RegulationsRule 1: Definitions

425. The CHAIRMAN opened the debate on the Regulations beginning with items (i) to (iv) of Rule 1. She noted that no Delegation asked for the floor.

426. Items (i) to (iv) of Rule 1 were adopted, without discussion, as appearing in the draft.

427. The CHAIRMAN continued the debate with items (v) and (vi) of Rule 1 and asked the Delegation of Hungary to explain its proposals submitted in respect of those items and contained in document IRAW/DC/6.

428.1 Mr. BOYTHA (Hungary) stressed that the recognition of the effect of prima facie evidence of any registration and the requirement of an unmistakable reference to a specific work require an unambiguous identification of any audiovisual work registered.

428.2 Both Rules 1(v) and 2(5)(a) merely prescribed the indication of the title or titles of the work which seemed to be insufficient for a proper identification of the work concerned. Several motion pictures could be produced under the same title. Therefore, a work-related application should indicate, in addition to the title of the work, also the maker of the work and its principal creators, at least the principal director, of it. Concerning works already made, the year of its production should also be indicated. Concerning future works, the indication of the proposed maker and principal director as well as the expected year of making the work would be necessary.

428.3 Consequently, he proposed to amend Rule 1(v) as follows:
"(v) 'work-related application' means any application that identifies an existing work by its title or titles, its maker and principal director as well as the year of its production, or a future work by its proposed title or titles, maker and principal director, if designated, and the scheduled year of its production, and requests that statements in respect of the interest of an identified person or identified persons in or concerning that work be registered in the International Register; 'work related registration' means a registration effected pursuant to a work-related application."

428.4 Furthermore, he proposed the replacement of the second sentence of Rule 1(vi) by the following text: "A work shall be considered as being described when, in particular, the person who or legal entity which has made, or is expected to make, the work, and its principal director, are identified;"

429. The CHAIRMAN thanked the presentation by the Delegate of Hungary and opened the discussion of both the original draft of items (v) and (vi) and of the Hungarian proposal.

430. Mr. BOGSCH (Director General of WIPO) said that he understood the intentions behind the proposal of the Delegation of Hungary; it would increase the minimum data to be furnished to make the identification of the work safer. He added, however, that certain elements of the proposed text might raise some problems which should be carefully studied. Under the proposal, two further notions, namely, "maker" and "principal director" would be introduced, notions which were not known in all countries, whose meaning differed country by country and whose translation into French would be quite difficult. He wondered whether it was absolutely necessary to require that all applications contained those two additional identifications. In respect of the year of production, it should be taken into account that the making of any given film may take more than one year and, in such a case, there would be doubt what date would have to be indicated. Under the proposal, if a future work was involved, the expected year of production would have to be indicated. Such a provision would raise a number of difficult questions, e.g., the question of whether the registration became invalid if the expected year was missed.

431. Mr. CHAUBEAU (FIAPF) was of the view that it would be difficult to apply the amendment proposed by the Delegation of Hungary. He noted that certain data requested by the proposed amendment would not be available and that the indication of the name of the director was far from being the most appropriate way to identify a work. He stressed that the text proposed by the International Bureau of WIPO was more suitable to the film industry.

432. Ms. PETERS (United States of America) said that, in the experience of the Copyright Office of the United States of America, the definitions and the related rules proposed by the Delegation of Hungary would not work in practice. They certainly would not work for television productions, for documentaries, for educational films, for slides and works included in "music video." It was not advisable to cast too many rules in stone. It would be better to merely provide that the work must be adequately identified and to leave open the ways of identification. It would be better to leave the details of identification to the Administrative Instructions than trying to settle them in the Regulations. On the Consultative Committee, there would be users and, particularly, producers who would give advice what data were needed in order to adequately identify a work.

433. Mr. BRENNAN (United States of America) stated that the terms that were suggested by the Delegation of Hungary were extremely difficult to define in the trade and they were not used in a uniform manner in respect of various works and in various countries. It would be in the interest of the applicants to describe the work as accurately and completely as possible. The details of that description might vary from work to work and, if they were regulated at all, it would be more appropriate to leave such a regulation to the Administrative Instructions.

434. Mr. FABIANI (Italy) said that his Delegation would find it useful to add to the indication of the title of the work--especially in the case of future works--other indications concerning persons who participated in the making of the work.

435. Mr. BOGSCH (Director General of WIPO) said that there would be application forms and those forms would invite applicants to give all the indications mentioned in the proposal of the Delegation of Hungary, and even more, and the relevant spaces would be certainly fully filled in because it was in the interest of the applicant to make it as sure as possible that the work was clearly identified. It was another question whether the application should be considered invalid and be rejected because one or the other of the data proposed by the Delegation of Hungary was missing. As had been stated, in the case of certain works, those data were usually not available, which would mean that those works would be excluded from registration.

436. Mr. TELICKA (Czechoslovakia) considered that the proposal put forward by the Delegation of Hungary would only create difficulties if future works could also be registered. If only existing works could be registered, the Delegation of Czechoslovakia could go along with the Hungarian proposal, the more so because that proposal was entirely in accordance with the Czechoslovak law where the author was always the initial owner of rights.

437. The CHAIRMAN asked the Director General to answer the question why future works would be registered.

438. Mr. BOGSCH (Director General of WIPO) said that the need for registration of statements concerning future works followed from the general practice in the film industry where financing always started before the work existed and, very frequently, fairly detailed contractual stipulations were agreed upon in such a stage in the form of what was called "pre-sale" of rights.

439. Mr. NDOYE (Senegal) wondered whether the registration of future works would not create certain legal difficulties taking into account that national laws, including the law of his country, provided that the transfer of rights in future works had no legal effect.

440. The CHAIRMAN noted that if the transfer of rights in future works might not be valid under certain national laws, it was certainly valid under certain other national laws; and the Register was intended for the use of applicants from countries with differing legal provisions.

441. Mr. NAVARRO GONZALES (Spain) stressed that the Register should also be available for the registration of statements concerning future works. As an example, he mentioned that the notion of future rights did exist in the Spanish civil law. Such rights could be the subject of what was called a "preventive notice" by which the recognition of such rights could be guaranteed.

442. Mr. MORFÍN PATRACA (Mexico) opposed the proposal put forward by the Delegation of Hungary. He said that his Delegation was in favor of maintaining the original text of the Regulations which much better corresponded to the purpose and nature of the Treaty by leaving the possibility open to all interested persons to use the Register.

443. Mr. DOZORTSEV (Soviet Union) found unusual that the Regulations provided for the possibility of the registration of future works. What was involved in such a case was not actually the registration of a work but, at most, the registration of certain interests in connection with a work that would be created in the future. All that should be clarified and all the consequences should be carefully considered.

444. Mr. HAMDANE (Lebanon) stated that he also had some doubts concerning the registration of future works. If such a work was registered, it would be very hard to precisely identify it, and it might become an obstacle to others who wished to produce a work with a similar title on a similar subject.

445. Mr. BOGSCH (Director General of WIPO) said that to have the Register open to future works was an absolute necessity. It had always been considered like that, at all the preparatory meetings; that was so because rights could be contracted in advance of the work coming into existence. The registration of a future work would not create any obstacle whatsoever for those who would like to produce a film with the same or similar title or on the same or similar subject; that was so because, as had been repeated several times, the registration of statements concerning works and rights in works would not create or convey any rights; thus, the registration of a title would not create any priority right in respect of that title.

446. The CHAIRMAN expressed her agreement with the statement made by the Director General. It was well known that the rights were often bought from an author of a novel to make a film on the basis of the novel, and it might take two to three years before that film was actually made, and at the time of the conclusion of the contract, it was not yet known, e.g., who the director would be. It was also clear that registration did not establish or convey rights.

447. Mr. ZUTSHI (India) said that, although the kind of information that the Hungarian proposal envisaged might be available in case of feature films, it would be difficult to have the same information in case of other audiovisual works; therefore, the provisions proposed by the Delegation of Hungary might create problems. He wondered whether a solution might not lie in making a minor amendment to item (v) to provide, for example, that a work-related application meant an application that identified an existing or future work by its title or titles and on the basis of other prescribed relevant information. Under the definition in item (ix), "prescribed" meant "as prescribed in the Treaty, in [the] Regulations or in the Administrative Instructions." As had been mentioned by the Director General, there would be application forms inviting the applicants to give as much information as necessary for the complete identification of the work concerned; all that might offer a satisfactory solution to the problem of identification.

448. Mr. NDOYE (Senegal) stated that he supported the proposal made by the Delegation of India.

449. Mr. LADSOUS (France) was of the view that it would be premature to fix certain criteria for the identification. He said that the questions of description and identification of works should be left to the Administrative Instructions and to the application forms rather than treated in the Regulations as proposed by the Delegation of Hungary.

450. The meeting was suspended for 30 minutes.

[Suspension]

451. The CHAIRMAN resumed the debate on item (v) of Rule 1 and proposed that, first, the discussion on the registration of future works should be finalized. She stressed that there was a great interest to register future works because, in many countries, films were frequently pirated before they were released; therefore, it was understandable that producers wished to have already the security offered by the Register at the moment of the completion of the works and not only after that, so that they could go to court and get an injunction against pirates. In that respect, registration was a mere means of precaution. The film industry clearly needed such a means of precaution.

452. Mr. DOZORTSEV (Soviet Union) stressed the difficulties of identifying future works. It was possible that various works had the same title; without further identification data, they could be mixed up. That might easily happen in the case of film versions of classical literary works of which various film versions had been or would be created.

453. Mr. AVERSA (Italy) said that the question of identification of works should not be settled in the Regulations but should rather be transferred to the Administrative Instructions and to the application forms. He mentioned that, in his country, the possibility existed to register a work before it had been produced and there was no problem concerning the identification of such works; it was in the interest of the applicant to give sufficient data for the identification of the work.

454. Mr. BOGSCH (Director General of WIPO) wished to clarify what a possible decision to transfer the question of identification of works to the Administrative Instructions would mean. Such a decision should not mean the implied promise that the Administrative Instructions would contain obligatory indications in addition to the title as proposed by the Delegation of Hungary. As the Delegation of the United States of America, a country with enormous experience in the field of registration, pointed out, in some cases, those elements which had been mentioned by the Delegation of Hungary simply did not exist. He drew attention to the fact that item (v) of Rule 1 only

referred to the obligatory element of a work-related application, namely that, in such an application, a work should be identified, at least, by its title. All that, however, had never been considered to be the only possible means of identification of works. Although the draft application forms to be used for registration had not been submitted to the Diplomatic Conference, they had been discussed by the Committee of Experts convened for the preparation of the Diplomatic Conference in March 1988. The application forms offered spaces and alternative boxes for all the information that the Hungarian proposal included and drew the attention of the applicant to the fact that it was in his interest to give as much information as necessary. The records of the Diplomatic Conference could confirm that the approach followed in the draft forms had been right and could make it clear again that the Administrative Instructions and the forms should call the attention of any applicant to the fact that the value of his application depended on the amount of information given. All that might, however, be considered as self-regulating because it was clearly in the interest of the applicant to give sufficient details.

455. Mrs. HÖKBORG (Sweden) associated her Delegation with the views expressed by the Delegation of the United States of America. The Register must be practical, otherwise it would not be used. For the representatives of the users, for instance for FIAPP, the original draft of item (v) of Rule 1 was practical, while the proposal put forward by the Delegation of Hungary was not practical. All that was a sufficient reason for keeping the text of the original draft. The Indian proposal could be accepted as a compromise, but the Delegation of Sweden would prefer to keep the text because it agreed with the argument of the Director General that the matter was self-regulating.

456. Mr. BOYTHA (Hungary) stated that there was a general feeling that the title in itself was not always sufficient to identify a work and also the draft forms invited further identification data. He added that he understood, however, that the data mentioned in the Hungarian proposal was not always applicable and practical. Taking into account those facts, the idea proposed by the Delegation of India could be a basis for a compromise solution. That idea could be combined with the Hungarian proposal if item (v) of Rule 1 were to be modified to provide that, in addition to the title and titles, other possible data should also be mentioned as enumerated in the Administrative Instructions. An agreement could be reached that the data, that, when applicable, should be indicated, included the data mentioned in the Hungarian proposal, and perhaps also some other data that were invited by the applicable forms referred to by the Director General.

457. Mr. BOGSCH (Director General of WIPO) noted that the modified proposal of the Delegation of Hungary differed in one important element from the compromise proposal of the Delegation of India. While the Indian proposal would not involve any obligation concerning the indication of data other than the title of the work, under the modified Hungarian proposal, if certain data were available, those data must be indicated. A consequence of such a provision would be that, if the applicant did not indicate such data, the application would have to be rejected by the Register. Consequently, a responsibility would be given to the Registry, and the Register could not

properly meet such a responsibility. The Registry would not be like a patent office which examined applications in detail. Taking into account the differing laws and terminology in the various countries, it would be hard to define what data were actually available. The responsibility involved in possible rejections which necessarily followed from the prescription of obligatory elements of applications should be restricted to extreme cases. Therefore, he repeated his suggestion that the indication of certain data other than the title of the work should be strongly recommended in the own interest of the applicant as it was done already in the draft application forms, but should not be made obligatory.

458. The CHAIRMAN proposed that the discussion of item (v) of Rule 1 be continued the following day and closed the meeting. (Continued at paragraph 459.)

<u>Sixth Meeting</u>
<u>Thursday, April 13, 1989</u>
<u>Morning</u>

Rule 1: Definitions (continued from paragraph 458)

459. The CHAIRMAN resumed the debate on item (v) of Rule 1 and indicated that there were still two questions concerning which the discussion should be completed. One related to the identification of the work being registered and the other related to the registration of future works.

460. Mr. COHEN (Canada) agreed with the Director General's statement made the preceding day that the identification of works would be a self-regulating kind of operation because it would be in the interest of the applicants to provide as much information as possible. He added that he would not object to any language which clarified the data that would be desirable to include in an application, as long as it was clear that the indication of certain data was not an obligation as proposed by the Delegation of Hungary. He went on saying that, in respect of the issue of future works, he did not understand why certain Delegations had misgivings. In the case of future works, the applications would be in the context of contractual rights. Since a work had not been created, there was no intellectual property right attached to it as yet, and it would be in that context that applications would be filed.

461. Ms. PETERS (United States of America) stated that her country continued to support the draft proposed by the Director General. For rejection purposes, the only thing that should be required with regard to identification was the title of the work. She also supported the Director General's suggestion that the Administrative Instructions and the application forms should encourage the applicant to give as much information as possible concerning other identifiers, such as the authors and other contributors to the audiovisual work.

462. Mr. TELICKA (Czechoslovakia) suggested that, first, the question of future works should be discussed and answered because the answer might influence the decision on the other question, namely on the question of the identification of works. Further, he raised the specific question of what would happen if statements concerning a future work based on a public domain literature work, for instance, "War and Peace" were registered. Would the cinematographic adaptation of such a literary work be blocked for other producers or not?

463. The CHAIRMAN answered to the question raised by the Czechoslovak Delegation that the registration of future works did not establish or transfer any rights, and, particularly, did not establish priority rights concerning certain titles or in respect of the adaptation of any literary works. All the legal effects of such a registration were that the statements were considered true, under certain conditions, until the contrary was proved.

464. Mrs KOSKINEN (Finland) said that, in general, the identification of a work by its title would not be sufficient; it was desirable to also indicate the names of the main authors when it was possible. Item (v) of Rule 1, however, was supposed to provide not what was desirable but what was obligatory. Therefore, the Finnish Delegation supported the original draft of item (v). Furthermore, it also supported the Director General's proposal that the Administrative Instructions and the application forms should encourage applicants to give all the information that was necessary for the identification of the work.

465. Mr. NDOYE (Senegal) stated that, on the basis of the explanations given during the discussion, he withdrew the reservation he had made in relation to the registration of future works, and that he could agree with the proposed draft text.

466. Mr. BOYTHA (Hungary) informed the Committee that, in the light of the discussions of the preceding day, after the meeting, there was an informal consultation with the participation of the Delegations which had taken part in the debate on the question of identification of works, and stated that his Delegation was ready to withdraw its proposal contained in document IRAW/DC/6 and to accept the solution formulated by the Director General and agreed upon by all the Delegations participating in the said consultation. That solution would consist of two elements: First, the word "at least" should be inserted in item (v) of Rule 1, before the word "by its title or titles"; thus, the beginning of item (v) would read "'work-related application' means an application that identifies an existing or future work at least by its title or titles" Second, the minutes of the Diplomatic Conference should reflect the following understanding: "It is understood that the Administrative Instructions and the application forms will invite the applicant to furnish data in addition to the title of the audiovisual work and will expressly mention, among such data, the name of the maker (producer), principal director, author of the script, author of the work from which the audiovisual work is or will be derived, the composer of any music contained in

the audiovisual work, as well as the principal actor or actors. The application forms will remind applicants that furnishing the maximum number of data with the maximum precision is in their own interest, because, the higher the number of the data is and the better their precision is, the easier it will be for them to identify the audiovisual work whose registration they ask for." He thanked the Director General for proposing, and the other Delegates for accepting, that solution.

467. The CHAIRMAN stated that she had also supported the solution proposed by the Director General and read by the Delegation of Hungary, and thanked the Delegation of Hungary for having withdrawn its proposal.

468. Mr. BRENNAN (United States of America) stated that the Delegation of the United States of America strongly supported the solution proposed by the Director General and read out by the Delegation of Hungary. Further, he commented on the question of future works pointing out that the possibility of registering such works was an absolute necessity for the film industry because of the general practice what is known in the trade as "pre-sales." That practice was the following: a film maker took an idea that might be just a title, or it might be a more developed idea, and went out to the market and actually licensed that future work, and developed the money to be able to make it. It was essential that film makers be able to register statements concerning such "pre-sales."

469. Mr. ZUTSHI (India) stated the support of his Delegation for the proposed solution read out by the Delegate of Hungary. He also agreed with the Delegation of the United States of America on the need for allowing the registration of statements concerning future works.

470. Mr. DOZORTSEV (Soviet Union) found the explanation made by the Delegation of the United States of America very useful and expressed the hope that some compromise solution might be worked out also in respect of future works. Such a solution would be if the Administrative Instructions invited applicants to indicate clearly whether the statements they requested to be registered related to an existing work or to a future work.

471. Mr. TELICKA (Czechoslovakia) supported the proposal made by the Delegation of the Soviet Union.

472. Mr. BOGSCH (Director General of WIPO) considered that assurances could be given to the Delegations of the Soviet Union and Czechoslovakia that the Administrative Instructions would distinguish between existing and future works, and the applicant would be invited to state whether the work in question was an existing or future one.

473. The CHAIRMAN asked the Delegations of the Soviet Union and Czechoslovakia whether, in that way, they considered the question of future works settled, and noted the agreement of the two Delegations.

474. Mr. CORBET (CISAC) stated that the organization represented by him found the indication of the authors' names or, at least, the main authors' names, important for two reasons; first, for a fullest identification of works, and, second, for the respect of authors' moral rights.

475. Mr. CHAUBEAU (FIAPF) supported the various comments on the necessity to register future works and explained that, in the field of audiovisual works, "pre-sales" of rights was a general practice in the stage when only the concept or idea of a film existed. He pointed out that the registration of statements concerning such "pre-sales" was in harmony with the preamble of the Treaty where the first objective indicated was to increase legal security in transactions concerning audiovisual works. He mentioned that it could be important, for example, in a given country for a distributor to whom distribution rights of a future film were proposed to be purchased, to be able to consult the Register in order to find out if the rights in question were or were not already sold. In respect of the question of the amount of information needed for the identification of the work, he stressed that it was in the interest of the producers to give a maximum of detailed information; however, that information could not be made uniform and, apart from the title of the works, should not be made obligatory. He thought that the text of the original WIPO draft was satisfactory, and expressed satisfaction that the proposal aimed at extending the scope of obligatory information had been rejected.

476. The CHAIRMAN summing up the discussion of item (v) of Rule 1, stated that, as a result of a long debate, there was an agreement in respect of both the question of future works and the question of the identification of works. Therefore, she considered that the text of that item had been agreed upon with the proposed minor modification.

477. Item (v) of Rule 1 was adopted as appearing in the draft, except that the words "at least" were inserted before the words "by its title or titles."

478. The CHAIRMAN opened the debate on item (vi) of Rule 1, and asked the Director General to explain the notion of "person-related application."

479. Mr. BOGSCH (Director General of WIPO) pointed out that there were situations in which it was necessary to have a registration even without indicating the title of the work. In such a case, what would replace the indication of the title was a description of the work. The work would be considered as being described when, in particular, the person who or the entity which had made or was expected to make the work was identified.

480. Mr. COHEN (Canada) thanked the Director General for his explanation and said that he only had one question which was the following: if the only thing for describing the work was the name of the bank or the producer, what happened if a different bank gave a loan to the same producer, and that was also registered? Would not then be "a conflict" over the description?

481. Mr. BOGSCH (Director General of WIPO) answered that he could see no conflict in such a case because two loans might exist in respect of the same work just as two mortgages could be taken on the same house which was owned by the same person. A new mortgage was not necessarily in contradiction with an existing mortgage. The situation was the same in the case under discussion.

482. Mr. WINTER (United States of America) raised the question of whether in the fourth line of the English text, the word "but" would not have to be replaced by the words "even if."

483. The CHAIRMAN proposed that the question raised by the Delegation of the United States of America should be dealt with by the Drafting Committee and suspended the meeting for thirty minutes.

[Suspension]

484. The CHAIRMAN resumed the discussion on item (vi) of Rule 1.

485. Mr. HAMDANE (Lebanon) asked the question what kind of descriptions could be acceptable under item (vi) of Rule 1, if the title or titles of the work were not mentioned.

486. Mr. BOGSCH (Director General of WIPO) drew attention to the second sentence of the item under which "[a] work shall be considered as being described when, in particular, the person who or legal entity which has made, or is expected to make, the work is identified." The most typical case might be the identification of the producer. However, what had been agreed upon concerning item (v) would also be applicable in respect of item (vi) : applicants also would be encouraged to give further details for identification.

487. Mr. AVERSA (Italy) suggested a modification in item (vi) of Rule (1) similar to the one agreed upon concerning item (v) to stress that the item only referred to a minimum identification. Otherwise, he found the proposed text acceptable.

488. Mr. CHAUBEAU (FIAPF) stated that his organization agreed with Rule (1)(vi) as it stood. However, he referred to the expression "to make a work" used in the English version for which it was difficult to find an exact equivalent in French. He was of the view that a word other than "réaliser" should be used in French because that word referred rather to the work done by the person who in English was called the "film director." He proposed to replace the word "réaliser" by the word "produire" in the French text, without touching the English version.

489. The CHAIRMAN suggested that the proposal made by the representative of FIAPF concerning the French version be dealt with by the Drafting Committee. As concerned the proposal made by the Delegation of Italy, the proposed modification did not seem to be necessary because the two items differed in nature. The proposal had not been seconded by another Delegation, so it was not necessary to transfer it to the Drafting Committee. She proposed that item (vi) be considered to have been adopted subject to the alterations the Drafting Committee might suggest concerning the word "réaliser" in the French version.

490. Item (vi) of Rule 1 was adopted as appearing in the draft, with a possible wording change in the French version to be proposed by the Drafting Committee.

491. The CHAIRMAN proposed that items (vii) to (x) of Rule 1 be discussed together.

492. Mr. NETTEL (Austria) wondered whether in items (vii) and (ix) the words "as the case may be" were not superfluous.

493. The CHAIRMAN proposed that the question whether the words referred to by the Delegation of Austria were superfluous, should be answered by the Drafting Committee. She stated that, otherwise, if there were no more wishes to take the floor on those items, she would consider items (vii) to (x), and, thus, the whole Rule 1, adopted.

494. Items (vii) to (x) of Rule 1 were adopted as appearing in the draft.

Rule 2: Application

495. The CHAIRMAN opened the discussion on Rule 2 and proposed a paragraph by paragraph discussion. She, first, invited comments on paragraph (1) [Forms], and found that there were no comments on it.

496. Rule 2, paragraph (1) was adopted, without discussion, as appearing in the draft.

497. The CHAIRMAN proceeded to paragraph (2) [Language].

498.1 Mr. BOGSCH (Director General of WIPO) recalled that the paragraph was the result of a very thorough debate at the preparatory meetings where, although certain countries had reservations, the majority favored the use of only one language, namely the English language.

498.2 He stressed that, in WIPO, every language was considered equally noble and good, and that, if only one language or only some of the languages were used in certain cases, it was not because one language was considered superior in any respect to the other, but rather because of budgetary reasons. The only reason the preparatory committee was in favor of paragraph (2), as appearing in the draft, was the need to keep the costs at a reasonable level.

499. Mr. TELICKA (Czechoslovakia) stated that his Delegation fully supported paragraph (2) for the reasons mentioned by the Director General.

500. Mr. OYAMA (Japan) said that his Delegation supported the provision on using only English in view of the need for curtailing the expenses as far as possible.

501. Mrs. RENAUDIN (France) stated that her Delegation could not accept Rule 2(2) as proposed. The two languages in which the Treaty would be adopted would be the English and French languages. Those two languages should be used in the Registry. She disagreed that the use of a second language in the Register would substantially increase its costs, because the forms which would be used by the applicants could be presented in such a standardized manner that would make their handling by the Registry easy even if the forms were bilingual. The deposit of documents in French should also be allowed; it was up to the applicant to make an English summary if he wished to make that information more easily available to English speaking users.

502.1 Mr. PALENFO (Burkina Faso) thought that the success of the Register would be endangered if users were kept away because of the use of only one language. He did not agree that an additional language, French, would substantially increase the operating costs of the Registry.

502.2 He referred to Article 15(1) of the Treaty which provided that the Treaty would be established in the English and French languages, and expressed the view that it would be in harmony with that position if those two languages were used in the Registry. He stated that his country would not be able to adhere to the Treaty if the French language was not accepted as a working language of the Register.

503.1 Mr. NETTEL (Austria) underlined, that, if another language were used in the Registry, the cost would rise considerably. He drew attention to the potential danger that, if one started proposing French as the second language, there might be interventions asking for Spanish as the third language, asking for German as the fourth language, and then the Russian, Chinese, Arabic and other languages would also be asked for, and all that would make the Registry extremely expensive. To avoid such a danger, there was a need for a reasonable compromise which would make the Treaty acceptable to all countries.

503.2 He considered that a possible compromise could be that the applications could be in English or in French, or in English and in French, but the work of the Registry would only be in English, because that would be the only way to keep the Registry working at a reasonable cost level.

504. The CHAIRMAN remarked that, if applications could be made in French, but the Register was in English, that would mean that any application in French would have to be translated into English.

505. Mr. NETTEL (Austria) answered that, if such a solution were adopted, the staff still would be able to handle the problem.

506. Mr. HAMDANE (Lebanon) said that most of the Lebanese people preferred to express themselves in French. He stressed that it would promote the wider use of the Register if there were, at least, one more alternative to the English language, preferably the French language.

507. Mr. JACQUET (Belgium) associated his Delegation to the statements made by the Delegations of France and Burkina Faso.

508. Mr. NDOYE (Senegal) supported the position of the Delegation of France, emphasizing that, in his country, French was the official language. He added that the international mission of WIPO should not be forgotten, and the use of the Register should not be made more expensive for the creators and users of those countries where English was not a widely used language by obliging them to pay the cost of expensive translations.

509. Mr. LOUA (Guinea) stated that his Delegation shared the position of the Delegation of France also supported by the Delegations of Belgium, Burkina Faso and Senegal.

510. Mr. MOKADDEM (Tunisia) supported the proposal made by the Delegation of France to make the use of the French language also possible.

511. Mr. ZUTSHI (India) recalled that, at the present Diplomatic Conference, during the discussions on the Treaty, there was a general agreement that the Register must be self-supporting and that the costs to the users must be reasonable. In view of that fact, his Delegation was of the view that the Register should be maintained in only one language, and, for reasons which were quite obvious, that language should be the English language.

512. Mr. FERNAU (Federal Republic of Germany) was in favor of maintaining paragraph (2) as appearing in the draft. There was an understanding that the costs of the Register should be kept at the lowest possible level. Every additional language would necessarily increase the costs and consequently the

fees to be paid by the users. A further consequence would be that applicants from countries who, after the introduction of additional languages, could still not use their mother tongue, would have to pay increased fees without benefitting from the additional languages.

513. Mr. CANO (Colombia) stressed the importance of including Spanish among the languages that could be used in connection with the Register. That followed from the international nature of the Treaty and of the Register and from the need for obtaining as wide adherence as possible. He pointed out that the possibility of using the Spanish language would be particularly important for the rights owners and users of developing countries where that language was the most widely used one. Finally, the importance of the Latin American and Spanish audiovisual markets also justified the use of the Spanish language.

514. Mr. CAMBITSIS (Greece) said that his Delegation understood that the costs might rise in case of the use of an additional language in the Register; those extra costs might, however, be justified by the fact that the Register would be an international institution and its image would suffer if only one language could be used. A widely used second language would make the Registry more accessible. It would also make it more precise, because, sometimes, the translations from French into English might not be accurate and that might create problems. The addition of another language, such as French, might also be useful for people speaking other languages which come nearer to French than to English. Therefore, he stated that his Delegation would be rather on the side of those who favored the use of both French and English in the International Register.

515. Mr. GERO (Canada) supported the inclusion of French in paragraph (2) as a language that could be used in applications. He added that he did not believe that the use of French would create substantial additional costs.

516. Mr. COSTA LOBO (Portugal) stated that his Delegation also supported the inclusion of the French language in paragraph (2).

517. Mr. GROSSENBACHER (Switzerland) associated himself with the Delegations which favored the possibility of using French as well. He wondered whether it would be justified to limit the impact and the territorial scope of the Register by excluding such a widely spoken second language as the French language. He said that, in some cases, even the use of further additional languages might be needed because it seemed to him difficult not to have in the data bank of the Register the original titles of works. He was of the view that it would be very difficult to find an audiovisual work in the data bank if one could only base the research on a literal English translation of the original title.

518. Mr. BOGSCH (Director General of WIPO) noted that there was a provision in the Regulations under Rule 2(5) that provided for the indication of the original title; thus, every such title would also be in the data base.

519. Mrs. MBETTE MBONGUE (Cameroon) remarked that her country was a bilingual country and she supported the Delegations which were in favor of the inclusion of French language in paragraph (2).

520. Mr. PALENFO (Burkina Faso) pointed out that the possibility of using one more language might also have a diminishing effect on costs because, if the Register was used by more applicants, the per-application cost might be decreased.

521. Mr. LECAT (France) thanked all those Delegations which had supported the position of his Delegation regarding the use of the French language; in particular, the Delegation of Austria which had tried to find a constructive compromise solution. He said that he wished to avoid a vote and preferred to obtain a consensus with the best solution also for the industries concerned. Concerning the forms, he thought that most of them would probably be coded in the computer system, something which would reduce the language problem. As far as the original titles were concerned, he was in agreement with the Delegation of Switzerland. Finally, in respect of the documents to be annexed to applications, he thought that it was up to the applicant to decide which documents, and in what language, he wished to annex to his application.

522. Mr. N'TAKPE (Côte d'Ivoire) supported the delegations which were in favor of also using French, and said that his Delegation was ready to examine the compromise solution proposed by the Delegation of Austria.

523. Mr. MOKADDEM (Tunisia) reiterated the support of his delegation for the use of the French language.

524. Mr. HERTEL (German Democratic Republic) said that, for German speaking users whom, in respect of his country, he represented, English and French were the same, as Spanish would also be the same. If any of those languages was used, German speaking users would be unable to use their own language. Of course, German also could be proposed as a further language; however, the need for making the Register self-supporting, required the restriction of the number of languages, and that was why his Delegation continued to believe that there should be only one language, the English language. Nevertheless, he added that his Delegation was ready to consider any reasonable and financially feasible compromise solution.

525. Mr. MORFIN PATRACA (Mexico) pointed out that the aim of decreasing the costs should not get in conflict with the basic purposes of the Register. For example, if the large number of interested persons whose only language was Spanish, were obliged to use other languages, that might lead to mistakes in translations and, thus, to misunderstandings. Furthermore, the question of costs should not be considered in a one-sided manner. One should also take into account that the translation of applications into another language--into English or probably into French--would mean an extra cost to applicants who could not use such a language. Therefore, either also Spanish should be allowed to be used or the fees should be differentiated to express that, for those who could use English or French, the costs were lower than for those who had to translate their applications; the latter users should be compensated through the fee system.

526. Mr. TROMBETTA (Argentina) agreed with the statements made by the Delegation of Mexico concerning the need for a complex approach to the question of costs. The fee system should express the fact that, for those who could not use English directly, extra costs would emerge. A compensation system might be a compromise solution to that problem, and the feasibility of such a system should be discussed in a more concrete manner.

527. Mr. OMAR (Libya) said that his Delegation agreed that only one language should be used. However, if other languages are to be used, it recommended the use of the Arabic language too.

528. Mrs. HÖKBORG (Sweden) stated that the Delegations which supported the use of the French language had not succeeded in persuading her Delegation that the costs would not be higher, or would only be minimally higher, with two languages. Therefore, for purely budgetary and economic reasons, her Delegation continued preferring one language only, the English language as proposed in the draft. She added, however, that she also considered it preferable to try and reach a consensus in the Main Committee.

529. Mr. NETTEL (Austria) noted that there was a general wish among the Delegations to try and outline a compromise solution. He proposed to set up a small group with the charge, or rather the wish, to present the Main Committee with a compromise solution. In the meantime, the discussion of the other provisions of the Regulations could continue. As a possible compromise, he repeated the idea, to which he had referred earlier, that the applications should be allowed to be filed also in French, but, from the filing of the application on, the Registry would only use the English language. The bilingual--or rather trilingual--staff could take care of the translation problems that might emerge in such a system.

530. It was decided that the discussion of Rule 2, paragraph (2), along with the proposal just made by the Delegation of Austria would be continued after lunch. (Continued at paragraph 531.)

<u>Seventh Meeting</u>
<u>Thursday, April 13, 1989</u>
<u>Afternoon</u>

Rule 2: Application (continued from paragraph 530)

531. The CHAIRMAN resumed the discussion on Rule 2, paragraph (2) [Language].

532. Mr. WINTER (United States of America) recalled that his country had always firmly supported the conclusion of a treaty for the registration of audiovisual works, one which would be widely accepted both by developing and by developed countries. To be useful, the Treaty had to have wide acceptance. Therefore, his Delegation regretted sincerely the divisive nature

of the debate on paragraph (2) of Rule 2. Solely on the basis of budgetary grounds, and for no other reason, the United States of America favored the text of paragraph (2) as appearing in the draft. He added, however, that his Delegation was ready to consider any practical and financially sound compromise and wished to avoid a vote on the issue.

533. Mr. HAMDANE (Lebanon) agreed with the Delegation of the United States of America that a compromise and--on the basis of the compromise--a consensus should be found. The compromise solution should take into account that the use of the Register would depend not only on the amount of fees but also on the language or languages that could be used. That was particularly true in respect of users from developing countries who could not afford the translation costs.

534. Mr. LADSOUS (France) said that his Delegation wished the discussion to move towards a possible compromise and was in favor of the proposal made by the Delegation of Austria.

535. Mr. CANO (Colombia) stated that his Delegation also wished to promote a consensus and, therefore, proposed, as a compromise solution, that the following sentence be added to Rule 2(2): "As soon as the International Register is financially self-supporting, the Assembly may determine the additional languages in which applications may be filed."

536. Mr. GERO (Canada) said that his Delegation supported the Austrian proposal in order to find a compromise.

537. Mrs. KOSKINEN (Finland) stated that the Delegation of Finland could accept the use of two languages, provided that the costs would remain the same, or the cost difference would be marginal; therefore, it was ready to support the compromise proposal made by the Delegation of Austria.

538. Mr. AVERSA (Italy) supported the Austrian proposal to try and find a compromise.

539. Mr. PALENFO (Burkina Faso) said that he was also in favor to continue the discussion on the basis of the proposal made by the Delegation of Austria.

540. Mr. NDOYE (Senegal) asked information on the languages used in the existing registration systems of WIPO.

541.1 Mr. BOGSCH (Director General of WIPO) answered that the languages used under the Patent Cooperation Treaty were English and French, and the language used under the Madrid Agreement was only French.

541.2 He went on outlining how the Austrian proposal could be translated into treaty language. He said that, if the basic idea of the Austrian proposal was accepted, four changes seemed necessary in the Regulations. The first change would be in paragraph (2) of Rule 2 where the French language should be added; so paragraph (2) would read "Any application shall be in the English language or in the French language." The second of the four changes would be in the second sentence of paragraph (5)(a) of Rule 2 which would read "When the title is in a language other than English or French or" etc., which meant the words "French or" would be inserted after the words "English or." The third change would be in the second sentence of paragraph (9)(a) of Rule 2 which would start in the following way: "Any such document in a language other than English or French," and the rest would remain without change. The fourth and last change would be in Rule 6 on the Gazette whose first paragraph read "The International Registry shall publish a gazette ("the Gazette") in which it shall indicate the prescribed data in respect of all registrations." The following second sentence should be added: "The Gazette shall be in English, provided that entries concerning applications that were filed in French shall also be in French."

541.3 He added the following explanation to his proposals. Wherever a translation became necessary, it would be done by the Registry and its cost would be included in the general cost. In other words, whether the application was in French or in English, the fees would be the same. It would be hard to indicate how much that proposal would increase the fees. It depended, to a large extent, on the proportion of the applications in English and French. If the applications in French exceeded in number the English, or were the same, the increase would be very high, but, if the applications in French were around 10%, the increase in fees would be between 10 and 20%.

542. Mr. MORFÍN PATRACA (Mexico) stated the disagreement of his Delegation with the proposal made by the Delegation of Austria, and explained in fuller detail by the Director General, because that proposal was not equitable; it would suggest that French was more important than other languages and would be disadvantageous to those who used the Spanish language.

543. It was decided to have a short break in the discussion to provide an opportunity for the Delegations to have an informal consultation.

[Suspension]

544. The CHAIRMAN resumed the discussion on the proposal presented by the Director General concerning the modifications needed for the partial use of the French language.

545. Mr. LADSOUS (France) said that his Delegation, after having examined carefully the proposals made by the Director General, and after having discussed the matter with some Delegations, was ready to accept them in a spirit of compromise.

546. Mr. GERO (Canada) indicated that his Delegation supported the compromise solution proposed by the Director General.

547. Mr. PALENFO (Burkina Faso) said that his Delegation also supported the proposals made by the Director General.

548. Mr. NDOYE (Senegal) stated that his Delegation supported the proposals put forward by the Director General.

549. Mr. GROSSENBACHER (Switzerland) supported the Director General's compromise solution.

550. Mr. LOUA (Guinea) also supported the proposals made by the Director General.

551. Mr. CANO (Colombia) referred to his proposal to add a new sentence to Rule 2, paragraph (2) which would open the way for the use of further languages when the Register became self-supporting. He stated that his Delegation continued supporting that solution as the best and most equitable one.

552. Mr. NIÑO GOMEZ (Venezuela) supported the proposal made by the Delegation of Colombia because it was flexible enough and could serve as a basis for a consensus.

553. Mr. MORFÍN PATRACA (Mexico) associated himself with the position and proposal of the Delegation of Colombia. He also stressed the importance of the volume of production in the various languages. In that context, he referred to the fact that Mexico was one of the countries with the highest production level in the field of television creations.

554. Mr. TETTAMANTI (Argentina) supported the compromise solution proposed by the Delegation of Colombia and underlined its flexible nature as a means of which the way would be left open for any future decision.

555. Mr. PEREZ del ARCO y SEGURA (Spain) stressed that the use of Spanish language--along with the English and French languages--would be justified from the beginning. However, in a spirit of compromise, he accepted the Colombian proposal and expressed the hope that the Register would soon become self-supporting and that, as a result of it, the Spanish language could also be used.

556. Mr. HAMDANE (Lebanon) said that he was not against the spirit of the Colombian proposal, but, if it were connected to the initial exclusive use of the English language, it would not remove the problem that the use of a single language would mean to the potential users of the Register in a number of countries.

557. Mr. YAHIA-CHERIF (Algeria) supported the statement made by the Delegation of Lebanon.

558. Mr. LOUA (Guinea) also supported the statement of the Delegation of Lebanon.

559. Mr. NETTEL (Austria) noted that the discussion on the question of languages was in a relative deadlock. To try and find a way out of that situation, he proposed a new compromise solution, namely the combination of the Director General's proposal with the proposal made by the Delegation of Colombia. He said it seemed clear to him that the whole idea of the Spanish speaking Delegations could not be satisfied by that solution, but it would go in their direction; English would be available and, to a certain extent, also French, and the possibility of using other languages would depend on when the Register became self-supporting.

560. Mr. CAMBITSIS (Greece) stated that his Delegation supported the proposal of the Director General, especially because it believed that it would not preclude the Assembly from adopting other languages, thus it was in accord with the proposal of the Delegation of Colombia.

561. Mr. ALGAN (Turkey) said that his Delegation agreed with the proposal made by the Director General. He added that the Colombian proposal seemed to him reasonable and he could also accept it. He also said that he wished very much that a consensus could be reached on the delicate question of languages.

562. Mr. NDOYE (Senegal) said that his Delegation wished to promote a consensus, and considered that such a consensus could be found on the basis of some kind of combination of the Director General's proposal and the Colombian proposal.

563. Mr. ZUTSHI (India) considered that the proposal made by the Delegation of Colombia, namely, that there should be only one language and the issue of additional languages should be left for the time of the operation of the Register, when it reached the stage of self-sufficiency, was the most reasonable one, and the Indian Delegation supported and commended that proposal.

564. Mr. TELICKA (Czechoslovakia) also supported the Colombian proposal.

565. Mr. GERO (Canada) supported the idea of the Delegation of Austria to combine the Director General's proposal and the Colombian proposal.

566. Mr. LADSOUS (France) also supported the Austrian proposal.

567. Mr. WINTER (United States of America) noted that the Delegation of Austria had made three proposals. The first proposal was that the applications be in English and French. The second proposal was that a working group be set up to study the problem. The third proposal was that the Director General's proposal and the Colombian proposal be combined. He wanted to know which of the three proposals the Delegation of France supported.

568. The CHAIRMAN had the impression that the Delegation of France had expressed support for the third proposal, namely for the combination of the Director General's proposal and the Colombian proposal.

569. Mr. LADSOUS (France) indicated that the Chairman was right; his Delegation had referred to the last--third--proposal of the Delegation of Austria.

570. Mr. HERTEL (German Democratic Republic) stated that his Delegation would prefer to have only one language, the English language, but in a spirit of compromise, it was ready to support the proposal of the Delegation of Colombia to decide on possible further languages when the Register became self-supporting.

571. Mr. OMAR (Libya) also supported the Colombian proposal.

572. Mr. TENEICHVILI (Soviet Union) supported the proposal made by the Delegation of Colombia. First, a temporary decision should be taken which kept the fundamental principle that the fees should be sufficiently low; that necessitated the use of only one language. A second language--or further languages--could only be decided when sufficient experience was available and the financial condition of the Register was guaranteed.

573. Mr. TEŠIĆ (Yugoslavia) associated himself with the previous speakers and supported the Colombian proposal.

574. Mr. GROSSENBACHER (Switzerland) said that his Delegation was in favor of the adoption of the Austrian proposal.

575. Mrs. GABR (Egypt) drew the attention of the Delegations to the fact that Egypt was the biggest producer of audiovisual works in the Middle East, and stated that her country was hoping for the success of the Register. She remarked that her country refrained from asking, during the preparatory meetings, for the use of the Arabic language and did it for the sake of not compromising the chances of the Register. She was of the view that the fees should be as low as possible. She supported, however, the proposal of the Delegation of Colombia to envisage other languages once the Register would be self-supporting.

576. Mr. WINTER (United States of America) said that it seemed to his Delegation feasible and practical to support the Colombian proposal.

577. Mr. NETTEL (Austria) noted that his proposal which added the Colombian proposal to the proposal of the Director General had been made in a spirit of compromise. If the majority of the Conference decided for the Colombian solution, the Austrian Delegation would not stand in the way of that compromise proposal.

578. The CHAIRMAN noted that there was a growing support for the Colombian proposal which seemed to her to be a really sound and reasonable compromise.

579. Mr. LADSOUS (France) remarked that some Delegations seemed to be satisfied with the Colombian proposal, but his Delegation was not and consequently, there was no consensus. He stated that the position of the Delegation of France was unchanged and that it was ready only to accept the proposal made by the Director General, as amended by the Delegation of Austria in its third proposal, but it was not ready to accept the Colombian proposal alone.

580. The CHAIRMAN answered that she had not said that a consensus had been reached but only indicated a certain trend in the discussion. She stressed, however, that the alternative to a consensus was a vote, and a vote was something that the Delegations--rightly--did not want.

581. Mr. PALENFO (Burkina Faso) said that his Delegation did not find the Colombian proposal appropriate for being a basis for a consensus. He maintained his position concerning the need for the possibility of also using the French language.

582. Mr. NDOYE (Senegal) recalled his strong position in favor of the use of the French language, and that his Delegation supported the proposal of the Director General, as amended by the Delegation of Austria. He added that a Treaty was, by definition, an international instrument established on the basis of a consensus and that his Delegation would not like to have a vote.

583. Mr. HAMDANE (Lebanon) considered that not much progress had been made towards a consensus, and expressed the view that more options should be given to the Delegations to try and find a compromise and to avoid a vote.

584. Mr. FORTINI (Italy) proposed to continue to examine the other Rules and to come back later to the question of languages, because the Main Committee was running out of time.

585. Mr. NDOYE (Senegal) supported the proposal made by the Delegation of Italy.

586. Mr. HAMDANE (Lebanon) also supported the idea of the Delegation of Italy.

587. Mr. CANO (Colombia) opposed the Italian proposal to adjourn the debate on the question of languages.

588. Mr. ZUTSHI (India) stated that the Delegation of India was also in favor of continuing the discussion on the question of languages.

589. The CHAIRMAN put the Italian proposal to vote. Sixteen Delegations voted for the adjournment of the debate on the question of languages as proposed by the Delegation of Italy; twelve Delegations voted against it; seven Delegations abstained.

590. It was decided to adjourn the debate of the rules that were related to the question of languages. (The debate on the question of languages continued at paragraph 746.)

591. The CHAIRMAN turned to Rule 2, paragraph (3) [Name and Address of Applicant] and noted that there were no comments.

592. Rule 2(3) was adopted, without discussion, as appearing in the draft.

593. The CHAIRMAN proceeded to Rule 2, paragraph (4) [Name and Address of Third Persons Referred to in the Application] and noted that there were no comments.

594. Rule 2(4) was adopted, without discussion, as appearing in the draft.

595. The CHAIRMAN referred to Rule 2, paragraph (5) [Title or Description of a Work] but noted that it also concerned the question of languages.

596. Mr. BOGSCH (Director General of WIPO) was of the view that, subject to a later discussion and decision on the question of languages, Rule 2(5) could be discussed.

597. The CHAIRMAN submitted Rule 2(5), leaving out the question of languages, to discussion.

598. Mr. BOYTHA (Hungary) referred to the decision taken concerning Rule 1(v) and found it logical that the first sentence of Rule 2(5) should be modified accordingly, which meant that the words "at least" should be inserted and the sentence should read: "Any work-related application shall indicate at least the title or titles of the work."

599. Mr. AVERSA (Italy) considered the change proposed by the Delegation of Hungary inevitable as a consequence of the modification of Rule 1(v), and supported that proposal.

600. The CHAIRMAN agreed with the proposal made by the Delegation of Hungary and seconded by the Delegation of Italy.

601. The first sentence of Rule 2, paragraph (5)(a) was adopted with the amendment proposed by the Delegation of Hungary (see paragraph 598). Rule 2, paragraph (5)(b) was adopted, without discussion, as appearing in the draft. The debate on the second sentence of Rule 2, paragraph (5)(a)--because it was connected to the question of languages--was adjourned. (The debate on the question of languages continued at paragraph 746.)

602. The CHAIRMAN proceeded to Rule 2, paragraph (6) [Reference to Existing Registration] and noted that there were no comments.

603. Rule 2(6) was adopted, without discussion, as appearing in the draft.

604. The CHAIRMAN turned to Rule 2, paragraph (7) [Interest of Applicant].

605. Mr. BRENNAN (United States of America) noted that, in Rule 2(7), there were two places in subparagraph (a) where there were indications in brackets, and there was also such an indication in subparagraph (b). Although it seemed clear that those were intended to be only illustrations, at a later time, such specific indications in the text of the Regulations might cause confusion in a particular country. Therefore, he suggested that all of the words in brackets in subparagraphs (a) and (b) be deleted. In addition, he stated that he believed that paragraph (c) was unnecessary and should also be deleted; however, the indication of the time limit should be suggested to the applicants as useful optional information.

606. Mr. ZUTSHI (India) endorsed the proposal made by the Delegation of the United States of America.

607. Mr. OYAMA (Japan) considered that it would be advisable for the application to indicate a time limit; therefore, he suggested that the square brackets in paragraph (7), subparagraph (c) should be deleted and the subparagraph should be maintained.

608. Mr. HAMDANE (Lebanon) associated himself with the remarks made by the Delegation of Japan, and wished to keep subparagraph (c) in the text, and to delete the brackets. In respect of removing the examples that were given in subparagraph (a) and (b) in brackets, he supported the proposal by the United States of America.

609. Mr. BOYTHA (Hungary) referred to paragraph 211 of the notes in "the Basic Proposal" which contained examples of the possible users of the Registry. He proposed that, if in any commentary on the Treaty such examples were given, a mention should also be made of the authors of audiovisual works.

610. Mr. BRENNAN (United States of America) elaborated further the reason why he wished to delete subparagraph (c). That was not because he did not think it was important to indicate the time limit, but simply because, due to the practice in the trade, it might frequently be extremely difficult to indicate a time limit. Therefore, it would be more appropriate, if the applicant were merely encouraged to provide that information; however, no provision was needed in the Regulations.

611. Mr. DOZORTSEV (Soviet Union) supported the remarks made by the Delegation of Hungary, as well as the proposal of the Delegation of the United States of America to delete from subparagraphs (a) and (b) the examples given in brackets; at the same time, he opposed the deletion of subparagraph (c).

612. Mrs. HAMDANE (Lebanon) also supported the deletion of the examples given in subparagraphs (a) and (b) considering that--in the same way as in the case of the identification of the work--the application form would invite the applicants to give as much information as reasonable in those respects. He opposed, however, the deletion of subparagraph (c).

613. Mr. BOGSCH (Director General of WIPO) considered that the wording of subparagraph (c) was not contrary to the position of the United States of America. "May" meant "may"; thus, the indication of the time limit could not be interpreted as an obligation. At the same time, during the preparatory meetings, it was found necessary to draw attention to the desirability of giving that important information.

614. The CHAIRMAN agreed with the Director General's explanation and wondered whether the Delegation of the United States of America which was alone to propose the deletion of subparagraph (c) would be ready to withdraw its proposal.

615. Mr. WINTER (United States of America) indicated that he was ready to withdraw the proposal concerning the deletion of subparagraph (c).

616. Mr. LADSOUS (France) stated that his Delegation wished to delete the square brackets in Rule 2(7)(c).

617. Mr. LÄNGLE (Austria) also supported the deletion of the brackets in Rule 2(7)(c).

618. The CHAIRMAN stated that there seemed to be a consensus about paragraph (7). The examples in brackets in subparagraphs (a) and (b) and the square brackets in subparagraph (c) should be deleted. She added that, if there were no further comments, she took paragraph (7) as adopted.

619. Rule 2(7) was adopted with the changes indicated in the preceding paragraph.

620. The CHAIRMAN adjourned the discussion on Rule 2. (Continued at paragraph 621.)

<u>Eighth Meeting</u>
<u>Friday, April 14, 1989</u>
<u>Morning</u>

Rule 2: Application (continued from paragraph 620)

621. The CHAIRMAN resumed the discussion on Rule 2 and took up paragraph (8) [Source of Rights].

622. Mr. BOGSCH (Director General of WIPO) said that paragraph (8) was important because it was intended to secure greater likeliness that the statements which were in the Register were true.

623. Mr. BRENNAN (United States of America) said that, for the same reasons for which he had proposed the deletion of the examples given in brackets in subparagraphs (a) and (b) of paragraph (7), he proposed the deletion of the examples given in brackets at the end of paragraph (8).

624. Mrs. VAIDYA (India) supported the proposal made by the Delegation of The United States of America.

625. The CHAIRMAN noted that the proposal of the United States of America had been seconded, and stated that if there was no contrary wish, she would take paragraph (8) as adopted.

626. Rule 2(8) was adopted with the deletion of the examples given in brackets.

627. The CHAIRMAN opened the discussion on Rule 2, paragraph (9) [Accompanying Documents and Identifying Material] and reminded the Delegations that the discussion of the languages aspects of the Rule had been adjourned; thus, the provisions of Rule 2(9) should only be discussed in respect of the other aspects.

628. Mr. BOGSCH (Director General of WIPO) said that paragraph (8) was important to guarantee the greatest possible probability of the truthfulness of the statements. The Administrative Instructions would urge the applicants to annex documents supporting their statements. The first sentence of subparagraph (a) served as a basis for such a practice in the Rules. The second sentence, which was subject to the languages question provided that, if the attached document was in a language other than the one--or ones--which was--or were--used in the Register, such a document had to be accompanied by an indication of the nature and essence of the document in the language--or in a language--that was used in the Register. That was important because, if a document was attached to the application in a less generally used language, many of the users of the Register would not be able to decide easily whether it was worthwhile to have that document translated; the indication of the nature and essence of the document in the language of the Register would give the users some information whether it would be worth having the document translated.

629. Mr. NDOYE (Senegal) noticed that, as regards documents which could support the statements in the application, the wording of the draft only referred to a possibility. He considered that, in the first sentence of subparagraph (a), the word "may" could be replaced by the word "shall" and, thus, the attachment of supporting documents could be made an obligation.

630. Mr. OYAMA (Japan) supported the proposal made by the Delegation of Senegal. He proposed that, in addition to replacing the word "may" by the word "shall," the word "prescribed" should be inserted before the word "documents" in the same sentence. In that case, "prescribed" would mean prescribed by the Administrative Instructions to be drawn up later.

631. Mr. BOGSCH (Director General of WIPO) explained why the attaching of documents was not an obligation in the draft but only an option. It was in the interest of the applicant to make a registration which was supported by sufficient evidence; therefore, that was a self-regulatory aspect. To say that the application must be accompanied by documents supporting the statements would pose very difficult problems of examination. If a paper were attached and it were said to support the applicant's allegation that he had acquired the rights by assignment, the Registry would have to examine whether the document really supported that statement and whether it really was true. That was something the Registry could not do for many reasons. The Registry would not know the signatures, would not know the identity of the persons involved, would not know the law of the country in respect of what were the requirements for the validity of a contract, and, if the document were in a less generally used language, the Registry would also have to know that language or it would have to require that a translation be furnished by the applicant. The translation would have to be certified by somebody; otherwise, the Registry would not know whether the translation was a correct translation of the document. All that would create insurmountable difficulties.

632. Mr. AVERSA (Italy) said that, following the explanations given by the Director General, he understood that it would be very difficult for the Registry to verify if documents annexed to an application were true or not. Therefore, he was in favor of the proposed text, with reservation as regards the issue of language to be discussed later.

633. Mr. HAMDANE (Lebanon) said that had been prepared to support the proposals made by the Delegations of Senegal and Japan. However, after having heard the explanation by the Director General, he was ready to accept the proposed draft, subject to the languages question.

634. Mr. NDOYE (Senegal) said that he also found the explanation by the Director General persuasive. He still considered, however, that documents supporting the statements included in the applications were important; therefore, the application forms should encourage applicants to attach such documents.

635. Mr. KITANI (Japan) said that his Delegation was not yet fully convinced by the explanation given by the Director General. He pointed out that, even if the Registry would not be able to fully examine the attached documents, the third party would have the possibility of examining them by itself by means of inquiring provided in Rule 7.

636. Mr. BOYTHA (Hungary) supported those Delegations which thought that paragraph (9)--apart from the languages question--should be retained as appearing in the draft. If obligatory attachment of documents supporting the statements were prescribed, that would imply an examination of the content of the document. Such an examination might be very burdensome and problematic.

637. Mr. DOZORTSEV (Soviet Union) also was of the view that the attachment of documents should not be made obligatory.

638. Mr. BRENNAN (United States of America) said that there were two possible problems that the obligatory attachment would raise and why his Delegation was against such a provision. First, such a provision would be meaningless in the case of future audiovisual works and, second, as the Director General had explained, such a provision would place the burden on the Registry to examine documents and interpret their legal effect.

639. Mrs. KOSKINEN (Finland) was against the idea of making the attachment of documents obligatory, but proposed that there should be strong recommendations in the Administrative Instructions or in the application forms urging the applicant to attach supporting documents to the application.

640. Mr. BOGSCH (Director General of WIPO) mentioned that one the applications, discussed at the preparatory meetings but not submitted to the Diplomatic Conference, energetically recommended the attachment of supporting documents.

641. The CHAIRMAN read the relevant part of the draft application form to which the Director General had referred which essentially said that the applicant would be well advised to include such documents, since they would support the statements entered in the Register and increase the evidentiary value of the statements. The fact that such documents form part of the international registration will be included in the entry in the Gazette. Examples of such documents are, in particular, copies of, or excerpts from

entries in national registers and texts of, or excerpts from, contracts between authors and producers, etc. She expressed her hope that all that could eliminate the concerns of those who had wished to make the attachment of supporting documents obligatory.

642. Mr. PUENTE GARCIA (Spain) supported those Delegations which were against the transformation of the option of attaching documents into an obligation.

643. Mr. ZUTSHI (India) stated that his Delegation also opposed the idea to make the attachment of supporting documents obligatory. In certain cases, such as in the case of original creators, such an obligation could not be fulfilled; otherwise it should be up to the applicant whether he chose to support his application by certain documents. If the attachment of supporting document were obligatory, it would involve an examination to find out whether what was attached was really a valid supporting document. Such a scrutiny would be difficult and would increase the costs in the Registry.

644. Mr. LADSOUS (France) stated that his Delegation approved the proposed text, and his position concerning the supporting documents furnished by the applicant was in complete harmony with the explanation given by the Director General; it was up to the applicant to decide whether it was in his interest to attach documents supporting his statements.

645. Mr. HAMDANE (Lebanon) asked the question of whether, in case of the optional attachment of supporting documents, the Registry would examine such documents or would accept them without any examination.

646. The CHAIRMAN answered that, in the given context, it seemed to her evident that there would be no examination by the Registry; it would be up to the users of the Register to undertake any examination if they had any doubts. She noted that the overwhelming majority was against the modification of the first sentence of subparagraph (a). As the Delegation of Senegal had withdrawn his proposal, there was only one Delegation, the Delegation of Japan, which still seemed to have maintained its proposal concerning such a modification.

647. Mr. KITANI (Japan) said that, although his Delegation still had some reservation, it did not want to be against the adoption of the proposed text by consensus.

648. The first sentence of subparagraph (a) and the entire subparagraph (b) of Rule 2, paragraph (9) were adopted as appearing in the draft. The discussion on the second sentence of subparagraph (a)--because it was connected to the question of languages--was adjourned. (The debate on the question of languages continued at paragraph 746.)

649. The CHAIRMAN proceeded to Rule 2, paragraph (10) [Statement of Veracity].

650. Mr. COHEN (Canada) proposed that, for the sake of covering all possible cases, the last part of the paragraph--which read "that any accompanying document is a true copy of an existing original" should be replaced by the following text "that any accompanying document is an original or is a true copy of an original."

651. Mr. HAMDANE (Lebanon) supported the Canadian proposal.

652. The CHAIRMAN noted that the Canadian proposal had been seconded by the Delegation of Lebanon and stated that she would consider the paragraph adopted with the modification proposed by the Canadian Delegation if there was no Delegation to oppose it.

653. Rule 2, paragraph (10) was adopted with the above-mentioned modification (see paragraph 650) proposed by the Delegation of Canada.

654. The CHAIRMAN took up Rule 2, paragraph (11) [Signature] and noted that there were no comment.

655. Rule 2, paragraph (11) was adopted, without discussion, as appearing in the draft.

656. The CHAIRMAN opened the discussion on Rule 2, paragraph (12) [Representation].

657. Mr. NETTEL (Austria) proposed the deletion of the second sentence of subparagraph (a) of paragraph (12), as that sentence did not add anything.

658. Mr. AVERSA (Italy) supported the Austrian proposal.

659. The CHAIRMAN noted that the Austrian proposal had been seconded by the Italian Delegation, and stated that she would consider the paragraph adopted with the modification proposed by the Delegation of Austria if there was no Delegation to oppose it.

660. Rule 2, paragraph (12) was adopted, as appearing in the draft, subject to the deletion of the second sentence of subparagraph (a).

661. The CHAIRMAN proceeded to Rule 2, paragraph (13) [Fees].

662. Mr. BOGSCH (Director General of WIPO) noted that the paragraph only contained provisions on the obligation to pay the prescribed fee and regulated the consequences and the procedure in case the fee was not paid along with the filing of the application; it did not deal with the amount and the procedure of the fixation and the modification of fees, the latter being the subject matter of Rule 8.

663. The CHAIRMAN noted that there was no proposal to modify paragraph (13).

664. Rule 2, paragraph (13) was adopted, without discussion, as appearing in the draft.

665. The meeting was suspended for thirty minutes.

[Suspension]

Rule 3: Processing of the Application.

666. The CHAIRMAN opened the discussion on Rule 3.

667. Mr. BOGSCH (Director General of WIPO) said that that Rule was responsive to requests that the Register be "user friendly." He proposed taking the Rule paragraph by paragraph. Paragraph (1) [Corrections] covered situations where the Registry noticed what appeared to be an obvious error, an inadvertent omission or a conflict between two statements in the same application. In such cases, the Registry would invite the applicant to make the correction. Such correction must be received within 30 days from the date the Registry notified the applicant of the problem.

668. Mr. GERO (Canada) noted that paragraph (1) suggested that corrections were only possible when the Registry noticed an error. It did not seem to provide for corrections when the applicant himself noticed the error. He asked whether there should also be a possibility for the applicant to correct the application.

669. Mr. BOGSCH (Director General of WIPO) pointed out to the Canadian Delegation that, if the Registry did not notice any errors, it would immediately register the statements in the application. If the applicant later discovered that he had made an error, he could file a new application which modified the statements in the basic registration. Thus, the applicant could make corrections.

670. Mr. GERO (Canada) said that such a procedure would mean that the applicant would have to pay another fee and file a subsequent application for what he saw as merely clerical or typographical errors. He suggested that the applicant should have the ability to make corrections without having to file a subsequent application, meet all the formalities of registration, and pay an additional significant fee.

671. Mr. BOGSCH (Director General of WIPO) remarked that that really was a question of the fee system. When the fee system was established, perhaps a lower fee would be set for correcting typographical and other clerical errors.

672. Mr. GERO (Canada) said that he could accept the solution referred to by the Director General.

673. The CHAIRMAN noted that no other Delegation wished the floor on paragraph (1).

674. Rule 3, paragraph (1) was adopted as appearing in the draft.

675. The CHAIRMAN opened the discussion on Rule 3, paragraph (2) [Giving Possibility to Remove Contradictions].

676.1 Mr. BOGSCH (Director General of WIPO) said that that paragraph was in response to the desire of the interested parties who had participated in the discussions of the preparatory meetings that contradictory statements should not be immediately registered. Instead, there should be an opportunity to resolve and remove the contradiction. There were two kinds of possible contradictions. The first kind was where the holder of an existing registration contradicted his own earlier statement in a subsequent application. The second kind was when a person other than the holder of the registration filed an application which contradicted earlier registered statements. In the latter case, there were two persons involved, and the Registry could merely try to get the parties to reach some agreement. However, if the contradiction was not resolved, the contradictory statement would be registered, with the consequence that the evidentiary value of the earlier statement and the newly registered statement would cease to exist and would never acquire an evidentiary value.

676.2 He then summarized the text of the paragraph. In essence, it provided that, where statements in a subsequent application appeared to conflict with existing statements in the Register, the Registry would communicate with the applicant before effecting registration. Where the applicant was not the same as the holder of the existing registration, the Registry would also contact the holder of that registration. Registration of the conflicting statements would be suspended until the contradiction was removed, but in no case for more than 60 days from the date of the Registry's notification of the potential conflict. The applicant could, however, request that the application be suspended for a longer period, and that request would be granted.

676.3 He reminded the Conference that paragraph (4) provided that, within three days of receipt of the application, the fact that a contradictory statement had been filed would be entered into the data base. Thus, all users of the Register would know that a contradictory application was pending.

677. Mr. GYERTYANFY (Hungary) referred to the possible consequences of the failure to resolve contradictions. He suggested that those consequences should be made clear to the parties concerned.

678. Mr. OYAMA (Japan) said that his Delegation believed that the suspension of the application mentioned in paragraph (2)(a) should be as short as possible. Thus, he suggested deleting from the last sentence "unless the applicant asks for a longer period, in which case it will be suspended until the expiration of that longer period."

679.1 Mr. BOGSCH (Director General of WIPO) agreed with the suggestion of the Delegation of Hungary; therefore, when the International Registry notified the interested parties that there was a possible contradiction, they would be warned of the consequences of not resolving the contradiction.

679.2 With regard to the proposal of the Delegation of Japan, he noted that, in the context of paragraph (2)(a), the applicant was a subsequent applicant who had voluntarily submitted an application. He did not see how a procedure which allowed for a longer suspension of the registration of contradictory statements would prejudice anyone's interest. It was true that, since the fact of the possible contradiction was entered into the data base, there was an indication to the public that something was unresolved. It was possible to accept the Japanese proposal, but that would simply mean that the applicant had to refile the application after 60 days if he wished to register the statements at a later time.

680. Mr. NAVARRO GONZALEZ (Spain) said that if an applicant asked for a longer period of suspension than 60 days provided in the Rule, that period should not be an unlimited one. He suggested that a time limit for a further extension be set in the Rule. Such a period might be a further 60 day period.

681. Mr. HAMDANE (Lebanon) with regard to the remarks of the Delegations of Japan and Spain concerning the length of the suspension, stated that he believed that there was no harm in allowing the period of suspension to be as long as the applicant requested.

682. Mr. AVERSA (Italy) said that his Delegation supported the proposed text; it corresponded to the users' needs.

683. Mr. HAMDANE (Lebanon) said that, as he understood it, once a contradictory statement was registered, the evidentiary value no longer existed. He asked who would decide whether or not there was a contradiction, and who would tell a court that there was a contradiction.

684. Mr. BOGSCH (Director General of WIPO) responded to the questions of the Delegation of Lebanon. Whether or not a statement was contradictory could only be decided by a court; it could not be decided by the International Registry. Therefore, under no circumstances should the International Register state that there was a contradiction. All that was proposed was that the International Registry would assist the interested parties in resolving what appeared to be a conflict. Thus, the Registry would say that there may be a contradiction, it would not say that there was a contradiction. If the parties' response was that there was no contradiction, or if the reply was to register the statement as it was, the Registry would effect the registration. The only question was whether there should be a permanent trace of the correspondence and the nature of the possible contradiction in the Register. If there were such a trace, the data base would continue to show that, at a certain moment, the Registry had some doubts, but nothing more. It would not be an authoritative statement. Moreover, even if a court invited the Registry to give an opinion, the Registry should decline.

685. Mr. BRENNAN (United States of America) asked for a clarification in the following situation. A person other than the holder of a registration, perhaps in good faith, filed an application contradicting the statement that the holder owned certain rights. He asked whether the second applicant had to wait 60 days before his contradictory statement was entered into the Register. If the intent of the subsequent applicant was to question the registered statement or to destroy the prima facie effect, did he have to wait 60 days?

686. Mr. BOGSCH (Director General of WIPO) replied affirmatively. He said that to shorten the time would not be helpful. The holder of the registration may need time to consult his lawyers or decide what his position should be. He admitted that it was true that the evidentiary value of the registrant's statements continued during the 60 days; but because of paragraph (4) of the Rule, it was under a very heavy cloud. Paragraph (4) made it clear to anyone who consulted the Register that there was a potential contradictory application pending. He doubted that a court would act during that 60 day period; most likely, it would wait and see whether the contradiction was removed.

687. The CHAIRMAN adjourned the discussion of Rule 3, paragraph (2). (Continued at paragraph 688.)

<p>Ninth Meeting Friday, April 14, 1989 Afternoon</p>

Rule 3: Processing of the Application (continued from paragraph 687)

688. The CHAIRMAN opened the meeting and resumed the discussion on Rule 3, paragraph (2) [Giving Possibility to Remove Contradictions].

689. Mr. WINTER (United States of America) said that, upon reflection and based on the explanations of the Director General, he considered his Delegation's questions had been answered. Therefore, his Delegation could accept the language of paragraph (2) as drafted.

690. Mr. KITANI (Japan) said that his Delegation was ready to join the consensus.

691. The CHAIRMAN noted that no other Delegations wished the floor, and stated that, if no opposition was expressed, she would consider Rule 3, paragraph (2) adopted.

692. Rule 3, paragraph (2) was adopted as appearing in the draft.

693. The CHAIRMAN opened the discussion on Rule 3, paragraph (3) [Rejections].

694. Mr. BOGSCH (Director General of WIPO) said that subparagraph (a) set forth various situations that would lead to a rejection, for example, lack of signature of the applicant or his authorized representative; lack of indication of the interest of the applicant; lack of the applicant's statement concerning veracity; lack of eligibility to be an applicant; and non-payment of the required fee. Subparagraph (b) said that an application which did not meet the conditions prescribed as to its form could be rejected. Subparagraph (c) said that an application could only be rejected for the reasons stated in subparagraphs (a) and (b); that was an important guarantee; it meant that the Registry could not invent reasons to reject an application. Subparagraph (d) said that the rejection of an application must be communicated in writing and that the applicant had 30 days from the date of that written communication to ask for a reconsideration.

695. Mr. CANO (Colombia) said he agreed with the list of situations which would lead to the rejection of the application. He noted, however, the references to languages in items (vii) and (xiii) in paragraph 223 of the notes to "the Basic Proposal" (document IRAW/DC/3) and reminded the Delegations that the question of the languages of the Registry was still open.

696. The CHAIRMAN noted that no other Delegation wished the floor.

697. Rule 3, paragraph (3) was adopted as appearing in the draft.

698. The CHAIRMAN opened the discussion on Rule 3, paragraph (4) [Notice in the Register of Receipt of the Application].

699.1 Mr. BOGSCH (Director General of WIPO) said that paragraph (4) dealt with the notice in the Register of the receipt of an application. He noted that the paragraph had, to a great extent, already been discussed. It provided that if, for any reason, an application was not registered within three working days of its receipt, the Registry would enter, into its data base, the essential elements of the application together with an indication of the reason why no registration had been made. In the context of contradictory statements, where there was a suspension for 60 days, that was an important paragraph.

699.2 The question to be answered was whether references to the existence of a contradiction should be maintained in the data base. The argument for erasing such data was that perhaps the Registry was mistaken, yet such a reference would place a cloud over the registered statements. On the other hand, it might be important to have a record that, at some point, the Registry hesitated before making registration. If such data should be maintained, then the last sentence in the paragraph should be deleted.

700. The CHAIRMAN, speaking for her Delegation of the Federal Republic of Germany, stated that the last sentence should be kept. Once the second registration was made, the facts of the two registrations would be there for all to see. If the registration was not made, traces of the problem were not necessary.

701. Mr. GYERTYANFY (Hungary) said that while a subsequent applicant would know there were some doubts about his application, third parties would not, if all traces of the doubt were erased. Therefore, his Delegation thought that the references should remain in the data base.

702. Mr. TELICKA (Czechoslovakia) noted that it might be better if, in the heading in the brackets, the reference was to the "International Register" instead of just the "Register." Also, in the third line, it might be better to say "International Registry" instead of merely the "Registry."

703. The CHAIRMAN supported the proposal of the Delegation of Czechoslovakia in the name of the Delegation of the Federal Republic of Germany.

704. Mrs. KOSKINEN (Finland) stated that, in the case of a suspected contradiction, it was important that the records showed that there had been some doubt. Thus, her Delegation believed that the remarks of the Delegation of Hungary might be worth considering.

705. Mr. BOGSCH (Director General of WIPO) asked for the opinion of the potential users of the Register. He noted that it had been the International Bureau's belief that it was better to delete the references because the Registry's initial opinion might have been erroneous, and maintaining the references would perpetuate that error. Furthermore, if the conflict had been settled between the parties, there was no need to inform the public of the fact of any supposed contradiction.

706. Mr. GERO (Canada) said that he agreed with the Director General. His Delegation would have problems if the said data were maintained in the data base.

707. Ms. PETERS (United States of America) stated that the Delegation of the United States of America agreed with the Director General. It was the experience of the United States Copyright Office that the maintenance of that type of an entry would cause more problems than it would solve.

708. Mr. ORF (IFPI) stated that, as a potential user, his Organization agreed with the draft as it stood.

709. Mr. BRISSON (FIAPF) believed that the text should remain as it was.

710. The CHAIRMAN stated that there was a clear majority in favor of maintaining paragraph (4) as appearing in the draft with the two minor wording changes proposed by the Delegation of Czechoslovakia.

711. Rule 3, paragraph (4) was adopted as appearing in the draft, subject to the drafting changes proposed by the Delegation of Czechoslovakia (see paragraph 702).

Rule 4: Date and Number of the Registration

712. The CHAIRMAN turned to Rule 4.

713. Mr. BOGSCH (Director General of WIPO) said that Rule 4 provided that the registration date would be the date on which the application was received and that each application would have a number, which would become the registration number. In the case of a subsequent application, the number assigned to that application would also include the number of the initial registration. Thus, the numbers would tie the registrations together.

714. The CHAIRMAN noted that no Delegation wished to take the floor.

715. Rule 4 was adopted, without discussion, as appearing in the draft.

Rule 5: Registration

716. The CHAIRMAN opened the discussion on Rule 5.

717. Mr. BOGSCH (Director General of WIPO) said that paragraph (1) of the Rule simply stated that when an application was not rejected, all of the statements in the application would be registered in the International Register. Paragraph (2) provided that the applicant would be notified of the registration and the registration would be published in the Gazette.

718. Mr. HAMDANE (Lebanon) noted that the Administrative Instructions should provide that the publication in the Gazette would include the most important information about the audiovisual work that was the subject of the registration.

719. The CHAIRMAN noted that no other Delegation wanted to take the floor.

720. Rule 5 was adopted as appearing in the draft.

Rule 6: The Gazette.

721. The CHAIRMAN turned to Rule 6, and noted that there was no wish to take the floor.

722. Rule 6 was adopted, without discussion, as appearing in the draft.

Rule 7: Inquiries.

723. The CHAIRMAN opened the discussion on Rule 7.

724. Mr. DOZORTSEV (Soviet Union) asked whether it might not be useful to provide that any person could make an inquiry, not just natural persons and legal entities of Contracting States.

725. Mr. NETTEL (Austria) said that he thought the draft text was clear on that point. The information service of the Registry was available to everyone.

726. Mr. BOGSCH (Director General of WIPO) said he agreed with the Delegation of Austria. Anybody could obtain information from the Registry, provided he paid for it.

727. The CHAIRMAN noted that no other Delegation wished to take the floor.

728. Rule 7 was adopted as appearing in the draft.

Rule 8: Fees

729. The CHAIRMAN opened the discussion on Rule 8.

730. Mr. BOGSCH (Director General of WIPO) recalled that that subject had already been discussed at length. The Director General of WIPO would consult with the Consultative Committee. The Assembly would review the fees and could instruct him to change them.

731. Mr. TELIČKA (Czechoslovakia) said that his Delegation believed that it was important to have as many registrations as possible. Thus, it believed that the fees should be as low as possible. The fee structure should be a differentiated one which took into consideration such factors as the year of production and the length of the audiovisual works.

732. Mr. ZUTSHI (India) agreed with the criteria mentioned by the Delegation of Czechoslovakia. He recommended that other objective criteria might also be established.

733. Mr. PALENFO (Burkina Faso) said that his Delegation supported the views expressed by the Delegation of Czechoslovakia. The text of the Rule did not need to be changed because the criteria to be used in establishing the fees could be included in the schedule of fees.

734.1 Mr HAMDANE (Lebanon) asked three questions. What was the situation with regard to the fee when an application was rejected? What happened when an applicant withdrew an application? If the Assembly changed fees originally set by the Director General, could the Director General at a later date change the fees again?

734.2 He supported the concept of preferential fees for applicants from developing countries.

735. Mr. BOGSCH (Director General of WIPO) responded to the various questions. First, he said that the various criteria that had been mentioned in the discussion would be taken into account when the fee system was established. With regard to rejected and withdrawn applications, there was no proposed text in the Rule. That issue would be dealt with when the fee system was established and ultimately would be reflected in the schedule of fees or in the Administrative Instructions. Finally, he said the Director General could change the fees after the Assembly had given him instructions, because, after the Assembly had met, certain situations might arise which required additional adjustments in the fees.

736. Mr. GYERTYANFY (Hungary) said that his Delegation associated itself with the remarks of the Delegation of Czechoslovakia. He suggested an additional factor to be considered in setting the fees, namely the category of the applicant; for example, whether the applicant was the producer or the author of the work.

737. Mr. DOZORTSEV (Soviet Union) supported the remarks of the Delegation of Czechoslovakia, which he considered being in harmony with earlier remarks of the Director General.

738. Mr. ORF (IFPI) stated that his Federation had always supported the principle of a scale of fees which varied according to the length of the work and took into account other criteria. He noted that, at one point, IFPI had suggested a discount where an applicant made multiple registrations at the same time. Thus, IFPI was not opposed to the principle of the Czechoslovak proposal which had been supported by other Delegations. There were, however, a number of implications to that proposal. If the criteria were included in either the Treaty or the Regulations, they would become rigid. Moreover, if the criteria were rigidly spelled out in the Regulations, the role of the Consultative Committee would be undermined. When the question of the International Register was first discussed, the video clip as it existed today was unknown. If criteria had been laid down at that point, it would be difficult to accommodate the video clip in the fee system. His Federation preferred to leave the question to the Administrative Instructions, the Consultative Committee and the Director General.

739.1 Mr BOGSCH (Director General of WIPO) noted that the Delegation of Czechoslovakia had not asked that the criteria be put into the Regulations, but rather that the International Bureau should note those various criteria and take them into account when the fees were set.

739.2 He then recalled the changes that had been made to Article 5, paragraph (3)(a), concerning the tasks of the Assembly. Those changes made the present draft of Rule 8 seem redundant; moreover, the Rule did not give sufficient emphasis to the Consultative Committee. Therefore, he suggested that paragraph (1) should read as follows: "Before determining the system and amount of the fees and before making any changes in that system and amount, the Director General shall consult the Consultative Committee. The Assembly may instruct the Director General to change the said system and amount."

740. Mr. AVERSA (Italy) supported the proposal made by the Director General.

741. Mr TELICKA (Czechoslovakia) also supported the proposal of the Director General.

742. The CHAIRMAN noted that there was approval of the Director General's proposal and that no other Delegation wished to take the floor.

743. Rule 8, as amended according to the proposal by the Director General of WIPO (see paragraph 736) was adopted, subject to possible amendments that might be made in connection with the question of languages.

Rule 9: Administrative Instructions

744. The CHAIRMAN turned to Rule 9 and noted that no Delegation wished to take the floor.

745. Rule 9 was adopted, without discussion, as appearing in the draft.

Question of Languages (continued from paragraph 590)

746. The CHAIRMAN returned to the only unresolved question, namely, the language question. She said that all other issues had been resolved in a spirit of great cooperation, and she hoped that that spirit would continue. She proposed convening a working group that represented the different languages. She proposed a working group with the participation of the representatives of Austria, Burkina Faso, Canada, Colombia, Czechoslovakia, Egypt, France, Hungary, India, Spain, Sweden and the United States of America.

747. Mr. HAMDANE (Lebanon) said that he wanted Lebanon included in the working group.

748. Mr. NIÑO GOMEZ (Venezuela), in view of the proposal by the Delegation of Lebanon, proposed adding Mexico to represent the Latin American countries.

749. Mr. HAMDANE (Lebanon) noted his displeasure with the proposed working group, because Arabic speaking countries were not represented in it.

750. Mr. BOGSCH (Director General of WIPO) said that there were other possibilities. An open-ended working group was possible; in such a working group, all those who wanted to participate would be included. Another possibility would be to handle the matter in the Main Committee.

751. Mr. NETTEL (Austria) said he had looked at who had been most active in the debate on the question of languages. As he saw it, it was the French Delegation and the Colombian Delegation. He suggested not using groups of languages to set up the working group. Instead, he offered to serve as a mediator in a group composed of the representatives of France, Colombia and himself. He added that the Director General should also participate.

752. Mr. GROSSENBACHER (Switzerland) supported the proposal made by the Delegation of Austria.

753. Mr. PALENFO (Burkina Faso) also supported the proposal made by the Delegation of Austria.

754. Mr. WINTER (United States of America) said that his Delegation could support the Austrian proposal as a practical and realistic one. He noted that the previously proposed working group was too large, and that certain proposals were to make it even larger.

755. Mr. AVERSA (Italy) said that his Delegation supported a working group composed of the Delegations of Austria, Colombia and France with the participation of the Director General.

756. Mr. ZUTSHI (India) said that, from the beginning, his Delegation looked at the language issue as one related to costs; it had never looked at it as a question of principle. Thus, his Delegation supported the Chairman's original proposal. The Austrian proposal gave the impression that there was something to be resolved between French speaking countries and Spanish speaking countries. From his point of view, that was not the correct way of looking at the question of language.

757. Mr. LADSOUS (France) stated that the question should not appear to be a competition between Spanish and French. Having said that, he accepted the offer made by the Delegation of Austria. The Delegation of France would be willing to participate in such a small informal group.

758. Mr. PEREZ del ARCO y SEGURA (Spain) agreed that the working group should be small, but said he could not support the proposal of the Delegation of Austria. What was involved was not a debate between France and Colombia but rather a question that concerned countries that used the French and the Spanish languages.

759. Mr. NETTEL (Austria) withdrew his proposal.

760. Mr. LADSOUS (France) said that, in view of the various concerns that had been noted, he now suggested convening a group composed of a representative of those who favored English as the only language, a representative of those who favored the inclusion of French as a second language and a representative of those who wished to take Spanish into account. The group could be chaired by the Chairman of the Main Committee.

761. Mr. CANO (Colombia) supported convening a small working group whose members would represent the various interested language groups.

762. The CHAIRMAN asked for an indication of what constituted a small working group.

763. Mr. CANO (Colombia) was of the view that the members of the working group should not exceed six or seven.

764. Mr. HAMDANE (Lebanon) recalled that there were two proposals. The French proposal was to add the French language. The Colombian, or Spanish, proposal was to add no languages and to leave the question of additional languages to the Assembly. He considered that the working group would seek a compromise between those proposals. Thus, the question was not whether to include the Spanish language. If there was any question of principle concerning languages, he reserved his right to include the Arabic language.

765. Mr. PEREZ del ARCO y SEGURA (Spain) said that his Delegation agreed with the French proposal for a three member working group. The members could be Colombia, France and India.

766. Mr. GYERTYANFY (Hungary) agreed that there should be a small working group, and endorsed the proposal of the French Delegation.

767. The CHAIRMAN noted that the French proposal only included three groups. There were, however, four. The fourth group was made up of those countries whose language was other than English, French or Spanish. She then

proposed a working group that included representatives from India and the United States of America (English), France and Canada (French), Colombia and Spain (Spanish) and Sweden, Egypt and Czechoslovakia (other languages).

768. Mr. TELICKA (Czechoslovakia) said that he was going to propose a working group of five members; however, he would support the Chairman's proposal.

769. Mrs. DIOUF (Senegal) said that her Delegation wished to include the French language because of economic considerations. If French were included, the additional costs for translation would be avoided. She proposed including a developing country in the working group so that the economic conditions of developing countries were taken into account.

770. Mr. HAMDANE (Lebanon) stated that his Delegation could accept the Chairman's proposal if Canada and Spain were eliminated.

771. The CHAIRMAN asked the Delegation of Lebanon why it had proposed eliminating Canada and Spain.

772. Mr. HAMDANE (Lebanon) said that he did not believe that any language needed to be represented by two Delegations.

773. Mr. PEREZ del ARCO y SEGURA (Spain) stated that his Delegation would have accepted the French proposal for a three member working group. If, however, a larger group was to be formed, his Delegation would like to be a member of it.

774. Mr. MORFÍN PATRACA (Mexico) stated that what was involved was an economic problem rather than a language problem. He supported the idea of a small working group.

775. Mr. HERTEL (German Democratic Republic) said he associated his Delegation with the statement made by the Delegation of Mexico.

776. Mrs. DIOUF (Senegal) said that her Delegation would insist that the working group have a representative from a French speaking developing country; she proposed the Delegation of Burkina Faso because that country was one of the most important representatives of the cinematographic industry in French speaking Africa.

777. Mr. PALENFO (Burkina Faso) said that he understood the concerns of the Delegation of Senegal; however, he asked that the Delegation of Senegal withdraw its proposal to include his country in the working group. He stated he was very much in favor of reaching a consensus.

778. Mr. LADSOUS (France) noted that the Chairman had proposed a nine member working group. He was surprised by the size of the proposed group. He much preferred a smaller group, and said that the earlier proposal of the Austrian Delegation or his proposal seemed more appropriate.

779. Mr. TELICKA (Czechoslovakia) asked the Delegation of Senegal to trust the Delegations of India and Egypt and the other "neutral" countries to bear in mind the needs of French speaking developing countries.

780. Mrs. DIOUF (Senegal) withdrew her request that Burkina Faso be included in the working group.

781. Mr. GERO (Canada) said that his Delegation supported a small working group and could accept either the one originally suggested by Austria or the one suggested by France.

782. Mrs. GABR (Egypt) said that she supported a working group made up of the representatives of France, Colombia and India.

783. Mr. HAMDANE (Lebanon) said that he would support such a working group. He had confidence in the Delegations of both Austria and India, and he did not have a preference whether it was Austria or India, in addition to France and Colombia, to be included in the working group.

784. The CHAIRMAN suggested voting on the various proposals.

785. Mr. HAMDANE (Lebanon) asked that no vote be taken; he asked the Chairman to see if there was a consensus on the French proposal for a group of three countries, France, Colombia and India.

786. Mr. CANO (Colombia) supported the statement of the Delegation of Lebanon.

787. Mr. AVERSA (Italy) said that his Delegation supported the French proposal for a three member group. His Delegation did not want a vote on the matter; that would contravene the wish to have a consensus.

788. Mr. WINTER (United States of America) stated that his Delegation agreed with the Delegations of Lebanon, Colombia and Italy; no vote should be taken. He asked whether the basic French proposal could be accepted with a modification. He proposed adding one more country to the group, namely Austria. The Delegation of Austria had been active in the debate and had worked hard to achieve a compromise. Moreover, Austria represented the group of other languages.

789. The CHAIRMAN said that she could agree with the French proposal as proposed to be amended by the Delegation of the United States of America. She believed that a Delegation should represent the countries that were not asking to have their language included. She asked if there could be agreement for a working group of Austria, Colombia, France, and India.

790. It was agreed to set up a working group consisting of the Delegations of Austria, Colombia, France and India with the task of making proposals on the language question.

791. The CHAIRMAN announced that the working group would meet on Monday (April 17, 1989) morning at 10.00 a.m., and adjourned the debate in the Main Committee until Monday afternoon. (Continued at paragraph 792.)

<p><u>Tenth Meeting</u> <u>Monday, April 17, 1989</u> <u>Afternoon</u></p>
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Question of Languages (continued from paragraph 791)

792. The CHAIRMAN opened the meeting and resumed the debate on the issue of languages. She drew attention to the proposal of the working group, consisting of the Delegations of Austria, Colombia, France and India, as reflected in document IRAW/DC/7. She opened the floor for the discussion of the proposal.

793. Mr. BOGSCH (Director General of WIPO) explained the essence of the proposal. Applications could be in English or in French. Once the Register became financially self-supporting, the Assembly could decide to add further languages. Publication in the Gazette would be in English except where the application had been submitted in French. In such a case, the Gazette would include an English entry and a French entry. Lastly, an essential condition, proposed by a participant who spoke for all developing countries, was that the fee should be reduced for applications coming from developing countries which were Contracting States. That reduction would initially be 15%; the Assembly could increase the reduction.

794. Mr. FERNAU (Federal Republic of Germany) thanked the working group for its efforts. He indicated that his Delegation had some doubts about the solution. The fees were not paid by governments but private entities. One could imagine a rich --

an industrialized country. He noted that the proposal was a completely novel one; the fees had not really been part of the discussion. He suggested adjourning the meeting for a short time so that the Delegations could receive instructions from their governments.

795. Mr. GAMBOA-ALDER (Colombia) stressed that the proposal to reduce the application fees by 15% for applicants from developing countries with the provision that the Assembly should periodically review the amount of the deduction, with an eye towards increasing the deduction, was based on two principles. One was that the Register should be self-supporting; the other was that the access to the Register should be facilitated for users from developing countries because their financial situation was less favorable than that of the users from industrialized countries.

796. Mr. NETTEL (Austria) intervened on a point of order. The proposal of the Delegation of the Federal Republic of Germany for an adjournment took priority. That was the only issue open for discussion.

797. The CHAIRMAN then asked whether there was support for the proposal.

798. Mrs. HÖKBORG (Sweden) supported the proposal.

799. The CHAIRMAN suspended the meeting for 90 minutes.

[Suspension]

800. The CHAIRMAN resumed the meeting and reopened the debate on the proposal made by the working group.

801. Mr. NETTEL (Austria) said that, having served on the working group, it went without saying that his Delegation supported the proposal, which was a compromise solution, a kind of package deal. He noted that it was true that the terms of reference of the working group had not explicitly extended to the issue of the fees. However, if the group had limited itself to discussing only languages, no solution would have been possible. He recalled that during the previous meeting, several Delegations had stated that the financial situation of developing countries had to be considered. He urged the other Delegations to accept the compromise.

802. Mr. KEREVER (France) said that the proposal was a compromise; each Delegation had to concede something. He noted the relation between Rules 2 and 8. His Delegation saw no other possible solution; it, therefore, supported the proposal of the working group.

803.1 Mr. GAMBOA-ALDER (Colombia) expressed his conviction that the proposed text represented a well-balanced compromise. It took into account the need to keep the costs of the Register low and justified the demand of countries with widely used languages other than English and French to have the possibility of using their own language. In addition, the proposed compromise took into account the fact that developing countries needed preferential fees to make it possible for them to use the Register. Therefore, he believed that the proposed text would be an appropriate basis for a consensus.

803.2 He then turned to the French version of the proposal and noted that it did not seem to have exactly the same meaning as the English text. The English text used the expression "additional languages" which had been agreed on. It had been translated into French as "langues supplémentaires." That seemed to express a judgement value on languages other than English and French. He suggested adjusting the French text to more closely match the English text.

804. Mr. ZUTSHI (India) responded to the comment that the working group might have gone beyond its mandate. He acknowledged that the working group's mandate had been to find a solution to the language problem, and that it had been anticipated that modifications would only be proposed in Rule 2, paragraph (2). It could, therefore, be said that, in a literal sense, the group had gone beyond its mandate. However, if the group had limited itself to the question of languages, no compromise would have been possible. He reminded the Delegations that the idea of preferential treatment for applicants from developing countries had been introduced in the plenary of the Conference. The Director General had stated that he would keep in mind the capacity of small producers from developing countries to pay registration fees when the fee structure was fixed. The reduction in fees for applicants from developing countries was a critical feature of the proposal. He urged support for the compromise.

805.1 Mr. PEREZ del ARCO y SEGURA (Spain) agreed with the Delegation of Colombia that the expression "additional languages" was not appropriately translated into French. He proposed a more neutral wording for both the English and the French texts. For the English, he proposed "other languages." For the French, he proposed the corresponding phrase "d'autres langues."

805.2 As far as the substance of the proposal, he expressed his Delegation's reservation. The proposal did not take into account the fact that the Spanish language was one of the most widely spoken languages in the world and that it deserved to be treated in the same way as the English and French languages.

806. Mr. PALENFO (Burkina Faso) noted that the proposal was born in a spirit of compromise. His Delegation was pleased with the solution proposed by the working group. The question of languages was linked to the fees. He noted that one might be surprised with the reduction in the fees, but the situation of developing countries had to be considered. The earlier reference to a rich producer in a developing country was misleading; one should consider the whole environment in which producers had to work in such countries. The reduction in fees for applicants from developing countries was completely justified.

807. Mr. FORTINI (Italy) said that his Delegation shared the reservations expressed by the Delegation of Spain. He noted that industrialized countries would have to support not only the increased cost of including a second language, but also a 15% reduction for applicants from developing countries. He also noted that the proposed compromise was a most complicated solution, and stated that his Delegation had strong reservations.

808. Mr. WINTER (United States of America) said that his Delegation believed that the proposed Treaty was a good one which was in the interest of both developing and developed countries. Since the Treaty was to be self-financing, the matter of administrative costs was critical. It was for that reason that the United States of America had supported the draft text of Rule 2, paragraph (2). An additional language would increase the costs of the International Register, and, therefore, would increase the level of the fees to be paid by users of the Register. However, in the interest of reaching a consensus and in the spirit of cooperation and compromise, the United States could support the proposed revisions in Rules 2 and 6. With regard to the proposed amendment to Rule 8, he noted that one of the major objectives of the Treaty was to contribute to the fight against piracy; the more countries that adhered to the Treaty, the more effective the Treaty would be. Therefore, he could support the reduction in fees for two reasons. First, it would encourage developing countries to adhere, and second, no cost of the Registry would be covered by the governments. He concluded by stating that his Delegation accepted the amendment to Rule 8 with the understanding that that would not be a precedent for any future treaties.

809. Mr. SÄILÄ (Finland) thanked the working group for its work. His country had understood the debate on languages to be a debate on economics not on principle. Additional languages made the Register more accessible; however, they also added to the cost of the Register. His Delegation recognized the importance of the Treaty, and, in a spirit of compromise, would be able to accept the proposal. The cost factor was still a relevant issue. Moreover, the reduction for developing countries should not be considered a precedent for future treaties. Finally, he questioned the last sentence which provided that the Assembly could only increase the reduction; he wondered if it might not be better to merely say that the Assembly would periodically review the percentage of the developing country reduction.

810. Mrs. DIOUF (Senegal) thanked the Delegations that served on the working group and praised the solution which took into account the situation of developing countries and reflected international solidarity.

811. Mr. ALGAN (Turkey) remarked that his country was not considered a developing country by the United Nations; there were, however, countries richer than Turkey that were considered as developing countries. He noted that his country did not benefit from the compromise in any way.

812. Mrs. HÖKBORG (Sweden) said that her Delegation had certain reservations related to the costs involved by the compromise; however, it could accept the proposal of the working group with the understanding that the text in Rule 8 was not a precedent for any other treaty.

813. Mr. WINTER (United States of America) referred to the proposal by the Delegation of Finland and said that the change that had been suggested would make the compromise more acceptable to the United States of America. He noted, however, that his Delegation did not insist on that change and would go along with the consensus.

814. Mr. FERNAU (Federal Republic of Germany) noted that there seemed to be a move toward consensus, and his Delegation would not stand in the way of it.

815. Mr. NETTEL (Austria) responded to the Delegations of Finland and the United States of America. The proposal that the Assembly should review the percentage of the reduction, with the possibility of increasing or decreasing it, had been discussed by the working group. He noted that some Delegations felt that 15% was an absolute minimum; therefore, the only possibility was to increase the reduction. That idea had not been enthusiastically embraced by other Delegations; however, in a spirit of compromise, all Delegations in the working group eventually had agreed to it.

816. Mr. GAMBOA-ALDER (Colombia) stated that the goal was to have the greatest number of registrations possible. He stressed that the proposed 15% reduction for developing countries with the obligation that the Assembly periodically examine whether or not that percentage should be increased was based on two principles; one was that the Register should be self-supporting; the other was that, at the same time, it should guarantee the possibility of access to developing countries whose financial situation was not as favorable as that of the industrialized countries.

817. Mr. TROMBETTA (Argentina) congratulated the working group for its excellent work. The proposal, which his Delegation fully supported, represented a reasonable, well-balanced compromise. It was an excellent solution which took into account the delicate question of languages and the special problems of developing countries.

818. Mr GERO (Canada) thanked the members of the working group for finding a solution to a difficult problem. He said that his Delegation could support the proposed compromise.

819. Mr. SÄILÄ (Finland) stated that previously he had merely mentioned the possibility of adjusting the last sentence of the proposal. However, his Delegation could support the proposed text.

820. Mr. MORFÍN PATRACA (Mexico) expressed his Delegation's satisfaction with the proposed compromise.

821. Mr. MOKADDEM (Tunisia) indicated that his Delegation agreed with the proposal made by the working group as well as the amendment proposed by the Delegation of Spain to the French text.

822.1 Mr. GROSSENBACHER (Switzerland) said that, on the question of languages, his Delegation supported the proposed solution; it also supported the amendment to the French text suggested by the Delegation of Spain.

822.2 He proposed a modification in Rule 6, paragraph (1), which dealt with the Gazette. To limit the costs, the entries in the Gazette could appear in the language of the application. Thus, a French entry would appear only in French. There would be no translation. He suggested adding at the end of paragraph (1) the following: "however, the elements concerning application which have been deposited in French, will be published only in French."

822.3 He said he was reserving his position on the proposed amendment to Rule 8.

823. The CHAIRMAN noted that no other Delegation wished to take the floor. She, therefore, summarized the situation. She recalled that, in trying to resolve the question of languages, several proposals had been made. No proposal, however, appeared to have the support of all of the Delegations; in any case, there was a wish not to have a vote on the question, but rather to work toward a solution that would allow a consensus to be achieved. A working group had been agreed on; it had met and proposed a solution. An overwhelming majority of the Delegations supported the proposal of the working group. Some Delegations voiced certain hesitation, and the Delegation of Italy had voiced grave concerns about a solution which imposed a burden on only a small number of countries, one of which was his. That group included countries which were not developing countries and which would not be able to use their own language. The Delegation of Spain also voiced concerns about the proposal. That Delegation had also proposed a change in the language for Rule 2, paragraph (2). All Delegations appeared to accept the Spanish proposal to adjust the text to say, in English, "other languages" rather than "additional languages," and, in French, to say "d'autres langues" rather than "langues supplémentaires." She suggested that the proposal could be agreed on without a vote.

824. Mr. PEREZ del ARCO y SEGURA (Spain) stated that he was maintaining his Delegation's reservations, but he was not proposing a vote.

825. The CHAIRMAN turned to the amendments to Rule 8, which provided that the Assembly should periodically examine the possibility of increasing the percentage of the reduction. She noted that the Delegation of Finland had proposed a change in the language; that change had been supported by the Delegation of the United States of America. Both Delegations had stated, however, that they could accept the proposed text. No other Delegations had supported the change, and several Delegations had opposed it.

826. Mr. ALGAN (Turkey) said that it was important to note that certain developing countries had greater financial resources than his country, and those countries would benefit from the reduction in fees provided for in Rule 8, paragraph (2). Despite the financial situation in his country, it would not be able to take advantage of the reduction in fees because it was not considered a developing country under the Rules of the General Assembly of the United Nations. His Delegation did not, however, object to the consensus.

827. The proposal of the working group, included in document IRAW/DC/7, was adopted subject to the wording modification in Rule 2, paragraph (2), mentioned in the Chairman's summary (see paragraph 825).

828. The CHAIRMAN announced that the Drafting Committee would meet the following day at 9.00 a.m.; the Credentials Committee would meet at noon; and the Main Committee would meet at 3.00 p.m., and she closed the meeting.

<u>Eleventh Meeting</u> <u>Tuesday, April 18, 1989</u> <u>Afternoon</u>

Consideration and Adoption of the Texts Submitted by the Drafting Committee.

829.1 The CHAIRMAN opened the meeting and turned to the consideration and adoption of the texts submitted by the Drafting Committee. She called the Delegations' attention to document IRAW/DC/8 containing those texts.

829.2 She began with the preamble and noted that the last sentence had been changed to read "to contribute to the fight against piracy of audiovisual works and contributions contained therein." The words "protected works, performances, phonograms and broadcasts" had been deleted.

829.3 She noted that there was no wish to take the floor.

830. The preamble of the Treaty was adopted as amended according to the proposal by the Drafting Committee.

831.1 The CHAIRMAN turned to Articles 1 and 2. She stated that Article 1 had not been changed. There was a slight modification in the definition of "audiovisual work" in Article 2. The previous text had been "any work that consists of the fixation of a series of related images"; that had been changed to "any work that consists of a series of fixed related images."

831.2 She noted that nobody wished to take the floor.

832. Article 1 was adopted; and Article 2, as amended according to the proposal of the Drafting Committee, was also adopted.

833. The CHAIRMAN turned to Article 3. She indicated that the first change was in paragraph (4).

834. Mrs. HÖKBORG (Chairman of the Drafting Committee) said that the last line in paragraph (4) had been changed from "by a person" to "by a natural person or legal entity."

835. The CHAIRMAN then turned to paragraph (5) where the change occurred only in the French text.

836. Mrs. HÖKBORG (Chairman of the Drafting Committee) said it was a minor drafting change. The text was changed to read "toute personne physique qui est ressortissante d'un Etat contractant ou qui a son domicile, sa résidence habituelle ou un établissement industriel ou commercial effectif"

837. The CHAIRMAN stated that there was no wish to take the floor.

838. Article 3 was adopted as amended according to the proposal of the Drafting Committee.

839. The CHAIRMAN turned to Article 4 where there was a change in paragraph (2) of the French text.

840. Mrs. HÖKBORG (Chairman of the Drafting Committee) said that the word "ou" in the fourth line had been replaced by the word "ni."

841. The CHAIRMAN noted that nobody opposed that modification.

842. Article 4 was adopted as amended in the French version according to the proposal of the Drafting Committee.

843. The CHAIRMAN indicated that in Article 5 there was a deletion in paragraph (1)(c).

844. Mrs. HÖKBORG (Chairman of the Drafting Committee) stated that the words "once the International Register becomes self supporting," had been in the Treaty in brackets. That text had been deleted entirely.

845. Mr. KEREVER (France) said that he had some reservations about the titles of the paragraphs, which appeared in brackets. He wondered what their status was and noted that the titles did not always exactly match the text. For example, Article 5 dealt with the Assembly. The title for paragraph (1) was "Composition and Expenses." However, paragraph (1) dealt only with the "Composition" of the Assembly. It did not deal with the "Expenses" of the Assembly; it dealt with expenses of the Delegations. He had raised that question in the meeting of the Drafting Committee. He believed that the question was an editorial one, and, therefore, the Drafting Committee could make changes in the titles of paragraphs. The view of the Drafting Committee, however, had been that that was a substantive question; therefore, it fell within the jurisdiction of the Main Committee.

846. Mr. BOGSCH (Director General of WIPO) noted that the titles of the paragraphs, unlike the titles of the Articles, were in square brackets to show that they did not have the value of the text of the Treaty. He said that some of the titles could be improved.

847. Mr. WINTER (United States of America) said that he understood from the remarks of the Director General of WIPO that the titles of the paragraphs would not be considered to be part of the text of the Treaty. However, his Delegation found them very useful and believed they would be helpful to others who were not familiar with the Treaty. His Delegation wanted to retain the titles of the paragraphs.

848. The CHAIRMAN noted that she too found them useful.

849. Mr. PEREZ del ARCO y SEGURA (Spain) proposed making paragraph (1)(c) a separate paragraph (2) with the title "Expenses of Delegations." The title for paragraph (1) would be "Composition"; paragraph (1) would contain two subparagraphs (a) and (b).

850. Mr. BOYTHA (Hungary) supported the proposal of the Delegation of Spain.

851. The CHAIRMAN noted that there was no objection to the Spanish proposal. She then turned to what was listed as paragraph (2), but which would now become, paragraph (3), where a new item (viii) had been inserted and a modification had been made to item (vii).

852. Mrs. HÖKBORG (Chairman of the Drafting Committee) stated that item (vii), in the English text, had been changed to read "establish, and decide from time to time the membership of a consultative committee consisting of representatives of interested non-governmental organizations." Item (viii) was a new item which had been proposed by the Main Committee; it read "control the system and amounts of the fees determined by the Director General." As a result of the new item (viii), the subsequent items were renumbered (ix) and (x).

853. Mr. KEREVER (France) said he was raising a point he had mentioned during the meeting of the Drafting Committee. He would prefer, in the French text, the expression "de temps en temps," presently in item (vii), be replaced by the word "périodiquement," which, from a legal point of view, was more appropriate.

854. Mrs. DIOUF (Senegal) supported the proposal of the Delegation of France.

855. The CHAIRMAN asked whether the English text needed to be changed.

856. Mr. BOGSCH (Director General of WIPO) stated that the English text could remain the way it was.

857. Mrs. HÖKBORG (Chairman of the Drafting Committee) said there was one additional change in the French text. In item (vii), in the first line the word "composé" had been substituted for "constitué." She also noted that what were paragraphs (2) to (8) would be renumbered as paragraphs (3) to (9).

858. Article 5 was adopted as amended according to the proposals of the Drafting Committee and the proposals made by the Delegations of Spain and France (see paragraphs 849 and 853).

859. The CHAIRMAN stated that there was only a minor change in the French text of Article 6. Originally, in that text, the reference to "directeur général" was spelt with a small "d." That error occurred in several places in the French version of the Treaty; it had been corrected throughout and spelt with a capital "D."

860. Article 6 was adopted, with the indicated spelling correction.

861. The CHAIRMAN turned to Article 7.

862. Mrs. HÖKBORG (Chairman of the Drafting Committee) said that, in the English and French texts, the word "voluntary" had been deleted from paragraph (3)(iii) because donations, by their very nature, were voluntary. Paragraph (4)(a) of the French text was also modified. The phrase "en liaison" in the third line had been changed to "concurement."

863. Mr. KEREVER (France) noted that paragraph (4)(b) [Continuation of Budget; Reserve Fund] dealt with a completely different aspect of the financing of the Register than the previous paragraph. He suggested, therefore, that paragraph (4)(b) become paragraph (5); if that proposal was accepted, all of the subsequent paragraphs would have to be renumbered.

864. Mr. BOGSCH (Director General of WIPO) thought that the proposal was a good one. Thus [Self-Supporting-Financing] would be paragraph (4) without an "(a)"; [Continuation of Budget; Reserve Fund] would be paragraph (5) without a "(b)"; paragraph (5) [Working Capital Fund] would become paragraph (6), and paragraph (6) [Auditing of Accounts] would become paragraph (7).

865. Mr. COHEN (Canada) returned to paragraph (3) (iii) and asked whether there was a typographical error. The phrase was "right holders." He wondered whether it should be "rights holders."

866. The CHAIRMAN agreed that that was an error, and considered that there was an agreement about the need for correction.

867. Article 7 was adopted as amended according to the proposals of the Drafting Committee and the proposals made by the Delegations of France and Canada (see paragraphs 863 and 865).

868. The CHAIRMAN noted that there were no changes to Articles 8, 9, 10, 11, 12.

869. Articles 8, 9, 10, 11 and 12 were adopted.

870. The CHAIRMAN turned to Article 13.

871. Mrs. HÖKBORG (Chairman of the Drafting Committee) reminded the Delegations that the brackets in Article 13, paragraph (2), had been deleted, and, thus, reservations were possible. Consequently, the brackets in paragraph (1) were also deleted and the title of the paragraph was changed from "No Reservation" to "Principle." With regard to paragraph (2) there was a change in the title in the English text. Originally, the title had said "Exceptions." There was only one exception; therefore, the title had been changed to "Exception." She noted that the French text had been in the singular. The text of paragraph (2) had been modified in accordance with the instructions of the Main Committee.

872. The CHAIRMAN noted that there was no wish to take the floor.

873. Article 13 was adopted as amended according to the proposals of the Drafting Committee.

874. The CHAIRMAN turned to Articles 14, 15 and 16, and noted that there were no changes.

875. Articles 14, 15 and 16 were adopted.

876. The CHAIRMAN said there was a small but important change in Article 17. The brackets had been deleted because of the possibility of reservations.

877. Article 17 was adopted as amended according to the proposal of the Drafting Committee.

878. The CHAIRMAN declared that the Main Committee had thus adopted the text of the Treaty in its entirety, and that that could now be transmitted to the Conference itself.

879. It was so decided.

Regulations

880. The CHAIRMAN opened the discussion on Rule 1 of the Regulations.

881.1 Mrs. HÖKBORG (Chairman of the Drafting Committee) said that, in item (v), the words "at least" had been added, so that the text read "'work-related application' means an application that identifies an existing or future work at least by its title or titles," etc. She recalled that that insertion was the result of a long discussion in the Main Committee.

881.2 There was a change in item (vi) of the French text. The words "réalisée" and "réaliser" had been changed to "produite" and "produire," respectively.

881.3 In item (vii), the words "as the case may be" had been deleted from both the English and French texts. The French text had been changed to read: [on entend] "par 'demande' ou 'enregistrement' - sans la mention 'en rapport avec une personne' ou 'en rapport avec une personne' - aussi bien une demande ou un enregistrement qui est en rapport avec une oeuvre qu'une demande ou un enregistrement qui est en rapport avec une personne".

881.4 Finally, in item (ix), the words "as the case may be" had been deleted, and the French text was corrected to spell committee with a capital "C."

882. Mr. KITANI (Japan) said that the word "audiovisual" in the fourth line of item (vi) of the English version should be deleted; that would make the item consistent with the rest of the Rules.

883. The CHAIRMAN agreed that that was correct, and stated that there were no objections to that change.

884. Mr. COHEN (Canada) mentioned that item (vi) could present some problems in his country because the words "produire" and "réaliser" had a somewhat different meaning in his country. In Canada, the word "producteur" was taken to mean "producer" while the word "réalisateur" meant "maker." He said, however, that his Delegation was ready to accept the proposed text.

885. Rule 1 was adopted as amended according to the proposals of the Drafting Committee and the proposal made by the Delegation of Japan (see paragraph 879).

886. The CHAIRMAN turned to Rule 2.

887.1 Mrs. HÖKBORG (Chairman of the Drafting Committee) said there were no changes in paragraph (1).

887.2 In paragraph (2), the text had been changed to allow applications in French as well as in English and to allow other languages to be added when the Register became self-supporting. She noted that the text proposed by the

working group had been "the Assembly may indicate to the Director General" that other languages may be used. The Drafting Committee had changed to say "the Assembly may determine the other languages in which applications may be filed."

887.3 There were no changes in paragraphs (3) and (4).

887.4 In paragraph (5), the words "at least" had been added; that was to conform the text to the change made in Rule 1, item (iv). The French language was also added so that the text read: "when a title is in a language other than English or French"

887.5 Paragraph (6) had not been changed.

887.6 In paragraphs (7)(a) and (7)(b) the examples that had appeared within parentheses had been deleted. That had been the wish of the Main Committee.

887.7 Paragraph (7)(c) had been in brackets; those brackets had been removed.

887.8 The examples that had appeared within parenthesis in paragraph (8) had been deleted.

887.9 Paragraph (9) had been amended to include documents in French.

887.10 In paragraph (10), the word "original" had been added to make it clear that the filing of an original document was also possible.

887.11 There were no changes in paragraph (11).

887.12 In paragraph (12), the words "where the signature is missing, the appointment shall be considered as non-existing" had been deleted.

887.13 There were no changes in paragraph (13).

888. Mr. CANO (Colombia) said that, in the English text of paragraph (2), the words used were the "interest of the applicant," while the French text read "intérêt juridique du déposant." He questioned the difference in the two texts and wondered if the phrase "intérêt juridique" would be appropriate in the French text.

889. Mr. BOGSCH (Director General of WIPO) said that, in the English version, it was obvious that what was meant was an interest in some rights. He said he did not think that was totally obvious in the French text and wondered whether the word "juridique" was really necessary.

890. Mr. KEREVER (France) expressed some doubts about deleting the word "juridique." He agreed, however, that the two texts did not mean exactly the same thing and that "juridique" was a more limiting word.

891. Mr. BOGSCH (Director General of WIPO) said he was concerned about a possible limitation of the scope of the interest of the applicant. He said that that was an important point which should be resolved in such a way that the Register had an appropriately broad scope.

892. The CHAIRMAN then asked whether the word "juridique" could be deleted from the French text, and stated that there was no objection to it.

893. Mr. KEREVER (France) suggested modifying paragraph (8) of the French text. The phrase used was "ce qui fait que." A legally more appropriate expression would be either "ainsi que les titres qui confèrent au déposant un intérêt à exercer ce droit," or "ainsi que les circonstances de fait ou de droit qui confèrent au déposant un intérêt à exercer ce droit."

894. Mr. BOGSCH (Director General of WIPO) stated that the English text was legally more precise; it stipulated that "the legal cause of the derivation" must be given. In the proposed French text, one could refer to the legal basis, i.e., "la base juridique."

895. Mr. KEREVER (France) agreed that the expressions "la base juridique" or "la cause juridique" were closer to the English text. He therefore supported the proposal of the Director General.

896. Ms. DANIEL (Canada) suggested referring to the "qualité du déposant."

897. Mr. KEREVER (France) agreed with the proposal of the Delegation of Canada. The text could read "ainsi que la qualité du déposant qui l'habilite à exercer ce droit."

898. Ms. DANIEL (Canada) supported the new text proposed by the Delegation of France which had taken her proposal into account.

899. The CHAIRMAN asked if the proposal for the new French text for paragraph (8) be read.

900. Mr. CURCHOD (Secretary of the Drafting Committee (WIPO)) said that the French text for paragraph (8) with the proposed amendment was as follows: "[Source des droits]. Lorsqu'une demande en rapport avec une oeuvre a trait à un droit sur l'oeuvre, elle indique, si tel est le cas, que le déposant est le titulaire initial du droit ou, lorsque le déposant tient le droit d'une autre personne physique ou morale, le nom et l'adresse de cette personne ainsi que la qualité du déposant qui l'habilite à exercer ce droit."

901. The CHAIRMAN noted that the English text of paragraph (8) would be kept, but there had been a proposal which had been supported to modify the French text to make it closer to the English text. She asked if there were any objections to the proposed amendment to paragraph (8) of the French text.

902. Mr. BOGSCH (Director General of WIPO) said that he thought the proposed text was not close enough in meaning to the English text. The English text made a clear distinction between a right that originally vested in the applicant and a right that was derived from another. The concept of the right derived from another was not completely expressed in the French text.

903. Mr. KEREVER (France) stated that he did not share the misgivings of the Director General. The English text was based on a notion of legal cause of the derivation of the right. A literal translation would lead to the use of the words "cause juridique"; however, he believed that the Canadian proposal was more appropriate.

904. Ms. DANIEL (Canada) supported the views of the Delegation of France.

905. Mr. ALMEIDA (Brazil) said that if the word "juridique" was deleted in paragraph (8) of the French text, it should also be deleted in the other Rules where it appeared in the same context.

906. The CHAIRMAN supported the proposal made by the Delegation of Brazil, and noted that there was an agreement on how to amend the French text of paragraph (8).

907. Rule 2 was adopted as amended according to the proposals of the Drafting Committee and the proposals made by the Delegations of Canada, France and Brazil (see paragraphs 896, 897, 900 and 905).

908. The CHAIRMAN turned to Rule 3.

909.1 Mrs. HÖKBORG (Chairman of the Drafting Committee) said that the word "International" had been inserted twice in paragraph (4) of the English text; once in the title of the paragraph, and once in the paragraph itself. No changes were made in the French text; it had been constructed so that it was clear that the reference was to the International Register.

909.2 In paragraph (4) of the French text, the word "saisit" had been changed to "inscrit" to make it closer to the English text which read "enter into the data base." Also, in the last line of the paragraph, the words "la rubrique correspondante est" had been changed to "les mentions correspondantes sont."

910. Rule 3 was adopted as amended according to the proposals of the Drafting Committee.

911. The CHAIRMAN proceeded to Rules 4 and 5 and announced there were no changes.

912. Rules 4 and 5 were adopted.

913. The CHAIRMAN turned to Rule 6.

914. Mrs. HÖKBORG (Chairman of the Drafting Committee) explained that there were two changes in paragraph (1). Initially, the text had stated that the Gazette would include the "prescribed data." That had been changed to state that it would include the "prescribed elements in respect of all registrations." Also, a new sentence had been added; the text was that which had been proposed by the working group on languages. That sentence was: "The Gazette shall be in English, provided that elements concerning applications that were filed in French shall also be in French."

915. The CHAIRMAN noted there were no objections to the amended text.

916. Rule 6 was adopted as amended according to the proposals of the Drafting Committee.

917. The CHAIRMAN turned to Rule 7 and noted there were no changes.

918. Rule 7 was adopted.

919. The CHAIRMAN proceeded to Rule 8.

920.1 Mrs. HÖKBORG (Chairman of the Drafting Committee) stated that paragraph (1) had been changed. The first sentence of the paragraph had read "The amount of any fee shall be fixed, and may be amended, by the Director General after consultation of the Consultative Committee." The new text read: "Before determining the system and amounts, of the fees, and before making any changes in that system or amounts, the Director General shall consult the Consultative Committee." The second sentence had read "The Assembly may instruct the Director General to change the said amount." The new sentence read: "The Assembly may instruct the Director General to change the said system and amounts." With regard to the first sentence, she said, there had been a long discussion in the Drafting Committee on whether the connecting word between "system" and "amounts" should be "and" or "or." The Drafting Committee had decided that "and" was more accurate.

920.2 There was a new paragraph (2); that was the result of the compromise reached on the question of languages. That paragraph provided for a reduction of 15% for applicants from developing countries which were Contracting States.

920.3 Because of the addition of a new paragraph (2), the subsequent paragraphs had been renumbered as (3) and (4).

920.4 In paragraph (3), there was a minor change in the first sentence in the English text. The word "amount" was changed to "amounts." In the same paragraph there was a minor change in the last sentence in the French text. The phrase "elle tombe au plutôt" was changed to "elle intervient au plutôt."

921. Mr. COHEN (Canada) said there was an inconsistency between the first and second sentences. The first sentence said "system or amounts." The second sentence said "system and amounts." He understood there was no obligation to change both. Therefore, he wondered whether the second sentence should be changed to "system or amounts."

922. Mr. BOYTHA (Hungary) suggested using "and/or."

923. The CHAIRMAN noted that she had made a similar proposal in the Drafting Committee; however, she had been told that that expression--"and/or"--was not used in international instruments, such as treaties.

924. Mr. NETTEL (Austria) agreed that it was a bad form to use "and/or" when drafting international treaties.

925. Mr. BOGSCH (Director General of WIPO) asked whether there was a proposal to change the text. He wanted it clear that the Assembly's power was as extensive as possible. He, therefore, advocated using "and," but, in the French text, it would be "ou" because in French everybody knew that "ou" also meant "and." In English, not everyone knew that "or" also meant "and."

926. Mr. KEREVER (France) agreed with the remarks of the Director General, noted that, in the French text, "ou" also meant "et." It meant that the Assembly could instruct the Director General to change only the system, only the amounts or, at the same time, both the system and the amounts. That text corresponded to the wishes of the Main Committee.

927. Mr. BOGSCH (Director General of WIPO) suggested that the English text should read "The Assembly may instruct the Director General to change the said system, the said amounts, or both," and that the French text should read "l'edit système, l'edit montant ou l'un et l'autre."

928. Mr. DOZORTSEV (Soviet Union) called attention to the fact that the new item (viii) in Article 5(a), which had already been adopted, read as follows: "control the system and the amounts of the fees by the Director General." He thought that the language in Rule 8 should be consistent with Article 5.

929. The CHAIRMAN said that she did not think the language had to be exactly the same.

930. Mr. TROMBETTA (Argentina) pointed out that it went without saying that somebody who could change two things could also change only one.

931. Mr. BOGSCH (Director General of WIPO) agreed with the Chairman and the Delegation of Argentina.

932. Mr. WINTER (United States of America) said that his Delegation preferred going back to the text proposed in document IRAW/DC/8. If, at a future date, there was some misunderstanding, the Rule could be amended by the Assembly.

933. Mr. KEREVER (France) said he did not agree with the point made by the Delegation of the Soviet Union. He supported the proposal of the Director General, which stated clearly the broad powers the Main Committee wished to give the Assembly. He noted, however, that the French text did not need to be changed.

934. Mr. BOYTHA (Hungary) supported the text proposed by the Director General.

935. The CHAIRMAN asked if there were any objections to the proposed English and French texts; she noted there were none.

936. Mr. COHEN (Canada) asked about the title of paragraph (1) in the English text. He said the word "fixation" was not really appropriate in this context. A better title might be "fixing of the fees."

937. The CHAIRMAN agreed with the proposal of the Canadian Delegation, and noted that there was a general agreement on it.

938. Rule 8 was adopted as amended according to the proposals of the Drafting Committee, the suggestion of the Director General and the proposal of the Delegation of Canada (see paragraphs 927 and 936).

939. The CHAIRMAN turned to Rule 9 and noted there were no changes.

940. Rule 9 was adopted.

941. The draft Regulations were adopted in their entirety as amended.

Closing Remarks

942. The CHAIRMAN stated that the Main Committee had completed its work. She thanked all of the Delegates of their hard work and their exceptional cooperation. She thanked Dr. Bogsch, Director General of WIPO, for his invaluable assistance and the staff of the International Bureau who had in making the Diplomatic Conference a success. She expressed her sincere thanks to the interpreters for their excellent work.

943. Mr. WINTER (United States of America) thanked Mrs. Möller, the Chairman of the Main Committee for her outstanding work, noting that she had presided over the meetings with grace, charm and good humor. He said his Delegation believed that the Treaty was an excellent one, and it appreciated all of the hard work that had gone into making the Diplomatic Conference a success. He complimented the International Bureau for its excellent work, and noted that Dr. Bogsch, the Director General of WIPO, had, as usual, assisted the Delegations in resolving what had appeared to be insoluble problems. He concluded by thanking the interpreters for their outstanding work.

944. Mr. BOGSCH (Director General of WIPO), on behalf of the Secretariat of the Conference, expressed his profound thanks to Mrs. Möller, Chairman of the Main Committee, and to Mrs. Hökborg, Chairman of the Drafting Committee.

945. Mr. KEREVER (France) associated his Delegation with the remarks of the Delegation of the United States of America. He thanked Dr. Bogsch, the Director General and the International Bureau of WIPO, Mrs. Möller, the Chairman of the Main Committee and Mrs. Hökborg, the Chairman of the Drafting Committee, as well as the interpreters.

946. Mr. ZUTSHI (India) said that his Delegation echoed the sentiments expressed by the Delegations of the United States of America and France. He congratulated Mrs. Möller on her extraordinary work. He thanked the International Bureau for its excellent work and Dr. Bogsch for his contributions which had paved the way for a successful conclusion of the Conference.

947. Mr. CANO (Colombia) expressed the satisfaction of his Delegation with the results of the discussions in the Main Committee. He congratulated the various Delegations on their work and thanked them for their cooperation. He gave special thanks to Dr. Bogsch, the Director General and the International Bureau of WIPO for the excellent work.

948. Mr. DOZORTSEV (Soviet Union) congratulated Mrs. Möller, the Chairman of the Main Committee for her excellent work, which was proof of the fact that if women guide men they can more easily reach agreement. He also thanked Dr. Bogsch, the Director General of WIPO and his staff.

949. Mr. SENE (Senegal) expressed his satisfaction with the Treaty, and noted especially the compromise solution on the question of languages. He congratulated Mrs. Möller, the Chairman of the Main Committee on her exceptional work and charm in leading the meetings. He thanked Dr. Bogsch, the Director General, the International Bureau of WIPO and the interpreters who had made the Conference a success.

950. The CHAIRMAN closed the last meeting of the Main Committee.

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Signatory of the Final Act: 53

MONTIGNY MARCHAND de (Canada)

Signatory of the Treaty: 33

MORFIN PATRACA J. (Mexico)

Head of the Delegation: 267

Vice-President of the Conference: 276

Interventions in the Plenary: 8; 28; 64

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Signatory of the Final Act: 53

MUYOVU G. (Burundi)

Head of the Delegation: 260

NAVARRO GONZALEZ J. (Spain)

Delegate: 269

Interventions in the Main Committee: 153; 183; 441; 680

Signatory of the Final Act: 53

NDOYE B. (Senegal)

Delegate: 269Vice-President of the Conference: 276

Interventions in the Plenary: 3; 19.1; 19.2; 19.3; 53

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NETTEL E. (Austria)

Head of the Delegation: 259President of the Conference: 276Member of the Steering Committee: 278

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Conference) 54.1; 54.2; 54.3; 58.1; 58.3; 59; 75;
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801; 815; 924Signatory of the Final Act: 53Signatory of the Treaty: 33

NGOUBEYOU F.-X. (Cameroon)

Alternate Head of the Delegation: 260

NINO GOMEZ L. (Venezuela)

Head of the Delegation: 272

Interventions in the Main Committee: 396; 552; 748

NOVOTNY M. (Czechoslovakia)

Delegate: 262

N'TAKPE N'C.A. (Côte d'Ivoire)

Delegate: 261

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OLSSON H. (World Intellectual Property Organization (WIPO))

Director, Copyright and Public Information Department: 275Secretary of the Conference: 276Secretary of the Steering Committee: 278

OMAR M. (Egypt)

Delegate: 262Signatory of the Final Act: 53Signatory of the Treaty: 33

OMAR I.A.-A. (Lybia)

Head of the Delegation: 267

Interventions in the Main Committee: 527; 571

ORF E. (International Federation of Phonogram and Videogram Producers (IFPI))

Observer: 275

Interventions in the Plenary: 41.1; 41.2

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OYAMA Y. (Japan)

Delegate: 266

PAK C.R. (Democratic People's Republic of Korea)

Delegate: 262

Signatory of the Final Act: 53

PAK D.H. (Democratic People's Republic of Korea)

Delegate: 262

PALENFO A.R. (Burkina Faso)

Delegate: 260

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Signatory of the Final Act: 53

Signatory of the Treaty: 33

PATTERSON D. (United States of America)

Advisor: 271

PEREIRA GOMES J.J. (Portugal)

Advisor: 271

Signatory of the Final Act: 53

PEREZ DEL ARCO Y SEGURA M. (Spain)

Deputy Head of the Delegation: 269

Vice-Chairman of the Credentials Committee: 276

Intervention in the Plenary: 76

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PETERS M. (Ms.) (United States of America)

Alternate Head of the Delegation: 271

Vice-Chairman of the Drafting Committee: 277

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Signatory of the Final Act: 53

POPOV M. (Bulgaria)

Head of the Delegation: 260

PUENTE GARCIA E. de la (Spain)

Delegate: 271

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PURI L. (Mrs.) (India)
Delegate: 265

QUEIROS FERREIRA A. (Portugal)
Advisor: 268

RAFFRAY A. (United Nations Educational, Scientific and Cultural Organization (UNESCO))
Observer: 274

RENAUDIN N. (France)
Delegate: 263
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RICUPERO R. (Brazil)
Signatory of the Treaty: 33

RI T. (Democratic People's Republic of Korea)
Head of the Delegation: 262

RICHARDSON J. (United States of America)
Advisor: 271

RIVADENEIRA R. (Ecuador)
Head of the Delegation: 263

ROBSON E.C. (Ms.) (United Kingdom)
Delegate: 271

RODIN A. (Sweden)
Delegate: 270

ROMERO MUÑOZ P. (Chile)
Delegate: 261
Signatory of the Final Act: 53

ROSENFIELD J. (United States of America)
Advisor: 271

ROULLET O. (Mme) (Holy See)
Head of the Delegation: 265

RUSSI L. (International Confederation of Societies of Authors and Composers (CISAC))
Observer: 275

SAAVEDRA POLO M. (Ms.) (Panama)
Delegate: 268
Signatory of the Final Act: 53

SAILÄ P. (Finland)
Head of the Delegation: 263
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SANKEY J.A. (United Kingdom)

Head of the Delegation: 271

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SENE A. (Senegal)

Head of the Delegation: 269

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Signatory of the Treaty: 33

SMIRNOV B.V. (Soviet Union)

Vice-Chairman of the Credentials Committee: 276

Delegate: 269

STROHAL C. (Austria)

Delegate: 259

ŠUC V. (Yugoslavia)

Delegate: 272

SVÉD P. (Hungary)

Deputy Head of the Delegation: 265

SZABÓ J. (Hungary)

Delegate: 265

TAMBEY VAIDYA M. (Mrs.) (India)

Delegate: 265

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TATAROV G. (All Union Corporation Sovexportfilm (SEF))

Observer: 272

TEBOURBI H. (Tunisia)

Delegate: 270

TELICKA P. (Czechoslovakia)

Delegate: 262

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TENEICHVILI O. (Soviet Union)

Delegate: 269

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TEŠIĆ R. (Yugoslavia)

Deputy Head of the Delegation: 272

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TETTAMANTI L.H. (Argentina)

Head of the Delegation: 259

Signatory of the Final Act: 53

THOMPSOM E. (International Federation of Phonogram and Videogram Producers (IFPI))

Observer: 275

TOWPIK A. (Poland)
Delegate: 269

TROMBETTA A.G. (Argentina)
Delegate: 259
Vice-Chairman of the Main Committee: 277
Intervention in the Plenary: 35
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TUKA V. (Czechoslovakia)
Advisor: 262

TÜRKEROĞLU C. (Turkey)
Alternate Head of the Delegation: 271
Signatory of the Final Act: 53

VACHER-DESVERNAIS A. (International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM))
Observer: 274
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VAJNAR V. (Czechoslovakia)
Head of the Delegation: 262
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VALENZUELA SOTO N. (Honduras)
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VIEIRA BRANCO J. (Portugal)
Alternate Head of the Delegation: 268

VILLARROEL H.K. (Philippines)
Head of the Delegation: 268
Signatory of the Treaty: 33

VUORINEN A. (Mrs.) (Finland)
Advisor: 263

WALDEN R. (Israel)
Alternate Head of the Delegation: 266
Signatory of the Final Act: 53

WALLENTIN Th. (Austria)
Advisor: 259

WINTER H.J. (United States of America)
Head of the Delegation: 271
Vice-President of the Conference: 276
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Signatory of the Final Act: 53

WOLKENSTEIN M. von (Austria)

Advisor: 259

YAHIA-CHERIF H. (Algeria)

Deputy Head of the Delegation: 259

Intervention in the Main Committee: 557

YDE N. (Denmark)

Head of the Delegation: 262

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ZUTSHI B.K. (India)

Head of the Delegation: 265

Vice-President of the Conference: 276

Interventions in the Plenary: 9; 24.1; 24.2; 24.3; 24.4; 63.1;
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732; 756; 804; 946

Signatory of the Final Act: 53

Signatory of the Treaty: 33

