

RECORDS
OF THE VIENNA DIPLOMATIC CONFERENCE
ON THE PROTECTION OF TYPE FACES

1973



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920/92

WIPO PUBLICATION
Nº 333 (E)

ISBN 92-805-0020-1

WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)

RECORDS
OF THE VIENNA DIPLOMATIC CONFERENCE
ON THE PROTECTION OF TYPE FACES

1973



GENEVA
1980

EDITOR'S NOTE

The Records of the Vienna Diplomatic Conference on the Protection of Type Faces, 1973, contain the most important documents relating to that Conference which were issued before, during and after it.

The Diplomatic Conference on the Protection of Type Faces was one of three Diplomatic Conferences which took place within the framework of the Vienna Diplomatic Conference on Industrial Property from May 17 to June 12, 1973, in the Hofburg in Vienna, Austria.*

The final text--that is the text as adopted and signed--of the Vienna Agreement for the Protection of Type Faces and their International Deposit and the Regulations thereunder appears on the right-hand (odd-numbered) pages of the first part of this volume (up to page 145). On the opposite, left-hand (even-numbered) pages (up to page 144) appears the text of the drafts of the said Agreement and Regulations as presented to the Diplomatic Conference on the Protection of Type Faces. In order to facilitate the comparison of the drafts with the final texts, these pages do not contain the full text of the drafts but merely indicate where the texts are identical or specify the slight differences existing between the drafts and the final texts.

Pages 149 to 151 contain the text of the Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection.

The part entitled "Conference Documents" (pages 155 to 212) contains two series of documents issued before or during the Diplomatic Conference on the Protection of Type Faces: "CT/DC/" (31 documents) and "CT/DC/CR" (4 documents). The said documents include, in particular, all the written proposals for amendments submitted by delegations of States. Such proposals are frequently referred to in the summary minutes (see below) and are indispensable for the understanding of the latter.

The part entitled "Verbatim and Summary Minutes" (pages 215 to 351) contains the verbatim minutes of the Vienna Diplomatic Conference on Industrial Property (pages 215 to 228), the verbatim minutes of the Plenary of the Diplomatic Conference on the Protection of Type Faces (pages 229 to 252) and the summary minutes of the Main Committee of the latter (pages 253 to 351). These 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 all speakers with the invitation to make suggestions for changes where desired. The final minutes published in this volume take such suggestions into account.

The Rules of Procedure of the Vienna Diplomatic Conference, which, it is recalled, included the Diplomatic Conference on the Protection of Type Faces, appear on pages 218 to 222.

* The other two Diplomatic Conferences were the Diplomatic Conference on the Trademark Registration Treaty and the Diplomatic Conference on the International Classification of the Figurative Elements of Marks. The Records of those two Conferences are published separately.

The part entitled "Participants" (pages 355 to 381) lists the individuals who represented governments (pages 355 to 372), intergovernmental organizations other than the World Intellectual Property Organization (pages 372 and 373), international non-governmental organizations (pages 373 to 378) and the World Intellectual Property Organization (page 379). (The report of the Credentials Committee appears on pages 222 and 223.) This part also lists the officers and the members of subsidiary bodies of the Vienna Diplomatic Conference on Industrial Property and the Diplomatic Conference on the Protection of Type Faces (pages 380 and 381).

The part entitled "Post-Conference Documents" (pages 385 and 386) makes reference to the two documents published after the Diplomatic Conference which contain the provisional minutes referred to above.

Finally, these Records contain five different indexes.

The first two (pages 391 to 433) are indexes relating to the subject matter of the Agreement, the Regulations under the Agreement and the Protocol. The first of these two indexes (Index A) lists by number each Article of the Agreement, each Rule of the Regulations and the Protocol, and indicates, under each of them, the number which the Article or Rule or the Protocol 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 or the Protocol appear, the pages where the written proposals for amendments to the Article or Rule or the Protocol 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 or the Protocol. The second index (Index B), is a catchword index, which lists alphabetically the main subjects dealt with in the Agreement, the Regulations and the Protocol. After each catchword, the number of the Article or Rule or point of the Protocol in which the particular subject is dealt with is indicated. By consulting Index A under the Article or Rule or under the Protocol, the reader will find the references to the pages or--in the case of the minutes--the paragraph numbers where the particular subject is treated.

The third index (pages 435 to 442) 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 proposals for amendments submitted and the interventions made on behalf of that State and, finally, the signatories of the Agreement and the Protocol.

The fourth index (pages 443 to 446) 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 447 to 464) is an alphabetical list of participants indicating, under the name of each participant, the State or organization which he represented as well as the place in these Records where his name appears together with that of his delegation, as an officer of the Conference or of a Committee, as a speaker in the Plenaries or Main Committee, or as a plenipotentiary signing the Agreement and the Protocol.

Geneva, 1980

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**VIENNA AGREEMENT
FOR THE PROTECTION OF TYPE FACES
AND THEIR INTERNATIONAL DEPOSIT**

**TEXT OF THE DRAFT AGREEMENT
AS PRESENTED TO THE DIPLOMATIC CONFERENCE**

**TEXT OF THE AGREEMENT
AS ADOPTED BY THE DIPLOMATIC CONFERENCE**

SIGNATORIES

DRAFT AGREEMENT FOR THE PROTECTION
OF TYPE FACES AND THEIR INTERNATIONAL DEPOSIT

List of Articles

INTRODUCTORY PROVISIONS

Article 1: Establishment of a Special Union
Article 2: Definitions

CHAPTER I: NATIONAL PROTECTION

Article 3: Principle and Forms of Protection
Article 4: Concepts of Residence and Nationality
Article 5: Conditions of Protection
Article 6: Content of Protection
Article 7: Term of Protection
Article 8: Cumulative Protection
Article 9: Right of Priority

CHAPTER II: INTERNATIONAL DEPOSIT

Article 10: International Deposit and Recording in the
International Register
Article 11: Right to Effect International Deposits and to
Own Such Deposits
Article 12: Contents and Form of the International Deposit
Article 13: Recording or Declining of the International Deposit
Article 14: Avoiding Certain Effects of Declining
Article 15: Publication and Notification of the International
Deposit
Article 16: Effect of the International Deposit
Article 17: Right of Priority
Article 18: Change in the Ownership of the International Deposit
Article 19: Withdrawal and Renunciation of the International
Deposit
Article 20: Other Amendments to the International Deposit
Article 21: Term and Renewal of the International Deposit
Article 22: Regional Treaties
Article 23: Representation Before the International Bureau

CHAPTER III: ADMINISTRATIVE PROVISIONS

Article 24: Assembly
Article 25: International Bureau
Article 26: Finances
Article 27: Regulations

VIENNA AGREEMENT FOR THE PROTECTION
OF TYPE FACES AND THEIR INTERNATIONAL DEPOSIT

List of Articles*

INTRODUCTORY PROVISIONS

Article 1: Establishment of a Union
Article 2: Definitions

CHAPTER I: NATIONAL PROTECTION

Article 3: Principle and Kinds of Protection
Article 4: Natural Persons and Legal Entities Protected
Article 5: National Treatment
Article 6: Concepts of Residence and Nationality
Article 7: Conditions of Protection
Article 8: Content of Protection
Article 9: Term of Protection
Article 10: Cumulative Protection
Article 11: Right of Priority

CHAPTER II: INTERNATIONAL DEPOSIT

Article 12: International Deposit and Recording
Article 13: Right to Effect International Deposits and to Own Such Deposits
Article 14: Contents and Form of the International Deposit
Article 15: Recording or Declining of the International Deposit
Article 16: Avoiding Certain Effects of Declining
Article 17: Publication and Notification of the International Deposit
Article 18: Effect of the International Deposit
Article 19: Right of Priority
Article 20: Change in the Ownership of the International Deposit
Article 21: Withdrawal and Renunciation of the International Deposit
Article 22: Other Amendments to the International Deposit
Article 23: Term and Renewal of the International Deposit
Article 24: Regional Treaties
Article 25: Representation Before the International Bureau

CHAPTER III: ADMINISTRATIVE PROVISIONS

Article 26: Assembly
Article 27: International Bureau
Article 28: Finances
Article 29: Regulations

CHAPTER IV: DISPUTES

Article 30: Disputes

* This List of Articles does not appear in the original text. It was added in order to facilitate consultation of the text.

CHAPTER IV: REVISION AND AMENDMENT

Article 28: Revision of the Agreement
Article 29: Amendment of Certain Provisions of the Agreement

CHAPTER V: FINAL PROVISIONS

Article 30: Becoming Party to the Agreement
Article 31: Indication of the Type of National Protection
Article 32: Entry Into Force of the Agreement
Article 33: Reservations
Article 34: Duration of the Agreement
Article 35: Denunciation of the Agreement
Article 36: Signature and Languages of the Agreement
Article 37: Depositary Functions
Article 38: Notifications

CHAPTER V: REVISION AND AMENDMENT

Article 31: Revision of the Agreement
Article 32: Amendment of Certain Provisions of the Agreement

CHAPTER VI: FINAL PROVISIONS

Article 33: Becoming Party to the Agreement
Article 34: Declaration Concerning National Protection
Article 35: Entry Into Force of the Agreement
Article 36: Reservations
Article 37: Loss of Status of Party to the Agreement
Article 38: Denunciation of the Agreement
Article 39: Signature and Languages of the Agreement
Article 40: Depositary Functions
Article 41: Notifications

The Contracting States,

Moved by the desire to provide an effective protection for type faces,

Conscious of the special requirements which such protection must fulfill,

Considering that, on the one hand, rules of substantive law should be drawn up, and that, on the other hand, an international deposit should be established,

Have agreed as follows:

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Special Union

The States party to this Agreement constitute a Special Union for the protection of type faces, in accordance with Article 19 of the Paris Convention for the Protection of Industrial Property.

The Contracting States,

Desiring, in order to encourage the creation of type faces, to provide an effective protection thereof,

Conscious of the role which type faces play in the dissemination of culture and of the special requirements which their protection must fulfil,

Have agreed as follows:

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Union

The States party to this Agreement constitute a Union for the protection of type faces.

Article 2Definitions

[Same as in the Final Text except for items (i), (vii), (viii) and (ix):

- (i) "type faces" means sets of designs of:
 - (a) letters and alphabets as such with their accessories (such as accents, numerals and punctuation marks),
 - (b) other figurative signs (such as conventional signs, symbols and scientific signs),
 - (c) ornaments (such as borders, fleurons and vignettes),

which are intended to provide means for composing texts by typographical, typewritten or other graphic techniques;]

(vii) and (viii) [Same as in the Final Text except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(ix) "Paris Convention" means the Paris Convention for the Protection of Industrial Property;

Article 2Definitions

For the purposes of this Agreement and the Regulations,

- (i) "type faces" means sets of designs of:
 - (a) letters and alphabets as such with their accessories such as accents and punctuation marks,
 - (b) numerals and other figurative signs such as conventional signs, symbols and scientific signs,
 - (c) ornaments such as borders, fleurons and vignettes,which are intended to provide means for composing texts by any graphic technique. The term "type faces" does not include type faces of a form dictated by purely technical requirements;
- (ii) "International Register" means the International Register of Type Faces;
- (iii) "international deposit" means the deposit effected for the purposes of recording in the International Register;
- (iv) "applicant" means the natural person who, or the legal entity which, effects an international deposit;
- (v) "owner of the international deposit" means the natural person or the legal entity in whose name the international deposit is recorded in the International Register;
- (vi) "Contracting States" means the States party to this Agreement;
- (vii) "Union" means the Union established by this Agreement;
- (viii) "Assembly" means the Assembly of the Union;
- (ix) "Paris Convention" means the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (x) "Organization" means the World Intellectual Property Organization;
- (xi) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);
- (xii) "Director General" means the Director General of the Organization;
- (xiii) "Regulations" means the Regulations under this Agreement.

CHAPTER I

NATIONAL PROTECTION

Article 3Principle and Forms of Protection

(1) The Contracting States undertake, in accordance with the provisions of this Agreement, to ensure the protection of type faces for the benefit of the creators thereof or their successors in title who are residents or nationals of a Contracting State, by establishing a special national deposit, or by adapting the deposit provided for in their national industrial design laws, or by means of their national copyright provisions. The said means of protection may be cumulative.

(2) Contracting States which protect type faces only by means of copyright provisions must be party either to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention. Such States must also grant the protection afforded to their nationals to all persons referred to in the preceding paragraph who are not entitled to invoke the benefit of the protection granted by the said Conventions.

[In the Draft, there are no provisions corresponding to those of Article 4 of the Final Text.]

CHAPTER I

NATIONAL PROTECTION

Article 3Principle and Kinds of Protection

The Contracting States undertake, in accordance with the provisions of this Agreement, to ensure the protection of type faces, by establishing a special national deposit, or by adapting the deposit provided for in their national industrial design laws, or by their national copyright provisions. These kinds of protection may be cumulative.

Article 4Natural Persons and Legal Entities Protected

(1) In Contracting States which declare under Article 34 that they intend to ensure protection by establishing a special national deposit or by adapting their national industrial design laws, the protection of this Agreement shall apply to natural persons who, or legal entities which, are residents or nationals of a Contracting State.

(2) (a) In Contracting States which declare under Article 34 that they intend to ensure protection by their national copyright provisions, the protection of this Agreement shall apply to:

(i) creators of type faces who are nationals of one of the Contracting States;

(ii) creators of type faces who are not nationals of one of the Contracting States but whose type faces are published for the first time in one of such States.

[In the Draft, there are no provisions corresponding to those of Article 5 of the Final Text.]

Article 4(2), continued]

(b) Any Contracting State referred to in subparagraph (a) may assimilate creators of type faces who have their habitual residence or domicile in a Contracting State to creators of type faces who are nationals of that State.

(3) For the purposes of the Agreement, any association of natural persons or legal entities which, under the national law of the State according to which it is constituted, may acquire rights and assume obligations, notwithstanding the fact that it is not a legal entity, shall be assimilated to a legal entity. However, any Contracting State may protect, in lieu of the said association, the natural persons or legal entities constituting it.

Article 5National Treatment

(1) Each Contracting State shall be obliged to grant to all natural persons and legal entities entitled to claim the benefits of this Agreement the protection afforded to its nationals according to the kind of protection which such Contracting State declares under Article 34.

(2) If a Contracting State referred to in Article 4(2) requires, under its domestic law, compliance with formalities as a condition of protecting type faces, these should be considered as fulfilled, with respect to type faces whose creators are referred to in Article 4(2), if all the copies of the type faces published with the authority of the creator or other owner entitled to protection are accompanied by or, as the case may be, bear a notice consisting of the symbol © accompanied by the name of the owner entitled to protection and the year date of the first such publication placed in such a manner as to give reasonable notice of claim of protection.

Article 4Concepts of Residence and Nationality

[Same as in Article 6 of the Final Text, except that, in paragraphs (1)(a), (1)(b), (2)(a) and (2)(b) of the Draft, the words "for the purposes of Articles 4(1) and 13" and in paragraph (3), the words "or legal entity" do not appear.]

Article 5Conditions of Protection

(1) [Same as in Article 7(1) of the Final Text except that, in the Draft, the provision begins as follows: "Contracting States may make the protection of type faces subject to"]

(2) [Same as in Article 7(2) of the Final Text except that, in the Draft, the words "if necessary" do not appear.]

Article 6Concepts of Residence and Nationality

(1) (a) Any natural person shall be regarded as a resident of a Contracting State for the purposes of Articles 4(1) and 13 if:

(i) according to the national law of that State he is a resident of that State, or

(ii) he has a real and effective industrial or commercial establishment in that State.

(b) Any natural person shall be regarded as a national of a Contracting State for the purposes of Articles 4(1) and 13 if, according to the national law of that State, he is a national of that State.

(2) (a) Any legal entity shall be regarded as a resident of a Contracting State for the purposes of Articles 4(1) and 13 if it has a real and effective industrial or commercial establishment in that State.

(b) Any legal entity shall be regarded as a national of a Contracting State for the purposes of Articles 4(1) and 13 if it is constituted according to the national law of that State.

(3) Where any natural person or legal entity invoking the benefits of this Agreement is a resident of one State and a national of another State, and where only one of those States is a Contracting State, the Contracting State alone shall be considered for the purposes of this Agreement and the Regulations.

Article 7Conditions of Protection

(1) The protection of type faces shall be subject to the condition that they be novel, or to the condition that they be original, or to both conditions.

(2) The novelty and the originality of type faces shall be determined in relation to their style or overall appearance, having regard, if necessary, to the criteria recognized by the competent professional circles.

Article 6Content of Protection

(1) (Same as in Article 8(1) of the Final Text, except that, in the Draft, item (i) reads as follows:

(i) the making, without his consent, of any reproduction, whether identical or slightly modified, intended to provide means for composing texts by typographical, typewritten or other graphic techniques, irrespective of whether or not the protected type faces have been known to the maker of the reproduction, and irrespective of the technical means or material used;]

[In the Draft, there are no provisions corresponding to those of Article 8(2)(a) of the Final Text.]

[The text of the Draft corresponding to that of Article 8(2)(b) of the Final Text appears in Article 6(3) below.]

(2) (Same as in Article 8(3) of the Final Text.)

(3) Contracting States in which originality is a condition of protection may provide that the right defined in paragraph (1) is subject to the condition that the protected type faces must have been known to the maker of the reproduction.

[In the Draft, there are no provisions corresponding to those of Article 8(4) of the Final Text.]

[In the Draft, there are no provisions corresponding to those of Article 8(5) of the Final Text.]

Article 8Content of Protection

(1) Protection of type faces shall confer upon the owner thereof the right to prohibit:

(i) the making, without his consent, of any reproduction, whether identical or slightly modified, intended to provide means for composing texts by any graphic technique, irrespective of the technical means or material used;

(ii) the commercial distribution or importation of such reproductions without his consent.

(2) (a) Subject to subparagraph (b), the right defined in paragraph (1) applies irrespective of whether or not the protected type faces have been known to the maker of the reproduction.

(b) Contracting States in which originality is a condition of protection are not required to apply subparagraph (a).

(3) The right provided for in paragraph (1) shall also cover any reproduction of type faces obtained by the distortion, by any purely technical means, of the protected type faces, where the essential features thereof remain recognizable.

(4) The making of elements of type faces, by a person acquiring type faces, during the ordinary course of the composition of texts, shall not be considered a reproduction within the meaning of paragraph (1)(i).

(5) Contracting States may take legislative measures to avoid abuses which might result from the exercise of the exclusive right provided under this Agreement in cases where, apart from the protected type faces in question,

Article 7Term of Protection

(1) [Same as in Article 9(1) of the Final Text, except that, in the Draft, the words corresponding to "fifteen years" read as follows: "twenty-five years."]

(2) [Same as in Article 9(2) of the Final Text.]

Article 8Cumulative Protection

[Same as in Article 10 of the Final Text.]

Article 9Right of Priority

[Same as in Article 11 of the Final Text.]

[Article 8(5), continued]

no other type faces are available in order to achieve a particular purpose in the public interest. The legislative measures shall not, however, prejudice the right of the owner to just remuneration for the use of his type faces. Nor shall the protection of type faces under any circumstances be subject to any forfeiture either by reason of failure to work or by reason of the importation of reproductions of the protected type faces.

Article 9Term of Protection

(1) The term of protection may not be less than fifteen years.

(2) The term of protection may be divided into several periods, each extension being granted only at the request of the owner of the protected type faces.

Article 10Cumulative Protection

The provisions of this Agreement shall not preclude the making of a claim to the benefit of any more extensive protection granted by national laws and shall in no way affect the protection granted by other international conventions.

Article 11Right of Priority

For the purposes of the right of priority, if applicable, national deposits of type faces shall be considered deposits of industrial designs.

CHAPTER II

INTERNATIONAL DEPOSIT

Article 10International Deposit and Recording
in the International Register

The international deposit shall be effected direct with the International Bureau, which shall record it in the International Register in accordance with the provisions of this Agreement and the Regulations.

{In the Draft, there are no provisions corresponding to those of Article 12(2) of the Final Text.]

Article 11Right to Effect International Deposits and to
Own Such Deposits

{Same as in Article 13(1) of the Final Text, except that, in the Draft, the words "according to the provisions of Article 4" appear after the words "a Contracting State."]

{In the Draft, there are no provisions corresponding to those of Article 13(2) of the Final Text.]

CHAPTER II

INTERNATIONAL DEPOSIT

Article 12International Deposit and Recording

(1) Subject to the provisions of paragraph (2), the international deposit shall be effected direct with the International Bureau, which shall record it in the International Register in accordance with this Agreement and the Regulations.

(2) (a) The national law of any Contracting State may provide that international deposits by natural persons or legal entities residing in the respective State may be effected through the intermediary of the competent Office of that State.

(b) Where an international deposit is effected, as provided for in subparagraph (a), through the intermediary of a competent Office of a Contracting State, that Office shall indicate the date on which it received the international deposit and shall transmit the said deposit in good time to the International Bureau in the manner provided for in the Regulations.

Article 13Right to Effect International Deposits and to Own Such Deposits

(1) Any natural person who, or legal entity which, is a resident or a national of a Contracting State may effect and be the owner of international deposits.

(2) (a) Any association of natural persons or legal entities which, under the national law of the State according to which it is constituted, may acquire rights and assume obligations, notwithstanding the fact that it is not a legal entity, shall have the right to effect international deposits and to own such deposits if it is a resident or national of a Contracting State.

(b) Subparagraph (a) shall be without prejudice to the application of the national law of any Contracting State. However, no such State shall refuse or cancel the effects provided for in Article 18 with respect to an association

Article 12Contents and Form of the International Deposit

(1) The international deposit shall contain:

(i) a signed instrument of international deposit stating that the deposit is effected under this Agreement and indicating the identity, residence, nationality and address of the applicant,

(ii) a reproduction of the type faces for which protection is sought,

(iii) [Same as in Article 14(1)(iii) of the Final Text.]

(2) The instrument of international deposit may contain:

(i) [Same as in Article 14(2)(i) of the Final Text except that, in the Draft, the word corresponding to "States" reads as follows: "countries."]

(ii) an indication of the name of the creator of the type faces,

(iii) [Same as in Article 14(2)(ii) of the Final Text.]

(iv) [Same as in Article 14(2)(iii) of the Final Text.]

(v) [Same as in Article 14(2)(iv) of the Final Text.]

(3) [Same as in Article 14(3) of the Final Text.]

(Article 13(2)(b), continued)

of the kind referred to in subparagraph (a) on the ground that it is not a legal entity if, within two months from the date of an invitation addressed to it by the competent Office of that State, the said association files with that Office a list of the names and addresses of all the natural persons or legal entities constituting it, together with a declaration that its members are engaged in a joint enterprise. In such a case, the said State may consider the natural persons or legal entities constituting the said association to be the owners of the international deposit, in lieu of the association itself, provided that the said persons or entities fulfil the conditions set forth in paragraph (1).

Article 14Contents and Form of the International Deposit

(1) The international deposit shall contain:

- (i) a signed instrument of international deposit declaring that the deposit is effected under this Agreement, and indicating the identity, residence, nationality and address of the applicant as well as the name of the creator of the type faces for which protection is sought or that the creator has renounced being mentioned as such;
- (ii) a representation of the type faces;
- (iii) payment of the prescribed fees.

(2) The instrument of international deposit may contain:

- (i) a declaration claiming the priority of one or more earlier deposits effected in or for one or more States party to the Paris Convention;
- (ii) an indication of the denomination given to the type faces by the applicant;
- (iii) the appointment of a representative;
- (iv) such additional indications as are provided for in the Regulations.

(3) The instrument of international deposit shall be in one of the languages prescribed by the Regulations.

Article 13Recording or Declining of the International Deposit

.1. Subject to paragraph (2), the International Bureau shall promptly record the international deposit in the International Register, and the date of the international deposit shall be the date on which it was received by the International Bureau.

(2) (a) Where the International Bureau finds any of the following defects, that is to say, where:

(i) [Same as in Article 15(2)(a)(i) of the Final Text.]

(ii) [Same as in Article 15(2)(a)(ii) of the Final Text.]

' (iii) [Same as in Article 15(2)(a)(iii) of the Final Text.]

' In the Draft, there are no provisions corresponding to those of Article 15(2)(a)(iv) of the Final Text.]

(iv) [Same as in Article 15(2)(a)(v) of the Final Text.]

(v) [Same as in Article 15(2)(a)(vi) of the Final Text.]

(vi) the international deposit does not contain a reproduction of the type faces for which protection is sought,

(vii) [Same as in Article 15(2)(a)(viii) of the Final Text.]

(b) [Same as in Article 15(2)(b) of the Final Text.]

Article 15Recording or Declining of the International Deposit

(1) Subject to paragraph (2), the International Bureau shall promptly record the international deposit in the International Register. The date of the international deposit shall be the date on which it was received by the International Bureau or, if the international deposit has been effected, as provided for in Article 12(2), through the intermediary of the competent Office of a Contracting State, the date on which that Office received the deposit, provided that the deposit reaches the International Bureau before the expiration of a period of one month following that date.

(2) (a) Where the International Bureau finds any of the following defects, it shall invite the applicant, unless it is clearly impossible to reach him, to correct the defect within three months from the date on which it sent the invitation:

(i) the instrument of international deposit does not contain an indication that it is effected under this Agreement;

(ii) the instrument of international deposit does not contain such indications concerning the residence and nationality of the applicant as to permit the conclusion that he has the right to effect international deposits;

(iii) the instrument of international deposit does not contain such indications concerning the applicant as are necessary to permit him to be identified and reached by mail;

(iv) the instrument of international deposit does not contain an indication of the name of the creator of the type faces or of the fact that the creator has renounced being mentioned as such;

(v) the instrument of international deposit is not signed;

(vi) the instrument of international deposit is not in one of the languages prescribed by the Regulations;

(vii) the international deposit does not contain a representation of the type faces;

(viii) the prescribed fees have not been paid.

(b) If the defect or defects are corrected in due time, the International Bureau shall record the international deposit in the International Register, and the date of the international deposit shall be the date on which the International Bureau receives the correction of the said defect or defects.

[Article 13(2), continued]

(c) [Same as in Article 15(2)(c) of the Final Text, except that, in the Draft, there are no provisions corresponding to the last sentence of this Article.]

Article 14Avoiding Certain Effects of Declining

(1) [Same as in Article 16(1) of the Final Text, except that, in the Draft, the words corresponding to "the competent Office" read as follows: "the national Office."]

(2) [Same as in Article 16(2) of the Final Text, except that, in the Draft, the words corresponding to "the competent Office" read as follows: "the national Office."]

Article 15Publication and Notification of the International Deposit

[Same as in Article 17 of the Final Text, except that, in the Draft, the words corresponding to "published" read as follows: "promptly published."]

[Article 15(2), continued]

(c) If the defect or defects are not corrected in due time, the International Bureau shall decline the international deposit, inform the applicant accordingly, and reimburse to him part of the fees paid, as provided in the Regulations. If the international deposit is effected through the intermediary of the competent Office of a Contracting State, as provided for in Article 12(2), the International Bureau shall also inform that Office of the declining.

Article 16Avoiding Certain Effects of Declining

(1) Where the International Bureau has declined the international deposit, the applicant may, within two months from the date of the notification of the declining, effect, in respect of the type faces that were the subject of the international deposit, a national deposit with the competent Office of any Contracting State which ensures the protection of type faces by establishing a special national deposit or by adapting the deposit provided for in its national industrial design law.

(2) If the competent Office or any other competent authority of that Contracting State finds that the International Bureau has declined the international deposit in error, and provided the national deposit complies with all the requirements of the national law of the said State, the said national deposit shall be treated as if it had been effected on the date which would have been the date of the international deposit had that international deposit not been declined.

Article 17Publication and Notification of the International Deposit

International deposits recorded in the International Register shall be published by the International Bureau and notified by the latter to the competent Offices of the Contracting States.

Article 16Effect of the International Deposit

(1) [Same as in Article 18(1) of the Final Text except that, in the Draft, the words corresponding to "which declare in accordance with Article 34 that they intend to ensure ..." read as follows: "which ensure"]

(2) [Same as in Article 18(2) of the Final Text, except that, in the Draft, the second sentence reads as follows: "However, States which undertake an ex officio novelty examination or make provision for opposition proceedings may prescribe the formalities required by such examination or such proceedings and charge the appropriate fees with the exception of the publication fee."]

Article 17Right of Priority

(1) [Same as in Article 19(1) of the Final Text.]

(2) The international deposit shall be a regular filing within the meaning of Article 4A of the Paris Convention if it is not declined pursuant to Article 13(2)(c), and shall be considered to have been effected on the date accorded to it under Article 13(1) or (2)(b).

Article 18Effect of the International Deposit

(1) In Contracting States which declare in accordance with Article 34 that they intend to ensure the protection of type faces by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws, the international deposit recorded in the International Register shall have the same effect as a national deposit effected on the same date.

(2) The Contracting States referred to in paragraph (1) may not require that the applicant comply with any additional formality, with the exception of such formalities as may be prescribed by their national laws for the exercise of the rights. However, Contracting States which undertake an *ex officio* novelty examination or make provision for opposition proceedings may prescribe the formalities required by such examination or such proceedings and charge the fees, with the exception of the publication fee, provided for in their national laws for such examination, the grant of protection and the renewal thereof.

Article 19Right of Priority

(1) For the purposes of the right of priority, if applicable, the international deposit of type faces shall be considered an industrial design deposit within the meaning of Article 4A of the Paris Convention.

(2) The international deposit shall be a regular filing within the meaning of Article 4A of the Paris Convention if it is not declined pursuant to Article 15(2)(c) of this Agreement, and shall be considered to have been effected on the date accorded to it under Article 15(1) or (2)(b) of this Agreement.

Article 18Change in the Ownership of the International Deposit

- (1) [Same as in Article 20(1) of the Final Text.]
- (2) [Same as in Article 20(2) of the Final Text.]
- (3) [Same as in Article 20(3) of the Final Text, except that, in the Draft, the first sentence reads as follows: "The change in the ownership of the international deposit may relate to all or fewer than all the Contracting States referred to in Article 16(1)."]
- (4) [Same as in Article 20(4) of the Final Text.]
- (5) [Same as in Article 20(5) of the Final Text.]
- (6) [Same as in Article 20(6) of the Final Text, except that, in the Draft, the reference is to Article 16(1) rather than to Article 18(1).]

Article 19Withdrawal and Renunciation of the International Deposit

- (1) [Same as in Article 21(1) of the Final Text.]

Article 20Change in the Ownership of the International Deposit

(1) Any change in the ownership of the international deposit shall, on request, be recorded in the International Register by the International Bureau.

(2) The change in the ownership of the international deposit shall not be recorded in the International Register if, according to the indications furnished by the person requesting the recording of the change, the new owner of the international deposit does not have the right to effect international deposits.

(3) The change in the ownership of the international deposit may relate to one or more of the Contracting States referred to in Article 18(1). In such a case, renewal of the international deposit must subsequently be applied for separately by each of the owners of the international deposit as far as he is concerned.

(4) The request for the recording of a change in the ownership of the international deposit shall be presented in the form, and accompanied by the fee, prescribed in the Regulations.

(5) The International Bureau shall record the change in the ownership of the international deposit in the International Register, shall publish it, and shall notify it to the competent Offices of the Contracting States.

(6) The recording of the change in the ownership of the international deposit in the International Register shall have the same effect as if the request for such recording had been filed direct with the competent Office of each of the Contracting States referred to in Article 18(1) which are concerned by the said change in ownership.

Article 21Withdrawal and Renunciation of
the International Deposit

(1) The applicant may withdraw his international deposit by a declaration addressed to the International Bureau.

[Article 19, continued]

(2) [Same as in Article 21(2) of the Final Text.]

(3) Withdrawal and renunciation may relate to all or fewer than all the type faces which are the subject of the international deposit, or to their denomination, and to all or fewer than all the Contracting States referred to in Article 16(1).

(4) [Same as in Article 21(4) of the Final Text.]

(5) [Same as in Article 21(5) of the Final Text, except that, in the Draft, the reference is to Article 16(1) rather than to Article 18(1).]

Article 20Other Amendments to the International Deposit

[Same as in Article 22 of the Final Text, except that, in paragraph (5), of the Draft, the reference is to Article 16(1) rather than to Article 18(1).]

[Article 21, continued]

(2) The owner of the international deposit may at any time renounce his international deposit by a declaration addressed to the International Bureau.

(3) Withdrawal and renunciation may relate to a part or the whole of the type faces which are the subject of the international deposit, or to their denomination, and to one or more of the Contracting States referred to in Article 18(1).

(4) The International Bureau shall record the renunciation in the International Register, shall publish it, and shall notify it to the competent Offices of the Contracting States.

(5) Renunciation recorded in the International Register shall have the same effect as if it had been communicated direct to the competent Office of each of the Contracting States referred to in Article 18(1).

Article 22Other Amendments to the International Deposit

(1) The owner of the international deposit may at any time amend the indications appearing in the instrument of international deposit.

(2) Type faces which are the subject of an international deposit may not be amended.

(3) Amendments shall be subject to the payment of the fees prescribed in the Regulations.

(4) The International Bureau shall record amendments in the International Register, shall publish them, and shall notify them to the competent Offices of the Contracting States.

(5) Amendments recorded in the International Register shall have the same effect as if they had been communicated direct to the competent Office of each of the Contracting States referred to in Article 18(1).

Article 21Term and Renewal of the International Deposit

- (1) [Same as in Article 23(1) of the Final Text.]
- (2) [Same as in Article 23(2) of the Final Text, except that, in the Draft, the words corresponding to "terms of five years" read as follows: "terms of five or ten years."]
- (3) [Same as in Article 23(3) of the Final Text.]
- (4) [Same as in Article 23(4) of the Final Text.]
- (5) [Same as in Article 23(5) of the Final Text.]
- (6) [Same as in Article 23(6) of the Final Text, except that, in the Draft, the reference is to Article 16(1) rather than to Article 18(1).]

Article 22Regional Treaties

- (1) [Same as in Article 24(1) of the Final Text.]
- (2) [Same as in Article 24(2) of the Final Text.]

Article 23Term and Renewal of the International Deposit

(1) The international deposit shall have effect for an initial term of ten years from the date of such deposit.

(2) The effect of the international deposit may be extended for terms of five years on the basis of demands for renewal submitted by the owner of the international deposit.

(3) Each new term shall commence on the day following that on which the previous term expires.

(4) The demand for renewal shall be presented in the form, and accompanied by the fees, prescribed by the Regulations.

(5) The International Bureau shall record the renewal in the International Register, shall publish it, and shall notify it to the competent Offices of the Contracting States.

(6) Renewal of the international deposit shall replace such renewals as may be provided for in the national laws. However, the international deposit may not, in any Contracting State referred to in Article 18(1), have effect after the maximum term of protection provided for in the national law of that State has expired.

Article 24Regional Treaties

(1) Two or more Contracting States may notify the Director General that a common Office shall be substituted for the national Office of each of them, and that their territories, as a whole, shall be deemed a single State for the purposes of international deposit.

(2) Such notification shall take effect three months after the date on which the Director General receives it.

Article 23Representation Before the International Bureau

(1) [Same as in Article 25(1) of the Final Text.]

(2) [Same as in Article 25(2) of the Final Text.]

(3) (a) Where there are several applicants and they have not appointed a common representative as provided in the Regulations, the applicant first named in the instrument of international deposit shall be considered the duly appointed representative of all the applicants.

(b) Where there are several owners of an international deposit and they have not appointed a common representative as provided in the Regulations, the first of the said owners named in the International Register shall be considered the duly appointed representative of all the owners of the international deposit.

'In the Draft there are no provisions corresponding to those of Article 25(3)(c) of the Final Text.'

Article 25Representation Before the International Bureau

(1) Applicants and owners of international deposits may be represented before the International Bureau by any person empowered by them to that effect (hereinafter referred to as "the duly appointed representative").

(2) Any invitation, notification or other communication addressed by the International Bureau to the duly appointed representative shall have the same effect as if it had been addressed to the applicant or the owner of the international deposit. Any deposit, request, demand, declaration or other document whose signature by the applicant or the owner of the international deposit is required in proceedings before the International Bureau, except the document appointing the representative or revoking his appointment, may be signed by his duly appointed representative, and any communication from the duly appointed representative to the International Bureau shall have the same effect as if it had been effected by the applicant or the owner of the international deposit.

(3) (a) Where there are several applicants, they shall appoint a common representative. In the absence of such appointment, the applicant first named in the instrument of international deposit shall be considered the duly appointed representative of all the applicants.

(b) Where there are several owners of an international deposit, they shall appoint a common representative. In the absence of such appointment, the natural person or legal entity first named among the said owners in the International Register shall be considered the duly appointed common representative of all the owners of the international deposit.

(c) Subparagraph (b) shall not apply to the extent that the owners own the international deposit in respect of different Contracting States.

CHAPTER III

ADMINISTRATIVE PROVISIONS

Article 24Assembly

(1) [Same as in Article 26(1) of the Final Text.]

(2) (a) The Assembly shall:

(i) [Same as in Article 26(2)(a)(i) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(ii) [Same as in Article 26(2)(a)(ii) of the Final Text.]

(iii) [Same as in Article 26(2)(a)(iii) of the Final Text.]

(iv) [Same as in Article 26(2)(a)(iv) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(v) [Same as in Article 26(2)(v) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(vi) [Same as in Article 26(2)(a)(vi) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(vii) [Same as in Article 26(2)(a)(vii) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(viii) [Same as in Article 26(2)(a)(viii) of the Final Text.]

CHAPTER III

ADMINISTRATIVE PROVISIONS

Article 26Assembly

(1) (a) The Assembly 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) (a) The Assembly shall:

- (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Agreement;
- (ii) exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Agreement;
- (iii) give directions to 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, adopt the triennial budget of the Union, and approve its final accounts;
- (vi) adopt the financial regulations of the Union;

(vii) establish such committees and working groups as it deems appropriate to facilitate the work of the Union and of its organs;

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

{Article 24(2) (a), continued}

(ix) adopt amendments to Articles 24, 25, 26 and 29;

(x) [Same as in Article 26(2) (a) (ix) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(b) [Same as in Article 26(2) (b) of the Final Text.]

(3) [Same as in Article 26(3) of the Final Text.]

(4) [Same as in Article 26(4) of the Final Text.]

(5) [Same as in Article 26(5) of the Final Text.]

(6) (a) [Same as in Article 26(6) (a) of the Final Text, except that, in the Draft, the references are to Articles 27(3) and 29(2) (b) rather than to Articles 29(3) and 32(2) (b).]

(b) [Same as in Article 26(6) (b) of the Final Text.]

(7) (a) [Same as in Article 26(7) (a) of the Final Text, except that, in the Draft, the words corresponding to "the General Assembly of the Organization" read as follows: "the Coordination Committee of the Organization."]

(b) [Same as in Article 26(7) (b) of the Final Text.]

(8) [Same as in Article 26(8) of the Final Text.]

[Article 26(2)(a), continued]

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

(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.

(3) A delegate may represent, and vote in the name of, one Contracting State only.

(4) Each Contracting State shall have one vote.

(5) (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 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 as provided in the Regulations.

(6) (a) Subject to the provisions of Articles 29(3) and 32(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) (a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General, preferably 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 on his own initiative or at the request of one-fourth of the Contracting States.

(8) The Assembly shall adopt its own rules of procedure.

Article 25International Bureau

[Same as in Article 27 of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

Article 27International Bureau

(1) The International Bureau shall:

(i) perform the administrative tasks concerning the Union; in particular, it shall perform such tasks as are specifically assigned to it under this Agreement or by the Assembly;

(ii) provide the secretariat of revision conferences, of the Assembly, of 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.

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

(3) 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)(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)(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 international non-governmental organizations concerning the preparations for revision conferences.

(c) The Director General and persons 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 26Finances

(1)(a) [Same as in Article 28(1)(a) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(b) [Same as in Article 28(1)(b) of the Final Text, except that, in the Draft, the words corresponding to "Union" and "Unions administered by the Organization" read as follows: "Special Union" and "Unions."]

(c) [Same as in Article 28(1)(c) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(2) [Same as in Article 28(2) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(3)(a) [Same as in Article 28(3)(a) of the Final Text except that, in Article 26(3)(a)(i), (ii) and (v) of the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(b) [Same as in Article 28(3)(b) of the Final Text.]

(c) [In the Draft, there are no provisions corresponding to those of Article 28(3)(c) of the Final Text. Article 26(3)(c) of the Draft corresponds partly to Article 28(4)(c) of the Final Text.]

Article 28Finances

(1) (a) The Union shall have a budget.

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

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be regarded 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) 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) (a) The budget of the Union shall be financed from the following sources:

(i) fees and other charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income;

(v) the contributions of Contracting States, in so far as income deriving from the sources mentioned under (i) to (iv) is not sufficient to cover the expenses of the Union.

(b) The amounts of fees and charges due to the International Bureau under subparagraph (a)(i) and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover the expenses of the International Bureau connected with the administration of this Agreement.

(c) If the income exceeds the expenses, the difference shall be credited to a reserve fund.

[Article 26(3)(c), continued]

For the purpose of establishing its contribution as provided in subparagraph (a)(v), each Contracting State shall belong to the class it has chosen in the Paris Union for the Protection of Industrial Property, and shall pay its contribution on the basis of the number of units fixed for that class in that Union. The contribution of each Contracting State shall be an amount in the same proportion to the total sum to be contributed as the number of its units is to the total of the units of all Contracting States.

(d) [Same as in Article 28(4)(d) of the Final Text.]

(e) [Same as in Article 28(3)(d) of the Final Text.]

[Article 28(4)(a) of the Final Text corresponds partly to Article 26(3)(c) of the Draft.]

[In the Draft, there are no provisions corresponding to those of Article 28(4)(b) of the Final Text.]

[Article 28 (3), continued]

(d) 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 year, as provided in the financial regulations.

(4) (a) For the purpose of establishing its contribution as provided in paragraph (3) (a) (v), each Contracting State shall belong to a class, and shall pay its contribution on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each Contracting State shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, it must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

[Article 26(3), continued]

[Article 28(4)(c) of the Final Text corresponds partly to Article 26(3)(c) of the Draft.]

[Same as in Article 26(3)(d) of the Draft.]

(4)(a) [Same as in Article 28(5)(a) of the Final Text, except that, in the Draft, the words corresponding to "Union" read as follows: "Special Union."]

(b) [Same as in Article 28(5)(b) of the Final Text.]

(c) [Same as in Article 28(5)(c) of the Final Text.]

(d) [Same as in Article 28(5)(d) of the Final Text.]

[In the Draft, there are no provisions corresponding to those of Article 28(5)(e) of the Final Text.]

(5)(a) [Same as in Article 28(6)(a) of the Final Text.]

(b) [Same as in Article 28(6)(b) of the Final Text.]

(6) [Same as in Article 28(7) of the Final Text.]

[Article 28 (4), continued]

(c) The contribution of each Contracting State shall be an amount in the same proportion to the total sum to be contributed as the number of its units is to the total of the units of all Contracting States.

(d) Contributions shall be payable on the first of January of the year for which they are due.

(5) (a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be a proportion of the contribution which that State may be required to pay under paragraph (3) (a) (v) for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement under subparagraph (a) shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

(e) If a working capital fund of sufficient amount can be constituted by borrowing from the reserve fund, the Assembly may suspend the application of subparagraphs (a) to (d).

(6) (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an ex officio seat in the Assembly if it is not a Contracting State.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) 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 27Regulations

[Same as in Article 29 of the Final Text.]

Article 29Regulations

(1) The Regulations provide rules:

(i) concerning matters in respect of which this Agreement expressly refers to the Regulations or expressly provides that they are or shall be prescribed;

(ii) concerning any administrative requirements, matters or procedures;

(iii) concerning any details useful in the implementation of this Agreement.

(2) The Regulations adopted at the same time as this Agreement are annexed to this Agreement.

(3) The Assembly may amend the Regulations, and such amendments shall require two-thirds of the votes cast.

(4) In the case of conflict between the provisions of this Agreement and those of the Regulations, the provisions of this Agreement shall prevail.

[In the Draft, there are no provisions corresponding to those of Chapter IV of the Final Text.]

CHAPTER IV

DISPUTES

Article 30Disputes

(1) Any dispute between two or more Contracting States concerning the interpretation or application of this Agreement or the Regulations, not settled by negotiation, may, by any of the Contracting States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the Contracting 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) Each Contracting State may, at the time it signs this Agreement or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of paragraph (1) shall not apply.

(3) Any Contracting State having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

CHAPTER IV

REVISION AND AMENDMENT

Article 28Revision of the Agreement

(1) [Same as in Article 31(1) of the Final Text, except that, in the Draft, the words corresponding to "conference" read as follows: "special conference."]

(2) [Same as in Article 31(2) of the Final Text.]

(3) Articles 24, 25, 26 and 29 may be amended either by a revision conference or according to the provisions of Article 29.

Article 29Amendment of Certain Provisions of the Agreement

[Same as in Article 32 of the Final Text, except for paragraphs (1)(a) and 2(b).]

(1)(a) [Same as in Article 32(1)(a) of the Final Text, except that, in the Draft, the references are to Articles 24, 25 and 26 rather than to Articles 26, 27 and 28.]

(2)(b) [Same as in Article 32(2)(b) of the Final Text, except that in the Draft, the reference is to Article 24 rather than to Article 26.]

CHAPTER V

REVISION AND AMENDMENT

Article 31Revision of the Agreement

(1) This Agreement may be revised from time to time by a conference of the Contracting States.

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

(3) Articles 26, 27, 28 and 32 may be amended either by a revision conference or according to the provisions of Article 32.

Article 32Amendment of Certain Provisions of the Agreement

(1) (a) Proposals for the amendment of Articles 26, 27, 28 and the present Article, 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) (a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast, provided that adoption of any amendment to Article 26 and to the present subparagraph shall require four-fifths of the votes cast.

Article 32, continued:

(3) (a) Any amendment to the Articles 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, provided that any amendment increasing the financial obligations of the said Contracting States shall bind only those States which have notified their acceptance of such amendment.

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

CHAPTER V

FINAL PROVISIONS

Article 30Becoming Party to the Agreement

(1) Any State member of the Paris Union for the Protection of Industrial Property may become party to this Agreement by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

[In the Draft, there are no provisions corresponding to those of Article 33(1)(b) of the Final Text.]

(2) [Same as in Article 33(2) of the Final Text.]

(3) [Same as in Article 33(3) of the Final Text, except that, in the Draft, the words corresponding to "Paris Convention for the Protection of Industrial Property" read as follows: "Paris Convention."]

(4) [Same as in Article 33(4) of the Final Text.]

CHAPTER VI

FINAL PROVISIONS

Article 33Becoming Party to the Agreement

(1) (a) Subject to subparagraph (b), any State member of either the International Union for the Protection of Industrial Property or the International Union for the Protection of Literary and Artistic Works, or party to the Universal Copyright Convention or to the latter Convention as revised, may become party to this Agreement by:

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

(b) States which intend to ensure the protection of type faces by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws may only become party to this Agreement if they are members of the International Union for the Protection of Industrial Property. States which intend to ensure the protection of type faces by their national copyright provisions may only become party to this Agreement if they are either members of the International Union for the Protection of Literary and Artistic Works or party to the Universal Copyright Convention or to the latter Convention as revised.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Agreement is made applicable by another Contracting State by virtue of the said paragraph.

Article 31Indication of the Type of National Protection

(1) At the time of depositing its instrument of ratification or accession, each State shall, by a notification addressed to the Director General, indicate whether it intends to ensure the protection of type faces on its territory by establishing a special national deposit, or by adapting the deposit provided for in its national industrial design law, or by means of its national copyright provisions. In the last-mentioned case, it shall indicate whether it is party to the Berne Convention for the Protection of Literary and Artistic Works, or to the Universal Copyright Convention, or to both.

(2) Any subsequent modification of the means of protection of type faces at the national level shall be indicated by a further notification addressed to the Director General.

Article 32Entry Into Force of the Agreement

(1) [Same as in Article 35(1) of the Final Text.]

(2) [Same as in Article 35(2) of the Final Text.]

(3) The provisions of Chapter II of this Agreement shall enter into force, however, only on the date on which at least three of the States for which this Agreement has entered into force afford protection to type faces by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws.

Article 34Declarations Concerning National Protection

(1) At the time of depositing its instrument of ratification or accession, each State shall, by a notification addressed to the Director General, declare whether it intends to ensure the protection of type faces by establishing a special national deposit, or by adapting the deposit provided for in its national industrial design laws, or by its national copyright provisions or by more than one of these kinds of protection. Any such State which intends to ensure protection by its national copyright provisions shall declare at the same time whether it intends to assimilate creators of type faces who have their habitual residence or domicile in a Contracting State to creators of type faces who are nationals of that State.

(2) Any subsequent modification of the declarations made in accordance with paragraph (1) shall be indicated by a further notification addressed to the Director General.

Article 35Entry Into Force of the Agreement

(1) This Agreement shall enter into force three months after five States have deposited their instruments of ratification or accession.

(2) Any State which is not among those referred to in paragraph (1) shall become bound by this Agreement three months after the date on which it has deposited its instrument of ratification or accession, unless a later date has been indicated in the instrument of ratification or accession. In the latter case, this Agreement shall enter into force with respect to that State on the date thus indicated.

(3) The provisions of Chapter II of this Agreement shall become applicable, however, only on the date on which at least three of the States for which this Agreement has entered into force under paragraph (1) afford protection to type faces by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws. For the purpose of this paragraph, the States party to the same regional treaty which gave notification under Article 24 shall count as one State only.

Article 33Reservations

No reservations to this Agreement are permitted.

Article 34Duration of the Agreement

This Agreement shall have the same duration as the Paris Convention.

Article 35Denunciation of the Agreement

(1) [Same as in Article 38(1) of the Final Text.]

(2) [Same as in Article 38(2) of the Final Text.]

(3) [Same as in Article 38(3) of the Final Text.]

(4) (a) [Same as in Article 38(4)(a) of the Final Text, except that, in the Draft, the words corresponding to "Articles 10 to 23" and "according to Article 21, and subject to Article 21(6)" read as follows: "Articles 12 to 25" and "according to Article 23(6)."]

(b) [Same as in Article 38(4)(b) of the Final Text.]

Article 36Reservations

No reservations to this Agreement other than the reservation under Article 30(2) are permitted.

Article 37Loss of Status of Party to the Agreement

Any Contracting State shall cease to be party to this Agreement when it no longer meets the conditions set forth in Article 33(1)(b).

Article 38Denunciation of the Agreement

(1) Any Contracting State may denounce this Agreement by notification addressed to the Director General.

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

(3) The right of denunciation provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes party to this Agreement.

(4)(a) The effects of this Agreement on type faces enjoying the benefits of Articles 12 to 25 on the day preceding the day on which the denunciation by any Contracting State takes effect shall subsist in that State until the expiration of the term of protection which, subject to Article 23(6), was running on that date according to Article 23.

(b) The same shall apply in Contracting States other than the denouncing State in respect of international deposits owned by a resident or national of the denouncing State.

Article 36Signature and Languages of the Agreement

[Same as in Article 39 of the Final Text, except that, in the Draft, in paragraph (1)(b), the words corresponding to "in the German, Italian, Japanese, Portuguese, Russian and Spanish languages and such other languages as the Assembly may designate" read as follows: "in such languages as the Assembly may designate."]

Article 37Depository Functions

[Same as in Article 40 of the Final Text, except that, in the Draft, in paragraph (2), the words corresponding to "States referred to in Article 33(1)(a)" read as follows: "States party to the Paris Convention."]

Article 39Signature and Languages of the Agreement

(1) (a) This Agreement shall be signed in a single original in the English and French languages, both texts being equally authentic.

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

(2) This Agreement shall remain open for signature at Vienna until December 31, 1973.

Article 40Depository Functions

(1) The original of this Agreement, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Agreement and the Regulations annexed thereto to the Governments of all the States referred to in Article 33(1) (a) and, on request, to the Government of any other State.

(3) The Director General shall register this Agreement with the Secretariat of the United Nations.

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

Article 38Notifications

The Director General shall notify the Governments of States party to the Paris Convention of:

- (i) signatures under Article 36(1);
- (ii) deposits of instruments of ratification or accession under Article 30(2);
- (iii) the date of entry into force of this Agreement under Article 32(1);
- (iv) indications on the type of national protection notified under Article 31;
- (v) notifications concerning regional treaties under Article 22;

- (vi) acceptances of amendments to this Agreement under Article 29(3);
- (vii) the dates on which such amendments enter into force;
- (viii) denunciations received under Article 35.

Article 41Notifications

The Director General shall notify the Governments of States referred to in Article 33(1)(a) of:

- (i) signatures under Article 39;
- (ii) deposits of instruments of ratification or accession under Article 33(2);
- (iii) the date of entry into force of this Agreement under Article 35(1) and the date from which Chapter II is applicable in accordance with Article 35(3);
- (iv) declarations concerning national protection notified under Article 34;
- (v) notifications concerning regional treaties under Article 24;
- (vi) declarations made under Article 30(2);
- (vii) withdrawals of any declarations, notified under Article 30(3);
- (viii) declarations and notifications made in accordance with Article 33(3);
- (ix) acceptances of amendments to this Agreement under Article 32(3);
- (x) the dates on which such amendments enter into force;
- (xi) denunciations received under Article 38.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Vienna, on June ..., 1973.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto,
have signed this Agreement.

DONE at Vienna, this twelfth day of June, one thousand nine hundred
and seventy three.*

FRANCE (J.-P. Palewski); GERMANY (FEDERAL REPUBLIC OF) (H. Schirmer, E. Ulmer);
HUNGARY (E. Tasnádi)**; ITALY (Pio Archi, Dino Marchetti); LIECHTENSTEIN,
December 20, 1973 (Michael U.R. von Schenk); LUXEMBOURG (J.P. Hoffmann);
NETHERLANDS (Enno van Weel); SAN MARINO (J.C. Munger); SWITZERLAND
(P. Braendli); UNITED KINGDOM (Edward Armitage, William Wallace);
YUGOSLAVIA (N. Janković)

* Editor's Note: All signatures were affixed on June 12, 1973, unless otherwise indicated.

** When signing this Agreement, the Government of the Hungarian People's Republic declared that it does not consider itself bound by paragraph (1) of Article 30 of the Agreement.

**REGULATIONS
UNDER THE VIENNA AGREEMENT
FOR THE PROTECTION OF TYPE FACES
AND THEIR INTERNATIONAL DEPOSIT**

**TEXT OF THE DRAFT REGULATIONS
AS PRESENTED TO THE DIPLOMATIC CONFERENCE**

**TEXT OF THE REGULATIONS
AS ADOPTED BY THE DIPLOMATIC CONFERENCE**

DRAFT REGULATIONS
UNDER THE AGREEMENT FOR THE PROTECTION
OF TYPE FACES AND THEIR INTERNATIONAL DEPOSIT

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REGULATIONS
UNDER THE VIENNA AGREEMENT FOR THE
PROTECTION OF TYPE FACES AND THEIR
INTERNATIONAL DEPOSIT

List of Rules*

RULE CONCERNING THESE REGULATIONS

Rule 1: Abbreviated Expressions

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* This List of Rules does not appear in the original. It is added for the convenience of the reader.

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- 13.1 International Deposit Certificate

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RULES CONCERNING CHAPTER III OF THE AGREEMENT

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Rule 28: Entry Into Force

- 28.1 Entry Into Force of the Regulations

RULE CONCERNING THESE REGULATIONS

RULE 1

ABBREVIATED EXPRESSIONS

1.1 "Agreement"

[Same as in the Final Text, except that, in the Draft, the words "the word" and "Vienna" do not appear.]

1.2 "Article"

[Same as in the Final Text, except that, in the Draft, the words "the word" do not appear.]

1.3 "Bulletin"

[Same as in the Final Text, except that, in the Draft, the words "the word" do not appear.]

1.4 "Table of Fees"

[Same as in the Final Text, except that, in the Draft, the words "the words" do not appear.]

RULE CONCERNING THESE REGULATIONS

RULE 1

ABBREVIATED EXPRESSIONS

1.1 "Agreement"

In these Regulations, the word "Agreement" means the Vienna Agreement for the Protection of Type Faces and their International Deposit.

1.2 "Article"

In these Regulations, the word "Article" refers to the specified Article of the Agreement.

1.3 "Bulletin"

In these Regulations, the word "Bulletin" means the International Bulletin of Type Faces/Bulletin international des caractères typographiques.

1.4 "Table of Fees"

In these Regulations, the words "Table of Fees" mean the Table of Fees annexed hereto.

RULES CONCERNING CHAPTER II OF THE AGREEMENT

RULE 2

DULY APPOINTED REPRESENTATIVES

2.1 Number of Duly Appointed Representatives

(a) The applicant or applicants and the owner or owners of the international deposit may appoint only one representative.

(b) [Same as in the Final Text, except that, in the Draft, the words corresponding to "applicant or the owner" read as follows: "applicant or applicants, or by the owner or owners."]

(c) Members of a partnership or firm composed of attorneys or patent or trademark agents shall be regarded as one representative.

2.2 Form of Appointment

(a) [Same as in the Final Text, except that, in the Draft, the reference is to paragraphs (b), (d) and (e) rather than to paragraphs (b) to (e).]

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

(i) that his name appear as that of a representative in the instrument of international deposit or any other document addressed to the International Bureau, and that such document bear the signature of the applicant or the owner of the International deposit, or

(c) [In the Final Text, there are no provisions corresponding to those of Rule 2.1(c).]

The signature shall not require any legalization.

(d) [Same as in Rule 2.2(c) of the Final Text, except that, in the Draft, the words corresponding to "appointment of their common representative shall be" read as follows: "appointment shall be."]

RULES CONCERNING CHAPTER II OF THE AGREEMENT

RULE 2

REPRESENTATION BEFORE THE INTERNATIONAL BUREAU

2.1 Number of Duly Appointed Representatives

(a) The applicant and the owner of the international deposit may appoint only one representative.

(b) Where several natural persons or legal entities have been indicated as representatives by the applicant or the owner of the international deposit, the natural person or legal entity first mentioned in the document in which they are indicated shall be regarded as the only duly appointed representative.

(c) Where the representative is a partnership or firm composed of attorneys or patent or trademark agents, it shall be regarded as one representative.

2.2 Form of Appointment

(a) A representative shall be regarded as a "duly appointed representative" if his appointment complies with the prescriptions of paragraphs (b) to (e).

(b) The appointment of any representative shall require:

(i) that his name appear as that of a representative in the instrument of international deposit and that such document bear the signature of the applicant, or

(ii) that a separate power of attorney (i.e., a document appointing the representative), signed by the applicant or the owner of the international deposit, be filed with the International Bureau.

(c) Where there are several applicants or owners of the international deposit, the document containing or constituting the appointment of their common representative shall be signed by all of them.

[Rule 2.2, continued]

(e) [Same as in Rule 2.2(d) of the Final Text.]

[In the Draft, there are no provisions corresponding to those of Rule 2.2(e) of the Final Text.]

(f) Where the appointment does not comply with the requirements referred to in paragraphs (b), (d) and (e), it shall be regarded as non-existent.

[In the Draft, there are no provisions corresponding to those of Rule 2.2(g) of the Final Text.]

2.3 Revocation or Renunciation of Appointment

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

(b) [Same as in the Final Text, except that, in the Draft, the second sentence reads as follows: "The signature shall not require any legalization."]

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

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

Rule 2.2, continued:

(d) Any document containing or constituting the appointment of a representative shall indicate his name and his address. Where the representative is a natural person, his name shall be indicated by his family name and given name(s), the family name being indicated before the given name(s). Where the representative is a legal entity or a partnership or firm of attorneys or patent or trademark agents, "name" shall mean the complete name of the legal entity or partnership or firm. The address of the representative shall be indicated in the same manner as that provided for in respect of the applicant in Rule 5.2(c).

(e) The document containing or constituting the appointment shall contain no words which, contrary to Article 25(2), would limit the powers of the representative to certain matters or exclude certain matters from the powers of the representative or limit such powers in time.

(f) Where the appointment does not comply with the requirements referred to in paragraphs (b) to (e), it shall be treated by the International Bureau as if it had not been made, and the applicant or the owner of the international deposit as well as the natural person, the legal entity, the partnership or firm which was indicated as the representative in the purported appointment shall be informed of this fact by the International Bureau.

(g) The Administrative Instructions shall provide recommended wording for the appointment.

2.3 Revocation or Renunciation of Appointment

(a) The appointment of any representative may be revoked at any time by the natural person who, or legal entity which, has appointed that representative. The revocation shall be effective even if only one of the natural persons who, or legal entities which, have appointed the representative revokes the appointment.

(b) Revocation shall require a written document signed by the natural person or the legal entity referred to in paragraph (a).

(c) The appointment of a representative as provided in Rule 2.2 shall be regarded as the revocation of any earlier appointment of any other representative. The appointment shall preferably indicate the name of the other earlier appointed representative.

(d) Any representative may renounce his appointment by means of a notification signed by him and addressed to the International Bureau.

[In the Draft, there are no provisions corresponding to those of Rules 2.4 to 2.6.]

[Rule 2, continued]

2.4 General Powers of Attorney

The appointment of a representative in a separate power of attorney (i.e., a document appointing the representative) may be general in the sense that it relates to more than one instrument of international deposit and more than one international deposit in respect of the same natural person or legal entity. The identification of such instruments of international deposit and such international deposits, as well as other details in respect of such general power of attorney and of its revocation or renunciation, shall be provided in the Administrative Instructions. The Administrative Instructions may provide for a fee payable in connection with the filing of general powers of attorney.

2.5 Substitute Representative

(a) The appointment of the representative referred to in Rule 2.2(b) may indicate also one or more natural persons as substitute representatives.

(b) For the purposes of the second sentence of Article 25(2), substitute representatives shall be considered as representatives.

(c) The appointment of any substitute representative may be revoked at any time by the natural person who, or legal entity which, has appointed the representative or by the representative. Revocation shall require a written document signed by the said natural person, legal entity or representative. It shall be effective, as far as the International Bureau is concerned, as from the date of receipt of the said document by that Bureau.

2.6 Recording, Notification and Publication

Each appointment of a representative or of a substitute representative, its revocation and its renunciation, shall be recorded, notified to the applicant or owner of the international deposit, published and notified to the competent Office of the Contracting States.

RULE 3

THE INTERNATIONAL REGISTER

3.1 Contents of the International Register; Keeping of the International Register

(a) [Same as in the Final Text, except items (i) and (iii).]

(i) all the indications that the applicant or owner of the international deposit must or may furnish under the Agreement or these Regulations and has, in fact, furnished, and, where relevant, the date on which such indications were received by the International Bureau,

(iii) the number and the date of the international deposit, as well as the dates of all recordings.]

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

RULE 4

APPLICANTS; OWNERS OF INTERNATIONAL DEPOSITS

4.1 Several Applicants; Several Owners of the International Deposit

[Same as in the Final Text.]

RULE 3

THE INTERNATIONAL REGISTER

3.1 Contents of the International Register; Keeping of the International Register

(a) The International Register shall contain, in respect of each international deposit recorded therein:

(i) all the indications that must or may be furnished under the Agreement or these Regulations, and that have in fact been furnished, to the International Bureau, and, where relevant, the date on which such indications were received by that Bureau;

(ii) the representation of the deposited type faces;

(iii) the number and the date of the international deposit and the numbers, if any, and the dates of all recordings relating to that deposit;

(iv) the amount of all fees received and the date or dates on which they were received by the International Bureau;

(v) any other indication whose recording is provided for by the Agreement or these Regulations.

(b) The Administrative Instructions shall regulate the establishment of the International Register, and, subject to the Agreement and these Regulations, shall specify the form in which it shall be kept and the procedure which the International Bureau shall follow for making recordings therein and for preserving it from loss or other damage.

RULE 4

APPLICANTS; OWNERS OF INTERNATIONAL DEPOSITS

4.1 Several Applicants; Several Owners of the International Deposit

(a) If there are several applicants, they shall have the right to effect an international deposit only if all of them are residents or nationals of Contracting States.

(b) If there are several owners of an international deposit, they shall have the right to own such a deposit only if all of them are residents or nationals of Contracting States.

[Rule 4, continued][4.2 Associations of Natural Persons or Legal Entities]

Where under the national law of any Contracting State an association of natural persons or legal entities may acquire rights and assume obligations notwithstanding the fact that it is not a legal entity, such association shall have the right to effect international deposits and to own such deposits if, within the meaning of Article 4, it is a resident or a national of that State.)

RULE 5

MANDATORY CONTENTS OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

5.1 Indication that the International Deposit is Effected Under the Agreement

The declaration referred to in Article 12(1)(i) shall be worded as follows: "The undersigned requests that the deposit of the type faces of which a reproduction is enclosed herewith be recorded in the International Register established under the Agreement for the Protection of Type Faces and their International Deposit."

5.2 Indications Concerning the Applicant

[Same as in Rule 5.2 of the Final Text.]

[In the Final Text, there are no provisions corresponding to those of Rule 4.2 of the Draft.]

RULE 5

MANDATORY CONTENTS OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

5.1 Declaration that the International Deposit is Effected Under the Agreement

(a) The declaration referred to in Article 14(1)(i) shall be worded as follows:

"The undersigned requests that the deposit of the type faces of which a representation is enclosed herewith be recorded in the International Register established under the Vienna Agreement for the Protection of Type Faces and their International Deposit."

(b) The declaration may, however, be worded differently if it has the same effect.

5.2 Indications Concerning the Applicant

(a) The applicant's identity shall be indicated by his name. If the applicant is a natural person, his name shall be indicated by his family name and given name(s), the family name being indicated before the given name(s). If the applicant is a legal entity, its name shall be indicated by the full, official designation of the said entity.

(b) The applicant's residence and nationality shall be indicated by the name(s) of the State(s) of which he is a resident and of which he is a national.

(c) The applicant's address shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and shall, in any case, consist of all the relevant administrative units up to, and including, the house number, if any. Any telegraphic and teletype address

[Rule 5, continued]

[The wording of Rule 5.3 of the Final Text corresponds to that of Rule 6.3 of the Draft.]

5.3 Indications Concerning the Type Faces

[Same as in Rule 5.4 of the Final Text, except that, in the Draft, the word corresponding to "representations" reads as follows: "reproductions."]

5.4 Indications Concerning Fees

[Same as in Rule 5.5 of the Final Text.]

[In the Draft, there are no provisions corresponding to those of Rule 5.6 of the Final Text.]

RULE 6

OPTIONAL CONTENTS OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

6.1 Naming of a Representative

[Same as in the Final Text.]

[Rule 5.2 (c), continued]

and telephone number that the applicant may have should preferably be indicated. For each applicant, only one address shall be indicated; if several addresses are indicated, only the one first mentioned in the instrument of international deposit shall be considered.

(d) Where the applicant bases his right to effect international deposits on the fact that he has a real and effective industrial or commercial establishment in a Contracting State, he shall mention that fact and specify the State in question.

5.3 Name of the Creator of the Type Faces

The creator of the type faces should be indicated by name. His name shall comprise the family name and given name(s), the family name being indicated before the given name(s).

5.4 Indications Concerning the Type Faces

The instrument of international deposit shall indicate the number of sheets bearing representations of the type faces which are the subject of the deposit.

5.5 Indications Concerning Fees

The instrument of international deposit shall indicate the amount paid and contain the other indications prescribed by Rule 22.5.

5.6 International Deposit Effected through the Intermediary of the Competent Office of a Contracting State

The indication referred to in Article 12(2)(b) shall be worded as follows:

"The ... ① certifies that the present international deposit was received by it on ... ②."

① Indicate the name of the competent Office. ② Indicate the date.

*

RULE 6

OPTIONAL CONTENTS OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

6.1 Naming of a Representative

The instrument of international deposit may indicate a representative.

[Rule 6, continued]

6.2 Claiming of Priority

[Same as in the Final Text, except that, in Rule 6.2(a) and (e) of the Draft, the reference is to Article 12(2)(i) rather than to Article 14(2)(i).]

6.3 Name of the Creator of the Type Faces

The creator of the type faces shall be indicated by name. His name shall comprise the family name and given name(s), the family name being indicated before the given name(s).

6.4 Denomination of the Type Faces

[Same as in Rule 6.3 of the Final Text, except that, in the Draft, the words corresponding to "Where a denomination relates only to a part of the type faces" read as follows: "Where a denomination does not relate to all the type faces."]

Rule 6, continued'

6.2 Claiming of Priority

(a) The declaration referred to in Article 14(2)(i) shall consist of a statement to the effect that the priority of an earlier deposit is claimed and shall indicate:

- (i) where the earlier deposit is not an international deposit, the State in which such earlier deposit was effected;
- (ii) where the earlier deposit is not an international deposit, the nature of that deposit (type face deposit or industrial design deposit);
- (iii) the date of the earlier deposit;
- (iv) the number of the earlier deposit.

(b) If the declaration does not contain the indications referred to in paragraph (a)(i) to (iii), the International Bureau shall treat the declaration as if it had not been made.

(c) If the earlier deposit number referred to in paragraph (a)(iv) is not indicated in the declaration but is furnished by the applicant or the owner of the international deposit to the International Bureau prior to the expiration of the tenth month from the date of the earlier deposit, it shall be considered to have been included in the declaration and shall be published by the International Bureau.

(d) If the date of the earlier deposit as indicated in the declaration precedes the date of the international deposit by more than six months, the International Bureau shall treat the declaration as if it had not been made.

(e) If the declaration referred to in Article 14(2)(i) claims the priority of more than one earlier deposit, the provisions of paragraphs (a) to (d) shall apply to each of them.

6.3 Denomination of the Type Faces

Where a denomination relates only to a part of the type faces, the instrument of international deposit shall clearly indicate those to which it does relate. The same shall apply where more than one denomination is indicated.

RULE 7

LANGUAGE OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT,
RECORDINGS, NOTIFICATIONS AND CORRESPONDENCE7.1 Language of the Instrument of International Deposit

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

(b) [Same as in the Final Text, except that, in the Draft, the words corresponding to "the model form" read as follows: "the printed form."]

7.2 Language of Recordings, Notifications and Correspondence

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

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

(c) [Same as in the Final Text except that, in the Draft, the words corresponding to "the competent Offices of Contracting States" read as follows: "the national Offices."]

(d) [Same as in the Final Text, except that, in the Draft, the provision begins as follows: "Letters from the International Bureau to any national Office shall be in English or French according to the wish of the national Office;"]

(e) [Same as in the Final Text, except that, in the Draft, the words corresponding to "the applicant or the owner of the international deposit" read as follows: "the applicant."]

RULE 7

LANGUAGE OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT,
RECORDINGS, NOTIFICATIONS AND CORRESPONDENCE7.1 Language of the Instrument of International Deposit

(a) The instrument of international deposit shall be in the English or in the French language.

(b) The Administrative Instructions may provide that the headings of the model form referred to in Rule 8.1 shall also be in languages other than English and French.

7.2 Language of Recordings, Notifications and Correspondence

(a) Recordings and notifications by the International Bureau shall be in the same language as that of the instrument of international deposit.

(b) Correspondence between the International Bureau and the applicant or the owner of the international deposit shall be in the same language as that of the instrument of international deposit.

(c) Letters or other written communications from the competent Offices of Contracting States to the International Bureau shall be in the English or in the French language.

(d) Letters from the International Bureau to any competent Office of a Contracting State shall be in English or French according to the wish of that Office; any matter in such letters quoted from the International Register shall be in the language in which such matter appears in that Register.

(e) Where the International Bureau is under the obligation to forward to the applicant or the owner of the international deposit any of the communications referred to in paragraph (c), it shall forward them in the language in which it received them.

RULE 8

FORM OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

8.1 Printed Forms

(a) The instrument of international deposit shall be presented on a printed form furnished free of charge, on request, by the International Bureau to prospective applicants, attorneys, patent or trademark agents, and the national Offices.

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

8.2 Copies; Signature

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

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

(c) Where the applicant is a legal entity, the name of the legal entity shall be indicated in the place reserved for signatures and shall be accompanied by the signature or signatures of the natural person or persons who, according to the national law of the country under whose law the legal entity was established, is or are entitled to sign for such legal entity.

8.3 No Additional Matter

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

(b) [Same as in the Final Text, except that, in the Draft, the words "and shall return the said document to the applicant" do not appear.]

RULE 8

FORM OF THE INSTRUMENT OF INTERNATIONAL DEPOSIT

8.1 Model Form

(a) The instrument of international deposit shall be established in accordance with the model form issued by the International Bureau. Printed copies of the model form shall be furnished free of charge, on request, by the International Bureau.

(b) The form shall be filled in preferably by typewriter and shall be easily legible.

8.2 Copies; Signature

(a) The instrument of international deposit shall be filed in one copy.

(b) The instrument of international deposit shall be signed by the applicant.

8.3 No Additional Matter

(a) The instrument of international deposit shall not contain any matter and shall not be accompanied by any document other than those prescribed or permitted by the Agreement and these Regulations.

(b) If the instrument of international deposit contains matter other than matter so prescribed or permitted, the International Bureau shall delete it ex officio; and if it is accompanied by any document other than those prescribed or permitted, the International Bureau shall treat it as if it had not been transmitted to it and shall return the said document to the applicant.

RULE 9

REPRODUCTION OF TYPE FACES

9.1 Form of Reproduction

(a) [Same as in the Final Text, except that, in the Draft, the word corresponding to "represented" reads as follows: "reproduced."]

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

(c) [Same as in the Final Text, except that, in the Draft, the word corresponding to "representation" reads as follows: "reproduction."]

(d) [Same as in the Final Text, except that, in the Draft, the word corresponding to "representation" reads as follows: "reproduction."]

9.2 Other Indications

[Same as in the Final Text, except that, in the Draft, the word corresponding to "representation" reads as follows: "reproduction."]

RULE 10

FEES PAYABLE WITH THE INTERNATIONAL DEPOSIT

10.1 Kinds and Amounts of Fees

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

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

RULE 9

REPRESENTATION OF TYPE FACES

9.1 Form of Representation

(a) Type faces which are the subject of an international deposit shall be represented on one side only of one or more sheets of paper of A4 size (29.7 cm. x 21 cm.), separate from the instrument of international deposit. A margin shall be left of at least 1.5 cm. from all four edges of each sheet.

(b) Letters and signs shall be presented in such a way that the tallest letter or sign within a set shall be not less than 10 mm., and they shall be separated from one another by their normal inter-letter spacing.

(c) The representation of the type faces shall also include a text of not less than three lines composed with the characters which are the subject of the international deposit. The text need not necessarily be in English or French or in the minimum dimensions required under paragraph (b).

(d) The representation of the type faces shall be of a quality admitting of direct reproduction by photography and printing processes.

9.2 Other Indications

The sheet bearing the representation of the type faces shall also bear the name of the applicant and his signature. If there are several sheets, each shall contain the same indications and each shall be numbered.

RULE 10

FEES PAYABLE WITH THE INTERNATIONAL DEPOSIT

10.1 Kinds and Amounts of Fees

(a) The fees payable with the international deposit shall be:

- (i) a deposit fee;
- (ii) a publication fee.

(b) The amount of each of those fees is indicated in the Table of Fees.

RULE 11

DEFECTS IN THE INTERNATIONAL DEPOSIT

11.1 Invitation to Correct

[In the Final Text, there are no provisions corresponding to those of Rule 11.1 of the Draft.]

Any invitation under Article 13(2)(a) shall be sent by registered mail.

11.2 Notification of Declining of International Deposit and Reimbursement of Publication Fee

[Same as in Rule 11.1 of the Final Text, except that, in the Draft, the reference is to Article 13(2)(c) rather than to Article 15(2)(c) and the words "by registered letter" appear after the words "the applicant."]

[In the Draft, there are no provisions corresponding to those of Rule 11.2 of the Final Text.]

RULE 11

DEFECTS IN THE INTERNATIONAL DEPOSIT

11.1 Notification of Declining of International Deposit and Reimbursement of Publication Fee

Where, under Article 15(2)(c), the International Bureau declines the international deposit, it shall notify the applicant, stating the grounds for declining, and shall reimburse to him the publication fee which has been paid.

11.2 Defects Peculiar to an International Deposit Effected Through the Intermediary of the Competent Office of a Contracting State

Where the instrument of international deposit presented through the intermediary of the competent Office of a Contracting State under Article 12(2):

- (i) does not indicate that the applicant is a resident of the State through the intermediary of whose Office the international deposit was effected, or
- (ii) does not contain a statement by the said Office indicating the date on which that Office received the said deposit, or
- (iii) contains the said statement indicating a date which precedes by more than one month the date on which the International Bureau received the international deposit,

the international deposit shall be treated as if it had been effected direct with the International Bureau on the date it reached the Bureau. The International Bureau shall inform accordingly the Office through the intermediary of which the international deposit was effected.

RULE 12

PROCEDURE WHERE AVOIDING CERTAIN EFFECTS OF
DECLINING IS SOUGHT12.1 Information Available to National Offices

[Same as in the Final Text, except that, in the Draft, the words corresponding to "At the request of the applicant or of the interested competent Office" read as follows: "On the request of the applicant or of the interested national Office."]

RULE 13

INTERNATIONAL DEPOSIT CERTIFICATE

13.1 International Deposit Certificate

[Same as in the Final Text.]

RULE 14

PUBLICATION OF INTERNATIONAL DEPOSITS

14.1 Contents of Publication of the International Deposit

The publication of any international deposit shall contain:

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

[In the Draft, there are no provisions corresponding to Rule 14.1(ii) of the Final Text.]

RULE 12

PROCEDURE WHERE AVOIDING CERTAIN EFFECTS
OF DECLINING IS SOUGHT12.1 Information Available to Competent Offices of Contracting States

At the request of the applicant or of the interested competent Office, the International Bureau shall send to that Office a copy of the file of the declined international deposit, together with a memorandum setting out the grounds for and the various steps leading to the declining of the said application.

RULE 13

INTERNATIONAL DEPOSIT CERTIFICATE

13.1 International Deposit Certificate

Once the International Bureau has recorded the international deposit, it shall issue to the owner thereof an international deposit certificate, the contents of which are provided for in the Administrative Instructions.

RULE 14

PUBLICATION OF INTERNATIONAL DEPOSITS

14.1 Contents of Publication of the International Deposit

The publication of any international deposit shall contain:

(i) the name and address of the applicant and, if he bases his right to effect international deposits on the fact that he is a resident or national of, or has a real and effective industrial or commercial establishment in, a State other than that in which he has his address, the name of the State of which he is a resident or national or in which he has a real and effective industrial or commercial establishment;

(ii) the name of the creator of the type faces or an indication that the creator has renounced being mentioned as such;

Rule 14.1, continued:

- (iii) [Same as in Rule 14.1(iii) of the Final Text.]
- (iv) [Same as in Rule 14.1(iv) of the Final Text.]
- (v) [Same as in Rule 14.1(v) of the Final Text.]
- (vi) if a representative is indicated in the instrument of international deposit, the name and address of that representative,
- (vii) [In the Final Text, there are no provisions corresponding to those of Rule 14.1(vii) of the Draft.]
if the creator is indicated in the instrument of international deposit, the name of the creator,
- (viii) [Same as in the Final Text.]

RULE 15

NOTIFICATION OF INTERNATIONAL DEPOSITS

15.1 Form of Notification

The notification referred to in Article 15 shall be effected separately for each national Office and shall consist of reprints of the publication by the International Bureau of each international deposit.

15.2 Date of Notification

[Same as in the Final Text.]

Rule 14.1, continued:

- (iii) the representation of the type faces, including the text referred to in Rule 9.1(c), in the same presentation and dimensions as those in which they were deposited;
- (iv) the date of the international deposit;
- (v) the number of the international deposit;
- (vi) where priority is claimed, the indications listed in Rule 6(2)(a);
- (vii) where a representative is appointed, the name and address of that representative;

- (viii) where a denomination is indicated for the type faces, that denomination.

RULE 15

NOTIFICATION OF INTERNATIONAL DEPOSITS

15.1 Form of Notification

The notification referred to in Article 17 shall be effected separately for each competent Office and shall consist of separate reprints of the publication by the International Bureau of each international deposit.

15.2 Time of Notification

The notification shall be effected on the same date as that of the issue of the Bulletin in which the international deposit is published.

RULE 16

CHANGES IN OWNERSHIP

16.1 Request for Recording of Change in Ownership

(a) The request for recording referred to in Article 18(1) shall indicate its purpose and contain:

(i) the name of the owner of the international deposit who appears as such in the International Register ("earlier owner"),

(ii) the name, residence, nationality and address of the new owner, in the manner provided for indications to be furnished in respect of the applicant under Rule 5.2,

(iii) the number of the international deposit,

(iv) where the change in ownership relates to fewer than all the Contracting States referred to in Article 16(1), identification of those States to which it relates,

(b) The request shall be signed by the earlier owner or, if he is unable to sign, by the new owner, provided that if it is signed by the new owner the request shall be accompanied by an attestation by the national Office of the Contracting State of which the earlier owner, at the time of the change of ownership, was a national or, if at that time the earlier owner was not a national of a Contracting State, by the national Office of the Contracting State of which, at the said time, the earlier owner was a resident. The competent national Office shall attest that, according to evidence produced before it, the new owner appears to be the successor in title of the earlier owner to the extent described in the request and the conditions prescribed in the preceding sentence are fulfilled. The attestation shall be dated and shall bear the stamp or seal of the national Office and the signature of an official thereof.

(c) The amount of the fee referred to in Article 18(4) is indicated in the Table of Fees.

RULE 16

CHANGES IN OWNERSHIP

16.1 Request for Recording of Change in Ownership

(a) The request for recording referred to in Article 20(1) shall indicate its purpose and contain:

(i) the name of the owner of the international deposit (hereinafter referred to as "the earlier owner") who appears as such in the International Register;

(ii) the name, residence, nationality and address of the new owner of the international deposit (hereinafter referred to as "the new owner"), in the manner provided for indications to be furnished in respect of the applicant under Rule 5.2;

(iii) the number of the international deposit;

(iv) where the change in ownership relates to fewer than all the Contracting States referred to in Article 18(1), identification of those States to which it relates.

(b) The request shall be signed by the earlier owner or, if his signature cannot be obtained, by the new owner, provided that if it is signed by the new owner the request shall be accompanied by an attestation by the competent Office of the Contracting State of which the earlier owner, at the time of the change of ownership, was a national or, if at that time the earlier owner was not a national of a Contracting State, by the competent Office of the Contracting State of which, at the said time, the earlier owner was a resident. The competent Office shall attest that, according to evidence produced before it, the new owner appears to be the successor in title of the earlier owner to the extent described in the request and the conditions prescribed in the preceding sentence are fulfilled. The attestation shall be dated and shall bear the stamp or seal of the competent Office and the signature of an official thereof. The attestation shall be given for the sole purpose of allowing the change of ownership to be recorded in the International Register.

(c) The amount of the fee referred to in Article 20(4) is indicated in the Table of Fees.

[Rule 16, continued]

16.2 Recording, Notification and Publication; Declining of Request for Recording

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

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

(c) [Same as in the Final Text, except that, in the Draft, the reference is to Article 18(5) rather than to Article 20(1).]

(d) [Same as in the Final Text, except that, in the Draft, the words "by registered letter" appear after the words "signed the request."]

RULE 17

WITHDRAWAL AND RENUNCIATION OF INTERNATIONAL DEPOSITS

17.1 Withdrawal of the International Deposit

[Same as in the Final Text, except that, in the Draft, the words "before recording in the International Register is effected and" appear before the words "before preparations."]

17.2 Procedure

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

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

Rule 16, continued.16.2 Recording, Notification and Publication; Declining of Request for Recording

(a) Where, according to the indications furnished in the request for recording of the change in ownership, the new owner is a person entitled to own international deposits and the request complies with the other prescribed requirements, the International Bureau shall record the change in ownership in respect of all the Contracting States or those specified in the request, as the case may be. Such recording shall contain the indications referred to in Rule 16.1(a) (ii) and (iv) and shall mention the date on which it was effected.

(b) The International Bureau shall notify the recording of the change in ownership to the earlier and to the new owners.

(c) The publication and the notification referred to in Article 20(5) shall contain the indications referred to in Rule 16.1(a) and the date of the recording.

(d) Where, according to the indications furnished in the request for recording of the change in ownership, the new owner is a person not entitled to own international deposits, or where the request does not comply with the other prescribed requirements, the International Bureau shall decline it and notify the person who has signed the request, stating the grounds for declining.

RULE 17

WITHDRAWAL AND RENUNCIATION OF INTERNATIONAL DEPOSITS

17.1 Withdrawal of the International Deposit

Any withdrawal of an international deposit shall be treated as such by the International Bureau if the declaration of withdrawal reaches it before preparations for publication have been completed. If the said declaration reaches the International Bureau later, it shall be treated as a renunciation of the international deposit.

17.2 Procedure

(a) Withdrawals and renunciations shall be effected by means of a written declaration addressed to the International Bureau and signed by the applicant or the owner of the international deposit, as the case may be.

(b) If withdrawal or renunciation is only partial, the States or type faces to which it relates shall be clearly indicated, failing which it shall not be taken into consideration.

[Rule 17.2, continued]

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

(d) [Same as in the Final Text, except that, in the Draft, the words corresponding to "notify the said recording to the owner of the international deposit, publish" read as follows: "shall notify the said recording to the author of the renunciation, and shall publish."]

RULE 18

OTHER AMENDMENTS TO INTERNATIONAL DEPOSITS

18.1 Permissible Amendments

[Same as in the Final Text, except that, in the Draft, the reference is to Rules 5.2, 6.1, 6.3 and 6.4 rather than to Rules 5.2, 5.3, 6.1 and 6.3.]

18.2 Procedure

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

(b) [Same as in the Final Text, except that, in the Draft, the reference is to Article 20(3) rather than to Article 22(3).]

(c) [Same as in the Final Text, except that, in the Draft, the words corresponding to "notify the said recording to the owner of the international deposit, publish such amendment" read as follows: "shall notify the said recording to the owner of the international deposit, and shall publish such amendment."]

(Rule 17.2, continued)

(c) The International Bureau shall acknowledge receipt of the declaration of withdrawal. If withdrawal is total, the International Bureau shall reimburse to the applicant the publication fee which has been paid.

(d) The International Bureau shall record the renunciation, notify the said recording to the owner of the international deposit, publish such renunciation and notify it to the competent Offices of the Contracting States.

RULE 18

OTHER AMENDMENTS TO INTERNATIONAL DEPOSITS

18.1 Permissible Amendments

The owner of the international deposit may amend the mandatory and optional indications appearing in the instrument of international deposit in accordance with Rules 5.2, 5.3, 6.1 and 6.3.

18.2 Procedure

(a) Any amendment referred to in Rule 18.1 shall be effected by means of a written communication addressed to the International Bureau and signed by the owner of the international deposit.

(b) The fees referred to in Article 22(3) are indicated in the Table of Fees.

(c) The International Bureau shall record the amendment, notify the said recording to the owner of the international deposit, publish such amendment and notify it to the competent Offices of the Contracting States.

RULE 19

RENEWAL OF INTERNATIONAL DEPOSITS

19.1 Reminder by the International Bureau

[Same as in the Final Text, except that, in the Draft, the words "(as the case may be)" appear after the word "renewal."]

19.2 Demand for Renewal

(a) The demand for renewal referred to in Article 21(4) shall preferably be made on a printed form furnished free of charge by the International Bureau together with the reminder referred to in Rule 19.1. In any case, the demand shall indicate its purpose and contain:

(i) the name, residence, nationality and address of the owner of the international deposit,

(ii) the number of the international deposit,

(iii) the term of renewal sought under Article 21(2).

(b) [In the Final Text, there are no provisions corresponding to those of Rule 19.2(b) of the Draft.]

The demand shall be signed by the owner of the international deposit. Where there are several owners, the signature of one of them shall suffice.

(c) [In the Final Text, there are no provisions corresponding to those of Rule 19.2(c) of the Draft.]

The demand shall not be combined with any other request or communication; in particular, it shall not include a request for recording a change in ownership, a partial renunciation, or any other amendments under Article 20.

RULE 19

RENEWAL OF INTERNATIONAL DEPOSITS

19.1 Reminder by the International Bureau

The International Bureau shall send a letter to the owner of the international deposit before the expiration of the term, initial or renewal, which is in effect, reminding him that such term is about to expire. Further details concerning the contents of the reminder shall be provided in the Administrative Instructions. The reminder shall be sent at least six months prior to the expiration date. Failure to send or receive the reminder, or the fact of sending or receiving it outside the said period, or any error in the reminder, shall not affect the expiration date.

19.2 Demand for Renewal

The demand for renewal referred to in Article 23(4) shall preferably be made on a printed form furnished free of charge by the International Bureau together with the reminder referred to in Rule 19.1. The demand shall, in any case, indicate its purpose and contain:

- (i) the name and address of the owner of the international deposit;

- (ii) the number of the international deposit.

Rule 19. continued19.3 Time Limits; Fees

(a) [Same as in the Final Text, except that, in the Draft, the reference is to Article 21(4) rather than to Article 23(4).]

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

(c) [Same as in the Final Text, except that, in the Draft, the last sentence does not appear.]

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

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

19.4 Recording, Notification and Publication

[Same as in the Final Text, except that, in the Draft, the reference is to Rule 19.2(a) rather than to Rule 19.2.]

19.5 Declining the Demand

Where the time limit fixed in Rule 19.3(a) is not respected or where the demand does not conform to the requirements of Rule 19.3 or the fees (including, where applicable, any surcharge) are not paid as prescribed, the International Bureau shall decline the demand and shall notify the owner of the international deposit by registered letter stating the grounds for declining the demand.

Rule 19, continued}

19.3 Time Limits; Fees

(a) Subject to paragraph (b), the demand for renewal and the fees referred to in Article 23(4) must reach the International Bureau not later than six months after the expiration of the term of protection.

(b) If the demand for renewal or the fees due reach the International Bureau after the expiration of the term of protection, renewal shall be subject to the payment of a surcharge, which must be paid within the time limit fixed in paragraph (a).

(c) Where, within the time limit fixed in paragraph (a), the International Bureau receives:

(i) a demand for renewal which does not conform to the requirements of Rule 19.2, or

(ii) a demand for renewal but no payment or insufficient payment to cover the fees due, or

(iii) money which appears to be intended to cover fees connected with renewal but no demand for renewal,

it shall promptly invite the owner of the international deposit to present a correct demand, to pay or complete the fees due, or to present a demand, as the case may be. The invitation shall indicate the applicable time limits.

(d) Failure to send or receive the invitation referred to in paragraph (c), or any delay in dispatching or receiving such invitation, or any errors in the invitation, shall not prolong the time limits fixed in paragraphs (a) and (b).

(e) The amounts of the fees prescribed under this Rule are indicated in the Table of Fees.

19.4 Recording, Notification and Publication of the Renewal

Where the demand is presented and the fees are paid as prescribed, the International Bureau shall record the renewal, notify the said recording to the owner of the international deposit, publish the indications referred to in Rule 19.2 together with an indication of the date on which the renewal expires, and notify the competent Offices of the Contracting States of the said indications and the said date.

19.5 Declining the Demand

(a) Where the time limit fixed in Rule 19.3(a) is not respected or where the demand does not conform to the requirements of Rule 19.2 or the fees due are not paid as prescribed, the International Bureau shall decline the demand and shall notify the owner of the international deposit, stating the grounds for declining the demand.

[In the Draft, there are no provisions corresponding to those of Rule 19.6 of the Final Text.]

RULE 20

TRANSMITTAL OF DOCUMENTS TO THE INTERNATIONAL BUREAU

20.1 Place and Mode of Transmittal

'Same as in the Final Text.]

20.2 Date of Receipt of Documents

'Same as in the Final Text.]

[In the Draft, there are no provisions corresponding to those of Rules 20.3 and 20.4 of the Final Text.]

[Rule 19.5, continued]

(b) The International Bureau shall not decline any demand before the expiration of six months after the starting date of the term of renewal.

19.6 Recording, Notification and Publication of Lack of Demand

Where, by the expiration of six months after the starting date of the term of renewal, no demand for renewal is presented to the International Bureau, the International Bureau shall record such fact, notify it to the owner of the international deposit, publish it and notify it to the competent Offices of the Contracting States.

RULE 20

TRANSMITTAL OF DOCUMENTS TO THE INTERNATIONAL BUREAU20.1 Place and Mode of Transmittal

Instruments of international deposit and their annexes, demands, notifications and any other documents intended for filing, notification or other communication to the International Bureau shall be deposited with the competent service of that Bureau during the office hours fixed in the Administrative Instructions, or mailed to that Bureau.

20.2 Date of Receipt of Documents

Any document received by the International Bureau through deposit or mail shall be considered to have been received on the day on which it is actually received by that Bureau, provided that, when it is actually received after office hours, or on a day when the Bureau is closed for business, it shall be considered to have been received on the next subsequent day on which the Bureau is open for business.

20.3 Legal Entity; Partnerships and Firms

(a) Where any document submitted to the International Bureau is required to be signed by a legal entity, the name of the legal entity shall be indicated in the place reserved for signature and shall be accompanied by the signature of the natural person or persons entitled to sign for such legal entity according to the national law of the country under whose law the legal entity was established.

RULE 21

CALENDAR; COMPUTATION OF TIME LIMITS

21.1 Calendar

[Same as in the Final Text, except that, in the Draft, the words corresponding to "competent Offices of Contracting States" read as follows: "national Offices."]

21.2 Periods Expressed in Years, Months or Days

[Same as in the Final Text.]

Rule 20.3, continued)

(b) The provisions of paragraph (a) shall apply, mutatis mutandis, to partnerships or firms composed of attorneys or patent or trademark agents but which are not legal entities.

20.4 Exemption from Certification

No authentication, legalization or other certification of the signature shall be required for documents submitted to the International Bureau under the Agreement or these Regulations.

RULE 21**CALENDAR; COMPUTATION OF TIME LIMITS****21.1 Calendar**

The International Bureau, competent Offices of Contracting States, applicants and owners of international deposits shall, for the purposes of the Agreement and these Regulations, express any date in terms of the Christian era and the Gregorian calendar.

21.2 Periods Expressed in Years, Months or Days

(a) When a period is expressed as one year or a certain number of years, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(b) When a period is expressed as one month or a certain number of months, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(c) When a period is expressed as a certain number of days, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire on the day on which the last day of the count has been reached.

[Rule 21, continued]21.3 Local Dates

(Same as in the Final Text.)

21.4 Expiration on a Non-Working Day

(Same as in the Final Text.)

RULE 22

FEES

22.1 Fees Due

Fees due are fixed in the Table of Fees and in the Administrative Instructions.

22.2 Payment to the International Bureau

All fees due under the Agreement and these Regulations shall be payable to the International Bureau.

22.3 Currency

All fees due under the Agreement and these Regulations shall be payable in Swiss currency.

Rule 21, continued]**21.3 Local Dates**

(a) The date which is taken into consideration as the starting date of the computation of any period shall be the date which prevails in the locality at the time when the relevant event occurred.

(b) The date on which any period expires shall be the date which prevails in the locality in which the required document is filed or the required fee is paid.

21.4 Expiration on a Non-Working Day

If the expiration of any period during which any document or fee must reach the International Bureau falls on a day on which that Bureau is not open for business, or on which ordinary mail is not delivered in Geneva, the period shall expire on the next subsequent day on which neither of the said two circumstances exists.

RULE 22**FEES****22.1 Fees Due**

(a) Fees due under the Agreement and these Regulations are fixed in the Table of Fees and in the Administrative Instructions.

(b) The fees payable shall be:

(i) where they concern an international deposit, the fees in force on the date on which the international deposit is received by the International Bureau or, where the deposit has been filed through the intermediary of a competent Office of a Contracting State, the fees in force on the date on which it was received by that Office;

(ii) where they concern a demand for renewal, the fees in force on the date which precedes by six months the starting date of the term of renewal.

22.2 Payment to the International Bureau

All fees due shall be payable to the International Bureau.

22.3 Currency

All fees due shall be payable in Swiss currency.

[Rule 22, continued]

22.4 Deposit Accounts

[Same as in the Final Text.]

22.5 Indications of the Mode of Payment

[Same as in the Final Text, except item (i).]

(i) the name and address, as provided in Rule 5.2(a) and (c),
of the person making the payment,

(Rule 22, continued)

22.4 Deposit Accounts

- (a) Any natural person or legal entity may open a deposit account with the International Bureau.
- (b) The details concerning deposit accounts shall be provided in the Administrative Instructions.

22.5 Indication of the Mode of Payment

(a) Unless the payment is made in cash to the cashier of the International Bureau, the international deposit, the demand, and any other request or other document filed with the International Bureau in connection with any international deposit, subject to the payment of any fee, shall indicate:

- (i) the name and address, as provided in Rule 5.2(a) and (c), of the natural person or legal entity making the payment, unless the payment is made by a cheque attached to the document;
- (ii) the mode of payment, which may be by an authorization to debit the amount of the fee to the deposit account of such person, or by transfer to a bank account or to the postal cheque account of the International Bureau, or by cheque. The Administrative Instructions shall provide the details, in particular those governing the kind of cheques that shall be accepted in payment.
- (b) Where the payment is made pursuant to an authorization to debit the amount of the fee to a deposit account, the authorization shall specify the transaction to which it relates, unless there is a general authorization to debit to a specified deposit account any fee concerning a certain applicant, owner of an international deposit, or duly appointed representative.
- (c) Where the payment is made by transfer to a bank account or to the postal cheque account of the International Bureau, or by a cheque not attached to the instrument of international deposit, the demand for renewal or any other request or other document, the notification of the transfer or cheque (or paper accompanying it) shall identify the transaction to which the payment relates, in the manner to be provided for in the Administrative Instructions.

[Rule 22, continued]**22.6 Effective Date of Payment**

[Same as in the Final Text.]

RULE 23**THE BULLETIN****23.1 Contents**

[Same as in the Final Text.]

23.2 Frequency

[Same as in the Final Text.]

Rule 22, continued.

22.6 Effective Date of Payment

Any payment shall be considered to have been received by the International Bureau on the date indicated hereinbelow:

- (i) if the payment is made in cash to the cashier of the International Bureau, on the date on which such payment is made;
- (ii) if the payment is made by debiting a deposit account with the International Bureau pursuant to a general authorization to debit, on the date on which the instrument of international deposit, the demand for renewal, or any other request or other document entailing the obligation to pay fees is received by the International Bureau, or, in the case of a specific authorization to debit, on the date on which the specific authorization is received by the International Bureau;
- (iii) if the payment is made by transfer to a bank account or to the postal cheque account of the International Bureau, on the date on which such account is credited;
- (iv) if the payment is made by cheque, on the date on which the cheque is received by the International Bureau, provided that it is honored upon presentation to the bank on which the cheque is drawn.

RULE 23

THE BULLETIN

23.1 Contents

- (a) All matters which, according to the Agreement or these Regulations, the International Bureau is obliged to publish shall be published in the Bulletin.
- (b) The Administrative Instructions may provide for the inclusion of other matters in the Bulletin.

23.2 Frequency

The Bulletin shall be issued according to requirements, so that any deposit or communication requiring to be published shall be published within three months.

[Rule 23, continued]**23.3 Languages**

{Same as in the Final Text.]

23.4 Sale

{Same as in the Final Text.]

23.5 Copies of the Bulletin for National Offices

(a) {Same as in the Final Text.]

(b) {Same as in the Final Text, except that, in the Draft, the words corresponding to "competent Office" and "Article 28(4)" read as follows: "competent national Office" and "the Paris Convention."}

(c) {Same as in the Final Text, except that, in the Draft, the words corresponding to "competent Office" read as follows: "national Office."}

[Rule 23, continued]

23.3 Languages

- (a) The Bulletin shall be issued in a bilingual (English and French) edition.
- (b) The Administrative Instructions shall identify those portions which require translation and those portions which do not require translation.
- (c) Where matters are published in both languages, the Bulletin shall indicate which is the original language. Translations shall be prepared by the International Bureau. In case of any divergence between the original and the translation, all legal effects shall be governed by the original.

23.4 Sale

The sale prices of the Bulletin shall be fixed in the Administrative Instructions.

23.5 Copies of the Bulletin for Competent Offices of Contracting States

- (a) Before July 1 of each year, the competent Office of each Contracting State shall notify the International Bureau of the number of copies of the Bulletin which it wishes to receive in the next subsequent year.
- (b) The International Bureau shall make the requested number of copies available to each competent Office:
 - (i) free of charge, up to the same number as the number of units corresponding to the class chosen under Article 28(4) by the Contracting State of which it is the competent Office;
 - (ii) at half the sale price for copies in excess of the said number.
- (c) Copies given free of charge or sold under paragraph (b) shall be for the internal use of the competent Office which has requested them.

RULE 24

COPIES, EXTRACTS AND INFORMATION

24.1 Copies, Extracts and Information Concerning International Deposits

(a) [Same as in the Final Text, except that, in the Draft, there are no provisions corresponding to the second sentence of Rule 24.1(a) of the Final Text.]

(b) [Same as in the Final Text, except that, in the Draft, the words ", or information by telecopier devices" do not appear.]

[In the Draft, there are no provisions corresponding to those of Rule 24.1(c) of the Final Text.]

24.2 Authentication of Documents Issued by the International Bureau

No authority of any Contracting State shall ask for the authentication by any person or authority of documents certified or of certificates issued by the International Bureau, provided such certified documents or certificates bear the seal of the International Bureau and the signature of the Director General or a person acting under his authority.

RULE 24

COPIES, EXTRACTS AND INFORMATION; CERTIFICATION OF DOCUMENTS
ISSUED BY THE INTERNATIONAL BUREAU**24.1 Copies, Extracts and Information Concerning International Deposits**

(a) Any person may obtain from the International Bureau, against payment of a fee whose amount shall be fixed in the Administrative Instructions, certified or uncertified copies or extracts of recordings in the International Register or of any document in the file of any international deposit. Each copy or extract shall reflect the situation of the international deposit on a specified date; such date shall be indicated in the said copy or extract.

(b) On request and against payment of a fee whose amount shall be fixed in the Administrative Instructions, any person may obtain from the International Bureau oral or written information, or information by telecopier devices, on any fact appearing in the International Register or in any document in the file of any international deposit.

(c) Notwithstanding paragraphs (a) and (b), the Administrative Instructions may waive the obligation to pay any fee where the work or the expense connected with the furnishing of a copy, extract, or information is minimal.

24.2 Certification of Documents Issued by the International Bureau

Where any document issued by the International Bureau bears the seal of that Bureau and the signature of the Director General or a person acting on his behalf, no authority of any Contracting State shall require authentication, legalization or any other certification of such document, seal or signature, by any other person or authority.

RULES CONCERNING CHAPTER III OF THE AGREEMENT

RULE 25

EXPENSES OF DELEGATIONS

25.1 Expenses Borne by Governments

[Same as in the Final Text.]

RULE 26

ABSENCE OF QUORUM IN THE ASSEMBLY

26.1 Voting by Correspondence

(a) [Same as in the Final Text, except that, in the Draft, the reference is to Article 24(5)(b) rather than to Article 26(5)(b) and the words "other than decisions relating to the Assembly's own procedure" appear between brackets.]

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

RULES CONCERNING CHAPTER III OF THE AGREEMENT

RULE 25

EXPENSES OF DELEGATIONS

25.1 Expenses Borne by Governments

The expenses of each delegation participating in any session of the Assembly and of any committee, working group or other body dealing with matters of concern to the Union shall be borne by the Government which has appointed it.

RULE 26

ABSENCE OF QUORUM IN THE ASSEMBLY

26.1 Voting by Correspondence

(a) In the case provided for in Article 26(5)(b), the International Bureau shall communicate any decision of the Assembly, other than decisions relating to the Assembly's own procedure, to the Contracting States which were not represented when the decision was made and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication.

(b) If, at the expiration of the said period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum when the decision was made, that decision shall take effect provided that at the same time the required majority still obtains.

RULE 27

ADMINISTRATIVE INSTRUCTIONS

27.1 Establishment of Administrative Instructions; Matters Governed by Them

The Director General shall establish Administrative Instructions. They shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

27.2 Control by the Assembly

[Same as in the Final Text.]

27.3 Publication and Effective Date

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

(b) [Same as in the Final Text, except that, in the Draft, the words corresponding to "period of one month" read as follows: "period of 14 days."]

27.4 Conflict with the Agreement and the Regulations

[Same as in the Final Text.]

RULE 27

ADMINISTRATIVE INSTRUCTIONS

27.1 Establishment of Administrative Instructions; Matters Governed by Them

(a) The Director General shall establish Administrative Instructions. He may modify them. He shall consult the competent Offices of the Contracting States which have a direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(c) All forms of interest to applicants and owners of international deposits shall be included in the Administrative Instructions.

27.2 Control by the Assembly

The Assembly may invite the Director General to modify any provision of the Administrative Instructions, and the Director General shall proceed accordingly.

27.3 Publication and Effective Date

(a) The Administrative Instructions and any modification thereof shall be published in the Bulletin.

(b) Each publication shall specify the date on which the published provisions become effective. The date need not be the same for all the provisions, provided that no provision may be declared effective prior to the expiration of a period of one month after the publication date of that issue of the Bulletin in which it has been published.

27.4 Conflict with the Agreement and the Regulations

In the case of conflict between any provision of the Administrative Instructions and any provision of the Agreement or of these Regulations, the latter shall prevail.

FINAL CLAUSE

RULE 26

ENTRY INTO FORCE

28.1 Entry Into Force of the Regulations

(Same as in the Final Text.)

FINAL CLAUSE

RULE 28

ENTRY INTO FORCE

28.1 Entry Into Force of the Regulations

These Regulations shall enter into force at the same time as Chapter II of the Agreement, with the exception of Rules 25 and 26, which shall enter into force at the same time as the Agreement itself.

Annex to the Draft Regulations

TABLE OF FEES

[Same as in the Final Text, except point II.]

Swiss Francs

II. Renewal

1. Renewal fee	1,000
(a) for a ten-year period	1,000
(b) for a five-year period	600
2. Surcharge (Rule 19.3(b))	50% of renewal fee

Annex to the Regulations

TABLE OF FEES

The International Bureau shall collect the following fees:

<u>I. Deposit</u>	Swiss francs
1.(a) Deposit fee, up to 75 letters or signs	500
(b) Complementary fee for each additional block or part of a block of 10 letters or signs	100
2. Publication fee for each standard space unit used (26.7 x 18 cm.), being the minimum publication fee	200
<u>II. Renewal</u>	
1. Renewal fee	600
2. Surcharge (Rule 19.3(b))	300
<u>III. Other Fees</u>	
1. Fee for recording a total or partial change in ownership	100
2. Fee for recording a change in the name or address of the owner of the international deposit or in other indications concerning the owner: per deposit	100
3. Fee for recording the appointment of a representa- tive, a change of representative, or a change in his name or address: per deposit	50
4. Fee for recording any other amendment: per deposit	50

**PROTOCOL
TO THE VIENNA AGREEMENT
FOR THE PROTECTION OF TYPE FACES
AND THEIR INTERNATIONAL DEPOSIT
CONCERNING THE TERM OF PROTECTION**

**TEXT OF THE PROTOCOL
AS ADOPTED BY THE DIPLOMATIC CONFERENCE**

SIGNATORIES

[The documents of the Vienna Diplomatic Conference on the Protection of Type Faces did not contain, at the opening of this Conference, any Draft Protocol.]

PROTOCOL

to the
Vienna Agreement for the Protection of Type Faces
and Their International Deposit
Concerning the Term of Protection

The States party to the Vienna Agreement for the Protection of Type Faces and Their International Deposit (hereinafter referred to as "the Agreement"), and party to this Protocol

Have agreed to the following provisions:

1. The term of protection shall be a minimum of twenty-five years instead of the minimum of fifteen years referred to in Article 9(1) of the Agreement.

2. (a) This Protocol shall be open for signature by the States which have signed the Agreement.

(b) This Protocol may be ratified by the States which have signed the Protocol and ratified the Agreement.

(c) This Protocol shall be open to accession by States which have not signed the Protocol but have ratified or acceded to the Agreement.

(d) This Protocol shall enter into force three months after three States have deposited their instruments of ratification of or accession to this Protocol, but not before the Agreement itself enters into force.

(e) This Protocol may be revised by conferences of the States party to the Protocol which shall be convened by the Director General at the request of at least one-half of those States. The expenses attributable to any conference for the revision of this Protocol which is not held during the same period and at the same place as a conference for the revision of the Agreement shall be borne by the States party to this Protocol.

(f) The provisions of Articles 30, 33, 35(2), 36, 37, 38, 39, 40 and 41(i), (ii), (iii), (vi), (vii), (viii) and (xi) of the Agreement shall apply mutatis mutandis.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Vienna, this twelfth day of June, one thousand nine hundred and seventy-three.*

FRANCE (J.-P. Palewski); HUNGARY (E. Tasnádi)**; LIECHTENSTEIN, December 20, 1973 (Michael U.R. von Schenk); LUXEMBOURG (J.P. Hoffmann); NETHERLANDS (Enno van Weel); SAN MARINO (J.C. Munger); SWITZERLAND (P. Braendli)

* Editor's Note: All signatures were affixed on June 12, 1973, unless otherwise indicated.

** When signing this Protocol, the Government of the Hungarian People's Republic declared that it does not consider itself bound by paragraph (1) of Article 30 of the Agreement.

CONFERENCE DOCUMENTS

DOCUMENTS OF THE SERIES "CT/DC"

(CT/DC/1 to CT/DC/31)

LIST OF THE DOCUMENTS

Document Number	Submitted by	Subject
1	The International Bureau of WIPO	Draft Agreement for the Protection of Type Faces and their International Deposit
2	The International Bureau of WIPO	Draft Regulations under the Agreement for the Protection of Type Faces and their International Deposit
3	The Director General of WIPO	Draft Agenda of the Diplomatic Conference on the Protection of Type Faces
4	United Kingdom	Observations and proposal for amendment concerning Article 3
5	Canada	Observations and proposal for amendment concerning Article 3
6	Switzerland	Proposals for amendment concerning Articles 5 and 6
7	Netherlands	Proposals for amendment concerning a new article entitled "Disputes"
8	Algeria, Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Poland, Soviet Union	Observations and proposals for amendment concerning Articles 3(1); 5(1) and 6(3)
9	Italy	Observations and proposals for amendments concerning in particular Articles 2; 6 and 7
10	United States of America	Proposal for amendment concerning Article 5
11	Poland	Observations and proposal for amendments concerning Articles 3(1); 7(1); 10; 13(1), (2)(a); 16(2); 26(4)
12	Japan	Observations and proposals for amendments concerning Articles 3(1), (2); 5(2); 6(3)
13	Italy	Observations and proposal for amendment concerning Article 7
14	Working Group I	Report concerning Article 2(1)
15	Australia	Observations and proposal for amendment concerning Article 6
16	Working Group II	Report concerning the Preamble and Articles 3; 4; 5(2)

Document Number	Submitted by	Subject
17	Australia	Observation and proposal for amendment concerning Article 6 <u>bis</u> (new)
18	The Secretariat	Proposals for amendments concerning Articles 23(3); 24(2)(a); 26(3)(c); 30(1); 34; 37(2); 38
19	Germany (Federal Republic of), Italy, Soviet Union, Spain, Switzerland	Observation and proposal for amendment concerning Article 36(1)(b)
20	France, Netherlands, Switzerland	Proposal concerning the Protocol
21	Working Group III	Report concerning Articles 3(2), (3), (4), (5) (new); 6(4) (new); <u>6bis</u> (new); 30(1)
22	The Secretariat	Revised Regulations under the Agreement for the Protection of Type Faces and their International Deposit
23	The Drafting Committee	Draft Vienna Agreement for the Protection of Type Faces and their International Deposit
24	The Drafting Committee	Draft Protocol Annexed to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection
25	The Drafting Committee	Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit
26	The Main Committee	Draft Vienna Agreement for the Protection of Type Faces and their International Deposit
27	The Main Committee	Draft Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection
28	The Main Committee	Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit
29	The Plenary of the Diplomatic Conference	Text of the Vienna Agreement for the Protection of Type Faces and their International Deposit, as adopted and as presented for signature
30	The Plenary of the Diplomatic Conference	Text of the Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection
31	The Plenary of the Diplomatic Conference	Text Adopted of the Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit

TEXT OF THE DOCUMENTS OF THE SERIES "CT/DC"
(CT/DC/1 to CT/DC/31)

CT/DC/1
THE INTERNATIONAL BUREAU OF WIPO

October 25, 1972 (Original: French)

Draft Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: The text of the Draft Agreement as appearing in this document is reproduced on the even-numbered pages from page 10 to page 76 above. The "Comments" which accompanied the text of the Draft Agreement are reproduced hereafter.

INTRODUCTION

The Present Document

1. This document concerns a special agreement for the protection of type faces and their international deposit.
2. It contains a brief historical outline of the subject, followed by the text of a draft agreement together with a commentary.
3. This document has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) for the Diplomatic Conference to be held in Vienna from May 17 to June 12, 1973.

Brief Historical Outline

4. Between 1960 and 1963 four successive Committees of Experts worked on the preparation of a preliminary draft agreement for the protection of type faces. The matter was then submitted for consultation on several occasions to the member States of the Paris Union for the Protection of Industrial Property. Finally, at its September 1969 session, the Executive Committee of the Paris Union "expressed the opinion that the conclusion of a special agreement ... should be placed on the agenda of the Diplomatic Conference of Vienna." For details of this preparatory work, reference is made to document CT/V/2, dated December 1, 1970.*
5. Since the preliminary drafts of the Agreement and Regulations were several years old and in the meantime the Stockholm Diplomatic Conference (1967) had brought about substantial changes in the administrative provisions of the Paris Convention for the Protection of Industrial Property and its Special Agreements, it seemed advisable to submit the preliminary drafts to a new Committee of Experts (hereinafter referred to as "the fifth Committee of Experts").

* The documents of the Series "CT/V" and "CT/VI" are not reproduced in this volume.

6. The fifth Committee of Experts met from February 22 to 26, 1971. Its discussions were based on texts which for the most part were those which resulted from the work of the previous Committees of Experts (document CT/V/2). In a number of respects it adopted new solutions, either in principle or in the form of newly drafted provisions (see its report, document CT/V/14). At the close of the session it approved the proposal of the Director General of WIPO to draft new texts for the Agreement and Regulations based on observations and suggestions made during that session, and then to submit the new texts to a sixth and final Committee of Experts before the Vienna Diplomatic Conference (document CT/V/14, paragraphs 5 and 99).

7. This "sixth Committee of Experts" met from March 13 to 17, 1972, and based its discussions on the new texts prepared by the International Bureau (documents CT/VI/2 and 3). It made several observations and suggestions (see its report, document CT/VI/11) which have been taken into consideration in this draft as well as the draft Regulations (document CT/DC/2).

8. By letter dated September 10, 1971, the Austrian Government officially informed the Director General of WIPO that the adoption of an agreement for the protection of type faces and their international deposit would be placed on the agenda of the Diplomatic Conference to be held in Vienna in May and June, 1973.

General Remarks on the Draft Agreement

9. The purpose of the Agreement is on the one hand to guarantee minimum national protection to the creators of type faces and their successors in title, and on the other hand to facilitate the acquiring of such protection in several countries by establishing an international deposit. The draft Agreement therefore contains a Chapter I (Articles 3 to 8) on national protection and a Chapter II (Articles 19 to 23) on the international deposit.

10. In addition, the draft Agreement contains introductory provisions concerning the creation of a special Union within the framework of the Paris Union (Article 1) and listing a number of definitions (Article 2).

11. Finally, the draft Agreement contains the administrative provisions and final clauses which have been customary since the Stockholm Diplomatic Conference (Chapters III to V, Articles 24 to 38).

Comments on the Title of the Agreement

12. The proposed title is the one adopted by previous Committees of Experts. It is somewhat restrictive in that it refers only to "type" faces, but Article 2(i) makes it clear that the expression must be interpreted broadly to cover also sets of designs which are intended to provide means for composing texts by typewritten or other graphic techniques.

Comments on the Preamble

13. The Committees of Experts were of the opinion that the Agreement should include a preamble recalling the main reasons for the planned adoption of a special instrument for the protection of type faces.

14. In the preliminary draft submitted to the fifth Committee of Experts, the preamble referred to Article 19 of the Paris Convention (Stockholm Act), to show that the Agreement was a special agreement within the meaning of that provision. The fifth Committee of Experts (document CT/V/14, paragraph 16) considered it preferable, however, to express this idea in Article 1.

15. "Contracting States," "type faces" and "international deposit" are defined respectively in Article 2(vi), Article 2(1) and Article 2(iii).

Comments on Article 1

16. This Article enunciates the principle whereby the Agreement is a special agreement under Article 19 of the Paris Convention and provides that the Contracting States constitute a special Union within the framework of the Paris Union. It follows that the Agreement is accessible only to States party to the Paris Convention (see Article 30(1)).

17. While the international instrument for the protection of type faces is a special agreement within the framework of the Paris Convention, it does not follow on any account that the Contracting States are obliged to protect type faces by means of their industrial property laws. On the contrary, Article 3 expressly allows Contracting States to afford such protection by means of copyright provisions.

Comments on Article 2

18. Article 2 has been entitled "Definitions" following the suggestion of the sixth Committee of Experts (document CT/VI/11, paragraph 17).

19. The International Bureau proposes a change in the order of definitions listed in this provision to allow, in particular, the most important definition, which is that of "type faces," to appear at the top of the list.

20. Item (i) defines the subject of protection, that is to say, it defines what is meant by "type faces" within the meaning of the Agreement. It follows from the text of the definition that "type faces" means not the actual metal bars of the type faces as such but the designs of the letters or signs forming the characters of the type faces.

21. As a result of the observations of the fifth Committee of Experts (document CT/V/14, paragraph 18), the draft Agreement makes it clear that "type faces" means not individual designs but sets of designs. Indeed, it is evident that it is not individual designs which require special protection as type faces but rather complete sets of letters and figures and the signs associated with them. It is understood that, according to Article 2(i)(c), "sets of designs" may comprise only ornaments which are intended to be used with letters and figures (see document CT/VI/11, paragraph 20).

22. In addition, on the basis of the observations of the fifth and sixth Committees of Experts (documents CT/V/14, paragraph 18, and CT/VI/11, paragraphs 18 and 19), the draft Agreement indicates that the subject of protection is not the actual texts composed by graphic techniques but the sets of designs intended to provide means for composing such texts by such techniques. It follows that the reproduction of signs themselves (direct reproduction by sign painters, for instance) cannot be prevented by the owner; he can only prohibit reproductions intended to provide means for composing texts by graphic techniques (see Article 6(1)).

23. Moreover, the concept of "type faces" is understood in a very broad sense and includes, in addition to letters of the alphabet and figures, all other signs used to compose a text, that is, punctuation marks, figurative signs and ornaments. In accordance with a proposal by the fifth Committee of Experts (document CT/V/14, paragraph 18), examples have been added to make the text clearer and more precise. For instance, it is expressly indicated that the other figurative signs mentioned in item (i)(b) include in particular conventional signs, symbols and scientific signs.

24. Similarly, the purpose of the sets of designs referred to is also conceived in a very broad sense, since it includes the composition of texts by typographical, typewritten or other graphic techniques. The words "typewritten techniques" are used mainly to cover typewriter characters. As for the expression "other graphic techniques," it refers in particular to characters intended for or produced by computers, and those providing means for composing lettering to be placed on the walls of buildings, exhibition stands and the like (see document CT/V/14, paragraph 19). It is also sufficiently broad to take account of future developments in technology.

25. At the same time, the International Bureau proposes the addition of two other definitions: "applicant" (item (iv)) and "owner of the international deposit" (item (v)). So long as the international deposit has not been recorded in the International Register, the draft Agreement and draft Regulations speak of "the applicant"; after it has been recorded, the person who has effected the international deposit is called "the owner of the international deposit." Furthermore, the International Bureau proposes the deletion of the adjective "International" in the definition of "Special Union" (item (vii)), as it seems superfluous. The other definitions appearing in Article 2 do not call for any explanation.

Comments on Chapter I

26. Chapter I introduces a minimum of protection at the national level for creators of type faces and their successors in title. Unlike the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, the minimum protection established by the draft Agreement is general: each Contracting State must grant minimum protection not only to the nationals and residents of other Contracting States but also to its own nationals and residents. Moreover, the provisions of the Paris Convention (Article 2), of the Berne Convention (Article 5(1)) and of the Universal Copyright Convention (Article II) on the national treatment principle are reserved; through these provisions, the protection guaranteed by this Agreement may have a wider geographical scope than the territory of the Contracting States (see Article 3(2), and paragraphs 31 and 32 of these comments).

Comments on Article 3

27. Article 3(1) is of fundamental importance: it is the provision which imposes on Contracting States the obligation to protect type faces.

28. Article 3 also indicates, at the suggestion of the fifth Committee of Experts (document CT/V/14, paragraph 21), that protection must be established for the benefit of the creator of the type faces or his successors in title.

29. Finally, on the proposal of the sixth Committee of Experts (document CT/VI/11, paragraph 21), this Article, subject to the provisions enumerated in paragraph 26, limits the protection (afforded by the Agreement) to residents or nationals of Contracting States. The concepts of residence and nationality are the subject of Article 4. If there are several owners of the rights in type faces they may invoke the benefits of the Agreement only if all of them fulfill the conditions of Articles 3 and 4 (see Rule 4.1).

30. While laying down the principle of protection and determining its essential content, the draft Agreement leaves Contracting States free to choose between three legal means of providing that protection: establishment of a special national deposit, adaptation of the national industrial design deposit, application of national copyright provisions. It also provides, on the proposal of the fifth Committee of Experts (document CT/V/14, paragraph 22), that the different means of protection may be cumulative. It goes without saying, on the other hand, that, if a Contracting State introduces a special deposit for type faces, it may exclude the latter from the protection afforded to industrial designs (see document CT/V/14, paragraph 42).

31. Since the Agreement is accessible only to member States of the Paris Union (see Articles 1 and 30(1)), the national treatment principle provided for in Article 2 of the Paris Convention applies automatically to persons who are residents or nationals of Contracting States, at least in so far as protection is subject to a special deposit or to the deposit provided for industrial designs. The situation becomes less clear, however, if Contracting States make use of legal means outside the province of industrial property, namely, protection by copyright provisions. In such cases, it must be ensured that there is no discrimination against the nationals or residents of other Contracting States. That is why, as was proposed by the fifth Committee of Experts (document CT/V/14, paragraph 23), Article 3(2) provides that Contracting States which protect type faces only by copyright means must be party to the Berne Convention for the Protection of Literary and Artistic Works, or the Universal Copyright Convention, or both.

32. The main effect of this requirement is twofold. On the one hand, it guarantees the application of national treatment (see Article 5(1) of the Berne Convention and Article II of the Universal Convention). On the other hand, it ensures--with certain exceptions--that protection will be granted without formalities (Article 5(2) of the Berne Convention) or with limited formalities (Article III(1) of the Universal Convention).

33. However, the requirement indicated in paragraph 31 produces its effects only between Contracting States party to the same Convention. For example, if a Contracting State which protects type faces by means of copyright is party to the Berne Convention only, nationals of Contracting States not party to that Convention are in danger of not deriving sufficient guarantee, especially with regard to formalities, even if such States are party to the Universal Copyright Convention. For this reason there must be a special provision to the effect that Contracting States which protect type faces only by means of copyright must in any event grant to the nationals of other Contracting States, as well as to persons who, while not being nationals of one of the latter States, are residents thereof, the same protection as that afforded to their own nationals.

Comments on Article 4

34. In the preliminary draft Agreement submitted to the sixth Committee of Experts, the concepts of residence and nationality were dealt with in what was formerly Article 10, now Article 11, in connection with the right to effect international deposits. But, on the proposal of the sixth Committee of Experts (document CT/VI/11, paragraph 21), Article 3 expressly limits protection to persons who are residents or nationals of Contracting States. It therefore seems preferable to define these concepts immediately after the provision in which they appear for the first time.

35. Article 4 takes over the nationality and residence concepts defined in Articles 2 and 3 of the Paris Convention.

36. Supranational companies may invoke the benefits of the Agreement if they have a real and effective industrial or commercial establishment on the territory of a Contracting State (Article 4(2)(a)).

37. Article 4(3) means that it is not necessary for a person wishing to invoke the benefits of the Agreement to have both the nationality of and residence in a Contracting State: compliance with one of the two criteria is sufficient.

Comments on Article 5

38. Since Contracting States may provide protection by copyright or industrial property means, they must also be able to make protection subject to the general conditions peculiar to those means, in other words, novelty if protection comes under industrial property or originality if it is determined by copyright provisions. They are not bound by this distinction, however. For instance, they can content themselves with originality even if they afford protection by industrial property means; it seems difficult, on the other hand, to imagine the application of the novelty criterion to a system which is not based on a deposit.

39. Moreover, it is well known that certain national laws protect industrial designs only if they are both novel and original. Therefore it seemed advisable to provide that novelty and originality requirements might be combined for type faces too.

40. Article 5 does not define either novelty or originality, so that Contracting States are free to apply their own legislation in those respects. However, on the proposal of the fifth Committee of Experts (document CT/V/14, paragraph 27), Article 5(2) indicates criteria for the assessment of both conditions: the novelty and the originality of type faces are assessed not on the basis of the details of each sign but in relation to the style or overall appearance. Moreover, in making this assessment, the competent authority must take into account criteria recognized by the competent professional circles; this will generally oblige it to accept *pro reo* by expert opinion, although it will naturally remain free in its evaluation of the experts' reports (see document CT/V/14, paragraph 28).

Comments on Article 6

41. Article 6, which is to a large extent based on the opinions expressed by the fifth and sixth Committees of Experts (documents CT/V/14, paragraphs 29 to 37, and CT/VI/11, paragraphs 29 to 46), determines the extent of the protection which, in all Contracting States, creators of type faces and their successors in title must enjoy. Such protection is only a minimum and Contracting States are free to provide more comprehensive protection.

42. Article 6(1) states the content of protection, according to the definition of type faces appearing in Article 2(i). Contracting States are not obliged to give the owner of the type faces the right to prohibit the making, the commercial distribution or the importation of reproductions of the letters and signs themselves; under Article 2(i), all they have to do is allow him to prohibit the making, the commercial distribution and the importation of reproductions of sets of designs intended to provide means for composing texts by graphic techniques. This means that, if only minimum protection is afforded, the owner of the right cannot object to the direct imitation of his type faces by a sign painter or stone engraver, or their reproduction by way of a quotation or an example in a newspaper or magazine. On the other hand, he must be able to prevent the reproduction of his type faces on templates or stencils intended for composing texts.

43. Furthermore, the minimum protection under Article 6 does not extend to the mere use of reproductions intended to provide means for composing texts by graphic techniques. It covers only the making of the reproductions, their commercial distribution and their importation. Therefore, if only minimum protection is afforded, a person who, for example, makes a bona fide purchase of such reproductions in the country in question cannot be prevented from using them.

44. For the owner to be covered by mandatory protection in the Contracting States, it is not necessary that the reproduction should be identical with the protected type face. Slight differences may exist.

45. Article 6(1)(i) states expressly that the fact that the protected type faces were or were not known to the maker of the reproduction is of no importance. This wording is in conformity with the rules of industrial property, which provide that the owner of a right shall in principle enjoy absolute protection, effective against all persons. Article 6(1)(i), however, is intended to apply to cases in both the industrial property and the copyright fields and yet it contains an exception to the copyright rule whereby a person who creates a work in ignorance of the fact that it has already been created cannot be validly attacked by the owner of the copyright in the earlier work. For that reason, it was necessary to include a reservation, in the form of Article 6(3) (see paragraph 49 below), for Contracting States which intend to maintain in this connection the principles governing copyright

46. The sixth Committee of Experts (document CT/VI/11, paragraph 40) asked the International Bureau to study the question whether it might not be preferable to say "irrespective of whether or not the fact that the type faces are protected was known to the maker of the reproduction." After studying the matter, the International Bureau proposes that Article 6(1)(i) should not be modified on this point, for two reasons. First, the proposed formula seems to presuppose that the type faces were known to the author of the reproduction; consequently, the case where the maker of the reproduction not only was unaware of the fact that the type faces in question were protected but did not even know of their existence (for example, because they were deposited under sealed cover) is not clearly covered. Secondly, the modification would not be in conformity with existing protection under copyright systems; the important factor in the case of countries protecting type faces by copyright means is, in fact, whether the type faces themselves are known and not whether the fact that they are protected is known.

47. The techniques and materials used to make the reproduction are of no importance. Contracting States cannot therefore confine protection to reproductions made in specific materials or by using specific techniques.

48. It is easy to alter protected characters by purely technical means, and especially by a photographic distortion process. Different type faces can thus be produced without creative effort. In such cases, according to Article 6(2), the right to prohibit provided for in Article 6(1) concerns type faces created in this way even if they have been greatly altered. Nevertheless, the essential features of the protected designs must remain discernible.

49. According to Article 6(1)(1), the owner of the right can oppose the reproduction of protected type faces even if the type faces were unknown to the maker of the reproduction. Article 6(3) permits an exception to this rule for Contracting States in which originality is a condition of protection, that is to say, in which a copyright criterion is applied. Such States may provide that the owner of the right cannot prohibit reproduction unless the maker of the reproduction had knowledge of the protected type faces. If, in fact, he had no knowledge of them, what appears to be a reproduction is in reality an original creation and cannot be considered to constitute an infringement under the normal rules of copyright (see paragraph 45).

50. It follows from the text of Article 6(3) that the faculty provided under this provision is available even to Contracting States which require both novelty and originality as conditions of protection. Thus, account is taken of certain systems for the protection of industrial designs.

51. Article 6(3) does not settle the question of the burden of proof, which is therefore left to the national law of each of the Contracting States.

52. The sixth Committee of Experts (document CT/VI/11, paragraph 45) adopted a proposal whereby the exception provided for in Article 6(3) could also refer to cases where the author of the commercial distribution or the importation was unaware of the existence of the protected type faces. After studying the matter, the International Bureau proposes to maintain the previous text. The text adopted by the sixth Committee of Experts would, in fact, be justified if it were a question of permitting an exception to the principle of absolute protection where the infringer had acted in good faith. But such is not the case. As indicated above (paragraph 49), it is rather a question of admitting of an exception where what appears to be a reproduction is in reality an original creation. In the latter connection, the decisive factor is whether the protected type faces were known to the maker of the reproduction; whether they are known to the authors of the commercial distribution or the importation is of no importance. It is obvious, however, that even if the authors of the commercial distribution or the importation know of the existence of the protected type faces they benefit from the fact that the author of the "reproduction" did not know of their existence and has consequently made an original creation; this emerges clearly from the text of Article 6(3), which refers to the right defined as a whole in Article 6(1).

53. The sixth Committee of Experts also considered the problem of type faces devised for use in data processing machines and asked itself whether, in certain conditions, such type faces should not be excluded from protection under the Agreement. It decided, however, that this was a question that should be carefully studied with the interested circles in the countries concerned and that a decision could be taken at the Diplomatic Conference (document CT/VI/11, paragraphs 42 and 43, and Annexes II and III).

Comments on Article 7

54. It is well known that it takes several years to create and market a complete set of type faces. For protection to be effective, therefore, it must be of sufficient duration. It is also generally accepted that a term of twenty-five years is an appropriate minimum, and that is precisely the term prescribed by Article 7(1).

55. The twenty-five-year term should not give rise to any problems for countries which will provide protection by means of copyright provisions: they have in any event to provide for at least as long a term of protection under the Berne Convention or the Universal Copyright Convention. The only difference is that the same minimum term must also apply to their own nationals.

56. In countries which will ensure protection by industrial property means, their national laws will have to provide for a minimum term of twenty-five years. It may be that they will have to make the appropriate amendments, for the purposes of type faces, to their laws on the protection of industrial designs.

57. What matters is that the full term of protection available to the owner of the protected type faces should be not less than twenty-five years. However, as provided in Article 7(2), this term may be divided into several shorter periods, in which case the owner of the deposit has to submit a request for each renewal, as generally happens with the protection afforded to industrial designs. For example, national laws could provide for an initial period of fifteen years with a ten-year extension at the request of the owner.

58. As for the starting point of the term of protection, Contracting States will fix it in their national laws, as proposed by the sixth Committee of Experts (document CT/VI/11, paragraph 47).

59. In accordance with the opinion expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 48), it will also be left to each Contracting State to decide whether the Agreement should apply to type faces in existence at the time of its entry into force.

Comments on Article 8

60. It has been explained (paragraphs 41 and 54 above) that the protection provided under the Agreement is minimum protection in respect of both content and duration. For this reason, the provisions of the Agreement do not preclude the claim to more extensive protection if it is available under national provisions; neither do they affect such protection as may be afforded by other international conventions.

61. The sixth Committee of Experts asked the International Bureau to study the question whether the title of this Article ("Cumulative Protection") was satisfactory (document CT/VI/11, paragraph 49). The International Bureau is of the opinion that the title can be maintained, since Article 8 of the draft Agreement gives the owner of the type faces the right to avail himself simultaneously of different forms of protection based upon differing legal concepts.

Comments on Article 9

62. In order to facilitate the acquiring of protection in several States, the national deposit of type faces should give rise to the right of priority established by Article 4 of the Paris Convention. This presents no problem in so far as type faces are regarded as industrial designs and protected as such by national law, since Article 4A(1) of the Paris Convention provides expressly that the deposit of an industrial design gives rise to a right of priority for subsequent deposits in other States. Consequently, deposits of type faces effected under the provisions on industrial designs enjoy a right of priority in all member States of the Paris Union.

63. The problem does arise, on the other hand, where States introduce a special deposit for type faces, since such a deposit is not expressly provided for in Article 4A of the Paris Convention. For that reason Article 9 provides that the national deposit of type faces shall be considered for priority right purposes to be an industrial designs deposit.

64. Thus, the special deposit system for type faces in any Contracting State gives rise to a right of priority in the other Contracting States which protect type faces by industrial property means, whether in the form of the deposit provided for industrial designs or in the form of a special deposit. Conversely, the deposit of type faces in a Contracting State under industrial design provisions gives rise to a right of priority in the other Contracting States, including those which protect type faces only by means of a special deposit.

65. It is understood that the provision in Article 9 can bind only Contracting States. Yet there is reason to hope that it will influence the interpretation by other Paris Union member States of Article 4 of the Paris Convention, in the sense that they will consider the deposit of "an industrial design" referred to in Article 4A(1) of that Convention to include also the special deposit established for type faces.

66. The words "if applicable" were added at the proposal of the sixth Committee of Experts (document CT/VI/11, paragraph 50) to take account of the fact that priority is not relevant under the copyright system.

67. As for the right of priority deriving from an international deposit or enjoyed by such a deposit, see Articles 12(2)(i) and 17. It was in order to make a clear distinction between this international deposit and the deposit referred to in Article 9 that the word "national" was inserted in the latter provision on the proposal of the sixth Committee of Experts (document CT/VI/11, paragraph 51).

Comments on Chapter II

68. Chapter II, comprising Articles 10 to 23, establishes and organizes an international deposit which is intended to facilitate the acquiring of protection at an international level. It is supplemented by Rules 2 to 24 of the Regulations. In order to harmonize the administrative rules applicable by and before the International Bureau, the Regulations are aligned, as far as possible, with those proposed for the Trademark Registration Treaty (document TRT/DC/2).

Comments on Article 10

69. Article 10 establishes an international deposit which must be recorded in an international register when certain conditions are fulfilled. Those conditions are given in Articles 11 to 13, supplemented by Rules 2 and 4 to 11.

70. At the session of the sixth Committee of Experts (document CT/VI/11, paragraph 54), the International Bureau undertook to study a proposal for the transfer to Article 10 (formerly Article 9) of the former Article 11(5) providing for direct deposit with the International Bureau. It does in fact seem preferable to state at the beginning of Chapter II that international deposits are effected direct with the International Bureau; this is now provided for under Article 10.

71. The establishment of direct deposit accords with the views expressed by the fifth Committee of Experts (document CT/V/14, paragraph 48). The administrative complications connected with the procedure of indirect deposit seem unnecessary in the case of type faces, where, unlike the situation in the case of applications for patents, a preliminary national screening in view of security requirements is out of the question. It seems also unnecessary to permit applicants to pass through the intermediary of the national Office. In general, applicants will be highly specialized persons--more often firms or enterprises--for whom an international deposit procedure will not pose any problems. The solution providing for direct deposit also eliminates the need to define the country of origin, a definition which often encounters grave difficulties.

72. "International Bureau," "International Register" and "Regulations" are defined respectively in Article 2(xi), Article 2(ii) and Article 2(xiii).

Comments on Article 11

73. Article 11 lays down the qualifications required to effect and be the owner of an international deposit. As to the concepts of residence and nationality, this Article refers back to Article 4.

74. "Applicant" and "owner of the international deposit" are defined respectively in Article 2(iv) and Article 2(v).

75. Under Article 12(1)(i) and Rule 5.2, the instrument of international deposit must indicate the residence and nationality of the applicant. If these indications are lacking or are not sufficient to establish whether the applicant has the right to effect an international deposit, the International Bureau declines the deposit according to the procedure provided for in Article 13. However, as in all cases where the International Bureau receives indications from the applicant or from the owner of the international deposit, it will not be in a position to check the accuracy of any indications given concerning the right to effect an international deposit. The administrative and legal authorities of Contracting States will have to examine whether the indications supplied correspond to the true facts and, where appropriate, decline the international deposit or declare it invalid in respect of their territories.

76. Supranational companies may effect international deposits provided that they have a real and effective industrial or commercial establishment on the territory of one of the Contracting States (see paragraph 36).

77. It will be sufficient if the applicant or the owner has the nationality of a Contracting State or is a resident (in the broad sense defined under Article 4(1)(a) and (2)(a)) of such a State.

78. Article 11 is supplemented by Rule 4.1, which deals with the case of several applicants or owners of an international deposit, and by Rule 4.2, which deals with the special case of associations which, under the legislation of certain States, may acquire rights and assume obligations without actually constituting legal entities (examples of such associations are the "offene Handelsgesellschaft" under German law and the "société en nom collectif" under Swiss law). Rule 4.2 has, however, been placed within brackets in order to show that there may be some doubt as to the need for such a rule, in view of the fact that it has not so far appeared in any convention, treaty or agreement administered by WIPO, without for that matter creating difficulties.

Comments on Article 12

79. Article 12 is supplemented by Rules 5 to 10.

80. In accordance with the opinion expressed by the fifth Committee of Experts (document CT/V/14, paragraph 50), the draft Agreement does not provide for deposits under sealed cover. Such deposits were considered unnecessary on the grounds that modern methods in the manufacture of type faces did not seem to call for a period of secrecy of one year. Moreover, it is generally acknowledged that sealed deposits have the disadvantage of affording a certain amount of protection to objects which cannot be known, and that this protection can therefore be violated by third parties acting in good faith.

81. Ad Article 12(1)(i): For the wording of the declaration by which the deposit is effected under the Agreement, see Rule 5.1. For the indications concerning the identity, residence, nationality and address of the applicant or applicants, see Rule 5.2. The instrument of deposit must also indicate the number of sheets bearing reproductions of the type faces (Rule 5.3) and include indications concerning the fees paid (Rule 5.4). No provision is made for making international deposits effective for some only of the Contracting States referred to in Article 16(1). The applicant is therefore not required to indicate the Contracting States in which he wishes to secure protection.

82. Ad Article 12(1)(ii): For the reproduction of type faces, see Rule 9. Color reproduction is not provided for, in accordance with the view expressed by the fifth Committee of Experts, which did not consider that color was a characteristic element of a type face (document CT/V/14, paragraph 86).

83. Rule 9.1(b) imposes minimum dimensions, which are necessary if the letters and signs are to be visible and clear when reproduced. For the same reason it also requires that the letters and signs should be separated from one another by their normal inter-letter spacing.

84. The sixth Committee of Experts asked the International Bureau (document CT/VI/11, paragraph 106) to study the question whether there should not be a requirement to the effect that every letter and sign should have a serial number for easy identification. It is true that in some cases the letters and signs must be capable of accurate identification: where a change in ownership, for example, or a withdrawal or a renunciation relates to some only of the letters and signs that are the subject of the international deposit. On the other hand, it is impossible to attach a clearly visible serial number to each letter and sign if letters and signs have to be separated by their normal inter-letter spacing. Besides, each letter and sign referred to can be accurately identified by indicating the line in which it is to be found and the place it occupies in that line. For those reasons, the International Bureau is not proposing any special rule in this connection.

85. Rule 9.1(c) provides further for the inclusion of a text of at least three lines, in order that the overall effect of the type faces may be judged, in accordance with Article 5(2). The text in question need not necessarily be in English or French, nor need it be presented in the dimensions prescribed for letters and signs.

86. Ad Article 12(1)(iii): For payment of the prescribed fees, see Rules 10 and 22. For their amount, see the Table annexed to the Regulations. The amounts of the fees will have to be so fixed that they cover the administrative expenses incurred by the International Bureau in connection with the Agreement.

87. Article 12(2)(i) deals with the case where an applicant wishes to claim the priority of one or more earlier deposits, whether they be special type face deposits or industrial design deposits. In such a case, he must make the appropriate declaration in the instrument of deposit. The indications which the declaration must contain and the penalties for their omission are specified in Rule 6.2. The effects of the priority claim are governed by Article 17. It is also possible under Article 12(2)(i) to claim the priority of an earlier international deposit; this possibility may be useful if the applicant wishes to obtain protection for a more comprehensive set of type faces than the one in the first deposit and enjoy partial priority (see Article 17(1)).

88. "Paris Convention" is defined in Article 2(ix).

89. The draft Agreement does not require that the instrument of international deposit must indicate the name of the creator of the type face. However, Article 12(2)(ii) gives the applicant the possibility of supplying this information, in accordance with the view expressed by the fifth Committee of Experts (document CT/V/14, paragraph 87). Thus, the creator may require, by contract with the applicant, that his name be indicated in the instrument of deposit. The form of this indication is prescribed in Rule 6.3. If the creator is indicated, his name is published and notified as provided in Article 15, as are all the other elements of the international deposit.

90. Pursuant to the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraphs 60 and 61), Article 12(2)(iii) provides further that the applicant may indicate in the instrument of international deposit the denomination he intends to give to the type faces. This provision is supplemented by Rule 6.4. The denomination thus indicated is published and notified as provided in Article 15, like all the other elements of the international deposit. It is understood that the indication of such denominations cannot prejudice their legal status, particularly with regard to the question whether or not the owner of the international deposit has the right to use the chosen denominations, a question which is left to the Contracting States to decide. That is why, in agreement with the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 61 in fine), it emerges from Article 19(3) that the owner of the international deposit may withdraw or renounce the denomination indicated in his deposit, in respect of all or any one or some only of the Contracting States referred to in Article 16(1).

91. The instrument of international deposit may also name a representative (Article 12(2)(iv)). In this connection, see Article 23 and Rule 2.

92. The languages referred to in Article 12(3) are English and French (Rule 7.1).

93. The formal requirements of the instrument of international deposit are governed in Rule 8.

94. In principle, the formalities indicated in the Agreement and the Regulations are exhaustive (see Article 16(2) and paragraph 113).

Comments on Article 13

95. The International Bureau has redrafted the text of Article 13 along the lines of Article 7 of the draft Trademark Registration Treaty (document TRT/DC/1). Article 13(1) deals therefore with the normal situation (where there are no defects) and Article 13(2) deals with the case of international deposits which have defects.

96. As to the recording in the International Register, see Rule 3.

97. The defects enumerated in Article 13(2)(a) are so basic that an international deposit having one or more of those defects cannot really be considered an international deposit within the meaning of the Agreement.

98. The defects referred to in Article 13(2)(a) relate to Article 12 and Rules 4, 5, 7.1, 8, 9 and 10.

99. When the International Bureau finds any of the defects mentioned in Article 13(2)(a), it does not immediately decline the international deposit unless it is impossible to reach the applicant or his representative, in other words, unless the international deposit clearly does not give the indications necessary to permit either one or other to be reached. In other cases, Article 13(2)(a) obliges the International Bureau to inform the applicant of the defects in the international deposit and invite him to correct them within a period of three months from the date of the registered letter to that effect which the International Bureau sends to the applicant or his representative. The International Bureau must have the missing documents, indications or fees in its possession within that period (see Rules 20.2 and 21).

100. If the defects notified are corrected in due time, the international deposit is recorded in the International Register as provided in Article 13(2)(b). If they are not corrected in due time, the International Bureau declines the international deposit as provided in Article 13(2)(c). The applicant has, properly speaking, no appeal against the declining of his international deposit. On the other hand, he can avoid the effects of declining, where unjustified, by effecting national deposits for the same type faces in the Contracting States (see Article 14).

101. According to Article 13(1), the date of the international deposit is the date on which it is received by the International Bureau, provided it has none of the defects listed in paragraph (2)(a). If it does have one or more of such defects, the date of the international deposit, according to Article 13(2)(b), is the date on which the correction of the defects has been received by the International Bureau. In the latter case, there seems to be no need to take account of the date on which the irregular or incomplete international deposit was effected. The defects mentioned are easy to avoid and, in any case, it is in the general interest to provide that the international deposit should not benefit from a date too much in advance of the date of its notification and publication.

102. As to the notification of declining and the reimbursement of certain fees, see Rule 11.2.

Comments on Article 14

103. Article 14 is based on a proposal by the sixth Committee of Experts (document CT/VI/11, paragraph 64) which was itself inspired by Article 9 of the draft Trademark Registration Treaty (document TRT/DC/1). Article 14 allows the applicant to avoid certain effects of any error that may have been made by the International Bureau in declining the international deposit. If the competent authority of the Contracting State decides that the International Bureau has erred and, consequently, that the declining of the international deposit was unjustified, the date of the national deposit will be the date which would have been the date of the international deposit if the latter had not been declined. Thus, the Agreement offers full guarantees against any error that may be made by the International Bureau in declining an international deposit.

104. Upon request, the International Bureau will provide the interested Office with the documents and information necessary to permit that Office or any other competent authority to decide whether or not the declining was justified (see Rule 12).

Comments on Article 15

105. Publication is effected in the International Bulletin of Type Faces/Bulletin international des caractères typographiques (see Rules 1.3 and 23 in this connection). The contents of the publication are specified in Rule 14. For access to information contained in the International Register by means other than the Bulletin, see Rule 24.

106. With regard to notification, see Rule 15. Notification will generally be effected by issuing reprints of the Bulletin, printed on one side only. This question will be dealt with in the Administrative Instructions.

107. In accordance with the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 67), international deposits will be notified to all Contracting States, even those which protect type faces through their copyright provisions, the existence of international deposits being possibly also of interest to the public of such countries.

108. "Competent Offices of the Contracting States" also means regional Offices having the task of registering type face deposits for several States (see Article 22).

Comments on Article 16

109. The first question which arises in connection with the effects of the international deposit is whether the international deposit, on being recorded in the International Register, has the effect of a national registration or only of a national deposit in each Contracting State. In accordance with the view expressed by the fifth Committee of Experts (document CT/V/14, paragraph 51), the draft Agreement adopts the latter solution. If the first were adopted, it would be necessary, in view of the examination procedure for industrial designs which exists in certain States, to provide for a refusal system similar to that of the Madrid Agreement Concerning the International Registration of Marks. The subject matter does not, however, appear to warrant such a solution.

110. Thus, under Article 16(1), the international deposit has, from the date it bears, the effect of a national deposit--by which is also meant an application for registration in the national register--in each Contracting State which provides protection by industrial property means (provisional protection, basis for registration procedure, etc.). Thereafter each State is free to proceed as it sees fit. The simplest procedure is for the Contracting State to make no examination and to consider international recording and publication sufficient--subject to examination by the courts in the event of judicial proceedings--for ensuring protection on its territory. It may also re-record the deposit in a national register and even make another publication. Finally, it may, under its national law, provide for an examination procedure, whether *ex officio* or only in case of opposition.

111. The words "on the same date" refer also to the priority date if priority has been claimed. For the right of priority, see Article 17.

112. The second question is that of the effect of the international deposit in Contracting States which protect type faces solely by means of copyright provisions. In accordance with the view expressed by the fifth Committee of Experts (document CT/V/14, paragraph 45), the draft Agreement is based on the idea that the international deposit cannot have any effect in such States, since the establishment of a deposit is not in conformity with the copyright protection system. In such States, the protection of type faces would be guaranteed in any case without deposit formalities, as far as their relations with other States bound by the Berne Convention or the Universal Convention are concerned. Thus, the effect of the international deposit extends only to States which protect type faces by industrial property means.

113. One of the main advantages of international deposit and subsequent publication is that they obviate deposit and publication in each of the States concerned. This advantage would be diminished to a varying degree if the States involved were able to impose additional formalities at this stage of the procedure. Therefore, Article 16(2) provides that, in principle, the States referred to in paragraph (1) may not impose any additional formalities on the applicant. This rule is subject to two exceptions, however:

(a) The formalities laid down for the exercise of the rights must naturally be reserved. If, for instance, the owner of the deposit wishes to institute infringement proceedings in a certain State, he must comply with the rules of procedure in that State. For example, he may be required to elect domicile or appoint an agent in that State. He might also be obliged to register the type faces in the national register of the said State.

(b) States which carry out a novelty examination, whether *ex officio* or in the event of opposition, may naturally prescribe the formalities required by such procedure and charge the appropriate fees. They may, for instance, provide that the applicant must elect domicile or appoint an agent on their territory. However, international publication should be able to take the place of national publication, especially that which is required in opposition proceedings. For that reason, the States concerned are not authorized to charge a publication fee, even if they actually do effect national publication--for instance to initiate the opposition proceedings.

Comments on Article 17

114. The effect of Article 17(1) is first to establish that the international deposit shall give rise to the right of priority provided for industrial designs by Article 4 of the Paris Convention. Article 17 can of course only bind Contracting States and, between those States, the right of priority based on the international deposit is of no particular value except in the undoubtedly infrequent case of an international deposit which is followed by another, more comprehensive international deposit (see paragraph 87 above). However, as in the case of Article 9 (see paragraph 65), there is reason to hope that the provision in Article 17 will influence the interpretation given to Article 4 of the Paris Convention by the other States party to that Convention, and that they will consider that the deposit "of an industrial design" mentioned in Article 4A(1) of the Paris Convention includes the special international deposit established for type faces. If such is the case, they will recognize the right of priority arising from the international deposit, whether they protect type faces by a special deposit procedure or by the procedure provided for industrial designs.

115. As in Article 9, the words "if applicable" indicate that Article 17 has no effect in States which protect type faces solely by means of the provisions of their copyright laws (see paragraph 66 above).

116. Article 17(2) specifies the conditions which must be met by an international deposit in order to be considered a "regular" filing and indicates the date of that deposit. Under this provision, the international deposit cannot be considered invalid if it is eventually recorded in the International Register.

117. In addition, the wording of Article 17 is such that Contracting States are obliged to acknowledge that deposits of type faces effected in other States party to the Paris Convention, whether they be special deposits or industrial design deposits, give rise to a right of priority which may be claimed for the international deposit. Article 12(2)(1) provides moreover that the instrument of international deposit may contain such a priority claim (see paragraph 87 above).

Comments on Article 18

118. Since the international deposit has only the effects of a national deposit, any subsequent procedure--if such procedure is necessary--generally takes place before the national Office. However, in order to simplify this procedure, both for national Offices and for the owners of international deposits, the draft Agreement provides that certain operations following the international deposit procedure may be centralized at the International Bureau, which then takes care of the necessary publications and notifications itself. This principle applies to changes in the ownership of the international deposit (Article 18), renunciation (Article 19), other changes in the international deposit (Article 20), and renewal (Article 21).

119. The International Bureau has changed the order and numbering of the paragraphs and the wording of Article 18, just as it has done in Article 19 and Article 20, in order to unify the presentation and the terminology of Articles 18 to 21, Article 21 having been taken as a model. The order of the paragraphs is based on the following reasoning: first, the principle of the Article concerned is posed; thereafter come the substantive conditions, next the formal requirements, then the procedure to be followed by the International Bureau, and lastly the effects of the operation in question.

120. For the recording of the change of ownership in the International Register (Article 18(1)), see Rule 16.2(a).

121. In order that the new owner may have access to the international procedure, he must qualify for ownership of an international deposit in accordance with Article 11. Otherwise that provision might easily be bypassed. The requirement is therefore imposed under Article 18(2). If, according to the indications supplied in the request, the new owner does not in fact have the right to own international deposits, the request for recording the change in ownership will be declined (see Rule 16.2(a) and (d)). However, it will not be the International Bureau that examines whether the request is true to the facts in this respect (see paragraph 75 above). If the recording of the change in ownership has been made in error, it will be for the Contracting States to draw the appropriate legal conclusions.

122. If the transfer is effected in favor of different owners for the purposes of different Contracting States and only some of those new owners do not have the right to own international deposits, it goes without saying that the request for recording the change in ownership will be declined only to the appropriate extent. For the rest, the recording in the International Register will remain in the name of the former owner.

123. In any event, the national laws of the Contracting States may allow the transfer to one or more persons who do not have the right to own international deposits.

124. In order to simplify the procedure, it is not provided that type faces may be the subject of different international deposits for the purposes of different Contracting States. Yet it is possible that, later, the rights attaching to an international deposit may be shared between different persons or transferred to different persons for the purposes of different Contracting States. Therefore there must be a provision in such cases for the possibility that changes in ownership may affect only some of the Contracting States, or that transfers may be made in favor of different new owners. The provision in question is Article 18(3). In such cases, the transfer is first recorded only under the number of the deposit concerned. On expiration of the current protection period, however, renewal must be demanded separately by the different owners, and the type faces then undergo as many different and distinct recordings in the International Register as there are owners or groups of owners for the purposes of the various Contracting States.

125. With regard to the form of the request for the recording of a change in ownership, Article 18(4) refers to the Regulations (see Rule 16.1(a) and (b)). With regard to the fee, Rule 16(1)(c) refers to the Table of Fees.

126. Article 18(5) provides that, on being recorded in the International Register, all changes in ownership are published and notified to the competent Offices of the Contracting States. In connection with this procedure, see Rule 16.2(c).

127. Under Article 18(6) recording in the International Register, together with publication and notification, produces the same effects as a transfer request filed direct with the competent Office of each of the Contracting States concerned. Those States may consider that formalities complied with at the international level are sufficient, especially if they themselves do not provide for any examination at that stage. They may also impose additional formalities and effect a recording in their own register if they keep one.

128. The recording of a transfer in the International Register, like other kinds of recording in the said Register, has no effect in Contracting States which protect type faces solely by means of copyright provisions.

129. No international procedure is provided for the recording of the transfer of some only of the type faces which are the subject of an international deposit. This is in conformity with the view expressed by the fifth Committee of Experts (document CT/V/14, paragraph 65), which felt that it was not necessary to authorize the transfer of part of the type faces that were the subject of an international deposit and to provide for the recording of such transfers.

130. Moreover, again in accordance with the view expressed by the fifth Committee of Experts (document CT/V/14, paragraph 64), the grant of a license, even if exclusive, does not constitute a change in ownership and therefore cannot be recorded in the International Register.

Comments on Article 19

131. The International Bureau has changed the order and numbering of the paragraphs as well as the wording of Article 19 (see paragraph 119).

132. As regards withdrawal of the international deposit as provided for in Article 19(1), see Rules 17.1 and 17.2. If the declaration of withdrawal does not reach the International Bureau by the time specified in Rule 17.1, it will be treated as renunciation.

133. For renunciation of the international deposit as provided for in Article 19(2), see Rule 17.2.

134. Under Article 19(3), withdrawal and renunciation may, as far as the type faces are concerned, be only partial. It is possible that the owner of a deposit may, for instance, have to renounce the protection of part of the type faces deposited. It is also possible that the withdrawal or renunciation may relate only to the denomination given to the type faces. And, finally, the withdrawal or renunciation may also be limited to a part of the Contracting States referred to in Article 16(1). In accordance with the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 78), all these possibilities of partial withdrawal and renunciation may be combined: for example, the owner may renounce his international deposit for a part of the type faces and in respect of some only of the Contracting States. In all cases, the extent of withdrawal or renunciation must be clearly indicated (Rule 17.2(b)) (see paragraph 84).

135. In the case of partial withdrawal, publication and notification will deal only with that part of the international deposit which has not been withdrawn; this can be specified in the Administrative Instructions.

136. Neither withdrawal nor renunciation is subject to the payment of a fee. On the contrary, where withdrawal in terms of Rule 17.1 is total, the publication fee is reimbursed to the applicant (Rule 17.2(c)).

Comments on Article 20

137. The International Bureau has changed the order and numbering of the paragraphs as well as the wording of Article 20 (see paragraph 119).

138. The purpose of Article 20 is to simplify the communication of other changes in the indications given in the instrument of international deposit by allowing the owner of the international deposit to communicate them to the International Bureau, which then takes care of their recording, publication and notification (see paragraph 118 above).

139. With regard to Article 20(1), Rule 18.1 indicates the principal amendments which may be made by the owner of the international deposit.

140. Under Article 20(2), type faces which are the subject of an international deposit may not be amended according to the procedure provided for in this Article. If the owner of the international deposit wishes to amend all or part of the deposited type faces, he must make a new deposit. It is recalled, however, that the change in ownership, withdrawal and renunciation may relate to some only of the the type faces (see Articles 18(3) and 19(3)). As those are not amendments to the type faces themselves, the International Bureau deleted all reference to such possibilities in Article 20(2).

141. With regard to Article 20(3), reference is made to the Table of Fees (Rule 18.2(b)).

Comments on Article 21

142. A distinction should be made between the period during which the international deposit produces its effects and that of the national deposit. Subject to the twenty-five-year minimum prescribed by Article 7, the term of protection is determined by the national law. However, up to the end of that term, deposit and renewal formalities are replaced by those provided for in the Agreement. The Contracting States referred to in Article 16(1) cannot therefore demand compliance with additional formalities.

143. In accordance with the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 81), terms of renewal are of five or ten years' duration, at the discretion of the owner of the international deposit. This means that, if a national law provides for an initial term of protection of five years, renewable for four periods of five years, the national deposit and the four national renewals that would be necessary to obtain protection for a maximum term of twenty-five years can be replaced by an international deposit, an international renewal for a period of ten years and an international renewal for a period of five years.

144. The number of international renewals is unlimited in principle. In practice, however, the applicant has nothing to gain by demanding another renewal when the maximum term of protection has expired in all the Contracting States which protect type faces by industrial property means.

145. If, at the time of renewal, the owner of the international deposit is not the same for all the Contracting States referred to in Article 16(1), as many demands should be filed as there are different owners (or different groups of owners) (see Article 18(3)).

146. The Regulations require that the International Bureau should send a reminder to the owner of the international deposit before the expiration of the current term of protection (Rule 19.1).

147. For the formal requirements of the demand for renewal (Article 21(4)), see Rule 19.2.

148. For the renewal fee and the grace period provided for in Article 5bis(1) of the Paris Convention, see Rule 19.3. The amounts of the fees due for renewal appear in the Table of Fees. In accordance with the view expressed by the sixth Committee of Experts (document CT/VI/11, paragraph 82), it will not be possible to charge national renewal fees.

149. For the recording of renewals (Article 21(5)) and the declining of demands for renewal, see Rules 19.4 and 19.5.

Comments on Article 22

150. The purpose of Article 22 is to provide the possibility of using the Agreement to achieve the effects of a regional deposit. In such cases, the various Contracting States party to the regional treaty should be regarded as a single Contracting State for the purposes of the international deposit, and the competent national Office within the meaning of this Agreement would be their regional Office. In all other respects, however, States party to the regional treaty would be regarded as separate Contracting States; in particular, the individual States would each have a vote in the Assembly of the Union (see Article 24(4)) and could act independently as far as the other administrative provisions of the Agreement are concerned.

151. It is possible that a Contracting State may be party to a regional treaty and yet retain its own national Office. In that case, it may or may not effect the notification provided for in Article 22(1). If it does not do so, it will be regarded as a separate Contracting State for the purposes of the international deposit, and the competent Office in terms of this Agreement will be its national Office.

152. The notification provided for in Article 22(1) may also be effected in the instrument of ratification or accession. It is therefore necessary to harmonize the time of entry into force of the notification with the time from which the deposit of an instrument of ratification or accession takes effect under Article 32(2). This is done in Article 22(2).

Comments on Article 23

153. In connection with Article 23(1), see Rule 2. According to this Article, any person may represent the applicant or the owner of an international deposit in dealings with the International Bureau. Therefore not only patent and trademark attorneys and agents may act as representatives but also employees of the applicant or owner and any other persons, including legal entities; no requirements as to professional qualifications may be prescribed. Of course, in cases where an act is to be accomplished before a national Office or other national authority, it is the national law governing that Office or that authority which will be applicable and it will often be necessary for the representative to be a qualified patent or trademark attorney or agent residing in the country in which that Office or other authority is located.

154. According to the first sentence of Article 23(2), where, for example, the Agreement provides that the International Bureau has to remind the owner of the international deposit of the expiration of the term of protection (Rule 19.1), or invite the applicant to correct certain defects in the international deposit (Article 13(2)(a)), or notify the applicant if it declines the international deposit (Article 13(2)(c)), the International Bureau will have complied with the requirements of the Agreement if it sends the invitation or notification to the duly appointed representative of the applicant or of the owner of the international deposit.

155. According to the second sentence of Article 23(2), the duly appointed representative may, for example, sign the instrument of international deposit, any request for the recording of a change in ownership, any communication of withdrawal or renunciation, or any demand for renewal, in place of the applicant or the owner of the international deposit.

156. In connection with Article 23(3), see Rule 2.1.

157. The formal requirements for the appointment of a representative are dealt with in Rule 2.2.

Comments on Chapter III

158. Articles 24 to 27 correspond to the administrative provisions which were incorporated in the Paris Convention and the Special Agreements at the Stockholm Diplomatic Conference (1967). As with all the Special Unions, except the International Patent Cooperation Union (see Article 54 of the Patent Cooperation Treaty (PCT)), no provision is made for the establishment of an Executive Committee. Only two organs are provided for the future Special Union: the Assembly of Contracting States and the International Bureau.

Comments on Article 24

159. Article 24, which concerns the Assembly of the Special Union, corresponds to the provisions governing the Assembly of the Paris Union and those of the Special Unions (see, for example, Article 13 of the Paris Convention).

160. "Organization," "Director General," "Special Union" and "Assembly" are defined respectively in Article 2(x), Article 2(xii), Article 2(vii) and Article 2(viii).

161. With regard to Article 24(1)(b), Rule 25 provides that the expenses of each delegation are to be borne by the Government appointing it.

162. Article 24(2)(a) does not give an exhaustive list of the Assembly's tasks: it contains three general clauses (items (i), (ii), and (x)), the second of which refers to the tasks specially assigned to the Assembly by this Agreement. Among the tasks not listed in Article 24(2)(a), one could mention for instance the adoption of the rules of procedure of the Assembly (Article 24(8)), the amendment of the Regulations (Article 27(3)) and the convocation of revision conferences (Article 28(2)).

163. Voting by correspondence, provided for in Article 24(5)(b) for cases where the quorum is not reached, is dealt with in Rule 26.

Comments on Article 25

164. Article 25, which concerns the International Bureau, corresponds to the provisions on the same subject in the Paris Convention (see Article 15) and in the Special Agreements and Treaties concluded within the framework of that Convention. It does not require special comment.

Comments on Article 26

165. Article 26, which deals with the finances of the Special Union, corresponds to the provisions governing the finances of the Paris Union and the Special Unions (see, for example, Article 16 of the Paris Convention).

166. In principle, the Special Union has to meet its expenses out of the income from fees. Thus Article 26(3)(b) provides that the amount of fees and charges due to the International Bureau for services rendered in connection with the Special Union, as well as the price of its publications, must be fixed in such a way as to cover, under normal circumstances, all expenses connected with the administration of the Agreement. The fees are for the most part fixed in the Table of Fees annexed to the Regulations. However, in accordance with the opinion expressed by the fifth Committee of Experts (document CT/V/14, paragraph 76), Article 26(3)(a)(v) provides for contributions on the part of Contracting States when the income from other sources is not sufficient to cover the expenses of the Special Union. Such contributions will make it possible to avoid the deficit which would result from a situation where fees that were too low could not be increased in time to meet the expenses of the Special Union.

Comments on Article 27

167. Under Article 27.2, the Regulations will be adopted by the Diplomatic Conference which adopts the Agreement itself and will be included among the documents which are opened for signature at the end of that Conference.

168. The hierarchy established by Article 27(4) between the Agreement and the Regulations corresponds to that which exists between the two organs which adopt them: the Diplomatic Conference and the Assembly.

169. Rule 27 entrusts the Director General with the task of establishing, under the control of the Assembly, Administrative Instructions intended to supplement the Regulations on matters of detail.

Comments on Chapter IV

170. Articles 28 and 29, concerning the revision of the Agreement, correspond to the provisions which govern the same subject in the Paris Convention and the Special Agreements since the Stockholm Diplomatic Conference (1967).

Comments on Article 28

171. The special conferences referred to in Article 28(1) are diplomatic conferences, that is, conferences between Governments represented by delegations having full powers to vote and, where appropriate, to sign.

172. The revision conferences mentioned in Article 28(2) are the special conferences referred to in paragraph (1).

173. In connection with Article 28(3), see the comments on Article 29.

Comments on Article 29

174. This Article, following on Article 28(3), confers extensive powers on the Assembly with respect to the amendment of the administrative provisions and those of Article 29 itself. In doing so, it is in conformity with the Paris Convention (Article 17) and the Special Agreements, in particular the Strasbourg Agreement Concerning the International Patent Classification, whose terms it reproduces with only slight alterations as to form (see Article 11 of the Strasbourg Agreement). On the other hand, it differs from the Patent Cooperation Treaty (Article 61), which is more restrictive in the powers it confers on the Assembly.

Comments on Chapter V

175. Articles 30 to 38, which contain the final clauses of the Agreement, correspond to the provisions which govern the same subject in the Paris Convention and the Special Agreements since the Stockholm Diplomatic Conference (1967).

Comments on Article 30

176. The provisions of Article 30 are customary and are identical, in particular, to the corresponding provisions of the most recent industrial property conventions, namely, the Patent Cooperation Treaty (Article 62) and the Strasbourg Agreement (Article 12).

Comments on Article 31

177. It is important that Contracting States, the International Bureau and the public should know how each individual Contracting State intends to protect type faces on its territory. That is why Article 31(1) obliges Contracting States to inform the Director General as to their respective protection systems. The Director General must then communicate this information to the other Contracting States in accordance with Article 38(iv).

178. The preliminary draft Agreement provided that the further notification referred to in Article 31(2) would not take effect until three months had elapsed since the date of its receipt by the Director General. The three-month time limit was intended mainly to permit the International Bureau to take the necessary administrative measures in connection with the notifications of international deposits, changes in ownership, renunciations, other changes, and renewals. Such notifications, according to the preliminary draft, were to be sent only to the Contracting States referred to in Article 16(1). Under the present draft Agreement, such notifications are to be addressed to all Contracting States (see paragraph 107). Consequently, the passage from one system of protection to another involves no adapting measures on the part of the International Bureau, so that the three-month time limit is no longer necessary.

Comments on Article 32

179. Article 32(1) and (2) deals in the customary manner with the entry into force of the Agreement.

180. Article 32(3), however, provides a special condition for the entry into force of Chapter II in order to avoid the situation where the international deposit mechanism would have to be set up for only one or two States because most of the Contracting States protected type faces by means of copyright.

Comments on Article 33

181. This Article is customary and requires no special comment.

Comments on Article 34

182. This provision is customary (see, for instance, Article 14 of the Strasbourg Agreement). It means that the duration of the Agreement cannot be longer than that of the Paris Convention, in the framework of which it is concluded. On the other hand, it can of course be shorter: if, for example, there is only one Contracting State left, the Agreement will automatically be terminated.

Comments on Article 35

183. The provisions of Article 35(1) to (3) are customary (see, for instance, Article 15 of the Strasbourg Agreement).

184. The purpose of Article 35(4) is to allow applicants and owners of international deposits a certain amount of time in which to investigate protection possibilities other than those offered by Articles 10 to 23 and to make use of such other possibilities. If, for example, an international deposit is duly effected on the eve of the day on which denunciation takes effect, the procedure must continue as if there had been no denunciation. Protection is limited to the current term of protection, however (see Article 21(1) and (2)), and cannot of course extend beyond the maximum term of protection provided for in the national law of the State concerned (see Article 21(6)).

Comments on Article 36

185. The provisions of Article 36(1) are in conformity with the corresponding provisions of treaties and agreements concluded recently under the aegis of the Paris Convention (see Article 67(1) of the Patent Cooperation Treaty and Article 16(1)(a) and (2) of the Strasbourg Agreement). However, Article 36 does not specify the languages in which official texts of the Agreement are to be established: it seems preferable to leave this to the Assembly, which can decide at a time when more is known about which States are interested in the Agreement.

Comments on Article 37

186. The provisions of this Article are in conformity with the corresponding provisions of treaties and agreements concluded recently under the aegis of the Paris Convention (see, for instance, Article 68 of the Patent Cooperation Treaty).

187. In connection with Article 37(3), it should be noted that Article 102 of the United Nations Charter provides for the compulsory registration of treaties with the Secretariat of the United Nations.

Comments on Article 38

188. The provisions of this Article are in conformity with the corresponding provisions of Treaties and Agreements concluded recently under the aegis of the Paris Convention (see Article 69 of the Patent Cooperation Treaty and Article 16(5) of the Strasbourg Agreement). Such notifications are necessary in order that States may be officially informed of the status of the Agreement.

CT/DC/2

October 25, 1972 (Original: French)

THE INTERNATIONAL BUREAU OF WIPO

Draft Regulations under the Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: The text of the Draft Regulations as appearing in this document is reproduced on the even-numbered pages from page 80 to page 144 above.

CT/DC/3

February 16, 1973 (Original: English)

THE DIRECTOR GENERAL OF WIPO

Draft Agenda of the Diplomatic Conference on the Protection of Type Faces

1. Opening of the Conference by the Director General of WIPO
2. Election of the President of the Conference
3. Adoption of the agenda (see the present document)
4. Election of the following officers:
 - (i) the Vice-Presidents of the Conference,
 - (ii) the Chairman of the Main Committee,
 - (iii) the Vice-Chairmen of the Main Committee.
5. Election of the members of the Drafting Committee
6. General debate on the proposed Agreement for the Protection of Type Faces and their International Deposit
7. Consideration of the question whether the proposed Agreement should be a special agreement under the Paris Convention for the Protection of Industrial Property
8. Consideration of the proposed Agreement and the Regulations thereunder on the basis of documents CT/DC/1 and 2, and any proposed amendments*
9. Consideration and adoption of the said Agreement and Regulations on the basis of the proposals of the Main Committee
10. Closing of the Conference by its President

* This item will be dealt with by the Main Committee of the Conference.

CT/DC/4

UNITED KINGDOM

March 6, 1973 (Original: English)

Observations and proposal for amendment concerning Article 3

Article 3 of the draft Agreement obliges Contracting States to protect the type faces of, inter alia, persons and entities who qualify as residents of other Contracting States by reason only of their having real and effective industrial establishments in those States. However, the Berne Convention and the Universal Copyright Convention do not require their Contracting States to extend copyright protection to such persons and entities, and the adoption of Article 3 in its present form would thus confront the United Kingdom, and possibly other States who have in mind the possibility of protecting type faces by means of their copyright provisions, with the choice between, on the one hand, not ratifying the Agreement and, on the other, giving a more extensive entitlement to copyright in type faces than is given to any other work protected by copyright, which would be both anomalous and difficult to justify. This difficulty would be resolved under the Agreement if Contracting States protecting type faces by copyright were permitted to adopt, as criteria for protection, the normal copyright criteria of (1) nationality of the author, and (2) place of first publication. The only persons and entities who would be adversely affected by the adoption of such a solution would be those who were not nationals or residents (in the copyright sense) of a State party to the Type Faces Agreement. The proposed exclusion is therefore very narrow in effect; moreover, it would be relatively simple for a person thereby excluded to obtain protection in "copyright" countries by first publishing his type face in a State party to this Agreement or in a State party to one or both of the Copyright Conventions.

A redrafted Article 3 giving effect to the above proposal is submitted. The second sentence in Article 3(2) makes it clear, for the avoidance of doubt, that nationals of Contracting States which are not party to the relevant Copyright Convention(s) shall receive treatment, especially as regards formalities, no less favourable than is provided for in those Conventions.

Article 3

(1) The Contracting States undertake, in accordance with the provisions of this Agreement, to ensure the protection of type faces created by the persons referred to in Article 4 by establishing a special national deposit, or by adapting the deposit provided for by their national industrial design laws, or by means of their national copyright provisions. The said means of protection may be cumulative. However, any Contracting State which protects type faces only by means of its copyright provisions is not obliged to extend protection to type faces created by persons and entities who are residents of other Contracting States by reason only of their having a real and effective industrial or commercial establishment in those States.

(2) Contracting States which protect type faces only by means of copyright provisions must be party either to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention. Such Contracting States must also grant the protection afforded to their nationals to persons referred to in the preceding paragraph, being nationals of other States party to this Agreement, who are not entitled to invoke the benefit of the protection granted by said Conventions.

CT/DC/5

April 19, 1973 (Original: English)

CANADA

Observations and proposal concerning Article 3

In view of its current revision of intellectual property legislation, Canada deems it important to maintain the possibility of optional systems of protection in the draft Type Faces Agreement.

According to the present draft of this Agreement the obligations of a Contracting State to provide protection vary according to the system adopted. If Canada were to adopt a copyright system of protection it would be obligated under Article 3 to extend to type faces more extensive protection than that presently required by the international copyright conventions of which Canada is a member.

More particularly, Article 3 creates an obligation on the part of a Contracting State to grant protection to nationals as well as persons and entities who qualify as residents of other Contracting States by reason only of their having real and effective industrial establishments in those States. However, neither the Berne nor the Universal Copyright Conventions, require Contracting States to afford copyright protection to individuals or corporate entities who are not nationals. The result is that the proposed Article 3 provides a more extensive copyright protection for type faces than is presently provided for other copyright works. For these reasons Canada strongly urges that any copyright protection provided for type faces be contained within the scope of the existing copyright conventions.

The difficulty could be resolved if the normal copyright requirements of (1) nationality of the author, and (2) place of first publication, were adopted as the criteria for protection. Those who are not nationals or residents of a state party to the Type Faces Agreement would be excluded but the effect would be very limited in application. In any event, such persons could obtain protection in type face-copyright countries by first publishing a type face in a state party to the Type Faces Agreement or in a state party to at least one of the copyright conventions.

We therefore submit the following draft as a suggestion to replace Article 3.

Article 3

(1) The Contracting States undertake, in accordance with the provisions of this Agreement, to ensure the protection of type faces created by the persons referred to in Article 4 by establishing a special national deposit, or by adapting the deposit provided for by their national industrial design laws, or by means of their national copyright provisions. The said means of protection may be cumulative. However, any Contracting State which protects type faces only by means of its copyright provisions is not obliged to extend protection to type faces created by persons and entities who are residents of other Contracting States by reason only of their having a real and effective industrial or commercial establishment in those States.

(2) Contracting States which protect type faces only by means of copyright provisions must be party either to the Berne Convention for the Protection of Literary and Artistic Works or to the Universal Copyright Convention. Such Contracting States must also grant the protection afforded to their nationals to persons referred to in the preceding paragraph, being nationals of other States party to this Agreement, who are not entitled to invoke the benefit of the protection granted by said Conventions.

CT/DC/6
SWITZERLAND

May 18, 1973 (Original: French)

Proposals for amendment concerning Articles 5 and 6

One of the means whereby Contracting States may provide for the protection of type faces is the adaptation of the deposit provided for in their national industrial design laws. The Swiss Law on Industrial Designs protects only ornamental designs, to the exclusion of utility designs. In accordance with this principle its scope does not extend to designs intended to achieve a technical rather than an aesthetic effect. Other countries have similar systems. In order to avoid any encroachment on this fundamental principle of design law, Contracting States should be allowed to exclude from protection type faces of a design dictated solely by technical requirements. Examples of this are certain machine-readable characters, the shape of which is determined exclusively by the fact that they must be able to be read by computers. It should be noted that the provision proposed does not prevent a system for the solution of a technical problem (for instance the machine-readability of a type face) by means of characters designed specifically for the purpose from being protected in another manner, for instance by patent.

Article 5

(3) Contracting States may exclude from protection under this Agreement type faces of a design dictated by purely technical requirements.

The legal position of the printer who has come into possession of a type face should be made clear. Under Article 6(1)(i) of the draft Agreement, he is not prevented from using it to compose texts. Yet there are certain modern typesetting processes where the composition of a text necessarily entails the manufacture of individual characters by the printer. In such a case the printer comes under the above-mentioned provision, which is not the intention of the draft Agreement. Contracting States should therefore be allowed to provide that a person acquiring a type face in good faith is not prevented by Article 6(1)(i) from manufacturing reproductions for his own use where it is impossible, for technical reasons, to compose texts without doing so.

Article 6

(4) Contracting States may provide that the provisions of paragraph (1)(i) of this Article shall not prevent a person who has acquired the type face in good faith from making reproductions for his own use when such reproductions are necessary, for technical reasons, for the composition of texts.

CT/DC/7
NETHERLANDS

May 19, 1973 (Original: English/French)

Proposal concerning a new article entitled "Disputes"

Disputes

(1) Any dispute between two or more Contracting States concerning the interpretation or application of this Agreement 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) Each Contracting State may, at the time it signs this Agreement or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of paragraph (1) shall not apply.

(3) Any Contracting State having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Remark: Paragraphs (2) and (3) may be the subject of a special article on "Reservations."

CT/DC/8

May 21, 1973 (Original: English)

ALGERIA, BULGARIA, CUBA, CZECHOSLOVAKIA, GERMAN DEMOCRATIC REPUBLIC, HUNGARY, POLAND, SOVIET UNION

Observations and proposals for amendments concerning Articles 3(1); 5(1) and 6(3)

The Delegations of the above-mentioned countries are of the opinion that the protection of type faces and their international deposit may have the "raison d'être" only when the type faces are newly created and distinguished by originality, otherwise the protection will not stimulate the creators of type faces but rather will lead to abuses and may even create obstacles to social and economic development of the member countries of WIPO.

It is therefore proposed to amend the Draft Agreement for the protection of type faces (document CT/DC/1) as follows:

1. Article 3(1): introduce the words "new and original" in the second line before the words "type faces";
2. Article 5(1): replace the second and the third lines by the words "the examination as to novelty and originality."
3. Article 6(3): delete in the first line the words "in which originality is a condition of protection."

CT/DC/9
ITALY

May 22, 1973 (Original: French)

Observations and proposal for amendment concerning in particular Articles 2; 6 and 7

1. Purpose of Protection

The Italian Ministry for Commerce and Industry, after having consulted interested parties, has expressed its perplexity at the approval of the articles of the draft Agreement concerning the extension of protection to typewriter type and to machine-readable characters; it has therefore advised the removal from all the articles of the draft Agreement (and in particular from Articles 2 and 6) references to "typewritten and other graphic techniques."

The main reasons for the above proposal are the following:

- (a) The characters used in typographical and offset machines and in photo-typesetting systems cannot be used in office machines and data-processing equipment;
- (b) In view of the fact that office-machine and computer technology develops very rapidly, protection of the kind envisaged would only delay the development of new technologies such as interpretation and the production of characters for use with data-processing systems. At worst the transmission of messages and the reproduction of texts could be seriously hampered.

2. Terms of Protection

The Italian Delegation wishes to point out that the term provided for in Article 7 is too long.

3. "Dies a quo" (point of departure)

The Italian Government wishes also to refer to the proposal submitted to the Geneva Committee of Experts concerning the point of departure of protection or "dies a quo" (see document CT/VI/11, paragraphs 47 and 48).*

CT/DC/10
UNITED STATES OF AMERICA

May 23, 1973 (Original: English)

Proposal for amendment concerning Article 5

The United States Delegation respectfully calls to the attention of the Diplomatic Conference on the Protection of Type Faces the requirement in the United States copyright law that published copies of copyrighted works bear a notice of copyright. This requirement has been in the United States law since 1802. Some sort of notice is, therefore, necessary to obtain protection in the United States. For example, under the Universal Copyright Convention, the requirement is met by a ©, the name of the copyright owner, and the year date of publication. In the recently negotiated Phonograms Convention, the copyright notice on sound recordings includes a special symbol ®.

* The documents of the Series "CT/VI/" are not reproduced in this volume.

If the United States were contemplating the protection of type faces by means of copyright, there would have to be an additional condition of protection in Article 5 to permit a Contracting State (i.e., the United States) to require a copyright notice.

The United States wishes to propose the addition to Article 5 of a new paragraph (3) reading substantially as follows:

"(3) If, as a condition of protecting type faces, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled, with respect to type faces created by residents or nationals of other Contracting States, if all authorized sets of type faces distributed to members of the public bear a notice consisting of the symbol **TF** accompanied by the name of the owner entitled to protection and the year date of the first such publication placed in such a manner as to give reasonable notice of claim of protection."

CT/DC/11
POLAND

May 24, 1973 (Original: French)

Observations and proposals for amendments concerning Articles 3(1); 7(1); 10; 13(1), (2)(a); 16(2); 26(4)

The Delegation of Poland has the following observations to make on the Draft Agreement For the Protection of Type Faces and their International Deposit (document CT/DC/1). In view of the fact that the draft Agreement leaves Contracting States to choose between three legal means of affording this protection, the observations are based on the incorporation in the Agreement of provisions allowing the acquisition of cumulative protection deriving from copyright and industrial design protection.

1. Article 3(1): After the words "for the benefit of the creators thereof or their successors in title," add the words "or legal entities having a right to the type faces."
2. Article 7(1): Replace the words "twenty-five" by "fifteen."
3. Article 10: Replace the existing text by the following:

"Article 10

International Deposit and Recording
in the International Register

(1) Subject to the provision of paragraph (2), the international deposit shall be effected direct with the International Bureau, which shall record it in the International Register in accordance with this Agreement and the Regulations.

(2) The national law of any Contracting State may provide that international deposits by applicants residing in the respective State may be effected through the intermediary of the national Office of that State.

(3) Where the international deposit is effected through the intermediary of a competent national Office within the meaning of paragraph (2), that Office shall indicate the date on which it received the international deposit and shall transmit the said deposit in good time to the International Bureau in the manner provided for in the Regulations."

4. Article 13(1): As a result of the amendment to Article 10 proposed above, add the following at the end of paragraph (1) of Article 12: "or, if the international deposit has been effected through the intermediary of a national Office in accordance with Article 10(2), the date on which that Office received the deposit, provided that the deposit reaches the International Bureau before the expiration of a period of one month following that date."

5. Article 13(2)(a): After the words "three months", add "from the date on which it sent the respective invitation."

6. Article 16(2): After the words "the appropriate fees," add "provided for in their laws for examination, the grant of protection and the renewal thereof..."

7. Article 26(4): At the end of the paragraph, add the following new subparagraph:

"(e) If a working capital fund of sufficient amount can be constituted by borrowing from the reserve fund, the Assembly may suspend the application of subparagraphs (a) to (d)."

CT/DC/12

May 24, 1973 (Original: English)

JAPAN

Observations and proposals for amendments concerning Articles 3(1), (2); 5(2); 6(3)

1. Article 3(1). The Delegation of Japan is in favor of the amendment to this paragraph proposed by the Delegations of the United Kingdom and Canada. However, in view of the wider adherence among the member States of the Berne Convention, to the Rome (1928) and Brussels (1948) Acts, in which Contracting States are not obliged to extend protection to authors who are not nationals but residents of other Contracting States, the following amendment is proposed to the text of the United Kingdom and Canada: delete "residents of other Contracting States by reason only of their having a real and effective industrial or commercial establishment in those States" in the second sentence, and replace it with "not nationals of other Contracting States".

2. Article 3(2). Reference to document CT/V/14, paragraph 23, gives rise to a misinterpretation that Contracting States protecting type faces only by means of copyright provisions are obliged to extend protection to type faces created by persons who are nationals of non-Contracting States party either to the Berne Convention or to the Universal Copyright Convention. The Delegation of Japan would like to seek confirmation that this is not a correct interpretation. Otherwise, we would propose deletion of this paragraph.

3. Article 5(2). It is stipulated in the draft Agreement that the novelty and the originality would be determined by the criteria recognized by the competent professional circles. In Japan, examination of design applications is done by the examiners of the Patent Office who are not bound by any criteria set up by private organizations. This should be left to domestic procedures and practices. Further, in case of protection by the copyright law, we consider that the provision should not be binding on law courts. Therefore, we think that the latter part of Article 5(2), namely "having regard to the criteria recognized by the competent professional circles", should be deleted.

4. Article 6(3). According to this paragraph, if a Contracting State in which originality is a condition of protection wishes not to grant the right defined in paragraph (1) in the case where the protected type faces have not been known to the maker of the reproduction, such State may be obliged to provide to that effect in its national law. In order not to impose such an obligation on Contracting States, it would be advisable to amend this paragraph as follows: "(3) Contracting States in which originality is a condition of protection are not obliged to grant the right defined in paragraph (1) in the case where the protected type faces have not been known to the maker of the reproduction."

CT/DC/13

May 24, 1973 (Original: French)

ITALY

Observations and proposals for amendments concerning Article 7

1. The Italian Delegation considers the term of protection provided for in Article 7 to be too long; in its opinion, the term could be reduced to 15 years with the possibility of a ten-year renewal. This would be very useful to all countries which protect type faces by means of industrial property provisions.

2. As for the point of departure of protection and the application of the Agreement to type faces existing at the time of its entry into force, it would be desirable to insert even an ad hoc provision in the Agreement, for instance by adding a paragraph (3) to Article 7, to the effect that existing type faces cannot be protected under the Agreement; naturally it would be for Contracting States to regulate this in their national laws.

CT/DC/14

May 25, 1973 (Original: English/French)

WORKING GROUP I

Report concerning Article 2(i)

1. The Working Group was set up by the Main Committee on May 24, 1973, to study the definition of type faces set forth in Article 2(i) of the draft Agreement (document CT/DC/1), taking into account the proposals for amendments submitted by the Delegation of Italy relating to Articles 2 and 6 (document CT/DC/9) and the proposal for amendment submitted by the Delegation of Switzerland concerning Article 5 (CT/DC/6) as well as the observations on these points made during the course of the discussions of the Main Committee.

2. The Main Committee appointed the Delegations of Australia, Brazil, Germany (Federal Republic of), Iran, Italy, Japan, Soviet Union, Switzerland, United Kingdom and the United States of America as members of the Working Group.

3. The Working Group met on May 25, 1973.

4. The Working Group elected Mr D.L.T. Cadman (United Kingdom) as Chairman.

5. The Working Group recommends that Article 2(i) be worded as follows:

"(i) "type faces" means sets of designs of:

(a) letters and alphabets as such with their accessories (such as accents, numerals and punctuation marks),

(b) other figurative signs (such as conventional signs, symbols and scientific signs),

(c) ornaments (such as borders, fleurons and vignettes),

which are intended to provide means for composing texts by any graphic techniques. The term "type faces" does not include type faces of a form dictated by purely technical requirements."

6. The Working Group draws the attention of the Main Committee to the need to harmonize the text of Article 6 with that which will be adopted for Article 2(i).

7. One delegation pointed out that in its view the meaning of the words "intended to" in Article 2(i) was not very clear. The Working Group considers that this expression does not concern the specific intention of the creator, and recommends that the attention of the Drafting Committee be drawn to this point.

CT/DC/15

May 25, 1973 (Original: English)

AUSTRALIA

Observations and proposal for amendment concerning Article 6

1. Australia is one of the countries that wishes to preserve the possibility of giving effect to the Agreement by means of its copyright law. Under that law protection, based on originality, would be given against the unauthorized copying (or reproduction) of protected type faces.

2. The concept of originality in the law of Australia and some other countries does not involve any element of knowledge and it is therefore desirable to remove this element from provisions binding on countries that adopt a copyright solution. The amendment therefore deals with the question of knowledge in a separate provision which does not have to be applied by countries adopting a copyright solution.

3. As drafted, the Australian proposal does not affect the application of the substance of Article 6(1)(i) in the case of countries giving protection on the basis of their laws on industrial property.

Article 6Content of Protection

(1) Protection of type faces shall confer on the creator or his successor in title, as the case may be, the right to prohibit:

(i) the making, without his consent, of any reproduction, whether identical or slightly modified, intended to provide means for composing texts by any graphic techniques irrespective of the technical means or material used;

(ii) the commercial distribution or importation of such reproductions without his consent.

(2) (a) Subject to subparagraph (b), the right defined in paragraph (1) applies irrespective of whether or not the protected type faces have been known to the maker of the reproduction.

(b) Contracting States in which originality is a condition of protection are not required to apply subparagraph (a).

(3) The right provided for in paragraph (1) shall also cover any reproduction of type faces obtained by the distortion, by any purely technical means, of the protected type faces, where the essential features thereof remain recognizable.

CT/DC/16

May 26, 1973 (Original: English/French)

WORKING GROUP II

Report concerning the Preamble and Articles 3; 4; 5(2)

1. The Working Group was set up by the Main Committee on May 25, 1973, to study the preamble, and Articles 3, 4 and 5(2) of the draft Agreement (document CT/DC/1), taking into account the proposals for amendments relating to Article 3, submitted by the Delegations of the United Kingdom (document CT/DC/4), Canada (document CT/DC/5), Poland (document CT/DC/11) and Japan (document CT/DC/12), and the proposals for amendments relating to Article 5, submitted by the Delegations of the United States of America (document CT/DC/10) and Japan (document CT/DC/12), as well as the observations on these provisions made during the course of the discussions of the Main Committee.

2. The Main Committee appointed the Delegations of Algeria, Brazil, Canada, France, Germany (Federal Republic of), Japan, Netherlands, Poland, Soviet Union, United Kingdom and the United States of America as members of the Working Group.

3. The Working Group met on May 26, 1973. All members of the Working Group were represented, except for Algeria and Brazil.

4. The Working Group elected Mr. A. Françon (France) as Chairman.

5. The Working Group recommends that the preamble be worded as follows:

"The Contracting States,

Desiring, in order to encourage the creation of type faces, to provide an effective protection thereof,

Conscious of the role which type faces play in the dissemination of culture and of the special requirements which their protection must fulfill,

Have agreed as follows:"

6. The Working Group recommends that Article 3 be worded as follows:

"Article 3

Principle and Forms of Protection

(1) The Contracting States undertake, in accordance with the provisions of this Agreement, to ensure the protection of type faces, by establishing a special national deposit, or by adapting the deposit provided for in their national industrial design laws, or by means of their national copyright provisions. The said means of protection may be cumulative.

(2) In Contracting States which ensure protection by establishing a special national deposit or by adapting their national industrial design laws, the protection of this Agreement shall apply to natural persons or legal entities who are residents or nationals of a Contracting State.

(3) (a) In Contracting States which ensure protection only by means of their national copyright provisions, the protection of this Agreement shall apply to:

(i) creators of type faces who are nationals of one of the Contracting States;

(ii) creators of type faces who are not nationals of one of the Contracting States but whose type faces are published for the first time in that State.

(b) Any Contracting State referred to in subparagraph (a) may assimilate creators of type faces who have their habitual residence or domicile in a Contracting State to creators of type faces who are nationals of that State.

(4) Contracting States shall be obliged to grant the protection afforded to their nationals to all persons who are entitled to claim benefits of this Agreement."

7. The Working Group noted that it might be necessary to add a sentence to Article 3(4) bearing upon the subject of formalities. In this connection, the Working Group took note of the desire of the Delegation of the United States of America that its proposal concerning formalities (document CT/DC/10) be discussed by the Main Committee at its next meeting.

8. The Working Group recommends that the phrase "for the purpose of Article 3(2)" be added at the beginning of the provisions of Article 4.

9. The Working Group recommends that Article 5(2) be worded as follows:

"(2) The novelty and the originality of type faces shall be determined in relation to their style or overall appearance, having regard, if necessary, to the criteria recognized by the competent professional circles."

CT/DC/17

May 28, 1973 (Original: English)

AUSTRALIA

Observations and proposal for amendment concerning Article 6bis (new)

The Australian Delegation is of the view that consideration should be given to the inclusion in the Agreement of a provision enabling Contracting States to make legislative provisions that will ensure that protected type faces are available for use within their territories. The Delegation therefore submits the text of a new article, i.e. Article 6bis, which has been prepared having regard to Article 5 of the Paris Convention.

Article 6bis

Contracting States shall have the right to take legislative measures to prevent abuses which might result from the exercise of the rights provided under this Agreement. The legislative measures shall not, however, prejudice the right of the creator of protected type faces or his successors in title to just remuneration for use of the type faces. Nor shall the protection of type faces under any circumstances be subject to any forfeiture either by reason of failure to work or by reason of the importation of reproductions of the protected type faces.

CT/DC/18

May 28, 1973 (Original: English/French)

SECRETARIAT

Proposals for amendments concerning Articles 23(3); 24(2)(a); 26(3)(c); 30(1); 34; 37(2); 38

At its meeting on May 28, 1973, the Main Committee asked the Secretariat to submit to it proposals for amendments with a view to adapting the draft Agreement in order to:

(a) take into account the fact that the Agreement will not be a Special Agreement within the framework of the Paris Union;

(b) take into account, where necessary, the decisions taken by the Main Committee of the Diplomatic Conference on the Trademark Registration Treaty.

The proposals for amendments appear in this document. Amendments relating solely to drafting do not appear in this document, but will be taken into account in the draft texts which the Secretariat will prepare for the Drafting Committee.

1. Article 23(3) should read as follows:

" (3)(a) Where there are several applicants, they shall appoint a common representative. In the absence of such appointment, the applicant first named in the instrument of international deposit shall be considered the duly appointed representative of all the applicants.

"(b) Where there are several owners of an international deposit, they shall appoint a common representative. In the absence of such appointment, the natural person or legal entity first named among the said owners in the International Register shall be considered the duly appointed representative of all the owners of the international deposit.

"(c) Subparagraph (b) shall not apply to the extent that the owners own the international deposit in respect of different Contracting States."

2. In Article 24(2)(a), item (ix) should be deleted, and item (k) would become item (ix).

3. Article 26(3)(c) should be replaced by a provision with the following wording:

"(4)(a) For the purpose of establishing its contribution as provided in paragraph (3)(a)(v), each Contracting State shall belong to a class, and shall pay its contribution on the basis of a number of units fixed as follows :

Class I	...	25
Class II	...	20
Class III	...	15
Class IV	...	10
Class V	...	5
Class VI	...	3
Class VII	...	1

(b) Unless it has already done so, each Contracting State shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, it must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The contribution of each Contracting State shall be an amount in the same proportion to the total sum to be contributed as the number of its units is to the total of the units of all Contracting States."

Paragraphs (3)(d) and (3)(e) would become paragraphs (4)(d) and (4)(e) respectively, and paragraphs (4), (5) and (6) would become paragraphs (5), (6) and (7) respectively.

4. Article 30(1) should read as follows:

"(1)(a) Subject to subparagraph (b), any State member of either the International Union for the Protection of Industrial Property, the International Union for the Protection of Literary and Artistic Works, or party to the Universal Copyright Convention, may become party to this Agreement by:

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

(b) States which intend to ensure the protection of type faces on their territories by establishing a special national deposit or by adapting the deposit provided for in their national industrial design

laws may only become party to this Agreement if they are members of the International Union for the Protection of Industrial Property. States which intend to ensure the protection of type faces only by means of their national copyright provisions may only become party to this Agreement if they are members of the International Union for the Protection of Literary and Artistic Works or party to the Universal Copyright Convention."

5. Article 34 should be deleted and replaced by the following text:

"Loss of Status of Party to the Agreement

Any Contracting State shall cease to be party to this Agreement when it no longer meets the conditions set forth in Article 30(1)(b)."

6. Article 37(2) should read as follows:

"(2) The Director General shall transmit two copies, certified by him, of this Agreement and the Regulations annexed thereto to the Governments of all the States referred to in Article 30(1)(a) and, on request, to the Government of any other States."

7. The beginning of Article 38 should read as follows:

"The Director General shall notify the Governments of the States referred to in Article 30(1)(a)..."

CT/DC/19

May 29, 1973 (Original: English)

GERMANY (FEDERAL REPUBLIC OF), ITALY, SOVIET UNION, SPAIN, SWITZERLAND

Observations and proposals for amendment concerning Article 36(1)(b)

(1)(a)

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

(2)

Observations

The delegations refer to Article 41 of the Draft TRT Treaty adopted by the Main Committee of the Diplomatic Conference on the Trademark Registration Treaty. They are of the opinion that the above-mentioned Treaty and the Agreement for the Protection of Type Faces and their International Deposit should be unified with regard to the provisions for both official texts.

CT/DC/20

May 30, 1973 (Original: French)

FRANCE, NETHERLANDS, SWITZERLAND

Proposal concerning the Protocol

The States party to this Protocol undertake to provide a minimum term of protection of 25 years for the benefit of persons mentioned in paragraph (1) below:

(1) (a) in States party to this Protocol which ensure the protection of type faces by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws, any natural person who, or legal entity which, is a resident or a national of a State party to this Protocol;

(b) in States party to this Protocol which ensure protection only by means of their national copyright provisions,

(i) creators of type faces who are nationals of a State party to this Protocol;

(ii) creators of type faces who are not nationals of a State party to this Protocol but whose type faces are published for the first time in such a State;

(iii) creators of type faces who are habitually resident or domiciled in a State party to this Protocol, provided the said State applies Article 3(3) (b) of the Agreement.

(2) (a) This Protocol is open for signature by those States which have signed the Agreement. It shall enter into force three months after three States have deposited their instruments of ratification or accession, but not before the Agreement itself enters into force. It may be revised by special conferences of the States party to the Protocol if requested by one-half of those States.

(b) The provisions of Articles 30, 32(2), 34, 35, 36, 37, 38(1), (ii), (iii) and (viii) of the Agreement shall apply mutatis mutandis.

CT/DC/21

May 30, 1973 (Original: English/French)

WORKING GROUP III

Report concerning Articles 3(2), (3), (4), (5) (new); 6(4) (new); 6bis (new); 30(1)

1. The Working Group was set up by the Main Committee on May 28, 1973, to study certain proposals for amendments of the draft Agreement, taking into account the observations on these proposals or on the articles to which they relate, made during the course of the discussions of the Main Committee which met on May 28 and 29, 1973, and of Working Group II, which met on May 26, 1973 (see document CT/DC/16). These proposals were submitted by the Delegations of the United States of America concerning Article 3 or Article 5 (document CT/DC/10), Switzerland relating to Article 6 (document CT/DC/6), Australia for a possible Article 6bis (document CT/DC/17), and by the Secretariat on the subject of Article 30(1) (document CT/DC/18).

2. The Working Group appointed the Delegations of Australia, Brazil, Canada, France, Germany (Federal Republic of), Italy, Mexico, Netherlands, Poland, United Kingdom, Soviet Union, Switzerland, United States of America as members of the Working Group. The International Typographic Association (ATYPI) was invited to participate as an observer.

3. The Working Group met on May 29 and 30, 1973. All members of the Working Group were represented, as was the invited observer.

4. The Working Group elected Mr. E. Ulmer (Germany (Federal Republic of)) as Chairman.

5. The Working Group recommends that Article 3(2) and Article 3(3) should be worded as follows:

"(2) In Contracting States which declare under Article 31 that they intend to ensure protection by establishing a special national deposit or by adapting their national industrial design laws, the protection of this Agreement shall apply to natural persons or legal entities who are residents or nationals of a Contracting State.

(3)(a) In Contracting States which declare under Article 31 that they intend to ensure protection by means of their national copyright provisions, the protection of this Agreement shall apply to:

(i) creators of type faces who are nationals of one of the Contracting States;

(ii) creators of type faces who are not nationals of one of the Contracting States but whose type faces are published for the first time in one of such States.

(b) Any Contracting State referred to in subparagraph (a) may assimilate creators of type faces who have their habitual residence or domicile in a Contracting State to creators of type faces who are nationals of that State."

6. The Working Group recommends that Article 3(4) should be worded as follows:

"(4) Each Contracting State shall be obliged to grant to all natural persons and legal entities entitled to claim the benefits of this Agreement the protection afforded to its nationals according to the kind of protection which such Contracting State declares under Article 31."

7. The Working Group recommends that Article 3 be completed by a new paragraph (5) which should read as follows:

"(5) If a Contracting State referred to in paragraph (3) requires, under its domestic law, compliance with formalities, as a condition of protecting type faces, these should be considered as fulfilled, with respect to type faces whose creators are referred to in paragraph (3), if all authorized type faces distributed to members of the public are accompanied by or, as the case may be, bear a notice consisting of the symbol  accompanied by the name of the owner entitled to protection and the year date of the first such publication placed in such a manner as to give reasonable notice of claim of protection."

8. The Working Group recommends that Article 6 be completed by adding a new paragraph (4) which should read as follows:

"(4) The making of characters of type faces, by a person acquiring type faces, during the ordinary course of the composition of texts, shall not be considered a reproduction within the meaning of paragraph (1)(i)."

9. The majority of the Working Group recommends that a new Article 6bis be added to the Draft Agreement which should read as follows:

"Article 6bis

Contracting States shall have the right to take legislative measures to avoid abuses which might result from the exercise of the exclusive right provided under this Agreement in cases where no other type faces are available for the purpose envisaged. The legislative measures shall not, however, prejudice the right of the creator of protected type faces or his successors in title to just remuneration for use of the type faces. Nor shall the protection of type faces under any circumstances be subject to any forfeiture either by reason of failure to work or by reason of the importation of reproductions of the protected type faces."

10. The Working Group recommends for Article 30(1) the text which is set forth in document CT/DC/18, item 4.

CT/DC/22

May 31, 1973 (Original: English/French)

THE SECRETARIAT

Revised Draft Regulations under the Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the complete revised text of the Draft Regulations under the Agreement for the Protection of Type Faces and their International Deposit prepared to take into account on the one hand the decisions made by the Main Committee concerning the Agreement for the Protection of Type Faces and their International Deposit and, on the other hand, the decisions made with respect to the Regulations under the Trademark Registration Treaty by the Main Committee of the Diplomatic Conference on the Trademark Registration Treaty. It is not reproduced in this volume. In the following, are indicated only the differences between the Text of the Draft (document CT/DC/22) and that of the Regulations adopted by the Diplomatic Conference and reproduced on the odd-numbered pages from page 81 to 145 of these Records.

1. In the Draft, there is a list of rules which does not appear in the Final Text.

2. Rule 1.1. In the Final Text, the word "Vienna" appears before the words "Agreement for the Protection of Type Faces and their International Deposit."

3. Rule 2.2(e). The reference is, in the Draft, to Article 23 2; rather than to Article 25 2.

4. Rule 2.4. The last sentence of this Rule reads, in the Draft, as follows:

"The Administrative Instructions shall also fix the amount of the fee, if any, payable in connection with the filing of general powers of attorney."

5. Rule 2.5(b). The reference is, in the Draft, to Article 23(2) rather than to Article 25(2).

6. Rule 2.5(c). The last sentence of this Rule reads, in the Draft, as follows:

"It shall, as far as the International Bureau is concerned, be effective as from the date of receipt of the said document by that Bureau."

7. Rule 4. In the Draft, there is a Rule 4.2, which appears between square brackets:

[4.2 Associations of Natural Persons or Legal Entities]

(a) Where under the national law of any Contracting State an association of natural persons or legal entities may acquire rights and assume obligations notwithstanding the fact that it is not a legal entity, such association shall have the right to effect international deposits and to own such deposit if, within the meaning of Article 4(2), it is a resident or a national of that State.

(b) References to legal entities, where such references concern them in their capacity of applicants or owners of international deposits, shall be construed as references also to associations referred to in paragraph (a).

(c) The provisions of paragraph (a) shall be without prejudice to the application of the national law in any Contracting State. However, no such State shall refuse or cancel the effects provided for in Article 16 on the ground that the applicant or the owner of the international deposit is an association of the kind referred to in paragraph (a) if, within two months from the date of an invitation addressed to it by the competent Office of that State, the said association files with that Office a list of the names and addresses of all the natural persons or legal entities who or which comprise it, together with a declaration that its members are engaged in a joint enterprise. The said State may, in such a case, consider the said persons or entities as the owners of the international deposit standing in the name of the said association.]

8. Rule 5.1. The wording of this Rule is, in the Draft, as follows:

"5.1 Declaration that the International Deposit is Effectuated Under the Agreement"

The declaration referred to in Article 12(1)(i) shall be worded as follows: 'The undersigned requests that the deposit of the type faces of which a reproduction is enclosed herewith be recorded in the International Register established under the Agreement for the Protection of Type Faces and their International Deposit.' The declaration, however, may be worded differently if it has the same effect."

9. The word corresponding to "representations" reads, in the Draft, as follows: "reproductions."

10. Rule 5.6. The wording of this Rule is, in the Draft, as follows:

"5.6 International Deposit effected through the intermediary of the competent Office of a Contracting State"

The Administrative Instructions shall regulate the tenor of the indications referred to in Article 10(3)."

11. Rule 6.2(a) and (e). The reference is, in the Draft, to Article 12(2)(i) rather than to Article 14(2)(i).

12. Rule 6.3. The beginning of this Rule reads, in the Draft, as follows: "Where a denomination does not relate to all the type faces,...."

13. Rule 8.1(a). In the Draft, at the end of this provision the following words appear between square brackets:

"to prospective applicants, attorneys, patent or trademark agents, and the competent Offices of Contracting States)."

14. Rule 9. The words corresponding to "representation" and "represented" read, in the Draft, as follows: "reproduction" and "reproduced."

15. Rule 11.1. The reference is, in the Draft, to Article 13(2)(c) rather than to Article 15(2)(c).

16. Rule 11.2. The reference is, in the Draft, to Article 10(2) and (3) rather than to Article 12(2).

17. Rule 13.1. The words corresponding to "the contents of which are provided" read, in the Draft, as follows: "whose contents are provided."

18. Rule 14.1(iii). The wording of this Rule is, in the Draft, as follows:

"(i) the name of the creator or an indication that the creator has renounced being mentioned as such,"

19. Rule 14.1(iii). The word corresponding to "representation" reads, in the Draft, as follows: "reproduction."

20. Rule 15.1. The reference is, in the Draft, to Article 15 rather than to Article 17.

21. Rule 16.1(a). The references are, in the Draft, respectively, to Article 18(1) and to Article 16(1) rather than to Article 20(1) and to Article 18(1).

22. Rule 16.1(b). The words corresponding to "if his signature cannot be obtained" read, in the Draft, as follows: "if he is unable to sign."

23. Rule 16.1(c). The reference is, in the Draft, to Article 18(4) rather than to Article 20(4).

24. Rule 16.2(c). The reference is, in the Draft, to Article 18(5) rather than to Article 20(5).

25. Rule 18.2. The reference is, in the Draft, to Article 20(3) rather than to Article 22(3).

26. Rule 19.2. The reference is, in the Draft, to Article 21(4) rather than to Article 23(4).

27. Rule 19.3(a). The reference is, in the Draft, to Article 21(4) rather than to Article 23(4).

28. Rule 23.5(b)(11). The reference is, in the Draft, to Article 26(4) rather than to Article 28(4).

29. Rule 26.1(a). The reference is, in the Draft, to Article 24.5(b) rather than to Article 26.5(b).

CT/DC/23

June 5, 1973 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Vienna Agreement submitted to the Main Committee. It is not reproduced in this volume. The text of the Draft is the same as the Final Text adopted by the Diplomatic Conference and reproduced on the odd-numbered pages from page 11 to page 77 of these Records.

CT/DC/24

June 5, 1973 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Protocol Annexed to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection

Editor's Note: This document contains the text of the Draft Protocol submitted to the Main Committee. It is not reproduced in this volume. Here are reproduced only the differences between the text of this Draft and that of the Protocol adopted by the Diplomatic Conference and reproduced on page 149 of these Records.

1. In the title of the Draft, the word "Annexed" appears after the word "Protocol."
2. Point 1 of the Draft reads as follows:

"1. In derogation of Article 9(1) of the Agreement, the term of protection shall be a minimum of twenty-five years."

CT/DC/25

June 5, 1973 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Regulations submitted to the Main Committee. It is not reproduced in this volume. Apart from the List of Rules which does not appear in the Final Text, the text of this Draft is the same as the Final Text adopted by the Diplomatic Conference (see the odd-numbered pages from page 81 to 145 of these Records).

CT/DC/26

June 7, 1973 (Original: English/French)

THE MAIN COMMITTEE

Draft Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Vienna Agreement for the Protection of Type Faces and their International Deposit submitted to the Plenary. It is not reproduced in this volume. The text of this Draft is the same as the Final Text adopted by the Diplomatic Conference (see the odd-numbered pages from page 11 to page 77 of these Records).

CT/DC/27

June 7, 1973 (Original: English/French)

THE MAIN COMMITTEE

Draft Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection

Editor's Note: This document contains the text of the Draft Protocol submitted to the Plenary. It is not reproduced in this volume. The text of this Draft is the same as the Final Text adopted by the Diplomatic Conference (see page 149 of these Records).

CT/DC/28

THE MAIN COMMITTEE

June 7, 1973 (Original: English/French)

Draft Regulations Under the Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Regulations submitted to the Plenary. It is not reproduced in this volume. The text of this Draft is the same as the Final Text adopted by the Diplomatic Conference (see the odd-numbered pages from page 81 to page 145 of these Records).

CT/DC/29

THE PLENARY OF THE DIPLOMATIC CONFERENCE

June 12, 1973 (Original: English/French)

Text of the Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Vienna Agreement as adopted by the Plenary of the Diplomatic Conference on June 8, 1973, and as presented for signature on June 12, 1973. It is reproduced on the odd-numbered pages from page 11 to page 77 of these Records.

CT/DC/30

THE PLENARY OF THE DIPLOMATIC CONFERENCE

June 12, 1973 (Original: English/French)

Text of the Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection

Editor's Note: This document contains the text of the Protocol as adopted by the Plenary of the Diplomatic Conference on June 8, 1973, and as presented for signature on June 12, 1973. It is reproduced on page 149 of these Records.

CT/DC/31

THE PLENARY OF THE DIPLOMATIC CONFERENCE

June 12, 1973 (Original: English/French)

Text of the Regulations Under the Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Regulations as adopted by the Plenary of the Diplomatic Conference on June 8, 1973. It is reproduced on the odd-numbered pages from page 81 to page 145 of these Records.

DOCUMENTS OF THE SERIES "CT/DC/CR"

(CT/DC/CR/1 to CT/DC/CR/4)

(documents prepared for the Drafting Committee)

LIST OF THE DOCUMENTS

Document Number	Submitted by	Subject
1	The Secretariat of the Conference	Draft Vienna Agreement for the Protection of Type Faces and their International Deposit
2	The Secretariat of the Conference	Draft Protocol Annexed to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection
3	The Secretariat of the Conference	Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit
4	The Secretariat of the Conference	Draft Texts for Articles 4(3) (new); 13(2); 20(3) (first sentence); 21(3); 33(1)(a) (first part) and 33(1)(b) (second sentence)

CT/DC/CR/1

THE SECRETARIAT

June 3, 1973 (Original: English/French)

Draft Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Vienna Agreement prepared for the Drafting Committee. It is not reproduced in this volume. In the following are indicated only the differences between the text of the Draft and that of the Agreement as adopted by the Diplomatic Conference and reproduced on the odd-numbered pages from page 11 to page 77 of these Records.

1. The Draft contains a list of Articles which does not appear in the Final Text.

2. Article 2(1)(a) and (b) reads, in the Draft, as follows:

- "(a) letters and alphabets as such with their accessories such as accents, numerals and punctuation marks,
- (b) other figurative signs such as conventional signs, symbols and scientific signs,..."

3. In the Draft, there are no provisions corresponding to those of Article 4(3) of the Final Text.

4. Article 5(2). The words corresponding to: "if all the copies of the type faces published with the authority of the creator or other owner entitled to protection are accompanied by or, ..." read, in the Draft, as follows: "if all authorized type faces distributed to members of the public are accompanied by or"

5. Article 6(1)(a) and (b), (2)(a) and (b). In the Draft, the reference is to Article 4(1) rather than to Articles 4(1) and 13.

6. Article 3(4). The words corresponding to "elements of type faces" read, in the Draft, as follows: "characters of type faces."

7. Article 13 reads, in the Draft, as follows:

"(1) Any natural person who or legal entity which is a resident or a national of a Contracting State according to the provisions of Article 6 may effect and be the owner of international deposits.

(2)(a) Where under the national law of any Contracting State an association of natural persons or legal entities may acquire rights and assume obligations notwithstanding the fact that it is not a legal entity, such association shall have the right to effect international deposits and to own such deposits if, within the meaning of Article 6(2), it is a resident or a national of that State.

(b) References to legal entities in this Agreement and in the Regulations, where such references concern them in their capacity of applicants or owners of international deposits, shall be construed as references also to associations referred to in paragraph (a).

(c) The provisions of paragraph (a) shall be without prejudice to the application of the national law in any Contracting State. However, no such State shall refuse or cancel the effects provided for in Article 18 on the ground that the applicant or the owner of the international deposit is an association of the kind referred to in paragraph (a) if, within two months from the date of an invitation addressed to it by the competent Office of that State, the said association files with that Office a list of the names and addresses of all the natural persons or legal entities who or which comprise it, together with a declaration that its members are engaged in a joint enterprise. The said State may, in such a case, consider the said persons or entities as the owners of the international deposit standing in the name of the said association."

8. Article 19(2). In the Draft, there are no words corresponding to "of this Agreement."

9. Article 20(3). The first sentence of this Article reads, in the Draft, as follows: "The change in the ownership of the international deposit may relate to all or fewer than all the Contracting States referred to in Article 18(1)."

10. Article 21(3) reads, in the Draft, as follows:

"(3) Withdrawal and renunciation may relate to all or fewer than all the type faces which are the subject of the international deposit, or to their denomination, and to all or fewer than all the Contracting States referred to in Article 18(1)."

11. Article 26(1)(a) and (b). The words: "of representatives" and "The Government of" appear, in the Draft, between square brackets.

12. Article 30(3). The words corresponding to "with the provisions of paragraph (2)" read, in the Draft, as follows: "with paragraph (2)."

13. Article 33(1)(a) and (b). The words corresponding to "the Universal Copyright Convention or to the latter Convention as revised" read, in the Draft, as follows: "the Universal Copyright Convention."

14. Article 41(i) reads, in the Draft, as follows:

"(i) signatures under Article 39(1);...."

CT/DC/CR/2

June 3, 1973 (Original: English/French)

THE SECRETARIAT

Draft Protocol Annexed to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection

Editor's Note: This document contains the text of the Draft Protocol prepared for the Drafting Committee. It is not reproduced in this volume. In the following are indicated only the differences between the text of this Draft and that of the Protocol as adopted by the Diplomatic Conference and reproduced on page 149 of these Records.

1. In the Draft, the title contains the word "Annexed" after the word "Protocol."

2. Point 1 reads, in the Draft, as follows:

"1. The term of protection shall be a minimum of 25 years for the benefit of the natural persons and legal entities mentioned below:

(a) in States party to this Protocol which declare, under Article 34 of the Agreement, that they intend to ensure protection by establishing a special national deposit or by adapting the deposit provided for in their national industrial design laws: natural persons who or legal entities which are residents or nationals of a State party to this Protocol;

(b) in States party to this Protocol which declare, under Article 34 of the Agreement, that they intend to ensure protection by their national copyright provisions:

(i) creators of type faces who are nationals of a State party to this Protocol;

(ii) creators of type faces who are not nationals of a State party to this Protocol but whose type faces are published for the first time in such a State;

(iii) creators of type faces who have their habitual residence or domicile in a State party to this Protocol, provided the said States assimilate, under Article 4(2)(b) of the Agreement, such creators to creators of type faces who are nationals of that State."

3. In point 2(e) of the Draft, there are no provisions corresponding to the second sentence of point 2(e) of the Final Text.

CT/DC/CR/3

June 3, 1974 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit

Editor's Note: This document contains the text of the Draft Regulations prepared for the Drafting Committee. It is not reproduced in this volume. In the following are indicated only the differences between the text of this Draft and that of the Regulations as adopted by the Diplomatic Conference and reproduced on the odd-numbered pages from page 81 to page 145 of these Records.

1. The Draft contains a list of Rules which does not appear in the Final Text.
2. Rules 2.1(c) and 2.2(d). In the Draft, the words "composed of attorneys or patent or trademark agents" and "of attorneys of patent or trademark agents" appear between square brackets.
3. Rule 2.4. The last sentence reads, in the Draft, as follows: "The Administrative Instructions shall also fix the amount of the fee, if any, payable in connection with the filing of general powers of attorney."

4. Rule 2.5(c). The last sentence reads, in the Draft, as follows: "It shall, as far as the International Bureau is concerned, be effective as from the date of receipt of the said document by that Bureau."

5. Rule 5.1. This Rule reads, in the Draft, as follows:

"The declaration referred to in Article 14(1)(i) shall be worded as follows: 'The undersigned requests that the deposit of the type faces of which a representation is enclosed herewith be recorded in the International Register established under the Vienna Agreement for the Protection of Type Faces and their International Deposit.' The declaration may, however, be worded differently if it has the same effect."

6. Rule 8.1. In the Draft, this Rule contains, after the words "by the International Bureau," the following words between square brackets: "to prospective applicants, attorneys, patent or trademark agents, and the competent Offices of Contracting States."

7. Rule 16.1(b). The words corresponding to "if his signature cannot be obtained" read, in the Draft, as follows: "if he is unable to sign."

8. Rule 20.3(b). The words "composed of attorneys or patent or trademark agents but which are not legal entities" appear, in the Draft, between square brackets.

CT/DC/CR/4

June 5, 1973 (Original: English/French)

THE SECRETARIAT

Draft texts for Articles 4(3) (new); 13(2); 20(3) (first sentence); 21(3); 33(1)(a) (first part) and 33(1)(b) (second sentence)

Article 4

"(3)(a) For the purposes of this Agreement, any association of natural persons or legal entities which, under the national law of the State in which it has its headquarters, may acquire rights and assume obligations, notwithstanding the fact that it is not a legal entity, shall be assimilated to a legal entity.

(b) Subparagraph (a) shall be without prejudice to the application of the national law of any Contracting State. However, no such State may deny protection to an association of the kind referred to in subparagraph (a), on the ground that it is not a legal entity if, within two months from the date of an invitation addressed to it by any competent authority in that State, the said association files with that authority a list of the names and addresses of all the natural persons or legal entities constituting it, together with a declaration that its members are engaged in a joint enterprise. In such a case, the said State may protect, in lieu of the said association, the natural persons or legal entities constituting it provided that the said persons or entities fulfil the conditions set forth in paragraph (1) or (2)."

Article 13

"(2)(a) Any association of natural persons or legal entities which, under the national law of the State in which it has its headquarters, may acquire rights and assume obligations, notwithstanding the fact that it is not a legal entity, shall have the right to effect international deposits and to own such deposits if it is a resident or national of a Contracting State.

(b) Subparagraph (a) shall be without prejudice to the application of the national law of any Contracting State. However, no such State shall refuse or cancel the effects provided for in Article 18 with respect to an association of the kind referred to in subparagraph (a) on the ground that it is not a legal entity if, within two months from the date of an invitation addressed to it by the competent Office of that State, the said association files with that Office a list of the names and addresses of all natural persons or legal entities constituting it, together with a declaration that its members are engaged in a joint enterprise. In such a case, the said State may consider the natural persons or legal entities constituting the said association to be the owners of the international deposit, in lieu of the association itself, provided that the said persons or entities fulfil the conditions set forth in paragraph (1)."

Article 20

"(3) The change in the ownership of the international deposit may relate to one or more of the Contracting States referred to in Article 18(1)."

Article 21

"(3) Withdrawal and renunciation may relate to a part only of the type faces which are the subject of the international deposit, or to their denomination, and to one or more of the Contracting States referred to in Article 18(1)."

Article 33

"(1)(a) Subject to subparagraph (b), any State member of either the International Union for the Protection of Industrial Property or the International Union for the Protection of Literary and Artistic Works, or party to the Universal Copyright Convention or to the latter Convention as revised, may become party to the Agreement by:

...

(b) ... States which intend to ensure the protection of type faces by their national copyright provisions may only become party to this Agreement if they are either members of the International Union for the Protection of Literary and Artistic Works or party to the Universal Copyright Convention or to the latter Convention as revised."

**VERBATIM AND SUMMARY
MINUTES**

PLENARY OF THE VIENNA DIPLOMATIC CONFERENCE ON INDUSTRIAL PROPERTY

President: Mr. F. SCHÖNHERR (Austria)

Vice-Presidents: Mr. M. A. OZÓRIO DE ALMEIDA (Brazil)

Mr. F. W. SIMONS (Canada)

Mr. E. TUXEN (Denmark)

Mr. Y. RIZK (Egypt)

Mr. D. M. SEARBY (United States of America)

Mr. E. TASNÁDI (Hungary)

Mr. P. ARCHI (Italy)

Mr. S. SASAKI (Japan)

Mr. G. E. LARREA RICHERAND (Mexico)

Mr. J. CRESPIN (Senegal)

Mr. P. BRAENDLI (Switzerland)

Mr. Y. MOROZOV (Soviet Union)

Secretary General: Mr. A. BOGSCH (WIPO)

Assistant Secretary General: Mr. J. VOYAME (WIPO)

First Meeting

*Thursday, May 17, 1973,
morning*

Mr. BODENHAUSEN (Director General of WIPO):

1.1 Mr. Federal President, Your Excellencies, Honorable Delegates, Ladies and Gentlemen, I have the honor to declare the Vienna Diplomatic Conference on Industrial Property open. The Conference is honored by the presence of His Excellency the Federal President of the Republic of Austria and, at his request, I will now ask him to address the meeting.

1.2 Mr. Federal President, may I call upon you to take the floor.

Mr. JONAS (Federal President, Austria):

2.1 Mr. Director General, Ladies and Gentlemen, it was almost exactly one hundred years ago, on May 1, 1873, that the 5th World Exhibition was opened, an Exhibition which was to strengthen at the international level the links between States in the economic, industrial and technical fields. It was also the occasion for re-thinking the question of the expediency of internationalizing industrial property rights. Austrian circles were therefore inspired with the idea of holding an international congress to discuss the whole question of patents within the framework of the World Exhibition. This proposal found general favor and was translated into reality. Thus, in August 1973, the congress was held in the Jury Pavillon of the grounds of the World Exhibition.

2.2 Without undue presumption, I think we may say in the circumstances that Austria was the first to take the initiative in the supranational establishment of the protection of industrial property. This marked the start of brisk activity in the negotiating field, which was later to lead to the creation of a considerable number of agreements. In the forefront of this development came the Paris Union Convention of 1883, within the framework of which other special Unions have been created, including a special Union for the inter-

national registration of marks established under the Madrid Agreement of 1891. A number of revision conferences have from time to time adapted the various treaties to changing circumstances. New treaties were also concluded, such as the Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, in Nice in 1957. Developments in the field reached a culminating point in 1967 with the conclusion of the Convention Establishing the World Intellectual Property Organization.

2.3 Ladies and Gentlemen, rapid economic expansion linked with an ever closer involvement of States on a worldwide scale is creating the need for the further development of those treaties. Although the Madrid Marks Agreement has undoubtedly proved a success, certain shortcomings cannot be overlooked. The proposed draft Agreement for the international registration of marks is intended to correct existing deficiencies and make working procedures more uniform, thereby enhancing its attraction for as many States as possible.

2.4 Another task devolving upon the Conference opening today is the proposed creation of an Agreement for the Protection of Type Faces. There is as yet no adequate protection for these, and so it would seem desirable to provide a special industrial property right also in their case. The need for such protection has become greater, particularly in the light of the new techniques that are making it considerably easier to copy printed characters. The new treaty will therefore fill a gap in the industrial property rights system.

2.5 In conclusion, Ladies and Gentlemen, I should like to express my pleasure that the World Intellectual Property Organization has accepted the invitation of the Austrian Federal Government to hold its Conference in Vienna. This invitation stresses the interest which Austria has always traditionally shown in industrial property matters. May I, in the name of the Austrian people, greet all our guests from far and near. It is our hope that, apart from your work at the Conference, you will also be able to take the opportunity to see some of the many natural beauties of our country and to participate in some of the cultural and artistic events that Vienna in particular, and Austria in

Editor's Note: These verbatim minutes have been published in the Records of the Vienna Diplomatic Conference on the Trademark Registration Treaty, 1973 (pages 317 to 330), and are reproduced here as they stand.

general, have to offer. I trust, Ladies and Gentlemen, that the deliberations of the Conference will be so fruitful and so profitable that the great expectations of all participants will be fulfilled. My best wishes for the success of the Conference.

Mr. BODENHAUSEN (Director General of WIPO):

3. I now call upon His Excellency the Federal Minister of Trade and Industry, Mr. Staribacher.

Mr. STARIBACHER (Minister for Trade and Industry, Austria):

4.1 Mr. Federal President, Mr. Director General, Ladies and Gentlemen, the protection of industrial property is a two-way protection operating, on the one hand, for the entrepreneur and, on the other, for the consumer. For the entrepreneur it offers protection against unfair competition; for the consumer it affords protection against misleading and dishonest practices—a sound basis on the whole, I believe, for mutual confidence in business relations. In the light of the vast supply of goods on the market today, trademark protection is a guide to the consumer, facilitating his choice, or even—I might almost say—making it possible for him to choose in the first place. The most remarkable example in this respect is the "declaration of goods" which we now operate in Austria on a voluntary basis. So far, regulations concerning television sets, radios, tape cassettes, sound recorders and dishwashers have been issued, and others are in preparation.

4.2 The protection of industrial property is however closely connected with technical and economic development and, as a result, the corresponding agreements often have to be amended or replaced. The scope of activity of our industrial property department is considerable for a small country like Austria—a fact which I should particularly like to emphasize. We have about 3,000 national and approximately 10,000 international trademark applications, not all of which, admittedly, are accepted for registration but which all are subjected to examination.

4.3 However, it is not only the protection of trademarks that plays an important part in our country, but also the question of the granting of patents and patent procedure, and it is our hope that the European patent granting procedure (the forthcoming conference on the subject will take place this autumn in Munich) will provide a positive solution for Austrian problems as well. As a participant in the Munich negotiations, Austria will submit appropriate proposals as to how the facilities of the Austrian Patent Office can contribute to this important work. I am hopeful and indeed convinced that the response in Munich will be positive and that a positive decision will be taken.

4.4 At the same time, the Republic of Austria is supporting international cooperation in the field of patents in yet another way, by setting up the International Patent Documentation Center. A year ago, on May 2, 1972, I had the great honor of signing, together with the Director General of WIPO, Professor Bodenhausen, the agreement concerning the establishment of the International Patent Documentation Center here in Vienna. In the meantime, the Center has started operating and has signed cooperation agreements with a number of countries. By the end of the year, at the latest, it will have registered and processed the data of 25 countries.

4.5 We should also like to make the information and experience of our Patent Office accessible to industry as well, and thus make it possible, with the introduction of an amendment to the Patent Law, to obtain in future information on prior art with the help of patent documents. We believe that this service and the documentation center already mentioned are of great importance to industry.

4.6 Last, but not least, we are particularly concerned that Austria's intellectual potential should be more to the benefit of economic progress and that it should be increasingly used. It is therefore our intention to create an advisory service for both patent applicants and inventors which, in

common with the Federal Chamber of Commerce, will be designed to help the promotion and exploitation of inventions.

4.7 As you see, Ladies and Gentlemen, we attach great importance to the protection of industrial property, and in particular to that of patents, trademarks, etc., and that is why we are particularly happy that this important Conference of WIPO is taking place in Austria, and here in Vienna. It is a great honor for the Austrian Patent Office, and for industrial property protection in Austria, that you have accepted the invitation of our Federal Government. I wish this Conference every success, and hope (since my duties as Minister for Trade and Industry make me responsible for tourism as well) that you will be able to enjoy the many tourist attractions of this city and take part in the cultural and social events, and thus make a small contribution yourselves to the promotion of tourism in Austria. I wish this Conference every success and I wish you all a pleasant stay in Austria.

Mr. BODENHAUSEN (Director General of WIPO):

5.1 Your Excellencies, Ladies and Gentlemen, it is a great honor for us that the President of the Republic of Austria should have shown his interest in our work and in industrial property in general by his presence here today and by the words he has addressed to us on this occasion. I should like to express our deep gratitude to him and to the Minister for Trade and Industry, Mr. Staribacher. We particularly value such encouragement in the performance of the frequently difficult tasks we have to carry out.

5.2 We are particularly happy—and I believe I may say so for all of us here—to find ourselves in industrial property circles in this city of Vienna, which, like Austria itself, has always known how to combine tradition and progressiveness with rare felicity. It is this progressiveness that has allowed Vienna, as the Federal President has reminded us, to become the place where for the first time the idea of international cooperation in the field of patents was discussed, discussions which led 10 years later to the adoption of the Paris Convention for the Protection of Industrial Property. It is this same spirit of progressiveness which has brought us all here today to discuss the three new international instruments which will add the illustrious name of Vienna to the list of cities that have been the birthplaces of our conventions, treaties and agreements. All of which proves how indebted we are to the Government of the Republic of Austria for its generous invitation and how grateful to the Austrian authorities for the care they have taken and the attention they have devoted to the preparation of our Diplomatic Conference and for their hospitality, which is, as ever, on the grand, imperial scale.

5.3 The three Diplomatic Conferences that will meet here in the forthcoming weeks, each dealing with its own particular subject, have only this in common: the fact that they were all prepared meticulously by many committees of governmental experts assisted by numerous representatives of intergovernmental and non-governmental organizations. It is a pleasure to find a great number of these experts here in this room, but, whether they be here or not, I should like to thank them most sincerely on behalf of the Organization I represent for their assistance to the Secretariat, for without such assistance it would not be possible to envisage with any optimism the outcome of the last round of discussions that will take place during this Conference. I am also very glad to note the presence of the numerous delegations sent to Vienna by the interested States and that of the representatives of many intergovernmental and non-governmental organizations. Their competence, their experience and their willingness to cooperate at the international level will, I am convinced, enable the Conference to achieve results that will represent a new step forward in the development of industrial property. May I extend my warmest wishes for the success of the Vienna Diplomatic Conference on Industrial Property. Thank you.

5.4 The session will be suspended for five minutes to allow the Austrian authorities to leave. I would ask the

delegates, however, to remain seated since the meeting will continue immediately afterwards. Thank you. The meeting is suspended for five minutes.

[Suspension]

Mr. BODENHAUSEN (Director General of WIPO):

5.5 Ladies and Gentlemen, the session will now continue. Please have before you document W/DC/2 *, which is the draft agenda of this meeting. You will see that item 3 of the agenda is the election of the President of the Vienna Conference. Are there any proposals? The Delegation of France has the floor.

Mr. PALEWSKI (France):

6. Mr. Chairman, the Delegation of France has the honor to propose Professor Schönherr as President of the Conference.

Mr. BODENHAUSEN (Director General of WIPO):

7. Are there any other proposals? The Delegation of the Soviet Union has the floor.

Mr. MOROZOV (Soviet Union):

8. The Delegation of the Soviet Union seconds with pleasure the proposal of the Delegation of France. Thank you.

Mr. BODENHAUSEN (Director General of WIPO):

9. The Delegation of the United States of America has the floor.

Mr. GOTTSCHALK (United States of America):

10. The Delegation of the United States is proud to second the distinguished recommendation of our wise colleague, France.

Mr. BODENHAUSEN (Director General of WIPO):

11. Thank you. The Delegation of Iran has the floor.

Mr. HEDAYATI (Iran):

12. Thank you, Mr. Chairman, for allowing me to take the floor. On behalf of the Delegation of Iran, I should like to second the proposal already made by my French colleague. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director General of WIPO):

13. Thank you. The Delegation of the Federal Republic of Germany has the floor.

Mr. KRIEGER (Federal Republic of Germany):

14. The Delegation of the Federal Republic of Germany welcomes the proposal submitted by the honorable Delegate of France and supports the proposal for the chair of this Conference. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director General of WIPO):

15. Thank you. Are there any other proposals? The Delegation of Italy wishes to speak.

* Document W/DC/2

Draft Agenda

presented by the Director General of WIPO

1. Opening of the Vienna Conference by the Director General of WIPO
2. Address by the Representative of the Republic of Austria
3. Election of the President of the Vienna Conference
4. Adoption of the Agenda (see the present document)
5. Adoption of the Rules of Procedure (see document W/DC/3)
6. Election of the Vice-Presidents of the Vienna Conference
7. Election of the members of the Credentials Committee
8. Consideration of the report of the Credentials Committee
9. Consideration and adoption of the Final Act of the Vienna Conference
10. Closing of the Vienna Conference by its President

Promptly after the closing of the Vienna Diplomatic Conference on Industrial Property, 1973, all participants will assemble and the Delegations having the right to sign will have an opportunity to sign the Final Act and the instruments adopted by each of the three Diplomatic Conferences.

Mr. ARCHI (Italy):

16. The Delegation of Italy has the honor to support the proposal made by the Delegation of France and seconded by the other delegations. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director General of WIPO):

17. The Delegation of Senegal has the floor.

Mr. CRESPIN (Senegal):

18. Thank you, Mr. Chairman. The Delegation of Senegal would like to associate itself with the proposal of the distinguished Delegate of France and would ask that Professor Schönherr be elected by acclamation. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director General of WIPO):

19. Thank you. Before proceeding with the election by acclamation, I should like to ask whether there are any other proposals. Are there any objections to the proposal of the Delegation of France, seconded by a number of other delegations? I see there are no objections. I therefore note that Professor Schönherr, Head of the Austrian Delegation, has been elected President of the Conference, and I invite him to take the Chair.

Mr. SCHÖNHERR (President of the Conference):

20.1 Ladies and Gentlemen, I am deeply moved by the decision that has just been taken by this assembly. For someone who has devoted a great deal of his work to the subject of industrial property and has put his heart and soul into the task, it is a great moment to be called upon to chair a conference as important as ours. It is an honor, a great honor, and at the same time a heavy charge, and I have reason—we all have reason—to be pleased that we will have the assistance of the wise and experienced team composed of the Director General of WIPO, Professor Bodenhausen, the Deputy Directors General, Dr. Bogsch and Professor Voyame, and all their collaborators who have prepared the documents for this Conference so well. It is comforting to see in the list of participants, and partly in this room, so many distinguished figures in the intellectual property field, many of whom—I am proud to say—are my friends.

20.2 I would therefore ask you, Ladies and Gentlemen, to devote all your efforts, all your experience and all your enthusiasm to the work that awaits us. Certainly, each of us will have to try to forget some of the peculiarities of his own national law because, after all, we are here to create an international instrument—or, rather, three international instruments. If the spirit of international co-operation prevails throughout our discussions, we can be sure that by the Tuesday after Whitsun we shall have taken a giant step forward toward achieving the aim that is so dear to all of us: improving the protection of intellectual property throughout the world. Thank you.

20.3 Gentlemen, we now come to the next item on the agenda, that is, item 4: "Adoption of the Agenda," which is still document W/DC/2. I would like to ask whether anybody in this meeting has any objections to the agenda as it is before you? As I see no objection, I think the agenda, document W/DC/2, is unanimously adopted by this assembly.

20.4 The next item on the agenda is the adoption of the Rules of Procedure, that is, document W/DC/3.** There is one written

** The draft of the Rules of Procedure is, with the exception of Rule 36, the same as the text as adopted.

The text of Rule 36 in the Draft is as follows:

"Rule 36. Required Majorities

"(1) Adoption of any treaty and of any regulations thereunder or of any other international instrument shall require a majority of two-thirds of the Member Delegations present and voting in the final vote in a Plenary.

"(2) Any other decisions in a Plenary and, subject to Rule 34, all decisions in any other body shall require a simple majority of the Member Delegations present and voting."

proposal by the Netherlands for an amendment to Rule 36.* I don't know if all the delegates have this amendment, so it would be wise to read it aloud. Rule 36 deals with the required majorities and the Delegation of the Netherlands proposes the following new version of paragraph (1): "Adoption of any instrument in the nature of an addition or other amendment to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks shall require that no State party to the Agreement vote against the adoption of the new instrument in the final vote in the Plenary." In the case of the adoption of that paragraph, the existing paragraphs (1) and (2) would become paragraphs (2) and (3). I think we should restrict the discussion to the first paragraph. Is there anybody in this meeting to support the proposal of the Netherlands? The Delegate of the Netherlands, of course, but I want to know if another delegation would second the proposal of the Netherlands. Maybe the Delegate of the Netherlands would be kind enough to explain the purpose of his amendment.

Mr. VAN WEEL (Netherlands):

21.1 Thank you, Mr. President. We have some difficulties with Rule 36 in its present wording. Rule 36 deals with the required majorities and states at present that the Treaty, the Regulations and any other international instrument shall be adopted by a two-thirds majority. Our difficulty is, the following: we are going to be faced with the problem of the diplomatic instrument concerning the International Classification of the Figurative Elements of Marks. As you know, there are two possible instruments: a new Agreement or an Additional Act to the Nice Agreement. Should the latter solution be adopted, we wonder whether it is acceptable that this Protocol should be adopted by a two-thirds majority whereas revision of the Nice Agreement itself would require unanimity. In this context, I should like to recall the Rules of Procedure of the Stockholm Conference, where a similar situation arose and we accepted a text for Rule 36 [37] of the Stockholm Rules of Procedure that took account of that situation. I should like to read that Rule, which states, *inter alia*: "Adoption of any revision or new instrument (Protocol or Additional Act) concerning the Berne, Paris, Madrid TM..., Conventions and Agreements, respectively, shall require that no State party to the Convention or Agreement vote against the adoption of the revision or of the new instrument in the final vote of the competent plenary meeting."

21.2 In our view, the situation is the same as it was in Stockholm and that is why we want to keep the unanimity rule which is required also for the Additional Protocol of existing Agreements. That is the reason for which we made the proposal you have just read. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

22.1 Thank you. Any comments? Ladies and Gentlemen, it seems that this proposal is a bit too complicated to be decided on the spot.

22.2 We have the next item on the agenda. The next item is the election of the Vice-Presidents of the Vienna Conference and the election of the members of the Credentials Committee. As you know, it is one of the tasks of the President to

* Document W/DC 8

Rules of Procedure

Amendments proposed by the Netherlands

Rule 36: Required Majorities

Insert a new paragraph (1):

"(1) Adoption of any instrument in the nature of an addition or other amendment to the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks shall require that no State party to the Agreement vote against the adoption of the new instrument in the final vote in the Plenary."

The existing paragraphs (1) and (2) become paragraphs (2) and (3), the new paragraph (2) being amended as follows:

"(2) Adoption of any treaty and of any regulations thereunder or of any international instrument *other than that mentioned in paragraph (1)* shall require..."

propose a list of candidates for those positions. Such a list has been prepared on the suggestion of Professor Bodenhausen and Dr. Bogsch and has been circulated to some of the Heads of Delegations. So I would propose that we suspend the meeting for, let's say, quarter of an hour, half an hour, and I would like to ask the Heads of Delegations to go over to the *Neuer Saal* to discuss the proposals made for the officers of this Conference

22.3 The meeting is therefore suspended for a quarter of an hour and the Heads of Delegations are kindly requested to go over to the *Neuer Saal* to discuss items 5 and 6 of the agenda. Thank you.

[Suspension]

22.4 Ladies and Gentlemen, we are going back to item 5 of the agenda: "Adoption of the Rules of Procedure." I hope you had occasion to think over the amendment made by the Delegation of the Netherlands, and I would ask if—let's make it the other way round—I would like to ask if anybody is against the amendment proposed by the Netherlands. I repeat, is any delegation opposed to the adoption of the amendment presented by the Delegation of the Netherlands? As I see no objection, I declare that the Rules of Procedure, with the amendment proposed by the Netherlands, are accepted. **

** Document W/DC 9.

Rules of Procedure

*Adopted by the Vienna Diplomatic Conference
on Industrial Property, 1973,
meeting in plenary, on May 17, 1973*

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22.5 So let's now go on to item 6 of the agenda: "Election of the Vice-Presidents of the Vienna Conference." After consultation with the Heads of Delegations, the following list is presented to this assembly. I shall not read the names

of the Vice-Presidents, but only the names of the countries in the alphabetical order according to the French language. So, I beg to propose as Vice-Presidents members of the following Delegations: Argentina, Canada, Denmark, Egypt,

[Footnote continued]

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- Rule 52: Signature of the Final Act

Chapter I: Objective, Composition and Bodies

Rule 1: Objective

(1) The objective of the Vienna Diplomatic Conference on Industrial Property, 1973 (hereinafter referred to as "*the Vienna Conference*"), is to provide the framework within which the following three Diplomatic Conferences (hereinafter referred to as "*Diplomatic Conference(s)*") will meet:

- (i) the Diplomatic Conference on the Trademark Registration Treaty,
- (ii) the Diplomatic Conference on the Protection of Type Faces,
- (iii) the Diplomatic Conference on the International Classification of the Figurative Elements of Marks.

(2) The term "*Conference(s)*," as hereinafter used, shall, unless otherwise expressly indicated, include both the Vienna Conference and the Diplomatic Conferences.

Rule 2: Composition

(1) Each Conference shall consist of Delegations (see Rule 4) of the States members of the World Intellectual Property Organization (WIPO) or of the International Union for the Protection of Industrial Property ("Paris Union") or of the International Union for the Protection of Literary and Artistic Works ("Berne Union"). Subject to Rule 35(2) and (3), only the said Delegations shall have the right to vote. They are referred to hereinafter as "*the Member Delegations*."

(2) Delegations of other States (hereinafter referred to as "*Observer Delegations*") and representatives of intergovernmental and non-governmental organizations (hereinafter referred to as "*Observer Organizations*") may, as specified in these Rules, participate in the Vienna Conference and that or those Diplomatic Conferences to which they were invited by the Director General of WIPO.

(3) The Delegation of any State member of WIPO or of the Paris or the Berne Union may, for the purposes of any of the Conferences, register as an observer and if so registers it shall be treated as an Observer Delegation.

(4) The term "*Delegation(s)*," as hereinafter used, shall, unless otherwise expressly indicated, include both Member Delegations and Observer Delegations. It does not include the representatives of Observer Organizations.

(5) The Director General of WIPO and any other official of WIPO designated by him may participate in the discussions of each Conference as well as in any body thereof and may submit in writing statements, suggestions and observations to such Conference and any body thereof.

Rule 3: Competence and Bodies

(1) The Vienna Conference, meeting in Plenary, shall be competent for:

- (i) adopting and amending these Rules,
- (ii) adopting any final act of the Vienna Conference,
- (iii) dealing with all other matters referred to it by these Rules or appearing on its agenda.

(2) Each Diplomatic Conference, meeting in Plenary, shall be competent for:

- (i) adopting the treaty, agreement or other instrument referred to in its agenda, and any regulations under such treaty, agreement or other instrument,
- (ii) adopting any recommendation or resolution whose subject matter is germane to the treaty, agreement or other instrument on its agenda,
- (iii) dealing with all other matters referred to it by these Rules or appearing on its agenda.

(3) Each Conference shall have such Committees and Working Groups as shall be established in accordance with these Rules.

(4) Each Conference shall have a Secretariat provided by WIPO in cooperation with the host Government.

Chapter II: Representation

Rule 4: Representation of Governments

(1) Each Delegation shall consist of one or more delegates and may include alternates and advisors. Each Delegation shall have a Head of Delegation.

(2) The term "delegate" or "delegates," as hereinafter used, shall, unless otherwise expressly indicated, include both member delegates and observer delegates. It does not include representatives of Observer Organizations.

(3) Each alternate or advisor may act as delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

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

Rule 6: Credentials and Full Powers

(1) Each Member Delegation shall present credentials. Each Member Delegation duly accredited to the Vienna Conference shall be considered to be accredited also to each Diplomatic Conference, provided that if any Member Delegation expresses the wish that it should not be considered as a Member Delegation in any of the Diplomatic Conferences, it shall not be treated as a Member Delegation of that Diplomatic Conference.

(2) Full powers shall be required for signing the international instrument adopted by a Diplomatic Conference. Such powers may be included in the credentials.

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

Rule 7: Letters of Appointment

(1) Each Observer Delegation shall present a letter or other document appointing the delegate or delegates as well as any alternate and any advisor. Such letter or document shall be signed as provided in Rule 6(3) or by the Ambassador accredited to the Government of the Republic of Austria or the Head of Mission accredited to the United Nations or to the United Nations Agencies in Vienna or Geneva.

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

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 should be presented to the Secretary General of the Vienna Conference not later than at the time of the opening of that Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7 and shall report to the Vienna 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 Vienna Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the vote on the adoption of the treaties, agreements or other instruments by the various Diplomatic Conferences.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives shall be entitled to participate provisionally.

Chapter III: Committees and Working Groups

Rule 11: Credentials Committee

(1) The Vienna Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of 11 members elected by, and from among, the Member Delegations of the Vienna Conference, meeting in Plenary.

(3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Main Committees

(1) Each Diplomatic Conference shall have a Main Committee.

(2) Each Member Delegation of a Diplomatic Conference shall be a member of its Main Committee.

(3) The Officers of a Main Committee shall be elected from among its members by the Plenary of its Diplomatic Conference.

(4) Each Main Committee shall establish draft texts which it shall submit to the Plenary of its Diplomatic Conference.

Rule 13: Drafting Committees

(1) Each Diplomatic Conference shall have its own Drafting Committee.

(2) Each Diplomatic Conference, meeting in Plenary, shall elect, from among its Member Delegations, the members of its Drafting Committee.

United States of America, Hungary, Italy, Japan, Philippines, Senegal, Switzerland and Soviet Union. Is anybody in this meeting against this proposal? So it seems that the proposed twelve Vice-Presidents are unanimously elected by this

(Footnote continued)

- (3) Each Drafting Committee shall have 9 members.
- (4) The officers of each Drafting Committee shall be elected by, and from among, its members.
- (5) Each Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee or Plenary of its Diplomatic Conference. It shall coordinate and review the drafting of all texts adopted, and shall report as appropriate either to the Main Committee or to the Plenary of its Diplomatic Conference.

Rule 14. Working Groups

- (1) Each Main Committee may establish such Working Groups as it deems useful.
- (2) The members of each Working Group shall be elected by, and from among, the members of the Main Committee which has established it.
- (3) The officers of each Working Group shall be elected by, and from among, its members.

Rule 15. Steering Committee and Joint Meetings

- (1) The Steering Committee of the Vienna Conference shall consist of the President of the Vienna Conference, the Presidents of the three Diplomatic Conferences, the Chairman of the Credentials Committee, and the Chairmen of the three Main Committees and of the three Drafting Committees.
- (2) The Steering Committee shall meet from time to time to review the progress of the Conferences and to make decisions for furthering such progress, including in particular decisions on the coordination of the meetings of all Plenaries, Committees and Working Groups.
- (3) The Steering Committee shall propose for adoption by the Vienna Conference, meeting in Plenary, the text of any final act of such Conference.
- (4) Committees or Working Groups of different Diplomatic Conferences may decide to meet in joint meetings. Any joint meeting shall elect a chairman from among the members of the Committees or Working Groups.

Chapter IV: Officers

Rule 16. Officers

- (1) The Vienna Conference shall, in a Plenary meeting presided over by the Director General of WIPO, elect the President of that Conference, and, in a Plenary meeting presided over by its President, elect 12 Vice-Presidents of the Vienna Conference.
- (2) Each Diplomatic Conference shall, in a Plenary meeting presided over by the Director General of WIPO, elect the President of that Conference, and, in a Plenary meeting presided over by its President, elect three Vice-Presidents as well as a Chairman and three Vice-Chairmen of the Main Committee of that Conference.
- (3) The President of the Vienna Conference shall act as Chairman of the Steering Committee. The Presidents of the three Diplomatic Conferences shall act as Vice-Chairmen of the Steering Committee.
- (4) The Credentials Committee and the three Drafting Committees shall each elect a Chairman and two Vice-Chairmen.
- (5) Precedence among the Vice-Presidents and among the 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.

Rule 17. Acting President or Acting Chairman

- (1) If any President or Chairman is absent from any meeting of a body, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among all the Vice-Presidents or Vice-Chairmen present, has precedence over all the others.
- (2) If both the President and the Vice-Presidents or both the Chairman and the Vice-Chairmen are absent from any meeting of a body, an Acting President or Chairman, as the case may be, shall be elected by that body.

Rule 18. Replacement of President or Chairman

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

Rule 19. Presiding Officer Not Entitled to Vote

- No Presiding Officer (President or Chairman) shall vote. Another member of his Delegation may vote for his State.

Chapter V: Secretariat

Rule 20. Secretariat

- (1) The Director General of WIPO shall, from among the staff of WIPO designate the Secretary General of the Vienna Conference, the Assistant Secretary General of that Conference, the Secretary of the Credentials Committee, and a Secretary for each Diplomatic Conference who shall act

assembly and the Delegations concerned are kindly requested to give to the Secretary General, Dr. Bogsch, the names of the persons who will act as Vice-Presidents of this Conference.

as the Secretary of its Plenary, Main Committee, Drafting Committee and Working Groups. The Secretary General shall serve as the Secretary of the Steering Committee.

(2) The Secretary General shall direct the staff required by each Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction, and distribution of the required documents; the interpretation of oral interventions; the preparation and circulation of the verbatim and summary minutes (see Rule 46); and the general performance of all other work required for each Conference.

(4) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of each Conference; the publication of the verbatim and summary minutes of each Conference after the Vienna Conference; and the distribution of the final documents of each Conference to the participating Governments.

Chapter VI: Conduct of Business

Rule 21. Quorum

(1) A quorum shall be required in any Plenary meeting of a Conference and shall be constituted by a majority of the Member Delegations of that Conference.

(2) A quorum shall not be required in the meetings of Committees and Working Groups.

Rule 22. General Powers of the Presiding Officer

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 and over the maintenance of order thereat. The Presiding Officer may propose the limiting of time to be allowed to speakers, the limiting of the number of times each delegation may speak on any question, the closing of the list of speakers, or the closing 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.

Rule 23. Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 24 and 25, 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 24. Precedence

(1) Member Delegations may be accorded precedence over Observer Delegations, and either may be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a Committee or Working Group may be accorded precedence for the purpose of explaining the conclusions arrived at by his Committee or Working Group.

(3) The Director General of WIPO or his representative may be accorded precedence for making observations or proposals relevant to the subject under discussion.

Rule 25. Points of Order

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 overruled by a majority of the Member Delegations present and voting. A Member Delegation rising to a point of order may not speak on the substance of the matter under discussion.

Rule 26. Time Limit on Speeches

Any meeting may 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 Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 27. Closing of List of Speakers

During the discussion of any matter, the Presiding Officer may announce the list of speakers and, with the consent of the meeting, declare the list closed. He may, however, accord the right of reply to any Delegation if a speech delivered after he has declared the list closed makes it desirable.

Rule 28. Adjournment of Debate

During the discussion of any matter, any Member Delegation may move the adjournment of the debate on the question under discussion. In

22.6 We now go to item 7 of the agenda: "Election of the Members of the Credentials Committee." For the Credentials Committee there have been proposed: Austria, Bulgaria, Belgium, Ireland, Ivory Coast, Finland, Iran, Mauritania,

[Footnote continued]

addition to the proposer of the motion, one Member Delegation may speak in favor of the motion, and two against, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time to be allowed to speakers under this Rule.

Rule 29: Closure of Debate

Any Member Delegation may at any time move the closure of the debate on the question under discussion, whether or not any other Delegation has signified its wish to speak. Permission to speak on the motion for closure of the debate shall be accorded to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote. If the meeting is in favor of closure, the Presiding Officer shall declare the debate closed. The Presiding Officer may limit the time to be allowed to Member Delegations under this Rule.

Rule 30: 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. The Presiding Officer may limit the time to be allowed to the speaker moving the suspension or adjournment.

Rule 31: Order of Procedural Motions

Subject to Rule 25, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) to suspend the meeting,
- (b) to adjourn the meeting,
- (c) to adjourn the debate on the question under discussion,
- (d) to close the debate on the question under discussion.

Rule 32: Basic Proposals and Proposals for Amendments

(1) Document TRT/DC/1, 1.Add., and 2.Rev., CT/DC/1 and 2, and CMF/DC/2, 3 and 4, respectively, shall constitute the basis of the discussions in the three Diplomatic Conferences ("basic proposals").

(2) Any Member Delegation may propose amendments, provided that if they relate to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, they may be made only by a Member Delegation of a State party to the said Nice Agreement.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body. The Secretariat shall distribute copies to the participants represented on the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than 5 p.m. on the day before that meeting. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available only on the day it is considered.

Rule 33: Withdrawal of Procedural Motions and Proposals for Amendments

Any procedural motion and proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before discussion on it has commenced, provided that the motion or proposal has not been amended. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

Rule 34: Reconsideration of Matters Decided

When any matter has been decided by a body it may not be reconsidered by that body, unless so decided by a two-thirds majority of the Member Delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

Chapter VII: Voting

Rule 35: Voting Rights

(1) Subject to paragraphs (2) and (3), each Member Delegation shall have one vote in each body of which it is a member. A Member Delegation may represent and vote for its own Government only.

(2) In the Plenary or in the Main Committee of a Diplomatic Conference, the right to vote on the adoption of any instrument in the nature of a special agreement under the Paris Convention for the Protection of Industrial Property shall be limited to States members of the Paris Union.

(3) In the Plenary or in the Main Committee of the Diplomatic Conference on the International Classification of the Figurative Elements of Marks, the right to vote on the adoption of any instrument in the nature of an addition or other amendment to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks shall be limited to States members of the Union created by the said Nice Agreement.

Monaco, Syria and the United Republic of Tanzania. Is there any objection to those proposals? No. It seems that I can therefore declare that the members of the Credentials Committee have also been elected unanimously.

Rule 36: Required Majorities

(1) Adoption of any instrument in the nature of an addition or other amendment to the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks shall require that no State party to the Agreement vote against the adoption of the new instrument in the final vote in the Plenary.

(2) Adoption of any treaty and of any regulations thereunder or of any international instrument other than that mentioned in paragraph (1) shall require a majority of two-thirds of the Member Delegations present and voting in the final vote in a Plenary.

(3) Any other decisions in a Plenary and, subject to Rule 34, all decisions in any other body shall require a simple majority of the Member Delegations present and voting.

Rule 37: Meaning of the Expression "Member Delegations Present and Voting"

For the purpose of these Rules, the expression "Member Delegations present and voting" means Member Delegations present and casting an affirmative or negative vote. Member Delegations which abstain from voting shall be considered as not voting.

Rule 38: Method of Voting

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

(2) Voting shall be by show of hands unless any Member Delegation, seconded by another 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 Member Delegation whose name is drawn by lot by the Presiding Officer.

Rule 39: 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 Member Delegations to explain their votes, either before or after the voting. The Presiding Officer may limit the time to be allowed for such explanations.

Rule 40: Division of Proposals

Any Member Delegation, seconded by another Member Delegation, may move that parts of the basic proposals or of proposals for amendments be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division 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.

Rule 41: Voting on Proposals for Amendments

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendments 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 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 proposal or text shall not be put to the vote. If one or more proposals for amendments 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 42: Voting on Proposals on the Same Question

Subject to Rule 41, where two or more proposals relate to the same question, the body concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 43: Elections on the Basis of Proposals Made by the President of the Vienna Conference

The President of the Vienna Conference may propose a list of candidates for all positions which are to be filled through election by that Conference or the Plenary of any of the three Diplomatic Conferences.

Rule 44: Equally Divided Votes

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

(2) If a vote is equally divided on a proposal for election of officers, the vote shall be repeated until one of the candidates receives more votes than any of the others.

Chapter VIII: Languages and Minutes

Rule 45: Languages of Oral Interventions

(1) Subject to paragraphs (2) and (3), oral interventions shall be in English, French, Russian or Spanish, and interpretation shall be provided for by the Secretariat in the other three languages.

22.7 Now, as the items of the agenda that could be dealt with this morning have been disposed of, the Plenary of the Vienna Conference is suspended until further notice. Thank you. Ladies and Gentlemen.

*Second Meeting
Friday, June 8, 1973,
afternoon*

Mr. SCHÖNHERR (President of the Conference):

23. Ladies and Gentlemen, I'd be honored to open the second Plenary meeting and I would suggest that we take first item 8 of the agenda: "Consideration and Adoption of the Report of the Credentials Committee." Would the Chair-

[Footnote continued on 1 end]

(2) Oral interventions in the Drafting Committees and any Working Group may be required to be made either in English or in French, and interpretation into the other language shall be provided by the Secretariat.

(3) Any Member Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention into English or French. In such a case, the Secretariat shall provide for interpretation from English or French into the other three languages referred to in paragraph (1), or the other language referred to in paragraph (2), as the case may be.

Rule 46: Verbatim and Summary Minutes

(1) Provisional verbatim minutes of the meetings of the Plenaries and provisional summary minutes of the meetings of the Main Committees shall be drawn up by the International Bureau of WIPO and shall be made available as soon as possible after the closing of the Vienna Conference to all participants, who shall, within two months from the making available of such minutes, inform that Bureau of any suggestions for changes in the minutes of their own interventions.

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

Rule 47: Languages of Documents and Minutes

(1) Any proposal shall be filed in English or French with the Secretary of the body concerned.

(2) All documents shall be distributed in English and French.

(3) (a) Provisional verbatim and 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 of WIPO.

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

Chapter IX: Open and Closed Meetings

Rule 48: Meetings of Plenaries and of the Main Committees

The meetings of the Plenary of the Vienna Conference and of all Plenaries and Main Committees of the Diplomatic Conferences shall be open to the public unless the body concerned decides otherwise.

Rule 49: Meetings of Other Committees and of Working Groups

The meetings of all Committees other than the Main Committees and of Working Groups shall be open only to the members of the body and the Secretariat.

Rule 50: Observers

(1) Any Observer Delegation and any representative of any intergovernmental organization may, upon the invitation of the Presiding Officer, participate without the right to vote in the deliberations of the Plenary and the Main Committee of any Diplomatic Conference to which it has been invited.

(2) The representative of any non-governmental organization may, upon the invitation of the Presiding Officer, make oral statements in the Main Committee of any Diplomatic Conference to which it has been invited.

Chapter XI: Amendments to the Rules of Procedure

Rule 51: Amendments to the Rules of Procedure

The Vienna Conference, meeting in Plenary, may amend these Rules by a decision of a majority of the Member Delegations present and voting.

Chapter XII: Signature of the Final Act

Rule 52: Signature of the Final Act

The Final Act of the Vienna Conference shall be open for signature by any Member Delegation.

man of the Credentials Committee, His Excellency Mr. Huybrecht, Ambassador of Belgium in Vienna, kindly present his report. The Delegate of Belgium has the floor.

Mr. HUYBRECHT (Belgium):

24. Thank you, Mr. President. I wanted to inform the Conference that the Credentials Committee met twice to examine the credentials, full powers and letters of appointment presented by Member Delegations, Observer Delegations and representatives of Observer Organizations. It published an interim report after its first meeting and authorized during its second meeting, held this morning, that its final report to this Plenary meeting (contained in document W/DC/26. *

* Document W/DC/26

Credentials Committee

Report

1. The Credentials Committee, hereinafter referred to as "the Committee," established by the Vienna Diplomatic Conference on Industrial Property, hereinafter referred to as "the Vienna Conference," on May 17, 1973, held two meetings on May 22 and on June 8, 1973.

Composition

2. The Delegations of the following States members of the Committee participated in the work of the Committee: Austria, Belgium, Bulgaria, Cameroon, Finland, Iran, Ireland, Ivory Coast, Monaco, Syrian Arab Republic, United Republic of Tanzania.

Opening of the meetings

3. The President of the Vienna Conference, Mr. F. Schonherr (Austria), opened the first meeting.

Officers

4. On the proposal of the Delegation of Ireland, seconded by the Delegation of Iran, the Committee unanimously elected H.E. Mr. R. Huybrecht (Belgium) as Chairman and H.E. Mr. I. Popov (Bulgaria) and Mr. F. Sangaret (Ivory Coast) as Vice-Chairman.

Examination of credentials, etc.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Vienna Conference on May 17, 1973, hereinafter referred to as "the Rules of Procedure," the Committee examined the credentials, full powers, letters and other documents presented for the purposes of Rules 6 and 7 by the Member Delegations, the Observer Delegations and the representatives of the Observer Organizations.

Member Delegations

6. The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials and, as appropriate, the full powers presented by the Member Delegations of the following States members of the World Intellectual Property Organization (WIPO) or of the International Union for the Protection of Industrial Property (Paris Union) or of the International Union for the Protection of Literary and Artistic Works (Berne Union): Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Cuba, Czechoslovakia, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Holy See, Hungary, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Senegal, South Africa, Soviet Union, Spain, Sweden, Switzerland, Syrian Arab Republic, United Kingdom, United Republic of Tanzania, United States of America, Yugoslavia.

7. The Committee noted that, in accordance with established practice, powers of representation in principle implied, in the absence of any express reservation, the right of signature, and that it should be left to each Member Delegation to interpret the scope of its credentials.

8. The Committee, taking into account the wishes expressed by the Member Delegations of Belgium, Denmark and the United Republic of Tanzania in accordance with Rule 6(1) of the Rules of Procedure, noted that the said Delegations were not to be treated as Member Delegations in the Diplomatic Conference on the Protection of Type Faces, and that the Delegation of the United Republic of Tanzania was not to be treated as a Member Delegation in the Diplomatic Conference on the International Classification of the Figurative Elements of Marks.

Observer Delegations

9. The Committee found in due form, in accordance with Rule 7(1) of the Rules of Procedure, the letters or other documents of appointment presented by the Observer Delegations of the following States:

(a) members of WIPO or of the Paris Union or of the Berne Union, having registered as Observers as provided for in Rule 2(3) of the Rules of Procedure: Lebanon, Turkey;

(b) invited to participate in the Vienna Conference as observers: Ecuador, Republic of Korea, Venezuela.

should be prepared in accordance with the Rules of procedure. The final decision on these credentials and other documents falls within the competence of the Vienna Conference, meeting in Plenary. The Credentials Committee expresses the hope that the Conference will be able to take its final decision by adopting the report hereby submitted to it. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

25.1 Do all the Delegates have the paper W DC/26? Yes.

25.2 Are there any observations on the report of the Credentials Committee? No observations so far. So I would propose the following resolution of this meeting as suggested by the Chairman of the Credentials Committee: the Conference may wish to record its final decision under Rule 9, paragraph (2), of the Rules of Procedure on the credentials, full powers, letters or documents presented by deciding to adopt the report of the Credentials Committee. Are there any observations on the proposed decision? So it seems that this suggestion by the Chairman is adopted unanimously. Any contrary votes? No.

25.3 Now, let us go back to item 6 of the agenda: "Election of the Vice-Presidents of the Vienna Conference." Contrary to expectations, two Delegations, namely, those of Argentina and the Philippines, have unfortunately been unable to participate in the Conference after having been elected on the opening day to fill posts as Vice-Presidents of the Conference. The Conference may wish to complete its list of officers by holding new elections for these two posts. After consultation with the Bureau and some delegations, I beg to suggest that the Heads of the Delegations of Brazil and Mexico be elected as if they had been included in the original list presented to the Conference under Rule 43 of the Rules of Procedure. I now repeat the suggestion to elect the Heads of the Delegations of Brazil and Mexico as Vice-Presidents of the Conference. Are there any comments on this proposal? Any objections? No. Then it seems that the election of the two Vice-Presidents is unanimously adopted.

[Footnote continued:]

Observer Organizations

10. The Committee found in due form, in accordance with Rule 7(2) of the Rules of Procedure, the letters or other documents of appointment presented by the representatives of the following intergovernmental and non-governmental organizations invited to participate in the Vienna Conference: United Nations Industrial Development Organization (UNIDO), African and Malagasy Industrial Property Office (OAMPI), Benelux Trademark Office (BENELUX), International Institute for the Unification of Private Law (UNIDROIT), Council of Europe (CE), Commission of the European Communities (CEC), Council of Ministers of the European Communities (CMEC), Council for Mutual Economic Assistance (CMEA), American Bar Association (ABA), International Association for the Protection of Industrial Property (AIPP), International Literary and Artistic Association (ALAI), Asian Patent Attorneys Association (APAA), American Patent Law Association (APLA), International Typographic Association (ATYPI), Bundesverband der Deutschen Industrie e.V. (BDI), Council of European Industrial Federations (CEI), The Chartered Institute of Patent Agents (CIPA), Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht e.V. (DVGR), European Computer Manufacturers Association (ECMA), European Federation of Agents of Industrial Property (FEMIP), International Federation of Patent Agents (FICPI), International Chamber of Commerce (ICC), The Institute of Trademark Agents (ITMA), International League Against Unfair Competition (ILC), The New York Patent Law Association (NYPLA), Pacific Industrial Property Association (PIPA), Patent and Trademark Institute of Canada (PTIC), Trademarks, Patents and Designs Federation (TPDFed), Union of European Patent Agents (UNEPA), Union of Industries of the European Community (UNICE), Union des Fabricants (UNIFAB), The United States Trademark Association (USTA).

Report

11. The Committee authorized the Secretariat to prepare the report of the Committee for submission to the Vienna Conference, and authorized the Chairman to examine and to report to the Vienna Conference upon any further credentials which might be presented by delegations after the closing of its second meeting.

25.4 Now, let us return to item 7 of the agenda, that is, the election of the members of the Credentials Committee. The Delegation of Mauritania, whose participation in the Conference was announced in advance, has unfortunately been unable to be present. Mauritania was elected a member of the Credentials Committee on the opening day of the Conference. May I suggest that the Delegation of Cameroon be elected to fill this position. I informed the Chairman of the Credentials Committee of this suggestion for this morning's meeting of the Committee, and I understand that the Committee provisionally coopted the Delegation of Cameroon, which therefore took part in its work this morning. So decided.

25.5 For vacancies similarly occurring among the officers and members of committees to be elected by the Plenaries of the Diplomatic Conference, I'd like to make the following suggestions: President of the Plenary of the Diplomatic Conference of the Trademark Registration Treaty—Senegal; member of the Drafting Committee of the Diplomatic Conference for the Trademark Registration Treaty—Iran; Vice-President of the Plenary of the Diplomatic Conference on the International Classification of the Figurative Elements of Marks—Syria; Syria should also be a member of the Drafting Committee of the Diplomatic Conference on the International Classification of the Figurative Elements of Marks. Are there any comments on these proposals? None, as I see. Any objections? None. Then I declare that the proposals for the elections of other officers of this Conference are unanimously adopted. Thank you very much. Thus, Senegal will replace the Congo in the TRT; then Syria will replace the Lebanon in the International Classification of the Figurative Elements of Marks; and in the Drafting Committee, Syria will replace Egypt.

25.6 Are there any other suggestions? If not, then I declare the Plenary meeting closed. Thank you, Ladies and Gentlemen.

*Third Meeting
Friday, June 8, 1973,
evening*

Mr. SCHÖNHERR (President of the Conference):

26.1 Ladies and Gentlemen, I open the Plenary session of the Vienna Diplomatic Conference.

26.2 We have to deal with the Final Act of the Vienna Conference. I hope you have before you document W DC/21* with a note by the Secretariat pertaining to the Final Act of the Vienna Conference. I hope all of the delegates have had the opportunity to study this document. I would ask the delegates if they have any comments on it. I see no comments are forthcoming. Can I then take it that the

* Document W DC/21

Final Act

In accordance with the decisions of the Executive Committee of the International (Paris) Union for the Protection of Industrial Property and of the Coordination Committee of the World Intellectual Property Organization in September 1972, following preparations by member States of the Paris Union and by the International Bureau of the World Intellectual Property Organization, and on the invitation of the Federal Government of Austria, the Vienna Diplomatic Conference on Industrial Property was held from May 17 to June 12, 1973.

The Diplomatic Conference on the Trademark Registration Treaty, the Diplomatic Conference on the Protection of Type Faces and the Diplomatic Conference on the International Classification of the Figurative Elements of Marks were held within the framework of the Vienna Conference and adopted respectively the Trademark Registration Treaty, the Vienna Agreement for the Protection of Type Faces and their International Deposit and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

The said international instruments were opened for signature at Vienna on June 12, 1973.

draft Final Act is accepted by this assembly? Are there any objections? No. The Final Act as contained in document W/DC/21 is therefore unanimously adopted.

26.3 May I recall that we shall meet for the closing session in this hall, in the *Festsaal*, next Tuesday at 4 p.m., and before closing I would like to wish you a very good restful weekend and hope to see most of you next Tuesday.

26.4 Thank you. This session is closed.

*Fourth meeting, Last,
Tuesday, June 12, 1973,
afternoon*

Mr. SCHÖNHERR (President of the Conference):

27.1 I have the honor to open the last meeting of the Plenary of the Vienna Diplomatic Conference.

27.2 Do any of the delegates wish to speak? The Delegate of Switzerland has the floor.

Mr. BRAENDLI (Switzerland):

28.1 Thank you, Mr. President. As I said at the Friday meeting, the Delegation of Switzerland has been holding in reserve the thanks which it now proposes to convey to the Austrian Government. I should like first to thank the Austrian Government for having organized the Conference so well, enabling it to take place under very favorable conditions in a building full of historic significance. On behalf of the Swiss Government, I wish to convey to it the expression of our profound gratitude. Vienna, city of monuments, music and light, was the ideal place to receive us, and it did so in style. Its name will from now on be associated with progress in the field of industrial property.

28.2 I should also like, Mr. President, to subscribe to the kind words addressed on Friday to you and to the various elected Presidents and Chairmen. Your task, Ladies and Gentlemen, was a delicate one, but you carried it out with great competence and verve and thus facilitated the accomplishment of our work. We are pleased to report that the Swiss Delegation has appreciated the high quality of the Conference, and for this we are indebted to you all, Ladies and Gentlemen. We congratulate you and are very grateful to you. I wish also to convey our congratulations and thanks to Director General Bodenhausen and his assistants in the Secretariat and the staff of WIPO. The quality of the work accomplished by WIPO at Vienna shows us once again how valuable it is to be able to rely on highly qualified people on occasions like this.

28.3 In conclusion, Mr. President, I particularly wish to express thanks in the name of all the Swiss Delegation to the members of the Austrian Delegation, who have helped us, with a courtesy and kindness characteristic of the Viennese, to discover the beauties of their capital and the charm of the surrounding area. Thanks to your touchingly warm welcome, we shall take back to Switzerland a happy memory of our stay in this wonderful Danubian capital. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

29. Thank you very much, Mr. Braendli. The next speaker is the Delegate of Norway.

Mr. NORDSTRAND (Norway):

30. Mr. President, on behalf of the Delegations of the Nordic countries, I would like to thank the Austrian Government and the Austrian Delegation for their hospitality and for having made our stay in Vienna the most charming experience. Our thanks also go to the Director General of WIPO and his staff for having prepared and administered the Conference so well that the timetable could be kept precisely and for their well-known excellent service offered to the parti-

cipants of the Conference. The proceedings deserve our gratitude for the proficient leadership from which they have benefited; and to all who have taken part in this Conference we extend our warmest thanks for their goodwill and their readiness to compromise, which has contributed so much to the good results and the success of this Conference. Thank you.

Mr. SCHÖNHERR (President of the Conference):

31. Thank you, Mr. Nordstrand. The Delegate of the United Kingdom has the floor.

Mr. ARMITAGE (United Kingdom):

32. Thank you, Mr. President. I think a great deal can be said at this Conference but the one thing we haven't said and we deliberately left unsaid until this afternoon was a word of thanks to our hosts, and I would like to underline what has been said so eloquently by Mr. Braendli. We have enjoyed at this Conference enormous benefits from the Austrian Government, the city of Vienna, the Patent Office and, if I may say so, Sir, with all respect, from yourself as a most efficient and amiable Chairman. With those things in combination, how could we have failed? And indeed we didn't fail—but of course it is easier for some Conferences than for others. I remember on Friday Mr. Haddrick from the Australian Delegation saying that the Conference on the Figurative Elements of Marks had been greatly assisted by the excellent weather which they had enjoyed in the first week or so of the Conference. It will not of course escape notice that by the time we got our teeth into the TRT the weather had become decidedly more changeable. However, we have emerged with what I hope is a trio of very acceptable arrangements and agreements and we for our part in this Delegation hope that these agreements will be widely accepted and that they will place the name of Vienna firmly on the industrial property map. We are most grateful to our hosts and we do wish them all the very best wishes. Thank you.

Mr. SCHÖNHERR (President of the Conference):

33. Thank you, Mr. Armitage. The Delegate of the Soviet Union has the floor.

Mr. MOROZOV (Soviet Union):

34.1 Mr. President, Ladies and Gentlemen, we would like to join in the thanks which have already been expressed by previous speakers concerning the kind hospitality of the Austrian Government, our colleagues in our neighbor Delegation—the Austrian Delegation—and the Secretariat, which, it seems, has spent a very pleasant weekend trying to find our mistakes, and everyone else who worked to ensure the successful progress of this Conference. By everyone, I mean all staff of the International Bureau, all staff who worked on the instruction of the Austrian Government, the interpreters and, indeed, everyone who has in some degree contributed to the success of this Conference.

34.2 Mr. President, it seems to us that Austria, again in this particular case, has remained faithful to its tradition of being a leader in the field of industrial property, and it has given us great pleasure to see this Conference taking place in Vienna, the capital of Austria.

Mr. SCHÖNHERR (President of the Conference):

35. Thank you, Mr. Morozov. The Delegate of Italy has the floor.

Mr. ARCHI (Italy):

36. Although I arrived in Vienna only a few days ago, I wish nevertheless to thank the Austrian Government for the hospitality it has extended to this Conference, which has lasted for 28 days and achieved results that are noteworthy in every respect. The Italian Government, which I have the honor to represent here, is very grateful to you, Mr. President, as the representative of Austria, for the welcome you have extended to us at this Industrial Property Conference. The Italian Delegation is appreciative of what you have done to contribute to the success of the Conference, and I wish to thank also the International Bureau of WIPO,

its Director General and Deputy Directors General for what they too have contributed to the success of this meeting. We shall have excellent memories of this Conference, which will rightly take the name of Vienna Conference. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

37. Thank you, Ambassador Archi. The Delegate of the Federal Republic of Germany.

Mr. SCHIRMER (Federal Republic of Germany):

38. Mr. President, we are now at the end of this very important Vienna Conference on Industrial Property. We appreciate very much the intensive and excellent work of all the parties to the Conference. We welcome without any reservations the Agreements on the Classification of the Figurative Elements of Marks and for the Protection of Type Faces. As far as the TRT is concerned, you know, Mr. Chairman, that not all the wishes of my Delegation have been fulfilled, but we are of the opinion that the TRT is now a reasonable compromise for all interested countries. We see in this instrument the first step towards a further development and we are convinced that we are on the right road. I would like to add my thanks to those of the previous speakers, extending them especially to you, Mr. President, to the Director General, and to the Secretariat, who have helped to such a large extent to make this meeting a success, and last, but not least, to the Austrian Government and the city of Vienna for making our stay here so very pleasant. Thank you.

Mr. SCHÖNHERR (President of the Conference):

39. Thank you very much, Mr. Ambassador. The Delegate of Australia has the floor.

Mr. PETERSSON (Australia):

40. Thank you, Mr. President. With some presumption we speak not only for ourselves but for the right-hand corner of down-under, many of whom are unfortunately not with us. We want to join the other delegations in praise of this Conference, this city and our wonderful Austrian hosts. None of this Delegation has had a previous opportunity to really know your city: we mainly know of it through reading about it as a city of beauty, history and the stuff of which dreams are made. It is not often that expectations are completely fulfilled as they have been on this occasion. It is sad that within a few hours we will be leaving this city we have enjoyed so much. We have learnt that much of the charm of this city derives from the charm of its people, their great hospitality and friendliness. Our gratitude to our Austrian host is unbounded. You have made this an unforgettable experience. Finally, I want to congratulate you, Mr. President, the Presidents of the Plenaries, the Chairmen of the Committees and of the Working Parties, the Secretariat and the translators. Your efforts have made these treaties a tribute to international cooperation. We wish them well. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

41. Thank you very much, Mr. Petersson. The Delegate of the United States has the floor.

Mr. GOTTSCHALK (United States of America):

42.1 Mr. President, it is difficult, having heard these tributes, to do more than acknowledge as best we can on behalf of the Delegation of the United States that we join most heartily in these heartfelt expressions of appreciation and gratification. We for our part are more than pleased with the results of this very successful Diplomatic Conference. We are convinced, as never before, that the spirit of cooperation which has been manifest throughout this Conference has great implications for now and for the future. We are more firmly convinced than ever that in the work we have performed here we have laid new foundations on which to build in the future. Vienna is a city of history. It is good to know that in our own way we are, I believe, contributing to its history and to its world fame as the centre of intellectual and cultural advancement. The international efforts which have been under way in the field of intellectual property

must certainly be one of the mainstays of civilization, as we know, and certainly it is increasingly our purpose on behalf of the United States to join increasingly in these many and varied efforts.

42.2 It is very difficult indeed to overstate the important role which has been played in all of these activities by the people participating in this Conference, by their Governments, and most particularly by those people who have carried special responsibilities for advancing the fortunes of intellectual property. It is difficult to overstate in terms of praise what has been accomplished by the Secretariat of WIPO. To Professor Bodenhausen, Dr. Bogsch, their colleagues and all of the staff of WIPO we owe a great deal not only in connection with the specific matter which has been the subject of consideration at this Conference but for the very existence of an ongoing mechanism to bring about consideration of many matters of importance in conferences such as this and in meetings that are in progress consistently around the year to advance the cause and the interest of intellectual property protection throughout the world. It is with great pleasure that we support these activities and shall continue to do so to the best of our ability, but obviously these efforts must be supplemented as they have been ideally supplemented at this Conference by the dedication and the hospitality, cordial warmth and support of the Austrian Government and you, Mr. President, and all of the city of Vienna, which has contributed so much.

42.3 All of us who have had a part in this Diplomatic Conference will take away from Vienna far more than just satisfaction at the accomplishments that have resulted from our efforts here together. We will all, I know, carry away from Vienna memories which will remain with us always and new inspiration for the future. We are truly grateful, truly appreciative and more than ever dedicated to cooperation and to the causes in which we share so fully. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

43. Thank you, Mr. Gottschalk. The Delegate of South Africa has the floor.

Mr. WELMAN (South Africa):

44. Mr. President, the South African Delegation is grateful for this opportunity to underline the sentiments expressed by previous speakers and to express its own appreciation to the Austrian Government for the magnificence and friendly way in which the delegates to this Vienna Diplomatic Conference have been received and entertained during their stay in the beautiful city of Vienna. Also we'd avail ourselves of this opportunity to thank all those assistants who arranged receptions for the delegates to make their stay more pleasurable here. To the Director General, his aids and staff our congratulations on the excellent way in which all arrangements for the speedy and successful completion of this important Conference were carried out. Your contribution, Mr. President, and that of the Chairmen of the Main Committees, Working Groups and other Committees can't sufficiently be praised in a short address such as this. Lastly, my personal thanks to the Austrian Delegation for what they have done to make our stay here pleasurable and for giving me an opportunity to visit their Trademarks Office. In years to come, when my staff speak of the Vienna Diplomatic Conference, I shall be proud to be able to say I was there.

Mr. SCHÖNHERR (President of the Conference):

45. Thank you, Mr. Welman. The Delegate of the Netherlands has the floor.

Mr. VAN WIJL (Netherlands):

46. Thank you, Mr. President. The Netherlands Delegation joins earlier speakers in extending its compliments to the Austrian Government. It too has admired the perfect organization of the Conference and enjoyed its stay in Vienna, one of the most interesting cities in the world. It thanks the Austrian Government for its warm welcome, and yourself, Mr. President, for the way in which you presided over the

Conference. Finally, it hopes that the agreements which came into being in the course of the Conference will contribute to the international development of industrial property. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

47. Thank you, Mr. van Weel. The Spanish Delegation has the floor.

Mr. FERNÁNDEZ-MAZARAMBROZ (Spain):

48. Mr. President, the Spanish Delegation also wishes to join the other delegations in expressing its gratitude to the Austrian Government and its various authorities, which have taken pains to create a suitable moral climate for the holding of this Conference. We wish to convey our appreciation of the many attentions which we have enjoyed and opportunities which have been given us of visiting its palaces, its reception rooms and other places of leisure. This Conference has created a moral climate which will remain indelibly in our memories, but in addition a physical climate has developed which is also very congenial and which to us, a tourist country, is explained by the striking attractiveness of the tourist-oriented streets of this city. We feel that the name of Vienna has taken its place among the names of the great treaties, especially those concerning intellectual property, and it will be remembered in the same way as those other great treaties which are present in every mind. Finally, we wish to thank the senior officers of WIPO, all its staff and all those whose efforts contributed to the successful running of the Conference and who satisfied in full measure whatever needs we felt. Neither must we forget to mention the hard task which fell to the lot of the interpreters, and for which I convey my own personal thanks. That is all, Mr. President. Thank you.

Mr. SCHÖNHERR (President of the Conference):

49. Thank you, Mr. Fernández-Mazarambroz. The Delegate of Egypt has the floor.

Mr. SHAHED (Egypt):

50. Thank you, Mr. President. On behalf of my country, Egypt, I find myself unable to find more suitable words than those spoken by the previous honorable delegations. So I have simply to say that I associate myself with all of them in thanking and expressing my gratitude to the Austrian Government and to Professor Bodenhausen and all the members of WIPO and all delegations who took part in this great Conference. Thanks to their collaboration and good work, the Conference has been able to achieve very considerable results. Thanks again to you, Mr. President, and to you all.

Mr. SCHÖNHERR (President of the Conference):

51. Thank you, Mr. Shahed. The Delegate of Luxembourg has the floor.

Mr. HOFFMANN (Luxembourg):

52. At the end of this Conference and on behalf of Luxembourg, I wish to subscribe to the kind words expressed by the other delegations and convey once again my warmest thanks. These thanks are addressed first and foremost to the Austrian authorities, who made every possible effort to enable us to carry out our task under optimum conditions and to make our lengthy stay in Vienna particularly enjoyable. They are also addressed to all those who, in whatever capacity, took an active part in the fulfillment of our task. A great deal of intellectual and physical effort, together with considerable willpower and a spirit of compromise, were needed to achieve the aims assigned to the Conference within the framework of the scheduled program. We have taken an important step, and it is now up to each of us to maintain the effort in order that the work we have started may be completed within a reasonable time by the ratification of the various instruments. After this formal closing ceremony, I shall leave Vienna with a feeling of sadness, but it is my hope that I shall have the opportunity to return from time to time. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

53. Thank you very much, Mr. Hoffmann. The Delegate of France has the floor.

Mr. PALEWSKI (France):

54. At this stage of the meeting, Mr. President, there is a need for brevity in our expressions of thanks. Yet I should not like to give the impression that my words are in any way lacking in warmth and sincerity. I shall say quite simply that our hosts have positively indulged us during our stay and that our work, greatly facilitated by those who assisted us, should be considered an important step forward in the protection of intellectual property. Of course, the problems with which we are constantly faced in a situation of perpetual international change, and which arise not only in technical research and its application but also in business methods, are there to show us that we shall still have to make considerable efforts in a great many fields. May future conferences have the same success as the one which has just ended here in Vienna, and may the cities which will do us the honor of receiving us be able to say that they have done at least as well as Vienna did. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

55. Thank you very much, Mr. Palewski. The Delegate of Bulgaria has the floor.

Mr. SOURGOV (Bulgaria):

56.1 Thank you, Mr. President. In addition to what I have already said during the last Plenary meeting, I would like once again to express the gratitude of the Bulgarian Delegation to the Government of Austria for creating such a good atmosphere for the work undertaken at the Vienna Diplomatic Conference.

56.2 Mr. President, on behalf of the Bulgarian Delegation, I would like to thank you and your collaborators, who have organized our work so well throughout the month. Thanks to your efforts, our work has been crowned with success. I would like to emphasize once more that the establishment of these three instruments during the Vienna Conference is an important contribution to subsequent cooperation among the peoples of the world. Whilst expressing our gratitude to the Austrian Government, I would like especially to thank the Mayor of Vienna, who created good working conditions for the Vienna Conference. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

57. Thank you, Mr. Sourgov. The Delegate of Japan has the floor.

Mr. SASAKI (Japan):

58. Thank you, Mr. President. This important Diplomatic Conference on Industrial Property is now closing and our Delegation would like to extend its most heartfelt gratitude to the Government of Austria, which has invited us to this Conference in Vienna. Our Delegation would also like to express its gratitude to the Chairmen, who have guided the Conference so successfully to a conclusion. The Japanese Delegation has also had several opportunities to join in the discussions, and in the Working Groups we have had very many opportunities to exchange views with other delegations. We are now going back to Japan with a feeling of satisfaction and the hope that this conclusion will be the foundation for future developments in this field. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

59. Thank you very much. The Delegate of Czechoslovakia has the floor.

Mr. PROŠEK (Czechoslovakia):

60.1 Mr. President, the Czechoslovak Delegation associates itself with those delegations which have already expressed their thanks to the Austrian Government and to the representatives of Vienna for their excellent hospitality and the creation of pleasant conditions to enable us to achieve positive results. At the same time, the Delegation of Czechoslovakia would like to express its gratitude to all officials of the

Conference, all members of the Secretariat and all other people who have taken part during the past few years in the preparation of this Conference. In appraising the results reached at this Conference, we feel sure that they represent a considerable contribution in the field of the protection of industrial property, although not all the results achieved suit us entirely. The Conference, however, which is now about to be closed, has laid the foundations for the subsequent development of international trade relations and this, in our opinion, has been its most positive feature.

60.2 In conclusion, allow me to thank all delegations which are represented here for their active participation and for the good mutual understanding achieved. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

61. Thank you, Mr. Prosek. The Delegate of Yugoslavia has the floor.

Mr. JANKOVIĆ (Yugoslavia):

62. Mr. President, I can only repeat the words which we have already heard here, expressing the thanks of all the delegations represented at the Vienna Diplomatic Conference to the Austrian Government and to you, Mr. President, as well as all those who have contributed to the success of the Conference. The Yugoslav Delegation considers that in the course of these last days we have taken a step forward, or rather three steps forward, towards the more effective protection of industrial property and a closer collaboration between member countries of the Paris Union. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

63. Thank you, Mr. Janković. The Delegate of Portugal has the floor.

Mr. SERRÃO (Portugal):

64. Thank you, Mr. President. The Portuguese Delegation endorses the words of the distinguished delegates who have just expressed their gratitude and appreciation, before the Conference as a whole, to the Austrian authorities and to our Austrian colleagues. We too are sensitive to all the kindnesses we have enjoyed and therefore, Mr. President, we likewise wish to express our thanks. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

65. Thank you, Mr. Serrão. Mr. Bogsch has the floor.

Mr. BOGSCH (Secretary General of the Conference):

66.1 Mr. President, as Secretary General of this Conference, I would like to go on record with special thanks from the Secretariat of the Conference and from the three Conferences which worked within its framework, first and foremost to you, Professor Schönherr, as President of this Conference and as Chairman of the Steering Committee. Your great knowledge of industrial property, your diplomacy, experience and tact made the work of the Secretariat easy and its contacts with the authorities of the Austrian Government smooth.

66.2 Secondly, the very warm thanks of the Secretariat go to the Ministry of Foreign Affairs, and in particular to Ambassador Zanetti and Dr. Ortner, as well as to Mr. Herold, the Austrian liaison officer.

66.3 Thirdly, the heartfelt thanks of the Secretariat go to all the staff placed at this Conference's disposal by the Government of Austria: the interpreters, the secretaries, the people in the document reproduction and distribution services, the attendants in the conference rooms and the switchboard operators.

66.4 Lastly, Mr. President, I would like to name here those officers of WIPO who, under the leadership of Professor Bodenhausen, have been here and have constituted the Secretariat. They are: Mr. Voyaine, my deputy as Secretary General of the Conferences and Secretary of the Type Faces Conference; Mr. Pfanner, Secretary of the TRT Conference; Mr. Egger, Secretary of the Classification Conference;

Mr. Harben, Secretary of the Credentials Committee. Furthermore, we have had here Mr. Ledakis, Mr. Baeumer, Mrs. Grandchamp, Mr. Thiam, Mr. Maugué, Mr. Takeda, Mr. Curchod, Mr. Qayoom, Mr. Rossier, Miss Daval, Mr. Andrews, Mr. Kellerson, Mrs. Diamond, Mrs. Bernillon, Mrs. Bourgeois, Miss Fankhauser, Mrs. Monfrinoli, Miss Oken, Miss Reix, Mrs. Schneiter, Miss Wachs and Mr. Schneuwly. Their devotion and competence, may I say, were as usual entire, and we are proud of them and thankful for their cooperation. Thank you, Mr. President.

Mr. SCHÖNHERR (President of the Conference):

67.1 Thank you very much, Mr. Bogsch.

67.2 And now I think the time has come for me to take the floor myself.

67.3 Ladies and Gentlemen, Colleagues, it is I who have the honor to say a few words before declaring the Conference closed. This is by no means an easy task, since so many distinguished and brilliant speakers have preceded me. Neither is it easy to give a reply, or to give anything like suitable thanks for the avalanche of tributes with which Austria has been honored, last Friday and today, and which have really been very touching. Be this as it may, we are delighted that, within the modest capabilities of our country, we have apparently succeeded in making your stay in Vienna a pleasant one. Indeed, some delegations have even gone as far as to credit us with the fine weather which we enjoyed during the first weeks of the Conference, in spite of some rather high temperatures recorded in this hall and other rooms in the *Hofburg*. It is a pity that Emperor Francis Joseph did not think of providing air conditioning, but perhaps the climate and the atmosphere of the city contributed something to the success of the Conference.

67.4 Vienna, as has already been said, was once the capital of a vast empire of more than 50 million inhabitants belonging to the most widely differing nations. It was thus accustomed to soothe antagonism, and to look for and find common ground; it could be, therefore, that this tradition helped the delegates to arrive more easily at compromises, and acceptable compromises, in the form of the three diplomatic instruments which are now going to be presented for signature.

67.5 However, this conciliatory spirit which has pervaded our deliberations should not be confined to the three instruments. I remember a remark which was made in the course of the discussions: "Oh, but that's not provided for in our national laws," said a delegate. As an observation or explanation it is indeed very interesting, but I do not think it should become a maxim. Meetings between experts from all over the world, like this Conference, are an excellent opportunity for looking beyond the frontiers, beyond the frontiers of one's own country and its national laws. If, by looking further afield, it can be seen that the same matters may, without adverse effects, be dealt with differently in different countries, it should give pause for thought and make each of us wonder whether his system really is the only one possible, or at least the best.

67.6 We Austrians are pleased and very honored that so many delegates and observers should have accepted the Austrian Government's invitation to come to Vienna. We are proud that the name of Vienna should be associated with the Trademark Registration Treaty, and that it should actually appear in the official titles of the Agreements for the Protection of Type Faces and on the International Classification of the Figurative Elements of Marks. The success of our work is at the same time a gift, in a way, to celebrate the centenary of the first international industrial property congress in 1873, which has already been evoked by other speakers and which paved the way for the 1883 Paris Convention.

67.7 I do not wish to end without thanking, on my own behalf and by name, some of the many people who were the artisans of these three instruments. First, the directorate of WIPO, that excellent organization; its Director General,

Professor Bodenhausen, and Deputy Directors General, Dr. Bogsch, the indefatigable Secretary General of this Conference, and Professor Voyame, his Assistant Secretary General, as well as their collaborators, in particular, Dr. Pfanner and Mr. Egger. Before the Conference, it was they who prepared the Conference documents with competence and precision and, during it, literally spent day and night, discreetly and efficiently and with an exemplary team spirit, stage-managing these important meetings.

67.8 I cannot but subscribe to the thanks expressed by many delegates to the Chairmen of the three Main Committees: Mr. Armitage, who combined his rich experience with a typically British sense of humor; Professor Ulmer, whose authority and competence, known and admired by us all, made it possible to find solutions to the most delicate of the questions arising during the discussions on type faces; my compatriot, Dr. Lorenz, who, thanks to his thorough knowledge of the subject, was able to complete the work of his Committee well ahead of the time fixed in the program.

67.9 Then, while the other delegates at last had the opportunity to take advantage of the fine weather, the Drafting Committees had to revise, item by item and word by word, the texts of the Drafts adopted. In this connection I should like first to mention Mrs. Steup, although she is no longer here, who presided with charm and firmness not only over

the TRT Drafting Committee, but also over a working group entrusted with the delicate question of the TRT article on developing countries. I also thank the Chairmen of the other Drafting Committees, Mr. van Weel and Mr. Haddrick, and finally the Presidents of the Plenaries, Mr. Crespin, Mr. Palewski and Mr. Hemmerling, as well as the Ambassador of Belgium, His Excellency Mr. Huybrecht, Chairman of the Credentials Committee.

67.10 My heartfelt thanks go also to the interpreters and translators: their art, and sometimes their indulgence, ensured mutual understanding in the fullest sense of the word between the various nations. And then, what would have become of our Conference without the assistance of our secretaries, housed either on this or on the second floor? A charming team indeed. They had to share the lot of their chiefs, working tirelessly with them to bring out on time the many draft proposals and eventually the final texts of the TRT and the two Agreements. Our sincere thanks to them too.

67.11 Finally, Ladies and Gentlemen, on behalf of the Austrian Government and in my own name, I wish you a pleasant return to your respective countries, hoping that the in-trays awaiting you will not be too full.

67.12 I now close this last Plenary and declare the Vienna Conference on Industrial Property closed. Thank you.

PLENARY OF THE VIENNA DIPLOMATIC CONFERENCE
ON THE PROTECTION OF TYPE FACES

President: Mr. J.-P. PALEWSKI (France)

Vice-Presidents: Mr. J.-P. HOFFMAN (Luxembourg)

Mr. G. E. LARREA RICHERAND (Mexico)

Mr. J. PROŠEK (Czechoslovakia)

Secretary: Mr. J. VOYAME (WIPO)

First Meeting

Thursday, May 24, 1973,

morning

Mr. BODENHAUSEN (Director General of WIPO):

68. Ladies and Gentlemen, I have the honor to open the Diplomatic Conference on the Protection of Type Faces. Document CT/DC/3 contains the draft agenda for this meeting. You see that point 2 of this agenda provides for the election of the President of this Conference on the Protection of Type Faces. You see in the proposal submitted to you by President Schönherr that it is suggested the Delegate of France be elected as President of this Diplomatic Conference. Is there any opposition to this proposal? If there is none, I declare that the Delegate of France has been elected President of the Plenary of the Conference on the Protection of Type faces. I invite the Delegate of France to take the presidential chair.

Mr. PALEWSKI (President):

69.1 Thank you. My dear colleagues we have to adopt the agenda. Is there any one who wants to speak about the agenda? There are no observations. The agenda is adopted.

69.2 Now, we have to proceed to elect the following officers: three Vice-Presidents of the Conference; the Chairman and the three Vice-Chairmen of the Main Committee. As Vice-Presidents of the Conference, the following countries have been proposed: Luxembourg, Mexico and Czechoslovakia. Is there any opposition? There is no opposition. The proposal is adopted. As Chairman of the Main Committee, the Federal Republic of Germany is proposed. Any opposition? The proposal is adopted. As the three Vice-Chairmen: Austria, the Netherlands and Yugoslavia are proposed. There is no opposition. The proposal is adopted. The meeting is suspended.

{ Suspension }

Mr. BODENHAUSEN (Director General of WIPO):

70. Ladies and Gentlemen, in the absence of the President of the Plenary of the Diplomatic Conference on the Protection of Type Faces, I welcome you to this meeting. I regret to have to inform you that not only the President, the Delegate of France, cannot be with us for the rest of this meeting but also the First Vice-President, the Delegate of Luxembourg. Fortunately, we do have with us the Second Vice-President, the Delegate of Mexico, and I would like to invite the Delegate of Mexico to take the chair for this meeting.

Mr. LARREA RICHERAND (Acting President):

71.1 Thank you, Mr. Director General. Before formally opening today's proceedings, I should like first of all to express my gratitude to the Conference for electing Mexico to one of the posts of Vice-President of the Plenary and to thank the Director General of WIPO, Dr. Bodenhausen, for inviting me to take the chair.

71.2 In accordance with the agenda, we are now called upon to take up item 6 "General Discussion on the Agreement for the Protection of Type Faces and their International Deposit." I open this discussion by calling for general statements. Any delegation so wishing may take the floor. The Director General of WIPO has the floor.

Mr. BODENHAUSEN (Director general of WIPO):

72. Mr. President, with your permission, I should like to make a suggestion as to the character of this general debate on the Agreement as proposed. The Plenary is not requested or supposed to go into any details this morning. There are, however, a few general questions. I would like to draw your attention--this is only an example--to the fact that the draft Agreement before you would become a special agreement under the Paris Union, whereas, on the other hand, the possibility of copyright protection is envisaged. These things may of course not be quite in harmony and this is one of the questions which perhaps will be debated during this meeting. I would, however, suggest that no conclusions be reached the because these questions are ultimately linked with the probable contents of the Agreement which will first be examined by the Main Committee. So my suggestion would be to limit the discussion today to general declarations. Every delegation who wishes to take the floor will of course do so, and we will all make notes on what has been said, but the idea will be not to come to any conclusions because then it would really interfere with the work to be done starting this afternoon by the Main Committee. So, if you agree, Mr. President, this would then be the proposed or suggested sense of the debate. I hope I have reflected your own views on this, and I am practically sure because we have discussed it already among ourselves.

Mr. LARREA RICHERAND (Acting President):

73. The Delegate of Brazil has the floor.

Mr. OZÓRIO DE ALMEIDA (Brazil):

74.1 Mr. President, at this first working plenary meeting of the Diplomatic Conference on the Protection of Type Faces, may I be permitted to congratulate you, Sir, on your election, and if I may say so congratulate ourselves for your presence at the presidency of this extraordinary gathering. We must really expect very much from your guidance in an international meeting in which so few seem to expect so much from so many. My Delegation had already the occasion to comment upon the rather hybrid nature of the Vienna Conference but we did it in a specific context of the Trademark Registration Treaty. Even though we are here faced with the specific interest of typographical experts and type face owners, practitioners and what not, who, by profession and habit, want to go straight into practical work, it may not be out of place to have a quick bird's eye view on the nature of this Conference and of the proposed Agreement that constitutes its substance. I understand that such has been the suggestion of WIPO and Dr. Bodenhausen.

74.2 Mr. President, a diplomatic conference is necessarily a political conference in which governments hopefully agree on the international ordering or dovetailing of certain general interests of the national communities they represent. These interests may be of an essentially public or of an essentially private nature even though it is private people who deal with public business and public interests are very often taken as a summation of a large set of private interests. The Diplomatic Conference now meeting under your wise guidance may perhaps be the extreme historical case of an international political gathering called to protect the interests of one of the smallest minority private groups in history. It should be incumbent upon us to ask a few questions before we proceed with our work, questions that on the one hand concern the possibility of harmonizing the minority interests with those of a few billion people in our world village, the possibility of attaining the same results through other means, the probable effect or consequence of the proposed measures, and I mean here those consequences that were not made explicit, and presumably not just desired by the authors of the amendment proposals, such as those of the Socialist countries. But, on the other hand, the practical possibility of implementation of whatever measures are proposed must be considered too.

74.3 Mr. President, the stated purpose of the Agreement is to protect the creators of type faces. Even though it is not stated in the Agreement itself why this protection is necessary, there have been quite a few articles and statements by eminent people in the associations within the typographical world on the reasons why this should be so. Right at the beginning, in Article 1 of the Draft, a reference is made to the Paris Convention for the Protection of Industrial Property. One should be led to believe, by all that has been said and written, that protection is an actual fact--not the end or goal but an instrumental means for something else, namely the creation if not of bigger, at least of better type faces. By protecting the rights of the creator, one would stimulate the creation of type faces that in the absence of such protection would not come into being and, by not becoming available, would detract from mankind's ability to communicate

or somehow jeopardize the rhythm of communication. This assumption may be true within the limits of a promise of a large remuneration, and has always led numerous segments of mankind to great efforts and risks. The Agreement, however, does not only protect the creators but also their descendants or successors in title. In actual fact, on the basis of Article 12, the creator is only incidental in the application for an international deposit, a reference to him is entirely facultative. Thus it becomes clear that only in rare instances would the applicant be the creator of the type face in the sense that the creator would be the artist who gave a plastic face-lifting to time-honored shapes in the most commonly used alphabet and numerals. In actual fact, the artistic aspects of the work seem to be so unimportant that color or coloring, although the most essential constituents of the visual arts, has been eliminated from the planned Agreement, which leaves us, as the substance for protection, the very essence of symbolic rhythm communication that changes the shape and relative position of science. The applicant owner will just be somebody else, who may have or may have not contributed to the creation of a new type face. However, he will have given his part of the work, or his contribution to it, through technical assistance by providing specialized equipment, techniques and know-how that are already fully protected within a world system of patents and trademarks and by the very tight dictates of know-how negotiations.

74.4 So, Mr. President, the assumption that by protecting type faces one enhances communication through the stimulus of artists to go on creating better visual characters fails to present a direct link with the procedures suggested in the Agreement. My Delegation fully agrees with the suggestion of the Socialist countries that this protection may jeopardize communications, lead to abuses and create obstacles to social and economic development in a number of countries. There is no doubt that the world is highly jeopardized by the absence of innovations, inventions and other creations that would have made it much better, including those that would permit people to communicate and to agree and to go on adding to mankind's stock of knowledge through written communication without having simultaneously to extract exorbitant prices for their use. There is also no doubt that it is the reader of printed texts that will eventually have to pay the cost whatever deals are made by the creators, owners and users of type faces. It is thus rather extraordinary that the reader is not even mentioned in the draft Agreement, which, from the standpoint of its goal, represents zero gain. Whatever is won or gained by the protected party is lost by the unprotected one who happens to be the reader.

74.5 Mr. President, in the case of these agreements, protection means restriction of the freedom of use by the community at large and, as such the creation and expression of an international monopolistic element in the use of type faces that goes beyond the normal restrictions inherent in the protection of know-how and beyond the usual restrictions inherent in the patenting of technology involved in the manufacturing of equipment both for producing type sets and for their graphic use. In the present case, such a restriction is extended in time by the Agreement for at least 25 years, which augments substantially the periods normally admissible under national legislations today.

74.6 One of the most difficult problems of this political Diplomatic Conference, however, is the determination of the object whose utilization is to be monopolized or restricted nationally and internationally. It could not be the shape of characters in the well-known alphabet or numericals that had been used by mankind for centuries. The Agreement itself recognizes the extreme difficulty and either directly or through the means of cryptic comments tries to clarify this matter perhaps with the hope that obscuring of expression may help to clarify darkness of purpose. So it is said or implied that in typography, or in the technological realms of printing equipment and know-how, the novelty of creative aspects has to limit itself to changes of detail in predetermined specific form. One might say that typographical faces are like women among whom, even though being composed of roughly the same ingredients and shapes, some may be classified as prettier than others, which of course, entails highly subjective and cultural conditioning of the judges. In a totally serious mood, Sir, it seems evident that we are inspired, as far as this Agreement is concerned, by a platonic philosophical approach to the substance of creation, innovation and originality in the context of typographical faces. These faces are known, so to speak, in some conceptual ideal form that cannot be appropriated, something perhaps in God's mind. What can be appropriated by an international applicant are changes to those platonic images or forms that are innovative or original or both. These changes do not concern any specific type face for letters or numerals but a set of them. These changes cannot be mere distortions and, least of all, distortions produced by modern technological means, such as modern photographic equipment.

74.7 Mr. President, the least that the typographical layman who carries the burden of committing his government can ask or try to determine is the working out of the implications of this proposition. Going backwards from the last point, one should seek clarification of the meaning of "distortion." From a purely epistemological standpoint anything that is done to a set of conceptually established visual symbols that will not change their nature will be a distortion. A distortion merely represents aesthetic or unaesthetic change, but a change it will be, and, tautologically, all changes of a predetermined form are distortions, so that, if one precludes distortions of the face of the alphabet and of numerals, one must invent new ones. That is where perhaps the solution did not reach the logical conclusion of its premises.

74.8 The second point concerns the fact that the innovative and/or original distortions that are to be appropriated do not concern as a rule any one specific type face but a set of them. The reason for this is that the innovation and originality are supposed to be so minute that this might not be detectable in one or in very few type faces but only in a relatively large set if not in all of the elements of the given alphabet. So it is agreed that the only possible basis for the determination of a sufficient degree of innovation and originality or both must be constituted by the sum of what cannot be seen or detected in one or in a few of the elements of a set. What is still more relevant is that the ability to see or detect is not imputable to us, common mortals, but to experts defined as "competent professional circles." In other words, Mr. President, the Agreement

does not define either novelty or originality--even though they constitute the conceptual and only substance of the monopolies to be created or expanded--and it is established in this Agreement that these material substances can be and, in actual fact, must be protected in the absence of a possible description or definition by competent expert circles. According to WIPO's comments on Article 5 of the draft Agreement, there is an implicit obligation for the competent national authorities and, by implication for the future international authorities, to accept proof by expert opinion even though it is apparently allowed that, after examining the proofs, these authorities may change their minds on the adequacy of the expert's expertise. We have here a complete vicious circle, since the "appropriable" elements in type face are not alphabets, like the Cyrillic, the Roman or the cuneiform, or numbers, such as the Arabic or the Roman. The "appropriation" is to be made of innovative or original distortions applied to those alphabets and numerals by artists and not by any other means. And the degree of innovation or originality of these distortions is to be judged by competent expert circles composed exactly of the very people on whose behalf the Agreement is supposed to create the monopolistic privileges indicated. The changes which are required for protection need not be aesthetic or artistic improvements to the type face. The changes need not encompass the concepts of art of a Picasso, a Salvador Dali, or the expressionists, the impressionists and members of other art movements since the middle of the 19th century who saw art as a conscious objective expression of reality. To what kind of art concept is the artistic creator of type faces going to belong? Apparently, to none. So, the essential owners and their successors will be in a position to restrict internationally the use of written communications on the basis of criteria which are not only undefinable in any concrete way but which are only determinable by members of what is potentially the closest club and possibly the smallest guild since the fall of Constantinople. At this stage of the argument, it becomes almost irrelevant that the appropriation of certain symbols is also considered. Whatever the object, its owner will be in the position to prohibit reproductions intended to provide means for composing texts by graphic techniques and will then be in the position to exact his own price.

74.9 Mr. President, there is no doubt that the Agreement as drafted would increase substantially the market powers of a very small in number but very powerful group of people, permitting them much greater margins of profit than the ones now possible for them. If we can gauge it, the International Typographical Association, which somehow claims the initiative in pushing this Diplomatic Conference, has a membership of around 150 adherents in areas of drawers, manufacturers and users of typographical characters. It is also claimed that the restriction of type-face use is becoming ever more urgent and necessary because the underdeveloped countries are making great efforts to wipe out illiteracy and millions if not hundreds of millions of yesterday's illiterates are reaching a stage in which they can be directly or indirectly milked by the 150 members of the International Typographical Association.

74.10 It might represent a great loss in profits if this Agreement were postponed until the time when mankind is ready to begin to understand the meaning of an international monopoly of this type. However, it is possible that the activities of the artists, experts, manufacturers, owners, users and others classifiable as belonging to "the competent professional circles" deserve better remunerations than those in general available to them. It is certain that one of the means to increase the sources of remuneration, if not for all in the group, at least for the group seen as a whole, consists in the increase of their restrictive power on the market for their products. It is not at all certain that this kind of protection is the only one possible since there are obviously other ways. It is absolutely certain that to transfer to those people who, in the words of WIPO, are--and I quote--"highly specialized persons," more often firms or enterprises, for whom the international deposit procedure will not pose any problems, resources hardly available to last year's illiterates is not the most ethical form of improving their economic status, and difficulties are compounded when the only final judges of what to restrict and appropriate are the interested parties themselves.

74.11 Mr. President, by indicating in such direct and candid ways its reading of the draft Agreement and its misgivings my Delegation hopes to show that this subject is not yet fully mature for international treatment. Otherwise, Mr. President, we shall not have chosen the easy way out, as we never will when the interests of the underprivileged people and countries of the world--a large group to which we belong--are at stake. Thank you very much.

Mr. LARREA RICHERAND (Acting President):

75. Thank you, Mr. Delegate of Brazil. Any other delegation wishes to speak? The Delegate of Canada has the floor.

Mr. KEYES (Canada):

76.1 Thank you, Mr. Chairman. May I on behalf of my Delegation thank the Austrian Government for their very great kindness in holding this meeting in their wonderful and charming city of Vienna and may I also congratulate you, Sir, on your election. I assure, you will have the cooperation of my Delegation in the conducting of our work.

76.2 My country has a high degree of interest in the Conference and, indeed, in all intellectual property, as we are currently in the process of revising all our laws but, as the delegates know, revision takes a great deal of time; we nevertheless have sought to participate to the fullest extent possible in international matters. And we did participate in the last two preparatory meetings of experts for this Conference, and we stated at that time that because we were in the process of revision--and this is reiterated in document CT/DC/5--Canada deems it important to maintain the possibility of the optional system of protection envisaged in the Convention. My Delegation is concerned about the circle of protected persons as provided by draft Article 3 to which we attach great importance, and we will take this up at the appropriate time in the debate.

76.3 In my country, type faces, their creation and use are seen as an integral important part of the printing industry, and Canadian designers have achieved a certain reputation, thus contributing to the further development and maintenance of the publishing and printing industry. Canadian interests therefore support the principle of the Agreement, and my Delegation looks forward to participating in the work of the Conference. Thank you.

Mr. LARREA RICHERAND (Acting President):

77. Thank you, Mr. Delegate of Canada. The Delegate of the United Kingdom has the floor.

Mr. ARMITAGE (United Kingdom):

78.1 Firstly, may I associate myself with the remarks of the Delegate of Canada with regard to the Austrian Government and your election to the chairmanship of this Conference.

78.2 Since we are in plenary session, I shall be brief and not touch on points of detail. The United Kingdom supports the principle of protection for type faces and would welcome the establishment of an agreement putting that protection on an international basis. We have, as I think is well known, certain problems with the draft Agreement, but these we will take up not now but in the Main Committee. Thank you.

Mr. LARREA RICHERAND (Acting President):

79. Thank you, Mr. Delegate of the United Kingdom. The Delegate of Switzerland has the floor.

Mr. BRAENDLI (Switzerland):

80.1 Thank you, Mr. President. Ladies and Gentlemen, it was already in 1958 at the Lisbon Diplomatic Conference on Industrial Property, that the question of the legal aspects of the protection of type faces was mentioned. Following this at the Diplomatic Conference at The Hague for the International Deposit of Industrial Designs, mention was made of the protection of type faces.

80.2 It was never seriously contested that they should be protected, but it was considered preferable, because of the particular nature of type faces, to assure protection in the form of a special agreement, rather than by adapting an existing convention. We have participated with interest in the work of formulating a special agreement. At this moment too we feel, although not without certain hesitations, that it appears more opportune to choose an agreement of this nature.

80.3 The draft Agreement Concerning the Protection of Type Faces and their International Deposit before us constitutes a novelty if one compares it with the other conventions belonging to WIPO's sphere. It concerns itself with one concrete subject, type faces, while the existing instruments in the field of protection of industrial property rights deal, at least in a general manner, with inventions,

industrial designs, trademarks and service marks. We have a certain fear that if we create an agreement which protects a special subject, we may be asked, later, that other subjects too should be given special protection. All the same, considering that it is justifiable to create a multilateral agreement in the particular case of the protection of type faces, we participate with great interest in the work of this Conference, as we have done in the Committees of Experts which worked out the draft which is submitted to us, and we hope to be in a position to contribute to find equitable solutions to the questions which are still open. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

81. Thank you, Mr. Delegate of Switzerland. The Delegate of the Federal Republic of Germany has the floor.

Mr. KELBEL (Federal Republic of Germany):

82.1 Mr. President, Ladies and Gentlemen, in principle, we are in favor of an effective protection for type faces. It is true that at the beginning of this work we hesitated somewhat as it may be asked whether it is justified to give to a single section of creators a special protection longer than the normal protection of designs, and to establish international deposit and registration. But in studying the question we have seen that there were special elements, as is, among others, the fact that it takes a long time to develop new type faces before they can be put into production. This is why we believe that such a special agreement is justified.

82.2 The task will be a difficult one. We have already had six Committees of Experts on this subject. Nevertheless, the remaining questions must be resolved here, by this Conference. The Director General has already mentioned the question of whether this is going to be a special agreement within the Paris Union, and whether we shall have a special Union within the framework of the Paris Union. Naturally the difficulty lies in the fact that we have two bases of protection, the right in industrial designs on the one hand, and copyright on the other. It is always difficult to find a solution when there are two different systems to take into account. It will be necessary to overcome this difficulty, and also, naturally, other difficulties. We have already seen some proposals, some amendments, and we hope we can overcome these difficulties and achieve good results in this Conference. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

83. Thank you, Mr. Delegate of the Federal Republic of Germany. The Delegate of France has the floor.

Mr. FRANCON (France):

84.1 Thank you, Mr. President. We would like to thank first of all the Austrian authorities for having included the protection of type faces on the agenda of this Conference which is held in their beautiful capital, and also WIPO for their remar-

nable preparatory work for this Conference. Finally, Mr. President, let me join the other preceding speakers to congratulate you on your taking the presidency of the Plenary Session of this Conference.

84.2 Mr. President, France is greatly delighted that we have arrived at the point reached today, which is already a success in itself when one recalls, as have other speakers, the long period of preparation which preceded the maturation of this project to the point which we have reached today. It is already a considerable success because several difficulties have already been surmounted, notably as mentioned by the Delegates of Switzerland and the Federal Republic of Germany, those very legitimate hesitations which were raised against the institution of a new type of protection in a particularly narrow field of technology. However, it must be admitted that if a meeting of the minds has progressively been achieved in accepting the idea of a special agreement, this is due to the fact that the protection offered by the more general instruments proved to be inadequate for solving problems posed in the field of type faces, a field which is both traditional and linked to all the technical progress achieved in respect of the multiplication of the methods of reproduction of the written word.

84.3 It is true that these problems touch closely those of the general diffusion of culture but I sincerely think that if no protection is given to the creators in this field, no benefit for the general diffusion of culture will benefit therefrom. In fact, I think that the generally agreed idea that the protection of inventions has been favorable to the diffusion and progress of technology is valid for other fields of industrial property. It is natural that we should discuss with all the necessary sincerity and vivacity the draft Agreement that we have met here to study. I hope that we shall conclude an instrument which will be approved not only by countries which are the big producers of type faces but also by as many other countries as possible. This is my wish and hope for the Conference. I thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

85. Thank you, Mr. Delegate of France. The Delegation of Iran has the floor.

Mr. HEDEYATI (Iran):

86.1 Thank you, Mr. President. In the name of the Iranian Delegation, I wish to thank the Austrian Government authorities for the warm reception offered to us here, in this beautiful capital of Austria. I wish also to congratulate you on your election to the presidency of this Conference.

86.2 I must mention that the Iranian Delegation has come here with a spirit of international cooperation but this should not prevent us from explaining to you our doubts and hesitations about the proposed project. Since we are at the stage of general discussion, I must now state our position. All that I wish to say is that I support very strongly the declarations made at the beginning of this Conference by the distinguished Delegate of Brazil.

86.3 I shall explain our hesitations when we come to study the Draft article by article, but already at this stage I must say that we have really very great hesitations about the approval of the Draft, and above all for the developing countries and the campaign against illiteracy, which, as you know, is having a great success in our country. I will express my point of view later when we come to study the draft Agreement. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

87. Thank you, Mr. Delegate of Iran. The Delegation of Italy has the floor.

Mr. TROTTA (Italy):

88.1 I thank you, Mr. President. We too join the other delegations in congratulating you on your election, the Austrian Government for their hospitality, and the Secretariat for the amount of work done by it.

88.2 I think the doubts expressed here are the doubts raised in the first instance by the Secretariat when proposals for creating an agreement were made. Evidently, there exist difficulties of a practical nature, and also theoretical difficulties, because we are facing for the first time a special agreement on a particular subject. However, it seems impossible to have other solutions, and we prefer to adopt the new instrument here and within the framework of WIPO. I think that the protection of type faces satisfies a just demand of the big producers of type faces who use considerable amounts of capital over long periods and have an interest in the protection of their type faces.

88.3 Evidently, type faces are in a peculiar position in the domain of intellectual property, as they belong both to industrial property and copyright. This factor has a bearing on the shaping of the instrument, which will be studied in the course of our work.

88.4 I think we must take into account the interests not only of the manufacturers of type faces. Other countries--and not only the developing countries--are concerned with information, with culture, with literacy and other problems, which obviously had to be raised on this occasion. Italy has proposed something which answers in a certain manner the demands of developing countries, namely that protection should extend only to type faces used in printing and not also to those used on typewriters and in graphics. Whereas there is good reason to protect the producers and designers who have worked for many years, there is perhaps less reason to extend this protection to others. This is why I recommend to everyone, to you, Mr. President, to the Secretariat and to the participants of this Conference to take into account the recommendations and the position of Italy. We think that this position represents a fair compromise. The Italian Delegation will try to propose appropriate amendments during the course of the Conference. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

89. Thank you, Mr. Delegate of Italy. The Delegate of Japan has the floor.

Mr. SASAKI (Japan):

90.1 I thank you, Mr. Chairman. On behalf of my Delegation I would like to express my thanks to the Austrian Government for inviting this Conference to Vienna, and I also thank the Secretariat which has prepared all the work. I also extend my heartfelt congratulations to you, Mr. Chariman, for your election.

90.2 Since this is the first time we speak in this meeting, I would first like to explain in a few words the background at home with respect to the protection of type faces. The first Japanese Design Law of 1889 gave protection to type faces by accepting them for registration, but the Design Examination Regulations of 1930 abolished the system, and since that time no legal protection has been given to type faces. Moves seeking legal protection for type faces are becoming evident among type face designers in Japan in keeping with the present plans of WIPO but no comprehensive study or discussion of giving legal protection to type faces has taken place to date. Such basic problems as whether the protection is to be given either by design law or by copyright law are still undecided.

90.3 Japan has not participated in the work of the Committees of Experts and is still not quite familiar with the draft Agreement. Through our participation in this Conference we wish to seek clarification on certain points as well as to propose certain amendments, so that the Conference could adopt an agreement which would be conducive to our becoming a party to it. Thank you very much,

Mr. Chairman.

Mr. LARREA RICHERAND (Acting President):

91. Thank you, Mr. Delegate of Japan. The Delegate of Finland has the floor.

Mr. SIPONEN (Finland):

92.1 Mr. President, the Delegation of Finland would like to express its gratitude to WIPO for having made careful studies in the field of industrial property rights to see to what fields protection should be extended, or how it should be developed. This work has brought about the deliberation of a draft Agreement for the protection of type faces. In order to join the Agreement, its Contracting States must have an existing registration system for the protection of type faces or they would have to create one. With this draft Agreement, it has been WIPO's aim to interest as many countries as possible in planning protection for type faces, which protection it considers important. The protection of type faces is of great importance in the countries where the graphics industry is extensive and strongly developing. As far as Finland is concerned, the graphics industry is not very extensive, and it has so far not been much involved in export. Consequently, no urgent need seems to exist in Finland for the protection of type faces. It is obvious, therefore, that Finland will not, at present, join an instrument establishing property rights in this field. However, since development is rather rapid in the world today, there might arise a need in our country for this kind of protection, and with this in mind the Finnish Delegation is going to follow with interest the discussions

held at the meeting here in order to be able, when necessary, to propose at home the creation of a system of protection in conformity with the one which will come into existence by the adoption of this Agreement.

92.2 We consider the Conference necessary and we shall participate in its work. We would like to thank once more WIPO and the Austrian Government for all their efforts in connection with this Conference. Thank you Mr. President.

Mr. LARREA RICHERAND (Acting President):

93. Thank you, Mr. Delegate of Finland. The Delegate of Nigeria has the floor.

Mr. KUYE (Nigeria):

94.1 Thank you, Mr. Chairman. My Delegation would like to join the previous Delegations in the fine sentiments they have expressed as regards our thanks to the Austrian Government. Our congratulations go to your very good self and we appreciate also the very hard work put in by the Secretariat.

94.2 My Delegation will, however, have to say that it wholeheartedly endorses the very fine sentiments expressed by the Honorable Delegate of Brazil. As a developing country, very young at this stage, we feel that while it is quite reasonable for developed countries to seek a means of protecting type faces, an international agreement of this magnitude will not be in the best interests of developing countries. We wholeheartedly endorse everything that has been said by Brazil, and we hope, while we continue deliberation, that we will be able to learn quite a lot but, as the Delegate of Brazil has said, an international agreement at this particular stage will not be in the best interests of my country or in the best interests of any developing country for that matter. Thank you very much, Mr. Chairman.

Mr. LARREA RICHERAND (Acting President):

95. Thank you, Mr. Delegate of Nigeria. The Delegate of Sweden has the floor.

Mr. BORGGRÄRD (Sweden):

96.1 Mr. Chairman, the Swedish Delegation would like to join with the other delegations in expressing its thanks to the Austrian Government for having invited us to this Conference, the more so perhaps as we know it was, at a certain time anyhow, hard to find a government willing to take on the responsibility to act as host to a conference on the somewhat difficult subject of the protection of type faces. Our appreciation is also due to the World Intellectual Property Organization and its highly competent staff for the, as always, excellent preparatory documents they have put before us to form the basis of our discussion.

96.2 The Swedish Government has for many years and with considerable interest followed the work which has led up to this Conference. Swedish delegations have taken part in all or nearly all of the meetings of the various Committees of Experts which have preceded this Conference. I may say that it is well recognized in my country that the highly sophisticated creative work and talent that it takes

to create a new set of type faces merit recognition quite as much as, or even more perhaps than, many other branches of creative or artistic work. Indeed, it is generally held by our copyright experts that type faces are in fact protected by our law of copyright. The attitude of the very few creators in this field that we have is also clearly positive towards the draft Agreement before us. A far more cautious attitude is taken by our printing and publishing industries, the consumers of type faces as it were. In these circles, there is a fear that the protection afforded by the draft Agreement could hamper their freedom to use the type faces they have acquired and which they need for their normal and legitimate business.

96.3 Mr. Chairman, whether it will be eventually possible for our country to adhere to the Agreement would to a great extent depend on how the scope of protection will come to be defined in the Agreement. We hope, of course, that a happy solution of this difficult point will be found by the Conference. Another condition that I know our industry emphasizes is that the Convention should be ratified by all the most important countries in the field.

96.4 And with this, Mr. Chairman, our Delegation would like to express its best wishes for the success of this Conference. Thank you, Mr. Chairman.

Mr. LARREA RICHERAND (Acting President):

97. Thank you, Mr. Delegate of Sweden. The Delegate of the United States has the floor.

Miss NILSEN (United States of America):

98.1 Thank you very much, Mr. Chairman. First, I would like to offer the congratulations of the United States of America to the Honorable Representative of Mexico on his election as chairman of this meeting. We are particularly pleased that the representative of a neighboring State of the United States of America was elected to this important post. We also would like to express our sincere appreciation to the Government of Austria for hosting this important Conference. We appreciate its marvellous hospitality and are looking forward to the succeeding days here in this beautiful city of Vienna. As always, the preparation for this meeting has been outstanding. Professor Bodenhausen and his staff have prepared a documentation which will be a big help to a successful conclusion to this meeting.

98.2 The Government of the United States of America, of course, is pleased to be represented at the Diplomatic Conference on the Protection of Type Faces which is an important part of the Vienna Conference on Industrial Property. This Conference is the culmination of work to establish an international agreement for the protection of type faces which began several years ago, in 1958. As has been indicated by other delegates, six Committees of Experts have met over the years to lay the groundwork for this Conference. The last one met in March, 1972, and the United States of America has been represented at the last two experts meetings in 1971 and 1972. The United States of America is attending the Type Faces Conference because of its general interest in intellectual property and especially because of the interest of the United States of America type face industry in the Type Faces Agreement. Our participation in this Conference will necessarily be

affected by the present situation in our country with regard to the protection of type faces. There is no protection under the copyright law and only limited protection for so-called exotic type faces under our design patent law. It is the view of our type face industry that the only effective way to protect type faces is under the copyright law. Therefore, it has expressed a sincere hope that the option for protection under copyright which is presently available in the draft Agreement before us will be maintained in the Agreement to be adopted at the end of this Conference. Thank you very much, Mr. Chairman.

Mr. LARREA RACHERAND (Acting President):

99. I thank the Delegate of the United States of America. The Delegate of Australia has the floor.

Mr. HADDRICK (Australia):

100.1 Thank you, Mr. President. The Australian Delegation associates itself with the remarks by other delegations that have expressed their congratulations to you and other officers of this Conference on your respective elections, and their gratitude to the Austrian Government for making it possible for this Conference to be held in such a charming city. We also join the other delegations that have complimented WIPO on the excellence of its preparatory work.

100.2 The text is an interesting one but not, we suspect, without its difficulties. We are interested to see that the text provides for the possibility of protection by national laws for the protection of designs and by national copyright provisions. Our opinion at this point in time is that if we are to become a party to an agreement on the protection of type faces we would give effect to it under our copyright law or under our design law, so we are particularly interested in the maintenance of these possibilities under the Agreement. These two thoughts that I have just mentioned are, of course, far broader and more general than the field of type faces, and we feel some concern that the provisions in the Agreement before us or in the draft text before us should not compel changes on a broad front in our laws. While we have a certain number of creators of type faces and would hope in the course of time to have more, we do feel some concern that there should be possibility of use of type faces in our country. Particularly in regard to our printing industry, we are concerned that barriers should not be placed in the way of the use of type faces on appropriate terms. The particular problem that concerns us, perhaps related largely to our remoteness from the main centers of the creation of type faces, is that there may be difficulties in obtaining authorization for use or there may be delays in obtaining such authorization, and delays, of course, may be just as important as complete barriers. We recognize in raising this matter that there are dangers in entering upon the field of use and we would, therefore, listen with great interest to the viewpoints of interested circles on the effect that provisions in national law on use would have on their position. Nevertheless, we feel that Contracting States should have open to them whatever possibilities they already have in relation to their designs and copyright laws. Thank you, Mr. Chairman.

Mr. LARREA RICHERAND (Acting President):

101. I thank the Delegate of Australia. The Delegation of Portugal has the floor.

Mr. VAN-ZELLER GARIN (Portugal):

102.1 Mr. President, the Delegation of Portugal also joins the other delegations in thanking the Austrian Government.

102.2 As to the proper place for protection, our Delegation thinks that the Agreement should be within the framework of the Paris Convention, because type faces are indeed very similar to industrial designs. But, in all frankness, the Portuguese Delegation favors very much the point of view expressed by the Delegation of Brazil. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

103. Thank you, Mr. Delegate of Portugal. The Delegate of Spain has the floor.

Mr. FERNÁNDEZ-MAZARAMBROZ (Spain):

104.1 Mr. Chairman, the Spanish Delegation wishes first to express its thanks to the Austrian Government for its invitation to attend this Conference in this admirable site in the city of Vienna. It would also like to express its appreciation for the work carried out by WIPO in preparing the working documents for the Conference on Type Faces. Finally, we congratulate you, Sir, on your appointment as President of this Plenary.

104.2 As regards the content of the Drafts, the Spanish Delegation wishes to state that, in fact, type faces are at present protected in Spain as industrial property and as industrial designs, and with a very high degree of protection at that since protection can extend up to 20 years. Since the term of protection offered in the Draft is up to 25 years, we consider that we are very close to the desire expressed by the enterprises interested in a special protection of type faces. We accordingly have no significant difficulty in accepting the principle of such a special protection. We must nevertheless express some reservations regarding certain provisions of these proposed texts and in particular we wish to mention the importance we attach to the fact of constituting an independent Union, owing to the economic implications which, in our view, represent one of the basic problems of the establishment of a special Union. That is all for the moment. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

105. Thank you, Mr. Delegate of Spain. The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

106. Thank you, Mr. President. On behalf of the Government of the Netherlands, I first thank the Austrian Government for having convened us here in this place, well known even to those who have never been to Vienna. My thanks go equally to WIPO for having prepared, jointly with the Austrian Government, the documents for

the adoption of this new Agreement. I also add that my Government is very happy that finally the day seems to have come when the Agreement Concerning the Protection of Type Faces sees the light of day. As you know, Mr. President, there are, in my country, some very important industries which have contributed greatly to the development of type faces. I hope that, thanks to the spirit of collaboration one has encountered in previous meetings in Geneva, we shall reach our goal, that is to say an agreement which will give an effective and just protection to the creators of type faces.

Mr. LARREA RICHERAND (Acting President):

107. Thank you, Mr. Delegate of the Netherlands. The Delegate of South Africa has the floor.

Mr. WELMAN (South Africa):

108.1 Thank you, Mr. Chairman. On behalf of my Delegation and my country, I convey to the Austrian Government our gratitude for their being hosts to this Conference in their beautiful capital of Vienna and to you, Mr. Chairman, our felicitations on your being elected to take the chair at this important Conference. And I pledge our cooperation in this important task allotted to you. Thirdly, the hard work done by the Director and staff of WIPO should never be underestimated, and our congratulations and appreciation go to Dr. Bodenhausen and his staff.

108.2 It is possible that, in due course, our country will have to accede to the Agreement and provide the relative national legal provisions under either the design or copyright laws, but that is something for the future. Thank you, Mr. Chairman.

Mr. LARREA RICHERAND (Acting President):

109. Thank you very much, Mr. Delegate of South Africa. The Delegate of the Soviet Union has the floor.

Mr. MOROZOV (Soviet Union):

110.1 Mr. President, allow me first of all to congratulate you on your election to this honorable and responsible post. The Delegation of the Soviet Union is grateful to the Austrian Government for taking the initiative to convene this Conference which, in our opinion, should sum up almost ten years of discussion on whether or not to protect type faces and if so, how to do it. The Soviet Delegation realizes the objectives of the proposed Agreement in the light of the World Intellectual Property Convention, which is aimed at promoting the protection of intellectual property throughout the world for the purpose of encouraging creative activity. We think that such an aim could be compatible with the other very humanitarian aim of disseminating culture, science and education throughout the world.

110.2 The Soviet Union did not take part in the preparatory work of the Committees of Experts. The reason for this is that we have no pertinent legislation concerning protection of type faces, and we thought that first of all we should try to stimulate the creators of type faces within our national framework. In this connection, we have already had several cases, about ten, when newly created type faces were protected by means of industrial design law. Of course, we still have to find good legal ground in order to substantiate this protection, since the industrial design law expressis verbis does not mention type faces as items for protection. We took the decision to grant protection to newly created type faces, only because of analogy with certain features of industrial designs.

110.3 When a draft agreement was circulated by the World Intellectual Property Organization, our Government took the decision to participate in this Conference. We consider that if the protection is aimed at promoting dissemination of culture and encouraging creative activity, we would be able to agree with such protection. As you have probably already mentioned, the draft Agreement has some specific features. The Draft prescribes the main principles of national legislation, and establishes the machinery for international deposit of type faces. In other words it consists of two parts, a procedural agreement and an agreement on substantive legal standards for national legislation.

110.4 We have certain observations on some of the principles of the draft Agreement which has been submitted to this Conference. Document CT/DC/8 contains a statement and a proposal presented on behalf of eight countries. I am not going at present to discuss the reasons of such a proposal in detail. However, I would like to dwell briefly on a reason which impels us to submit this proposal at this meeting. It is known that type faces are very widely used at present. The many countries represented at this Conference do not have precise legislation concerning the protection of type faces. We think it is just to introduce the protection of type faces for the purposes which have already been mentioned by me, namely for the development of creative activity as well as for encouraging dissemination of culture. However, we should not allow this new Agreement, which prescribes the national standards as well as the machinery and the procedure, to be a starting point for unconscientious people to file applications in the International Bureau for the registration of type faces which are well known and have been in use for a long time or to prevent free use in several countries of type faces which are known. We are ready to discuss ways of avoiding such situations, and I believe that many will agree with us that permitting such situations would not be normal.

110.5 Mr. President, proceeding from these principles, the Soviet Delegation will take part in this Conference. We believe that the spirit of mutual understanding and cooperation will bring a satisfactory solution for everybody. Thank you, Mr. President.

Mr. LARREA RICHERAND (Acting President):

111.1 I thank the Delegate of the Soviet Union. Does any other delegation wish to speak? This is not the case.

111.2 May I say a few words as representative of Mexico, in order to associate myself with the congratulations addressed to the Austrian Government for its initiative, and also to tell you that Mexico is taking part in this meeting out of a desire to collaborate, as it always has done in all international affairs, and specifically with WIPO. I would like also to state that in Mexico type faces are protected by the copyright law which is at present under revision, as we wish to adjust our domestic legislation to the latest international treaties signed and concluded in recent years and to give more effective encouragement to intellectual creativity and the protection required for that purpose.

111.3 As President of the Plenary, I wish to say that now that the various delegations have made their statements, we have before us quite an arduous task to which we shall apply ourselves with all the vigor required for carrying it through.

111.4 For the moment we shall regard item 6 of the agenda as concluded, and leave it to the Main Committee to take up the substance of the problems.

111.5 The Main Committee will hold its first meeting at 3 o'clock this afternoon. Thank you.

<u>Second Meeting</u>
<u>Friday, June 8, 1973,</u>
<u>afternoon</u>

MR. PALEWSKI (President):

112.1 Honorable Delegates, dear colleagues, the Plenary Session of the Conference which must accept the texts submitted by the Main Committee of the Conference on the Protection of Type Faces and their International Deposit is open.

112.2 I have to submit to you three texts. The first is the Draft Vienna Agreement for the Protection of Type Faces and their International Deposit. Is there anyone wishing to speak on any article? There is no opposition. The text is adopted.

112.3 The second is the Draft of the Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit. If any Delegation wishes to speak, please do so. No one wishes to speak. The text is adopted.

112.4 The third text is the Draft of the Protocol to the Vienna Agreement for the Protection of Type Faces and their International Deposit concerning the Term of Protection. Is there anyone who wants to speak on the Protocol? No one has asked for the floor. The text is adopted.

112.5 The Delegate of the Federal Republic of Germany has the floor.

Mr. KELBEL (Federal Republic of Germany):

113.1 Mr. President, Ladies and Gentlemen, we are pleased that, after a long preparatory work, it was possible to conclude here in Vienna this Agreement. The protection it accords concerns a small but culturally important sector of artistic and intellectual creations. This is why we shall sign the Agreement. In principle, we agree also with the Protocol but, naturally, we shall have to examine, in the Federal Republic of Germany, the question of the term of protection; we shall examine this question in the light of the general provisions of our design law and its planned revision. Consequently, we reserve our position in respect of our possible acceptance of the Protocol at a later date.

113.2 I should like to add that we are particularly pleased that this Agreement bears the name of Vienna, a city for whose beauty, artistic treasures, charm and rich cultural life we have great admiration and in which we have enjoyed such warm hospitality. We are most grateful for this hospitality. Thank you, Mr. President.

Mr. PALEWSKI (President):

114. I thank the Delegate of the Federal Republic of Germany. The Delegate of Canada has the floor.

Mr. KEYES (Canada):

115. Thank you, Mr. Chairman. My Delegation also wishes to thank the Austrian Government for its hospitality in holding the Conference in this charming city. My country has an interest in the Type Faces Agreement in view of the current revision of our intellectual property laws and particularly in the optional systems in the instrument we have adopted. The Agreement will provide great flexibility to those countries that have to make a choice as to systems of protection. The Canadian Delegation considers that the treaty we have adopted provides for options that will enable Canada to consider the possibilities reflected in that treaty. It is our opinion that the Type Face Agreement represents the best solutions which could be arrived at, in the spirit of international goodwill and compromise. Thank you, Mr. President.

Mr. PALEWSKI (President):

116. I thank the Delegate of Canada. I give the floor to the Delegate of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

117.1 Thank you, Mr. Chairman. This Agreement is unusual in that it permits States to protect the creators of type faces either by copyright or by industrial property law, and this undoubtedly made negotiation of this Agreement a complex matter, a difficult one because of the interaction of these two systems. This must have given a lot of problems, and we are very grateful to the Conference for having arrived at such a satisfactory conclusion. We are in particular grateful to Professor Ulmer for chairing the Main Committee of this Conference and doing it in his usual masterly manner. We are also very grateful to the Chairmen

117.2 We have on previous occasions expressed support for the principle of protection of type faces. This is a thing which will require, we believe, legislation in the United Kingdom, but we do propose to sign the Agreement in the belief that its provisions will accord with our future law in this matter. Thank you.

Mr. PALEWSKI (President):

118. I thank the Delegate of the United Kingdom. I give the floor to the Delegate of the Netherlands.

Mr. van WEEL (Netherlands):

119.1 Thank you, Mr. President. First of all, I do thank the Austrian Government and all those who have contributed to the achievement of this Special Agreement for the Protection of Type Faces. I do not deny that our country has always had a keen interest for protection in this particular field. We hope that this new Union shall prosper and develop in the future in procuring an effective international protection of type faces.

119.2 I declare that my country has authorized me to sign the Agreement and the Protocol next Tuesday. Thank you, Mr. President.

Mr. PALEWSKI (President):

120. I thank the Delegate of the Netherlands. I give the floor to the Delegate of Czechoslovakia.

Mr. BĚLOHLÁVEK (Czechoslovakia):

121. Mr. President, the Czechoslovak Delegation would like to remind you that the statement it made during the TRT Conference relating to the problem of dependent territories also concerns this Conference. The Czechoslovak Delegation asks that this statement be included in the records of the Conference. Thank you, Mr. President.

Mr. PALEWSKI (President):

122. I give the floor to Mr. Bogsch.

Mr. BOGSCH (WIPO):

123. Mr. President, the Secretariat has noted the declaration of the Delegation of Czechoslovakia. Unless advised to the contrary by the delegations that have expressed their disapproval or reservation or made other observations concerning the territorial clause, I can assure them that the Records of each Conference will reflect these, without having to repeat them in each Conference.

Mr. PALEWSKI (President):

124. I give the floor to the Delegate of Switzerland.

Mr. BRAENDLI (Switzerland):

125. Mr. President, at the beginning of this Conference the Swiss Delegation declared that in principle it favored an adequate protection for type faces. We have also said that it is the first time that an agreement was being made to protect one concrete subject, and that this fact caused some concern. Thanks to the excellent spirit which reigned within the Committee, and thanks above all to the eminent President of the Committee, Professor Ulmer, who conducted the debate with great competence, we have succeeded in finding solutions to many problems. We think that the Agreement on Type Faces, in its final version, is an instrument capable of serving our interests. It is for these reasons, Mr. President, that Switzerland will sign the Agreement and the Protocol which is annexed to it. Thank you, Mr. President.

Mr. PALEWSKI (President):

126. I thank the Delegate of Switzerland. Is there any other delegation wishing to speak? I give the floor to the Delegate of France.

Mr. FRANCON (France):

127. I thank you, Mr. President. First of all, the French Delegation joins in the congratulations and thanks that have been expressed by the previous speakers. As far as the Agreement on Type Faces and the Protocol are concerned, the point of view of the French Delegation is entirely favorable to those diplomatic instruments. That is to say that the French Delegation always desired the protection of type faces. It is its intention to sign the Agreement and the Protocol next Tuesday. Thank you, Mr. President.

Mr. PALEWSKI (President):

128. Thank you. I give the floor to the Delegate of Italy.

Mr. TROTTA (Italy):

129.1 The Italian Delegation has taken note of the Agreement and the Protocol. I am glad to have the opportunity to thank Professor Ulmer and the Secretariat for the good work they have accomplished.

129.2 As to the Agreement, we note that it contains several clauses which were proposed by the Italian Delegation. The Protocol somewhat surprises us, and we do not like it very much. It evokes rather bad memories. Thus I would not make any final pronouncement on the Protocol. I assure you that we regard with the best of intentions the Agreement, which we sincerely hope to sign. Thank you, Mr. President.

Mr. PALEWSKI (President):

130. I thank the Delegate of Italy. Is there any other delegation wishing to speak? The Delegate of Australia has the floor.

Mr. HADDRICK (Australia):

131.1 Thank you, Mr. President. The Conference on the Protection of Type Faces was perhaps a distinctive element of the Vienna Conference in that it was the Conference that was concerned with the basic questions of protection. This, of course, gave rise to very difficult questions which nevertheless were most interesting and in our Conference we spent a good deal of time working out our different positions on the question of type face protection. We were aided most significantly by our distinguished Chairman. The reputation of Professor Ulmer had of course proceeded to Australia well in advance of this Conference. It was nevertheless a great pleasure to participate in a conference with such an erudite and patient Chairman. We also had the opportunity of seeing in this smaller Conference a greater participation by the other members of the International Bureau of WIPO, and we thank them very much for their expert assistance in dealing with a number of different questions that arose. Our estimation of the International Bureau is so much the greater for the possibility we had on this occasion of witnessing their excellent work.

131.2 Seeing that I will perhaps speak again in the next Conference, I will save our remarks on our dear friends, the Austrian Delegation and also their Government. Thank you.

Mr. PALEWSKI (President):

132. I thank the Delegate of Australia. The Delegate of Luxembourg has the floor.

Mr. HOFFMANN (Luxembourg):

133. Mr. President, I am in a position to declare that the documents which have been submitted to us now give us entire satisfaction and that our country will sign those documents. I wish to make use of this occasion to thank all those who have contributed to the formulation of these new instruments. Thank you, Mr. President.

Mr. PALEWSKI (President):

134. I thank the Delegate of Luxembourg. Is there anyone else who wants to speak? The Delegate of Portugal has the floor.

Mr. VAN-ZELLER CARIN (Portugal):

135.1 Thank you, Mr. President. Our Delegation thanks the Austrian Government once again.

135.2 Since the professional circles concerned in our country have not indicated, up to now, interest in the Agreement on the protection of type faces, we shall not, unless we receive instructions to the contrary, which is improbable, sign the Agreement. Thank you, Mr. President.

Mr. PALEWSKI (President):

136.1 Thank you. Does any one else still want the floor? Have all the delegations that wanted to speak had the opportunity to do so?

136.2 In this case, what remains for me to do, Ladies and Gentlemen, Delegates and dear colleagues, is to express my personal thanks and the thanks of the Plenary Assembly both to the members of the International Bureau who had prepared for this Conference with such profound knowledge of a difficult subject and Professor Ulmer who conducted the discussions of the Main Committee with the competence everyone recognizes. We also acknowledge his patience and great culture. My thanks go also to the Chairmen of the Working Groups and also to those who in the anonymity of the Secretariat furnished us with the indispensable documents.

136.3 I think that the documents you have just adopted characterize in a special manner the Vienna Diplomatic Conference, because they innovate in a field in which, up to now, barriers existed between two kinds of legal protection. As many of you have already indicated, we have tried to establish a bridge between the two terms of protection, and I think we have managed to give satisfaction to the most demanding of lawyers. This is why I wish to conclude by expressing to the Assembly gratitude from all who have dedicated their lives to the study of the problems of industrial property for having innovated in this field. Thank you. As no one else wants the floor, I declare the Plenary closed.

MAIN COMMITTEE OF THE
VIENNA DIPLOMATIC CONFERENCE
ON THE PROTECTION OF TYPE FACES

Chairman: Mr. E. ULMER (Federal Republic of Germany)

Vice-Chairmen: Mr. E. DUDESCHER (Austria)

Mr. E. van WEEL (Netherlands)

Mr. N. JANKOVIC (Yugoslavia)

Secretary: Mr. J. VOYAME (WIPO)

First Meeting

Thursday, May 24, 1973,

afternoon

General Observations

137. The CHAIRMAN opened the meeting and recalled that the Delegations of the following countries had submitted observations in writing: United Kingdom (document CT/DC/4), Canada (document CT/DC/5), Switzerland (document CT/DC/6), Netherlands (document CT/DC/7), Algeria, Bulgaria, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Poland, Soviet Union (document CT/DC/8), Italy (document CT/DC/9), United States of America (document CT/DC/10).

138. The SECRETARY added that the Secretariat had just received two further proposals, from the Delegations of Poland (document CT/DC/11) and Japan (document CT/DC/12), and indicated that the text of those proposals would be distributed in due course.

Article 1: Question of Principle: Should the Proposed Agreement be a Special Agreement Under the Paris Convention for the Protection of Industrial Property?

139. The CHAIRMAN, after having recalled that proposals for amendments should be submitted in writing, opened the discussion on item 7 of the agenda dealing with the question whether the proposed Agreement should be a special agreement under the Paris Convention for the Protection of Industrial Property (Article 1 of the Draft). The Draft provided that States could protect type faces by either industrial property or copyright provisions. The problem that arose was therefore whether it was possible for the Agreement to be a special agreement under the Paris Convention whereas certain States provided protection by means of copyright provisions. The Delegations of the United Kingdom and Canada suggested that States whose legislation provided for the protection of type faces by means of copyright should apply, with regard to the persons protected by the Special Agreement, the rules of the Copyright Convention and not those of the Industrial Property Convention. The Chairman wondered whether it would not be advisable to provide for an agreement that was not a special agreement as provided for in

the Paris Convention, but to require at the same time that all States acceding to the Agreement be party to the Paris Convention and to the Berne Convention, or to the Universal Copyright Convention. He opened discussions on the question, adding that, if necessary, it could be resolved at a later stage, in connection with the discussions on Article 3 of the draft Agreement.

140. Mr. van WEEL (Netherlands) proposed that no reference be made to the three Conventions but that it be simply stated, as in the case of UPOV, that the States party to the Agreement constituted a Special Union for the protection of type faces.

141. The CHAIRMAN recalled that it was a question of establishing what States could accede to the Special Agreement.

142. Mr. CADMAN (United Kingdom) admitted that he had not fully assessed the possible consequences of a situation where the Agreement for the Protection of Type Faces would be open to the signature of any State party to the Paris Convention and to the Berne Convention, or to the Universal Copyright Convention. The Delegate of the United Kingdom considered that, for States such as the United Kingdom, it would be easier to become party to the Agreement if it was not a special agreement under the Paris Convention.

143. Mr. MOROZOV (Soviet Union) expressed the view that it would also be possible to regard the Agreement under discussion as an agreement as provided for in Article 2(vii) of the Convention Establishing WIPO, which referred not only to agreements established in relation with the Paris Union, but also to any other international agreement designed to promote the protection of intellectual property whose administration was assumed by WIPO.

144. Mr. DE SANCTIS (Italy) considered that the Paris and Berne Conventions, and the Universal Copyright Convention, were a sort of framework for Special Unions. If a reference were made to those general Conventions, it might perhaps be necessary to include in the Agreement on type faces all the necessary references. His Delegation considered that type faces belonged primarily to the field of industrial property; the Delegation of Italy therefore supported the reference in the Agreement to the Paris Convention.

145. Mr. KAMPF (Switzerland) was of the opinion that it would be advisable to postpone discussions on the matter until a final text was available.

146. Mr. KEYES (Canada) endorsed the opinion expressed by the Delegates of the United Kingdom and of the Soviet Union.

147.1 Mr. BODENHAUSEN (Director General of WIPO) remarked that there were indeed a number of possible solutions. He did not mean to put forward arguments for and against, but he considered that the Main Committee should settle the problem with full knowledge of the facts.

147.2 The first possibility was that provided for in the Draft that is to say a special agreement under the Paris Convention. From the point of view of drafting,

the advantage was that one could refer to the Paris Convention, as was done, for instance, in Articles 30 and 34 of the Draft. A certain lack of logic could be noted in that solution, however, because it was stated that the Agreement was an agreement under the Paris Convention and yet protection by means of copyright was also allowed.

147.3 The other possibility was to provide that the Agreement was open to signature by countries members of the Paris Union or of the Berne Union, or by countries party to the Universal Copyright Convention. Acceptance of such a solution would make it necessary to amend certain passages in the Draft because in such a case every country wishing to be bound by the Special Agreement would first have to be bound by a general convention, either on industrial property or on copyright. The Chairman recalled that there had been long discussions on the same subject at the time of the elaboration of the text of the Rome Convention on Neighboring Rights. Neighboring rights could not be protected if the main rights were not protected. Consequently, it would have to be required that a country wishing to protect neighboring rights--in the case in point, type faces--be a member of one of the two Unions, Paris or Berne.

147.4 The third possibility was that proposed by the Delegate of the Soviet Union, namely, a simple statement that the proposed Agreement was an agreement whose administration would be endured by WIPO, as in the case of the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. It would also be possible to say that the Agreement was administered by WIPO without requiring accession to a general Convention on either industrial property or copyright.

147.5 The fourth possibility was to make no reference, even to WIPO, regarding the Agreement as being totally independent, as in the case of UPOV, where there was only a self-contained Union, the Secretary-General of UPOV being by chance also the Director General of WIPO. There would thus be no legal link and it would be a completely independent body.

148. The CHAIRMAN considered that it would be only logical to say that countries whose national legislation provided for protection of type faces by means of copyright should be countries party to the Berne Convention or to the Universal Copyright Convention, while those that provided for protection by means of their national industrial property provisions should be countries party to the Paris Convention.

149. Mr. LORENZ (Austria), referring to Rules 2 and 35 of the Rules of Procedure of the Conference, asked whether it was expressly stated that States participating in the Diplomatic Conference on the Protection of Type Faces had necessarily to be States party to the Convention Establishing WIPO, to the Paris Convention or to the Berne Convention. The Delegate of Austria thought that that could have some bearing on the choice of the legal form of the proposed Agreement.

150.1 The CHAIRMAN recognized that the question raised by the Delegate of Austria was important, particularly as far as the right to vote was concerned. As for the delegations participating in the present Conference, they were delegations of countries which were all party to the Paris Convention, and which, as such, would therefore have the right to vote.

150.2 The Chairman proposed that the discussion of the question continue in conjunction with the discussion of Article 3, and opened the discussion on Article 2 containing the definitions.

Article 2: Definitions

151. Mr. DE SANCTIS (Italy) recalled that his Delegation had raised the problem of the limitation of the scope of the protection provided by the Agreement at the sixth Committee of Experts, in 1972. The Agreement dealt with a very specific subject matter which was already protected in a number of countries, either by industrial design legislation or by copyright legislation. The problem was of particular interest to a certain number of industries. There was no unanimous opinion on the definition of the term "type faces." The one proposed was regarded as purely arbitrary, and in fact other definitions were not ruled out. As far as the typographical field was concerned, and that included phototype-setting systems, the adoption of the Special Agreement had proved necessary. The protection of the type faces designed for typewriters and for high-speed printers for data processing equipment was not an advantage for the typographical industry on account of the different types of technology involved. The conventional typewriter was at that time the most widely used instrument for writing texts; its purpose was to provide a legible text without any particular artistic or aesthetic characteristics. It contributed to the widespread disclosure of information and offered a solution to the problem of illiteracy in developing countries. According to the proposal of one group of countries, contained in document CT/DC/8, it appeared desirable that protection be afforded exclusively to those type faces that were distinguished by their novelty and originality. The Delegate of Italy supported that proposal indicating, on the one hand, that the Agreement under consideration did not seem to him to be suitable for typewriter characters and, on the other hand, that the exclusion of such characters from protection would be a compromise between the needs of developing countries and the requirements of highly industrialized countries. The documents used by offices organized in an up-to-date and efficient way could be produced partly with typewriters and partly with high-speed printers. All those documents had to be deciphered automatically by means of optical readers or the apparatus used in data processing systems. That called for standardization. New technologies were developing and gradually supplanting traditional typewriters and other similar methods of writing. In view of those technological trends, in particular the trend towards non-typographical industrial printing, and considering that the protection afforded in Italy by industrial design legislation was sufficient for that type of industry, the Delegation of Italy proposed the deletion, in Articles 2(i) and 6(1)(i) of the Draft, of the words "... typewritten or other graphic...."

152. The CHAIRMAN recognized that the question raised by the Delegate of Italy was very important, and asked the delegations to state their views on the proposal.

153. Mr. KÄMPF (Switzerland) expressed surprise at the attitude taken by the Delegation of Italy. He was not convinced by the arguments put forward for excluding characters for office typewriters from protection, arguments which, in his opinion, were no more valid for typewriter characters than for characters used in printing. Ordinary characters would never be protected, because they had long fallen into the public domain. What had to be protected were characters that differed from ordinary characters. A firm might wish, for publicity purposes, to have special characters for its office typewriters. It might order them and receive them. It would not then be pleased to see that someone else was using them when the firm itself had borne the cost of acquiring the special characters. What had to be protected, therefore, were not only characters used in printing, but also characters for office typewriters.

154. Mr. MOROZOV (Soviet Union) said that he would like to speak on the Preamble but did not wish to interrupt the discussion for the moment.

155. The CHAIRMAN asked whether characters existed that were intended exclusively for typewriters.

156. Mr. KÄMPF (Switzerland) replied that characters used for printing and those used for typewriters were completely different, as were the specialized firms that manufactured them. That at least was the situation in Switzerland.

157. Mr. DREYFUS (International Typographic Association (ATYPI)) said that he was very interested by the statement of the Delegate of Italy. However, he considered that certain remarks were the result of a misunderstanding. With regard to the purely arbitrary character of the definition contained in Article 2, the Observer from ATYPI asserted that that was not the case. The definition had been drafted at a time when the technology used in printing and in the industry producing office machines was undergoing great changes. The interested parties were therefore the producers and designers of type faces for use on conventional typewriters as well as for the apparatus used in data processing. If the words "... typewritten or other graphic ..." were deleted, a long sentence would have to be added to the text to clarify the meaning of the word "type faces." The aim was to find a formula that covered characters designed for existing technologies and also for those that might be developed in the future. That was why a very broad definition had been given. In order to enjoy protection, any design had to possess the quality of originality or novelty. That, of course, did not rule out designs that would be invented in the future. The Observer from ATYPI wondered whether the Delegate of Italy was not creating fears which in fact did not exist since all the type faces that the latter wished to have in the public domain would not have those qualities of novelty or originality and therefore would remain in the public domain. As far as characters intended for typewriters were concerned, the Delegation of Italy was oversimplifying the problem. There were indeed typewriters equipped with characters of different widths, which

afforded wide possibilities in the design of type faces that were both new and original. The American IBM Company produced 10 to 15 years ago a type of character called IBM Executive Typewriter Type which had been produced later on under license as a type face. That concrete example proved that persons working in the field of both printing by conventional methods and printing by office machines needed to have new and original printing characters at their disposal.

158. The CHAIRMAN reverted to the question raised by the Delegate of the Soviet Union and proposed that the Preamble be discussed later, together with Article I of the Draft.

159. Mr. MURAOKA (Japan) said that he greatly appreciated the opinion expressed by the Delegation of Italy. As for the text proposed for the definition, he had some misgivings on account of the imprecise and broad nature of the words used. If the proposal of the Delegation of Italy to delete the words "... typewritten or other graphic ..." was not supported by other delegations, some clarifications would have to be made so that future developments in the data processing field would not be neglected. The Delegate of Japan suggested that the Delegation of Italy and the other interested delegations seek a compromise solution together.

160. Mr. KELBEL (Federal Republic of Germany) reminded the Main Committee that the purpose of the proposed Agreement was to protect intellectual creations, in other words, type faces. The proposal of the Delegation of Italy, in his opinion, introduced a foreign element into the discussion which related to industrial production. He was therefore unable to support it.

161. Mr. DE OURO-PRETO (Brazil) recalled that his Delegation had had occasion to express its hesitation with regard to the Agreement, precisely on account of the specific problems that required clarification. The Delegate of Brazil wished to know what relation there was between the semantic content of the definition as proposed in Article 2(i) of the Draft and the concept of characters intended for computers, etc., which was referred to in paragraph 24 of the comments on Article 2 of the Draft. He then turned to the problem of computer language and its nature, noting that any replies which might be given would contribute to the understanding of the words "other graphic techniques." The Delegate of Brazil added that he was very interested in the amendment proposal submitted by the Delegation of Italy.

162. Mr. KEYES (Canada) shared the opinion expressed by the Delegate of the Federal Republic of Germany.

163. Mr. DE SANCTIS (Italy) asked the Observer from ECMA (European Computer Manufacturers Association) to give him his opinion on the subject of the intervention by the Observer from ATYPI.

164.1 Mr. BARBIERI (European Computer Manufacturers Association (ECMA)), taking the floor in the capacity of Observer, introduced ECMA. The Association represented all the main computer manufacturers established in Europe, interested in highly technical industries and consequently in industrial property problems. Type faces as such were of real interest to the computer

industry for the individual composition of printouts and the use of specialized printers for that purpose. Type faces were also interesting for industry in the case of the magnetic and optical identification of the results appearing in the computer output. The need for the adoption of an international instrument on the protection of type faces had been felt quite recently within ECMA. Such an instrument had been regarded as a specialized scheme of great interest to the printing industry and to industries concerned with the creation of type faces. Even though the need for protection of the latter was evident, the industrial property experts in ECMA were very hesitant about creating new forms of protection which would entail registration formalities, etc.: they preferred to have protection afforded by traditional methods and through harmonization of existing systems. ECMA expressed itself in favor of a protection system either through copyright legislation or through industrial design legislation, but not a mixed system which would only cause difficulties in the development of new equipment for the world market. The 25-year protection period, which was interesting for authors, seemed--according to the Observer from ECMA--too long for the computer manufacturing industry. For those reasons, the Observer from ECMA expressed his preference for protection by industrial design legislation and a shorter protection period which would correspond more closely to the need to amortize investments.

165. Mr. CADMAN (United Kingdom) observed that the problem was a philosophical problem: was one trying to protect creators or to stimulate industry and trade? If the protection of type faces by means of copyright was contemplated, which he was prepared to accept, the benefits would accrue to the creators without any effect on industry and commerce. If, on the other hand, protection by means of industrial property legislation was envisaged, that would lead to a limitation of protection along the lines of the proposal of the Delegation of Italy.

166. The SECRETARY returned to the problems raised by the Delegate of Brazil. As far as the proportion between the length of Article 2(i) and the length of the comments was concerned, the definition appearing in the Article contained a number of terms which were not very common, notably for jurists, and it had seemed necessary to comment on them perhaps at somewhat more length than on other provisions that were easier to understand. As far as computers were concerned, it was actually stated that "graphic techniques" referred also to computers, but when the Draft was written it was not the system of writing for computers that had been meant, in other words the kind of letters, everything that was liable to hamper the standardization of development, but only the original and novel shape of the letters. The same applied to typographical techniques. The elaboration of a new system had nothing to do with the outward form of the letters, which had to be original and/or novel. The Secretary recalled that the Delegation of Switzerland had submitted a proposal (document CT/DC/6) which, in his opinion, should be discussed at the same time as the definition in question. The aim of the proposal was precisely to exclude letters whose shapes are dictated solely by technical requirements, which to a large extent applied notably to computers.

167. Mr. LARREA RICHERAND (Mexico) considered that the essence of the problem under discussion in connection with Article 2 was closely associated with the contents of the Preamble and Article 1 of the Draft, which had been reserved for later consideration. The fundamental question for the Delegation of Mexico was to know what would be the system--copyright or industrial property--under which protection would be afforded. In the Draft, industrial property was mentioned. There were countries, however, such as Mexico, which possessed copyright laws providing for the protection of type faces. The problem that preoccupied the Delegate of Mexico in particular was that of the steps that would have to be taken to prevent the provisions of the Agreement under discussion, if it were to provide for the protection of type faces by means of copyright also, from conflicting with those of the Berne Convention as revised at the Paris Diplomatic Conference in 1971, in which certain facilities were made available to developing countries (25-year term of protection, reproduction licenses, etc.).

168. The CHAIRMAN remarked that his position was close to that of the Secretary. If the problem were to be examined from the copyright standpoint, only the artistic elements would be protected and not the purely technical elements. It would seem that the same remark could be made on the basis of a study of the court decisions concerning the protection of industrial designs. The Chairman therefore proposed that a special provision be inserted in the text of the Draft stating that purely technical elements were not protected by the Agreement.

Suspension

169. The CHAIRMAN reopened the meeting and the discussion on the question of the definition of "type faces." He recalled that the Delegation of Switzerland had submitted a proposal for the amendment of Article 5 of the Draft (document CT/DC/6), according to which States might exclude from protection under the Agreement type faces of a design dictated solely by technical requirements. The Chairman suggested saying, in the definition contained in Article 2(i), "to provide means for composing texts by any graphic technique," and to resolve other questions of detail, concerning typewriters and computers for instance, by reference to the proposal of the Delegation of Switzerland.

170. Mr. FALSAFI (Iran) expressed himself in agreement with the proposal submitted by the Delegation of Switzerland. He recalled that, as a rule, the text of an agreement had to be drafted in general terms. To list in detail in legislative or treaty texts all sorts of exceptions, examples, etc., was, in his opinion, unwise if not actually dangerous. In order to escape from the trap into which the Conference had fallen at the very outset, the Delegate of Iran suggested specifying in the text of the Agreement and in the Regulations, quite simply, that "type faces" meant sets of designs, letters and alphabets as such, and ornaments, intended to provide means for composing texts by typographical or any other graphic techniques.

171. The CHAIRMAN noted that, in order to be decided upon, the proposal of the Delegate of Iran had to be submitted in writing.

172. Mr. MURAOKA (Japan) wished to know whether the discussion should not be

173. The CHAIRMAN proposed that there be a vote on the definition of the "type faces" concept as contained in Article 2(i) of the Draft, amended to replace its last words by the following: "which are intended to provide means for composing texts by graphic techniques." As for the question raised by the Delegation of Italy, it would be examined later, at the same time as the proposal by the Delegation of Switzerland on Article 5.

174. Mr. HADDRICK (Australia) referred to Article 2(i) and asked for clarification of the term "intended to provide." He recalled that the Observer from the International Chamber of Commerce had raised the problem of intention at the meeting of the sixth Committee of Experts (document CT/VI/11, paragraph 19). He wondered whether the words "intended to provide" had an objective significance and had been inserted for a specific purpose. In his opinion they added nothing to the text, and it would be simply a question of drafting.

175. The CHAIRMAN considered that it was indeed a drafting question which could be entrusted to the Drafting Committee.

176. Mr. MURAOKA (Japan) had two problems to submit on the subject of Article 2(i) of the Draft. The first related to the words "letters and alphabets." After having described the characteristics of the Japanese alphabet, which used characters or graphic signs of Chinese origin, the Delegate of Japan observed that, in everyday practice in Japan, only some of those characters were used (about 2,000 out of tens of thousands). Paragraph 21 of the comments on Article 2 of the Draft made it clear that protection was afforded not to individual designs but to sets of designs. The Delegate of Japan asked that the Japanese language, as well as other languages such as Arabic or Russian, with their special alphabets, be also covered by the term "letters and alphabets," and that there be no requirement of reservations for all the Chinese characters used by the Japanese language. The second problem related to the word "texts," which had not been defined and might give rise to some ambiguity. According to the Delegation of Japan, a text included at least one sentence made up of separate elements, serving to convey intentions, ideas, etc. However, the creation of the design of a single word or of a set of letters, as in the case of a trademark, did not constitute a text, and the designs and characters in question would remain outside the bounds of protection.

177. Mr. RÚA BENITO (Spain) considered that no effort should be spared in making the definitions in Article 2, and particularly that of the "type faces" concept, as clear as possible. It seemed to follow from the definition contained in Article 2(i)(a) (document CT/DC/1) that figures could be registered only as accessories of letters or alphabets. And yet it was stated in paragraph 21 of the comments on Article 2 of the Draft that sets of letters and figures and the signs associated with them required special protection, as type faces. The literal text of the definition of "type faces" was, in the opinion of the Delegation of Spain, inconsistent with what was to be meant, i.e. its spirit. The Delegate of Spain wished to have the provision in Article 2(i)(a) drafted more clearly so as to make it obvious that figures as such could be registered without having to be an accessory of letters or alphabets.

178. The CHAIRMAN repeated that, in his opinion, such questions were for the most part drafting matters which, although important, could be settled by the Drafting Committee.

179. Mr. DE OURO-PRETO (Brazil) considered that the question under discussion was not one of a drafting nature. It was a substantive question which should be discussed in connection with Article 2 on the problem of definitions and not in connection with Article 5.

180. The CHAIRMAN presumed that the Delegate of Brazil was referring to type-written and other graphic techniques.

181. Mr. DE OURO-PRETO (Brazil) recalled that the members of the Main Committee were not in agreement on the meaning that should be attributed to the subject matter to be protected by the Agreement. He insisted on the fact that the problem raised by the Delegation of Italy was a substantive problem, and should not be referred to the Drafting Committee.

182. The CHAIRMAN agreed that, in that case, it was indeed a substantive question. However, he considered the other questions raised by the various delegations to be essentially drafting questions.

183. The SECRETARY found that the interpretation submitted by the Delegation of Japan appeared to be accurate as far as the Secretariat was concerned.

184.1 The CHAIRMAN proposed that the interpretation in question be included in the report of the Main Committee.

184.2 He asked whether the Main Committee accepted his proposals as to the definitions of the "type faces" concept and the proposal of the Delegation of Italy.

185. Mr. FALSAFI (Iran) agreed with the Chairman's proposal. He shared the opinion expressed by the Delegation of Brazil that the question was a substantive one. Finally, he recalled that definitions were usually included at the beginning of the instrument when drafted and not in the middle of the text (as in Article 5 of the Draft).

186. Mr. KÄMPF (Switzerland) indicated that he had made a proposal on the subject of Article 5 precisely because he considered that it was not a question of definition but rather a question of substance concerning the scope of protection.

187. Mr. HADDRICK (Australia) supported the Chairman's proposal, provided that the definition proposed by the Drafting Committee would be only a proposal to be submitted to the Main Committee for a decision.

188. The CHAIRMAN confirmed that it would be so.

189.1 Mr. MOROZOV (Soviet Union) referred to the Rules of Procedure and drew the Chairman's attention to the fact that he had asked for the floor three times already but in vain.

189.2 As far as the substantive questions under discussion were concerned, he shared fully the opinion expressed by the Delegate of Brazil, and would be prepared to accept the text of Article 2(i) as proposed by the Chairman if he received a clear assurance that the Main Committee and the Working Group would provide all the details concerning the scope of the "graphic techniques" concept and all the exceptions excluded from protection under the Agreement.

190. The CHAIRMAN apologized to the Delegate of the Soviet Union for not having given him the floor earlier. In fact he had not seen his signal.

191. Mr. FALSAFT (Iran) shared the opinion expressed by the Delegate of the Soviet Union. He repeated that he agreed to the replacement of the term "typographical" by the term "graphic." As for the rest, it was a substantive matter. He therefore proposed that a working group be formed to study those problems.

192. Mr. LARREA RICHERAND (Mexico) supported the proposal of the Delegate of the Soviet Union. He considered that the question was one of substance and not of procedure. No agreement could ever be reached on definitions without a decision having been taken beforehand on the Preamble and Article 1. The Delegate of Mexico therefore suggested restarting the discussion on all the provisions in context.

193. The CHAIRMAN recognized that the formation of a working group was necessary. However, in order to finish the discussion on the definition of the "type faces" concept he suggested acceptance of his proposal regarding the replacement of the word "typographical" by the word "graphic" and the referral of other questions to the Drafting Committee.

194. Mr. KÄMPF (Switzerland) felt somewhat reluctant to adopt this course and take a vote. In view of the fact that the question was one of substance and also in view of the objections that had been made in the course of the discussion, he wondered whether one should not refrain from voting for the time being and await a decision on the substance of Article 5 in particular. Then at least one would know what was to be protected.

195. Mr. FALSAFI (Iran) proposed a procedural motion. He asked that the formation of a working group be put to the vote.

196. The CHAIRMAN promised to accede to the request of the Delegate of Iran after the intervention of the Delegate of the United States of America.

197. Miss NILSEN (United States of America) supported the Chairman's proposal concerning the Drafting Committee.

198. The CHAIRMAN asked the Main Committee whether it agreed to establish a working group to devise a definition for the "type faces" concept and consider the proposal of the Delegations of Switzerland and Italy.

199. Mr. DE OURO-PRETO (Brazil) said that his Delegation wished to support the proposal made by the Delegation of Iran.

200. Mr. DE SANCTIS (Italy) supported the proposal that a working group be formed.

201. The CHAIRMAN asked whether the Secretariat had a proposal to make regarding the composition of the Working Group.

202. The SECRETARY proposed that the Working Group consist of the representatives of the following countries: Australia, Brazil, Germany (Federal Republic of), Iran, Italy, Japan, Soviet Union, Switzerland, United Kingdom.

203. Mr. HADDRICK (Australia) declared himself satisfied with the fact that his country was represented on the Working Group, and hoped that their joint efforts would make it possible to find a solution acceptable to all.

204. Miss NILSEN (United States of America) wished to take part in the deliberations of the Working Group.

205. The CHAIRMAN added the United States of America to the countries whose representatives would be on the Working Group, and proposed that the Group start work on Saturday morning, May 26, 1973.

206. Mr. BODENHAUSEN (Director General of WIPO) proposed that the Working Group meet earlier, on May 25, 1973, at 9 a.m.

207. Mr. PALSAPI (Iran) supported the proposal of the Director General of WIPO.

208.1 The CHAIRMAN indicated that the Working Group would meet on May 25, at 9 a.m., and the Main Committee on that same day at 3 p.m.

208.2 He asked the Main Committee to state its views on the other definitions contained in Article 2 of the Draft and noted that the Main Committee could accept them, with the exception of item (vii) on the "Special Union" concept, as the decision on the latter definition had to be postponed until such time as a decision had been taken on Article 5.

209. Mr. LARREA RICHERAND (Mexico) considered that there should also be a definition of the expression "Berne Union," depending on the final wording of Article 1.

210. The CHAIRMAN said that, if necessary, the Main Committee would revert to that question after having decided on the text of Article 1.

211. Article 2, with the exception of items (i) and (vii), was adopted as appearing in the Draft.

<u>Second Meeting</u>
<u>Friday, May 25, 1973,</u>
<u>afternoon</u>

Article 2: Definitions

212. The CHAIRMAN opened the second meeting of the Main Committee and invited Mr. Cadman, Delegate of the United Kingdom, who that morning had presided over the meeting of the Working Group, to report briefly on the result of the Group's work.

213. Mr. CADMAN (United Kingdom), speaking in the capacity of Chairman of the Working Group, emphasized the spirit of cooperation and goodwill that had prevailed during the meeting of the Working Group, and commended the services of WIPO--which had assisted the Working Group in the accomplishment of its task--for their competence and efficiency. He noted that the recommendations of the Working Group had for the most part been adopted unanimously. The proposal of the Delegation of Italy on Article 2(i) of the Draft had been discussed and put to the vote, as a result of which it had been rejected.

214. The CHAIRMAN presented the text of Article 2(i) recommended by the Working Group, which appeared in paragraph 5 of the latter's report (document CT/DC/14). He noted that the difference in relation to the Draft consisted in the replacement of the words "composing texts by typographical, typewritten or other graphic techniques" by the words: "composing texts by any graphic techniques. The term "type faces" does not include type faces of a form dictated by purely technical requirements." The sentence after the full stop had been added in accordance with a proposal by the Delegation of Switzerland. He opened discussions on Article 2(i) as proposed by the Working Group.

215. Mr. KEYES (Canada) said that his Delegation could adopt the proposal.

216. Mr. MOROZOV (Soviet Union) asked how the expression "purely technical requirements" should be understood. The interpretation given to the expression by the Main Committee would be of some significance.

217. The CHAIRMAN pointed out that the Working Group had borrowed the expression from the proposal of the Delegation of Switzerland. He asked whether the Delegate of Switzerland could not provide the explanations requested by the Delegate of the Soviet Union.

218. Mr. KÄMPF (Switzerland) recalled that an explanation had already been given in document CT/DC/6, which contained the proposal of the Delegation of Switzerland. Some further explanations had already been given in the course of the meeting of the Working Group which, when drafting its report, had paid particular attention to the difficulties that the wording of Article 2(i) of the Draft caused the Delegation of Italy. This was why the Working Group had thought that, for use in computers, characters had to be created that could be read by a machine, and

that that requirement of being machine-readable called for the creation of certain character shapes that were determined by technical requirements and consequently excluded from protection. Nevertheless, the Delegate of Switzerland did not consider it advisable to give a definition in the Agreement or in the Regulations of what was meant by "technical requirements," even if it were possible to devise one.

219. The CHAIRMAN asked the Delegate of the Soviet Union whether the explanation by the Delegate of Switzerland satisfied him.

220. Mr. MOROZOV (Soviet Union) replied in the affirmative, and asked that the explanation in question be inserted in the minutes of the Main Committee.

221. The CHAIRMAN confirmed that it would be so.

222. Mr. RÚA BENITO (Spain) announced that his Delegation had studied the text of Article 2(i) of the Agreement as drafted by the Working Group, and had found that the wording of items (a), (b) and (c) was unchanged. The Delegate of Spain drew attention to the fact that the text might, from a legal standpoint, raise questions of interpretation, for instance whether figures as such could be registered as "type faces." If the text were interpreted strictly, that would be true only of figures used at the same time as letters and alphabets. In many cases, however, it could prove more advantageous to be able to register figures alone, which was not possible according to the text drafted by the Working Group. The Delegation of Spain considered therefore that if the possibility of registering figures independently of letters was not desired, that should be expressly stated in the comments. If that were not the case, the proposed text should be redrafted in such a way as to allow registration of figures independently of letters and alphabets.

223. The CHAIRMAN thought that it was clear from the text proposed that only sets were protected. In view of the fact that it was also possible for such sets to be composed only of ornaments, without the letters of the alphabet, the Chairman asked the Main Committee to decide on the question whether the protection of such sets would be possible. He asked for the views of ATYPI on the question.

224. Mr. DREYFUS (International Typographic Association (ATYPI)) indicated that it had always been customary for those who supplied letters for composing texts to supply also certain decorative elements. However, it did sometimes happen at the present time that ornaments were supplied independently of sets of letters. Considering the problem from the point of view of ATYPI and of those who created the designs for type faces, those who manufactured them and those who used them, it was more important to be able to deposit figures independently of alphabets than to deposit ornaments independently of alphabets.

225. The CHAIRMAN proposed that the statement made by the Observer from ATYPI be included in the report of the Main Committee.

226. It was so decided.

Article 3: Principle and Forms of Protection (Principle and Kinds of Protection of the Text as Adopted). Article 5 (Article 7 of the Text as Adopted): Conditions of Protection

227. The CHAIRMAN opened discussions on Article 3 and introduced document CT/DC/8, which contained the observations and proposed amendments submitted by the eight Delegations. The document in question proposed that the words "new and original" be inserted before the words "type faces" in Article 3(i). The Chairman observed that it would also be possible to settle the question during the discussion of Article 5, which provided that Contracting States might make the protection of type faces subject either to their novelty or to their originality, or to both conditions at the same time. He wondered whether it was possible to have only one solution, i.e. to require cumulatively novelty and originality. Countries with legislation that required compliance with both conditions were generally the exception (e.g.: the Federal Republic of Germany). Countries that dealt with the matter with reference to industrial design legislation required novelty only. "Copyright" countries tended to use originality as the basis. It was not certain that countries belonging to the latter two categories would be able to accept the formula proposed by the eight Delegations. For that reason, the Chairman proposed that the Agreement state that it was necessary that one condition be met, "novelty" or "originality" or "novelty and originality," without it being mandatory that both conditions be met at the same time.

228. Mr. KEYES (Canada) said that he agreed with the Chairman's exposition.

229. Mr. MOROZOV (Soviet Union) explained the reasons for which the eight Delegations had decided, in document CT/DC/8, to take the two conditions, originality and novelty, into account. It was obvious that, in countries with legislation that provided for the protection of type faces by means of copyright provisions, originality, not novelty, had to be the condition of protection. For that reason his Delegation declared itself in favor of the solution that allowed countries to choose between the three possible alternatives, including cumulative protection. With regard to the place in the Agreement in which the question of criteria should be dealt with, the Delegate of the Soviet Union considered that it could just as well be in Article 5 as in Article 3. Consequently he was prepared to adopt the proposal concerning Article 5.

230. Mr. FRANCON (France) endorsed fully the opinion expressed by the Chairman to the effect that, in the face of the variety of legislations involved, the wisest course was probably to decide that countries could, at their discretion, make protection subject either to originality or to novelty.

231. Mr. van WEEI (Netherlands) took the same view as the Delegate of France.

232. The CHAIRMAN, asked the Delegate of the Soviet Union whether, to facilitate adoption of the proposal of the eight Delegations, he would agree to the provision of the possibility for countries to choose the condition from among three alternatives: originality, novelty, and both conditions required at the same time.

233. Mr. MOROZOV (Soviet Union) replied that he was not in favor of the alternative of requiring that both conditions be met at the same time, but that if a country provided for such a solution in its legislation, it should be given the possibility of adopting that course. If the Soviet Union was to become party to the Agreement on the subject matter under discussion, it had to be clear that the Agreement made mandatory provision, among the conditions laid down, for the possibility of originality or novelty being required separately.

234. The CHAIRMAN remarked that the Main Committee, in the light of the explanation of the Delegate of the Soviet Union, agreed on the whole on the solution to the problem under discussion. There thus remained only the question of the Article 3 or 5, in which the problem should be dealt with. Personally, the Chairman favored Article 5, in which case the words "Contracting States may make the protection of type faces subject to ..." would have to be replaced by the words "The protection of type faces shall be subject either to" He asked the delegates for their opinion on this subject.

235. Mr. KAMPF (Switzerland) thanked the Delegate of the Soviet Union for having clarified that one condition or the other should always be imposed, and possibly both conditions together, rather than the two conditions being imposed in every case. He agreed with this proposal and expressed preference for Article 5 rather than Article 3.

236. Miss NILSEN (United States of America) also preferred to see the question dealt with in Article 5.

237.1 The CHAIRMAN stated that in view of the Main Committee's preference for Article 5, the decision on the question under discussion would be taken at a later stage.

237.2 He opened discussions on the other question concerning Article 3, which had been raised by the Delegations of the United Kingdom (document CT/DC/4) and Canada (document CT/DC/5) on the subject of eligibility criteria, which were different in the Paris Convention on the one hand and in the Copyright Conventions on the other. In his opinion the question at issue was not merely whether there was an industrial establishment in one country or another, whether the creator of the type face was a national of a country party to the Paris Convention or whether the first publication occurred on the territory of such a country. In the case of protection by means of industrial property legislation, it was not necessary for the author to be a national of a Paris Union country, as the fact of the successor in title being a national was sufficient. For all those reasons the Chairman considered it necessary to adopt the proposal of the United Kingdom and Canada.

238. Mr. CADMAN (United Kingdom) said that the Chairman had presented the point of view of the Delegation of the United Kingdom in an extremely clear manner. He would therefore confine himself to the problem of whether the Agreement for the Protection of Type Faces should or should not oblige Contracting States that afforded protection by copyright means to grant more extensive entitlement to copyright in type faces than in other categories of works protected by copyright. The Delegate of the United Kingdom felt that that would be difficult to justify, as entitlement to copyright should be the same in all cases; he advocated improvement of the wording of Article 3 of the Draft.

239. Mr. KEYES (Canada) endorsed the remarks made by the Delegate of the United Kingdom. The availability of options was of great importance to his country, which had not yet chosen the means of protecting type faces. The Delegate of Canada thought that protection by copyright would be chosen, and that some amendment of the national copyright legislation currently in force was to be expected.

240. Miss NILSEN (United States of America) shared the views expressed by the Delegates of the United Kingdom and Canada and emphasized the necessity of improving the proposed text.

241. Mr. van WEEL (Netherlands) said that he agreed with the Chairman, whose extremely clear explanation had greatly facilitated comprehension of the problem. He wondered whether the text proposed by the Delegations of the United Kingdom and Canada reflected exactly the existing situation under the Berne Convention, as the proposal went somewhat beyond what was required by the Convention. The Delegate of the Netherlands thought nevertheless that the question was one of drafting.

242. The CHAIRMAN indicated that the Delegation of Japan had submitted a proposal for the amendment of Article 3(1) (document CT/DC/12) which involved the deletion, in the second sentence of the text proposed by the Delegation of Canada (document CT/DC/5), of the words "residents of other Contracting States by reason only of their having a real and effective industrial or commercial establishment in those States," and their replacement by the words "not nationals of other Contracting States."

243. Mr. FRANCON (France) wished to make some comments on the proposals submitted by the Delegations of the United Kingdom and Canada. If a comparison were made of the eligibility criteria in the copyright and industrial property conventions, and if the draft Agreement were examined from a copyright standpoint, it would be possible to observe on the one hand the use of a criterion that was unknown in copyright conventions, namely that of the effective establishment, and on the other hand the absence of the criterion that played such an important part in the copyright conventions, namely that of first publication. According to the Delegate of France, the system proposed in the draft Agreement was a system which

would ultimately result in some distortion of the criteria of the copyright conventions, while the Draft itself acquired the character of a special agreement as provided for in the Paris Convention. Consequently, if as a result of the discussions the proposed Agreement were to become an independent international instrument, all the problems that had been discussed would have to be reconsidered. The Delegate of France wondered therefore whether the problems of Article 3(2) could be discussed independently of the problem of the nature of the Agreement.

244. The CHAIRMAN recognized that these questions were indeed closely dependent on each other. For the time being the Main Committee should--in his opinion--decide only on the principle according to which industrial property countries would use the eligibility criteria of the Paris Convention whereas copyright countries would use the criteria of the copyright conventions. That, according to the Chairman, was the meaning of the two proposals.

245. Mr. KELBEL (Federal Republic of Germany) understood that countries protecting type faces by means of copyright encountered some difficulty in affording protection to persons who were only residents of other countries. However, he thought that it would be possible to accept the proposal of the Delegations of the United Kingdom and Canada because, in the majority of cases, the persons concerned were in fact nationals of countries party to the Berne Convention or to the Universal Copyright Convention. As for the others, they could enjoy protection in copyright countries through first publication. On the basis therefore of the distinction between copyright countries and industrial property countries (Paris Union countries), the Delegate of the Federal Republic of Germany supported the proposal of the Delegation of Japan contained in document CT/DC/12.

246.1 The CHAIRMAN asked whether the Delegates agreed to accept the principle proposed by him concerning protection criteria; he noted that the principle in question was unanimously adopted.

246.2 As for the formulation and drafting of the principle in the text of the Agreement, the Chairman proposed that that task be entrusted to a working group set up specially for the purpose.

246.3 The Chairman pointed out that the Delegation of Poland had submitted a proposal (document CT/DC/11) which was closely related to everything that had been said previously. He asked the Delegate of Poland to explain his proposal.

247. Mr. OPALSKI (Poland) recalled that his Delegation proposed to add to Article 3(1), after the words "for the benefit of the creators thereof or their successors in title" the words "or legal entities having a right to the type

faces." Copyright law protected the right of the creator, while industrial design law also protected the owners of the industrial designs. In order to allow countries whose legislation protected type faces by means similar to those applied to industrial designs to become party to the Agreement, it was necessary, according to the Delegation of Poland, to amend the wording of Article 3(1) as indicated in document CT/DC/11.

248. The CHAIRMAN raised the problem of the character of the right when the owners were legal entities, and asked whether the latter could acquire the right in the first instance.

249. The SECRETARY recalled that, under certain legislations, the right could vest directly in the person of the employer, who then was not the successor in title of the creator. That was precisely the case in certain industrial property legislations, and more specifically in patent laws, under which the right vested in the person of the employer. The Secretary did not think it was necessary to make the addition proposed by the Delegation of Poland, because, in certain countries, the employer could also be a natural person.

250. The CHAIRMAN thought that it would be necessary to find separate formulas for the copyright countries and industrial property countries that might be particularly concerned.

251. Mr. HADDRICK (Australia) said that, without actually opposing the proposal of the Delegation of Poland, he nevertheless preferred the text of Article 3(1) as presented in the Draft. He thought that the reference should be to the creator, it being understood that the normal provisions of industrial property laws or copyright laws would apply in relation to that term. The Delegate of Australia finally expressed certain misgivings as to the distinction made between industrial property countries and copyright countries.

252. Mr. KELBEL (Federal Republic of Germany) drew the Chairman's attention to the fact that Article 3(1) as proposed by the Delegations of the United Kingdom and Canada (documents CT/DC/4 and CT/DC/5) referred to Article 4, which in turn referred in its paragraph (2) to a legal entity. He wondered therefore whether acceptance of the proposal of the Delegation of the United Kingdom would not in itself provide a solution.

253. The CHAIRMAN considered it possible to accept the proposals submitted, provided that a new wording could be found: the Draft said "for the benefit of the creators thereof or their successors in title" whereas the proposal of the Delegation of the United Kingdom said "created by the person referred to in Article 4," there being no reference to the successors in title of the creator.

254. Mr. CADMAN (United Kingdom) considered that the task of improving the wording of the provision under discussion should be entrusted to a special group created for that purpose instead of being discussed within the Main Committee.

255. The SECRETARY asked the Chairman whether it would not be possible to set up the working group at once, unless the Drafting Committee was to be entrusted with the tasks concerned.

256. The CHAIRMAN recognized that a meeting of the Drafting Committee had to be convened soon, as it was necessary to elect its Chairman, who would be a member ex officio of the Steering Committee. As for the wording of the texts under discussion, the Chairman proposed that a decision be taken later on whether it should be dealt with by a working group or rather by the Drafting Committee.

257. Mr. MURAOKA (Japan) remarked that his Delegation felt that the task of the working group or of the Drafting Committee would be extremely difficult if as vital a problem as that of the Special Union under the Paris Convention had not been resolved beforehand. For that reason he shared the opinion expressed on the subject by the Delegate of France.

[Suspension]

Article 1: Question of Principle: Should the Proposed Agreement be a Special Agreement under the Paris Convention for the Protection of Industrial Property? (Continued). Article 3(2) (Principle and Forms of Protection (Continued)).

258. The CHAIRMAN recalled that the discussion was on two questions of particular importance. The first question was whether the Agreement under discussion should provide for a special Union under the Paris Convention or simply a Union for the protection of type faces, without any express mention of the Paris Convention in Article 1. The second question was whether the Contracting States should be party to the Paris Convention or, in the case of copyright countries, party to the Berne Convention or to the Universal Copyright Convention, or again whether all States could accede to the Agreement. He added that the Agreement would obviously be administered by WIPO, and asked that discussions begin with the first question.

259. Mr. FRANCON (France) said that his Delegation would be in favor of a text that would be independent of the Paris Convention, in view of the fact that, among the types of protection envisaged, some were based on industrial property and others on copyright.

260. Mr. FALSAFI (Iran) shared the opinion expressed by the Delegate of France, emphasizing that that was the only solution which could contribute to the universality of the Agreement.

261. Mr. HADDRICK (Australia) declared himself in favor of an independent agreement, but one open exclusively to countries party to the Paris Convention, to the Berne Convention and to the Universal Copyright Convention.

262. Mr. MOROZOV (Soviet Union) drew the Chairman's attention to Article 2(vii) of the 1967 Convention Establishing WIPO, and declared himself in favor of the Union as provided for in that Article.

263. Mr. DE SANCTIS (Italy) was of the opinion that the Agreement on type faces should be established according to the principles of the Paris Convention. He recalled that the preamble of the Agreement spoke of the introduction of an international deposit, while Article 17 spoke of the right of priority, which meant that the problems concerning the deposit and other matters would have to be resolved in terms of industrial property.

264. Mr. VANÍŠ (Czechoslovakia) declared himself in favor of the solution provided for in Article 2(vii) of the Convention Establishing WIPO, which seemed the simplest and the most practical.

265.1 Mr. van WEEL (Netherlands) said that his Delegation was in favor of a special Union within the framework of the Paris Union, the Berne Union and the Universal Copyright Convention.

265.2 He asked whether the Secretary could not explain the differences between the option of the Union under Article 2(vii) of the Convention Establishing WIPO and that of a special Union within the framework of the Paris Union, the Berne Union and the Universal Copyright Convention.

266.1 The SECRETARY observed that no Union had yet been conceived within the framework of three different Unions. The Union established under Article 2(vii) of the Convention Establishing WIPO would--in his opinion--be an independent Union which would nevertheless remain within the framework of the Convention Establishing WIPO, like the Paris Union or the Berne Union. With regard to the Union envisaged by the Delegate of the Netherlands, that would be a Union dependent, in a manner of speaking, on other Unions, in the sense that, in order to join the Special Union, a country would have first to be either a member of a general Union--Paris or Berne--or party to the Universal Copyright Convention.

266.2 The Secretary wished to add that, if international registration was spoken of in the proposed Agreement, provision would have to be made for a Union with a budget, a certain material existence and certain independence. If international registration was not provided for, but only protection of type faces similar to the protection of phonograms, there would be no need to create a special Union.

267. The CHAIRMAN noted that the majority of the delegations were in favor of the wording of Article 1 that provided for the creation of a Union for the protection of type faces in terms of Article 2(vii) of the Convention Establishing WIPO, and put the question to the vote.

268. The proposed adoption of such a principle was adopted with one opposing vote and one abstention.

269. Mr. FALSAFI (Iran) asked whether the Union for the protection of type faces could, according to the example of the Paris Union or the Berne Union, be called the "Vienna Union."

270. The SECRETARY pointed out that there had never in the past been any formal naming of a Union in the course of the Diplomatic Conference itself, but in practice the Unions were given the name of the city in which the Diplomatic Conference took place.

271.1 The CHAIRMAN recalled that the Main Committee had yet to decide on the second question, namely whether all States could accede to the Agreement or only States party to a general convention. According to him, it would be logical to state in the Agreement that States that protected type faces by means of their industrial property laws had to be party to the Paris Convention, while States protecting them by means of their copyright laws had to be party to the Berne Convention or the Universal Copyright Convention.

271.2 The Chairman added that it would be necessary to say also that national treatment had to be granted to all nationals of Contracting States of the Agreement.

272. Mr. HADDRICK (Australia) recalled that, according to his Delegation, the Agreement should be open only to countries party to one of the three Conventions.

273. Mr. FRANCON (France) fully agreed with the opinion expressed by the Chairman.

274. Mr. KEYES (Canada) subscribed to the observations made by the Delegate of Australia.

275. Mr. CADMAN (United Kingdom) endorsed the statements made by the previous speakers.

276. The CHAIRMAN noted that there were no further opinions on this question, and put it to the vote.

277. The Main Committee unanimously adopted the principle according to which countries whose legislation provided for the protection of type faces by means of industrial property provisions had to be party to the Paris Convention, and countries whose legislation provided for the protection of type faces by means of copyright had to be party to the Berne Convention or to the Universal Copyright Convention.

Preamble

278. The CHAIRMAN opened discussions on the preamble.

279. Mr. MOROZOV (Soviet Union) referred to paragraph 13 of the comments of the preamble, in which it was said that "the Committees of Experts were of the opinion that the Agreement should include a preamble recalling the main reasons for the planned adoption of a special instrument for the protection of type

faces," and remarked that the proposed text of the preamble did not contain any such reasons. The Delegate of the Soviet Union was of the opinion that a working group should be entrusted with the drafting of the preamble, which should be based on the preamble to the Convention Establishing WIPO and the idea of the promotion of cultural activity throughout the world. The Delegation of the Soviet Union wished to take part in the work of the working group.

280. The CHAIRMAN agreed that this question would be studied by the working group and that the Delegate of the Soviet Union should be a member of that group. However, he considered that it would be useful for the working group to know the opinions of the delegations. The Chairman felt that the preamble should cover the idea of protection of intellectual creation. He put the question to the vote.

281. It was unanimously decided that a working group should be set up to deal with the question of the drafting of the preamble.

282. The CHAIRMAN asked the Secretary to present the proposals regarding the composition of the Working Group.

283. The SECRETARY proposed the following countries as members of the Working Group: Algeria, Brazil, Canada, France, Germany (Federal Republic of), Japan, Netherlands, Poland, Soviet Union, United Kingdom, United States of America.

284. It was so decided.

285. The CHAIRMAN proposed that the Working Group meet on the following day, May 26, in the morning.

Article 5: Conditions of Protection

286. The CHAIRMAN opened discussions on Article 5, which concerned the conditions of protection, and recalled that, in paragraph (1), the Main Committee wished to replace the words "may make...subject" by the words "shall make...subject." As it was a question of drafting, the task of establishing the final text could be entrusted to the Drafting Committee.

287. Mr. HADDRICK (Australia) apologized for reverting to Article 3, and presented an observation that might reflect the point of view of countries with legislation based on that of the United Kingdom. The provisions of Article 3 were based on the presumption of the application of the Berne Convention or the Universal Copyright Convention. However, the status of type faces as works was not specified in any way. The legislation of countries such as Australia included in their copyright laws not only provisions concerning the protection of authors and their works, but also provisions on other matters (for instance typographical compositions, specific publications, radio and television broadcasts, phonograms, etc.). It was thus possible to apply the provisions of copyright law to type faces, even if it was not entirely clear in the treaty provisions under consideration. For that reason the Delegate of Australia suggested adding at the end of Article 3(1) the indication that protection might be afforded by the provisions of national copyright law that related to artistic works and works of applied art.

288. The CHAIRMAN agreed to have the matter looked into by the Working Group. He recalled that the eight Delegations had proposed replacing, in Article 5(1), the end of the sentence after "subject to;" the new phrase would be the following: "the examination as to novelty and originality." He asked whether that should be regarded as a proposal for official examination. In the great majority of countries, national legislation--whether on the protection of industrial designs or on copyright--did not provide for an official examination. It was another matter if the question was to be examined by the courts. Then it would be necessary to examine either novelty or originality.

289. Mr. MOROZOV (Soviet Union) said that, in view of the amendment that had already been adopted, the joint authors of the proposal might wish to reconsider their position and withdraw the proposal. Before giving a reply to the Chairman, therefore, he wished to consult them.

290. The CHAIRMAN proposed that the text of Article 5(1) be left as proposed unless the Delegate of the Soviet Union reverted to the question after consultation with the other authors of the proposal contained in document CT/DC/8 and opened discussions on Article 5(2).

291. Mr. MURAOKA (Japan) referred to the proposal by his Delegation (document CT/DC/12) that the last part of Article 5(2) be deleted, namely the phrase "having regard to the criteria recognized by the competent professional circles." He pointed out that in Japan the examination of applications relating to designs was carried out by Patent Office examiners who were in no way bound by criteria established by private organizations. National procedures and practices had to be observed in the field in question. The reference to criteria at the end of Article 5(2) of the Draft did not, in his opinion, contribute to any greater balance in the protection of the various interests involved.

292. The CHAIRMAN explained that the meaning of the provision was not that courts and Offices were bound by an opinion given by the experts, but that their opinion should be taken into consideration. He recalled that the Observer from ATYPI had expressed the wish that a very careful examination be made of the style, overall appearances, etc. of the type faces.

293. Mr. MURAOKA (Japan) said that, according to his Delegation, the criteria recognized by competent professional circles were one side of the coin only. The other side was the necessity of disseminating culture or protecting the lawful rights of users of type faces. If the text of the draft Agreement took only certain aspects of the problem into consideration, that might lead to misinterpretation. If then references were made to the criteria recognized by competent professional circles, there should also be a mention of the other requirements for the balancing of the opinion of the Patent Office or the authorities concerned.

294. Mr. DREYFUS (International Typographic Association (ATYPI)) pointed out that there was no underlying intention, in the proposal under discussion, to exert an unfair and undesirable influence on anyone (courts, patent offices, etc.). The question was merely one of ensuring the possibility of consulting experts in matters concerning the design of type faces, as was normal in cases where questions of writing were discussed.

295. The CHAIRMAN observed that it was possible to indicate in the report that courts and authorities were not bound by the opinion of experts. He asked whether such a clarification satisfied the delegations concerned.

296. Mr. HADDRICK (Australia) thought that he understood the application of the provision in question by a copyright country, which did not seem to present any particular difficulties.

297. Mr. KÄMPF (Switzerland) was certain that the Main Committee agreed that the courts and authorities were not bound by the criteria prevailing in competent professional circles, but that they would take them into consideration when they assessed novelty and originality. He thought therefore that the question was one of drafting and could perhaps be left to the Drafting Committee, which could reflect on the question whether it was possible to make the formula under discussion, contained in Article 5(2) of the Draft, more specific.

298. Mr. van WEEL (Netherlands) said that his Delegation wished to maintain the proposal in question because it might contribute to the clarification of the problem of assessing novelty and originality. The Delegate of the Netherlands proposed as an alternative the addition of the words "inter alia" to the text, before the words "to the criteria recognized by the competent professional circles," in order to emphasize that the criterion was not the only one but one of the more interesting of a number of criteria.

299. Mr. CADMAN (United Kingdom) shared the opinion expressed by the Delegate of Australia. It was the desire of the United Kingdom that Article 5(2) be so worded as to indicate that, in the assessment of novelty and originality, the testimony of experts would be accepted.

300. The CHAIRMAN thought personally that one should not attach too much significance to the provision. The courts could hear experts, but they were not obliged to do so.

301. Miss NILSEN (United States of America), in the light of the discussion, declared herself in favor of the wording in the Draft.

302. The CHAIRMAN noted that, in accordance with the Rules of Procedure, he was obliged to call for a vote on the proposal of the Delegation of Japan that the words "having regard to the criteria recognized by the competent professional circles" be deleted.

303. The proposal of the Delegation of Japan was rejected.

304. Mr. MOROZOV (Soviet Union) said that his Delegation had voted for the maintenance of the words in question. On reflection, realizing the concern of the Delegation of Japan, the Delegate of the Soviet Union wondered whether the insertion in Article 5(2) as presented in the Draft of the words "inter alia" would not satisfy the Delegation of Japan.

305. The CHAIRMAN thought that that question could be considered within the Drafting Committee, and asked the Secretary for his opinion.

306. The SECRETARY thought that the question was more one of substance than one of drafting, even though it was not all that important in itself.

307. The CHAIRMAN asked whether it would not be possible to say "having regard to the criteria recognized by the public and by the competent professional circles."

308. The SECRETARY replied that, if that suggestion were adopted, it would be preferable to use the text proposed by the Delegate of the Netherlands and presented in English by the Delegate of the Soviet Union.

309. The CHAIRMAN recognized that the insertion in the proposed text of the words "inter alia" was a good suggestion.

310. Mr. DE SANCTIS (Italy) drew the Chairman's attention to the fact that the words "inter alia" were not clear, in his opinion, and that it restricted the criteria already specified in the text.

311. Mr. MURAOKA (Japan) fully agreed with the Delegate of the Soviet Union in the sense that some words should be added to the text of Article 5(2) of the Draft. He preferred to have the problem submitted to the Working Group for consideration.

312. The CHAIRMAN recalled that the Working Group already had a great deal to do, and that it would be helpful to clarify the question within the Main Committee. He asked the Delegate of Japan whether the formulation of "having regard, inter alia, to the criteria recognized by the competent professional circles" satisfied him.

313. Mr. MURAOKA (Japan) replied that he preferred the expression "among others."

314. Mr. KEYES (Canada) declared himself in favor of the use in the English text of the expression "inter alia."

315. The CHAIRMAN proposed saying "having regard, among others, to the criteria...."

316. Mr. CADMAN (United Kingdom) declared himself against any amendment of the text of Article 5(2) as proposed in the Draft by the insertion of "among others" or "in particular." The reason was that the question whether or not the type face was protected under copyright laws depended on the assessment by the experts of the degree of originality.

317. The CHAIRMAN suggested that the problem should be studied by the Working Group, which would be entrusted with preparing a proposal for the Main Committee.

318. It was so decided.

319. The CHAIRMAN recalled that the Delegation of the United States of America had submitted a proposal for a new Article 5(3) (document CT/DC/10), which raised a rather difficult legal problem concerning the use of the symbol ~~TM~~. He wondered whether it was possible to change the ~~©~~ symbol of the Universal Copyright Convention, which specified the ~~©~~ and not ~~TM~~. The Chairman asked the Delegation of the United States of America to explain its opinion on this subject. There was also another question, namely that of the formality, which arose only in industrial property countries. The Chairman concluded that, if one were to accept the proposal of the Delegation of the United States of America, it would perhaps be necessary to say that Contracting States which protected type faces by means of copyright and were not party to the Berne Convention had the option of providing for such a formality.

320. Miss NILSEN (United States of America) said that the Chairman had presented very well the problem that arose in relation to the proposal submitted by her Delegation, which was contained in document CT/DC/10. In view of the highly technical nature of the problem and the lateness of the hour, she suggested that the question should be considered by the Working Group.

321. The CHAIRMAN recalled that the Working Group would meet the following morning, and that the next meeting of the Main Committee would be on the morning of Monday, May 28, 1973.

<u>Third Meeting</u>
<u>Monday, May 28, 1973</u>
<u>morning</u>

Working Group Entrusted with the Drafting of the Preamble and Articles 3, 4 and 5(2) of the Draft--Articles 3, 6 and 7 of the Text as Adopted. General Remarks

322. The CHAIRMAN opened the meeting of the Main Committee and asked Mr. FRANCON, Chairman of the Working Group, to present the results of the Group's work, which were contained in document CT/DC/16.

323.1 Mr. FRANCON (France), speaking in the capacity of Chairman of the Working Group, said that the Group had met on the Saturday morning to consider a certain number of amendment proposals and to prepare new wording for certain provisions, notably in the preamble and in Article 3. As far as the wording of Article 3 was concerned, account had been taken of the decisions in relation to the independent character of the instrument. The Working Group had examined whether there was a need to make amendments to Article 4, and had taken the attitude that a definition should be given only in connection with protection by means of industrial property provisions. For that reason, it had been proposed that there be an indication at the beginning of Article 4 to the effect that the definitions given would be definitions only for the purposes of Article 3(2), in other words, in view of the protection of type faces by means of industrial property provisions. Finally, on the subject of Article 5(2), a wording had been devised that would satisfy the Delegate of Japan, according to which the part played by competent professional circles was not absolutely decisive in the assessment of novelty and originality. Some leeway had thus been left, in particular for all courts responsible for considering such questions.

323.2 In conclusion, the Chairman of the Working Group emphasized that the Group had wished to abide strictly by the mandate given it. That meant that the Working Group had not considered it necessary to mention in the envisaged provisions that, in order to be party to the Agreement, it was absolutely necessary to be bound either by the Paris Convention or by one of the international copyright conventions, which did not rule out the idea that such a qualifying statement would have to be included in other provisions of the Draft, and probably in the final clauses.

Preamble

324. The CHAIRMAN thanked the Chairman of the Working Group and commended the Working Group on the results obtained. He opened discussions on the preamble (paragraph 5 of the Working Group's proposal), indicating that the wording chosen, which was based on a proposal by the Delegation of the Soviet Union, stressed the creation aspect and the part played by type faces in the dissemination of culture.

325. The Preamble was unanimously adopted as proposed by the Working Group, subject to final drafting by the Drafting Committee.

Article 3 (Article 3 of the Text as Adopted. Principle and Kinds of Protection): Principle and Forms of Protection

326. The CHAIRMAN opened discussions on paragraphs (1) and (2) of Article 3.

327. Paragraphs (1) and (2) of Article 3 were unanimously adopted as proposed by the Working Group.

328. The CHAIRMAN opened discussions on Article 3(3).

329. Miss NILSEN (United States of America) recalled that she had taken part in the work of the Working Group. She noted however that Article 3(3)(a) raised a minor problem which could perhaps be resolved by the Drafting Committee or by a Working Group. The expression "which ensure protection only by means of ..." used in Article 3(3)(a) of the Working Group's proposal (document CT/DC/16) seemed to contradict Article 3(1) of the same proposal, which provided that means of protection might be cumulative. It was possible in the United States of America to obtain protection for type faces under the law on industrial designs. The expression used in Article 3(3)(a) might therefore prevent the use of the copyright route.

330.1 The CHAIRMAN admitted that the problem raised by the Delegate of the United States of America was somewhat difficult. He fully understood her point of view. However, he foresaw difficulties in States such as the Federal Republic of Germany, whose legislation provided for cumulative protection, under industrial design law for instance (protection for 15 years and, if the Agreement under discussion entered into force, protection for 25 years) and under copyright law (70 years after the death of the author, exclusively in the case of type faces of high quality that could be regarded as works of art). It would therefore be possible in the Federal Republic of Germany to meet the obligations under the Agreement by means of industrial property provisions only. The protection of type faces by copyright provisions would call for a very high artistic level in the type faces and, in addition, it could be granted only to nationals of countries party to the Berne Convention or to the Universal Copyright Convention, and not to nationals of countries party exclusively to the Agreement under discussion.

330.2 The Chairman felt, however, that Article 31 of the Draft offered a solution in that it provided that, at the time of depositing its instrument of ratification or accession, each State might, by a notification addressed to the Director General of WIPO, indicate the means whereby it intended to ensure the protection of type faces. Article 3(2) (as drafted by the Working Group--document CT/DC/16) would apply in Contracting States that indicated their intention to afford protection by means of industrial property, and Article 3(3) in States that declared their intention to afford protection by means of copyright. It was also possible that States might declare that they wished to afford protection by means of

industrial property and by copyright. In that case, the provisions of Article 3(2) and (3) would apply. The Chairman asked the Delegate of the United States of America if this solution satisfied her.

331. Miss NILSEN (United States of America) replied that she wished to have some time to consider the problem.

332. Mr. KELBEL (Federal Republic of Germany) pointed out that the Chairman had indicated the difficulties that would arise for the Delegation of the Federal Republic of Germany through abandonment of the wording "ensure protection only by means of...." However, the Delegate of the Federal Republic of Germany understood the concern felt by the Delegate of the United States of America, and agreed with the Chairman on the amendment of Article 3(3)(a).

333. The CHAIRMAN noted that it would be necessary to say in Article 3(2): "in Contracting States which ensure protection by establishing a special national deposit...." He asked the Delegate of the United States of America whether she could now accept the proposed amendment to Article 3(3)(a).

334. Miss NILSEN (United States of America) preferred to be allowed to consider the question later.

335. The CHAIRMAN said that the matter would remain open for the time being.

336. Mr. WALLACE (United Kingdom) noted that Article 3(3)(a) contained two eligibility criteria, namely the nationality of the creator of the type faces, and the place of first publication of the type faces where their creator was not a national of a Contracting State. He wondered therefore whether one should not provide a definition of the concept of "publication" of the type faces.

337. The CHAIRMAN replied that it was not intended that there should be a definition for the purposes of the protection of type faces by copyright. The publication concept was defined in the Berne Convention and also in the Universal Copyright Convention. The differences between the two definitions did not seem to have any great importance in the case in point. This was why, in case of need, it was possible to refer to the provisions of the existing international copyright conventions and to those of national legislations. As far as the publication of the type faces was concerned, the Chairman saw certain similarities to cinematographic works. There was no need to have a large number of copies, as in the case of books for instance.

338. Mr. WALLACE (United Kingdom) remembered well the article containing the definition of "publication," drafted in the course of the Stockholm Diplomatic Conference, according to which the showing of a cinematographic work did not constitute publication. He therefore asked whether the Main Committee could regard as publication of a type face the publication of a book printed using that type face.

339. The CHAIRMAN replied to the Delegate of the United Kingdom that, personally, he did not think that the publication of a book with a given type face could be regarded as publication of the type face itself. In his opinion, the publication of the type face was an act prior to the printing of the book using that type face and to its disclosure. "Publication" should therefore be taken to mean the manufacture of the type face and the fact of offering or distributing a sufficient number of copies of it to printers or other users. The Chairman was not personally in favor of the definition of the concept in the text of the Agreement, preferring to have the question clarified in the report.

340. Mr. WALLACE (United Kingdom) recalled that the definition adopted in the Berne Convention referred to the "reasonable requirements of the public, having regard to the nature of the work." He felt that such a definition could be adopted. The Delegate of the United Kingdom agreed to the clarification of the question in the report as proposed by the Chairman; he wished to be sure, however, that that was the general opinion of the Main Committee.

341. The SECRETARY pointed out that there was no provision in the Rules of Procedure of the Conference for the preparation of reports of the various committees or indeed of the various Conferences, only for the taking of minutes. He felt that the minutes of the discussion could serve as a report.

342. The CHAIRMAN asked the Main Committee whether it agreed with the opinion according to which, first, "publication" of type faces meant, for the purposes of their protection by copyright, the manufacture of the type faces and the fact of their being offered or distributed in sufficient number to printers or other users and, second, the mere sale of books printed with a given type face did not constitute publication of the type face.

343. Mr. OVINK (Netherlands) wished to make a remark on the sale of type faces. He said that there were institutions, for instance the Imprimerie Nationale in France, that produced special kinds of type face for their own use. Those type faces were not sold to the public but had nevertheless to be protected. Consequently, the criterion of sale to the public or disclosure for the purposes of sale should not be used in the definition concerned.

344. The CHAIRMAN added that the situation was rather similar to that of cinematographic works, where hire was involved.

345. Mr. OVINK (Netherlands) replied it was not a question of hire but of the production of type faces by certain persons or bodies for their private use.

346. The CHAIRMAN contended that, in that case, there was no publication in the copyright sense, because distribution, even through hire, was necessary.

347. Mr. MOROZOV (Soviet Union) had no concrete proposal to make for the time being, but he considered that the question embarked upon by the previous speakers should be considered in greater depth.

348. Mr. KEYES (Canada) gave his support to the Chairman's suggestion and to the arguments put forward by the Delegate of the United Kingdom.

349. Mr. HADDRICK (Australia) wondered whether it would not be possible to solve the problem by means of a reference to Article 3(3)(a)(i), thereby limiting protection to creators who had the nationality of a Contracting State. He considered the definition presented by the Chairman and amended by the Delegate of the United Kingdom to be correct.

350. The CHAIRMAN agreed with the Delegate of Australia. While there was no publication on account of there being no distribution, there still remained the eligibility criterion of nationality.

351. The SECRETARY fully shared the opinion expressed by the Chairman and added that the question of first publication as envisaged by the Main Committee no longer had anything to do with the question of novelty.

352. Mr. WALLACE (United Kingdom) said that, the more he listened, the more concerned he was becoming about the criterion of first publication. He wondered whether it was possible to have a freely available book that had been printed in a type face that had never been published. The additional requirement of publication did not add much, in his opinion. In fact a country had to go further than the Agreement actually required and add that second criterion to the criterion of nationality, but it was not necessary to go so far in the actual text of the Agreement.

353. The CHAIRMAN thought that that would be somewhat dangerous for States that afforded protection by means of their industrial property provisions. The eligibility criteria were broader: they covered not only the nationality of the creator, but also his residence and the nationality or residence of the successor in title. There was too great a difference between the extent of protection in industrial property countries on the one hand and in copyright countries on the other. The latter were obliged to afford such protection also where there was first publication in a Contracting State. So why not provide that possibility in the Agreement under discussion?

354. Mr. FRANCON (France) fully shared the view that, according to the copyright conventions, an eligibility criterion based on publication should be adopted. In order to avoid too many difficulties, the Working Group had agreed to give purely optional character to a copyright criterion that related to the habitual residence or domicile. The Delegate of France considered that it would really be very difficult to go further and to give optional character also to the criterion of first publication.

355. The CHAIRMAN asked the Delegate of the United Kingdom whether it would be possible for him to accept the criterion of first publication.

356. Mr. WALLACE (United Kingdom) recalled that the Delegation of the United Kingdom had already accepted that criterion in its observations, which had been circulated. He merely pointed out that the criterion in question raised problems in connection with type faces. He would have no objection, however, if the majority of the Main Committee wished to have that criterion included.

357. The CHAIRMAN noted that a considerable concession had already been made to copyright countries in the acceptance of the copyright criteria, but in that case all the copyright criteria were involved.

358. Mr. DE SANCTIS (Italy) said that the problem did not exist for Italy. Type faces generally came under industrial designs, and the question of first publication did not arise. Article 3 of the Berne Convention contained a definition of published works (oeuvres publiées), which were to be taken to mean works published (oeuvres éditées). The question that had to be answered at the present stage was whether publication (édition) included also the idea of offering to the public. The Delegate of Italy stated that there were industrial enterprises that produced type faces for the printing of their work. They could at the same time reserve their exclusive use. There was thus no question of offering the type faces to the public by means of publication. The idea of offering type faces to the public that was to be introduced into the draft Agreement had nothing to do with the conception of first publication according to the Berne Convention. That was something entirely different. For all those reasons the Delegation of Italy expressed misgivings with regard to the conception of first publication.

359. Mr. MOROZOV (Soviet Union) said that the question of first publication was of very special importance to him. If one provided for protection by means of industrial design legislation or by means of a law introducing a special deposit, one was obliged to take the right of priority into account as in the case of inventions. He asked the Chairman and the Main Committee whether or not a text published using a certain type face and distributed on a wide scale constituted publication.

360. The CHAIRMAN replied that, as far as the right of priority was concerned, it had to be granted only to industrial property countries, i.e. those providing for deposit. In that case publication was not the essential factor, only the date of deposit. The other point was the idea that publication of printed books constituted publication of the type faces. According to the definition of type faces, they were a set of designs. However, when books were printed, the whole set of designs was not printed, merely an extract from that set. The Chairman preferred not to have the question under discussion referred to the Working Group but rather resolved in the Main Committee.

361. The SECRETARY wished to add a remark for consideration by the Delegate of the Soviet Union. As far as he could see, the main concern of the Soviet Delegation was to know what relation there was between the concept of publication as discussed within the Main Committee and the question of examination of novelty. The Secretary thought that the concept of publication, as it had just been defined, was independent of any question of novelty. The question under consideration was different. It concerned merely the first publication which had to establish an eligibility criterion in terms of copyright.

362. The CHAIRMAN asked the Main Committee whether it could accept, subject to final drafting, his proposal that the concept of publication of type faces be clarified, or whether it preferred to entrust that task to the Working Group. According to the clarification, publication would be the offering or distribution of copies of type faces to a sufficient number of users. On the other hand, the mere publication of books in which type faces were printed would not be publication.

363. Mr. LORENZ (Austria) asked what the form of the clarification would take, as it would affect the implementation of the Agreement.

364. The SECRETARY said that the whole discussion was being taped and would then be recorded accurately in the minutes, which would be published in the Records of the Vienna Conference.

365. The CHAIRMAN put his proposal to the vote.

366. The Chairman's proposal was adopted with one abstention.

367. The CHAIRMAN opened discussions on Article 3(4) (document CT/DC/16, paragraph 7), and mentioned that it might be necessary to add to that Article, for the benefit of copyright countries, a sentence dealing with formalities. The only formality that could be considered in that case would be that of prior examination in a country party to the Agreement. As the question had not yet been studied thoroughly enough, the Chairman proposed that it be left open for the time being.

368. Mr. WAS (International Chamber of Commerce (ICC)) considered that the expression "that State" used at the end of Article 3(3)(a)(ii) was not sufficiently clear.

369. The CHAIRMAN replied that it naturally referred to a Contracting State, and added that the question could be resolved by the Drafting Committee.

370. The CHAIRMAN moved on to paragraph 8 of document CT/DC/16, which contained a proposal that the phrase "for the purpose of Article 3(2)" be added at the beginning of Article 4.

371. The above proposal was unanimously adopted.

Article 4 (Article 6 of the Text as Adopted): Concepts of Residence and Nationality

372. The CHAIRMAN opened discussions on paragraphs (1), (2) and (3) of Article 4, which contained definitions for the benefit of industrial property countries.

373. Paragraphs (1), (2) and (3) of Article 4 were unanimously adopted as proposed in the Draft.

Article 5 (Article 7 of the Text as Adopted): Conditions of Protection

374. The CHAIRMAN opened discussions on the proposal of the Working Group concerning Article 5(2) (document CT/DC/16, paragraph 9), namely that the words "if necessary" be added after the words "having regard."

375. Mr. van WEEL (Netherlands) found that the words "if necessary" weakened to some extent the proposal presented in the Draft. He thought that in practice it would almost always be necessary to refer to the criteria and the experts. The Delegate of the Netherlands preferred to have the words "if necessary" replaced by the words "inter alia."

376. Mr. MURAOKA (Japan) said that he was surprised that the Delegation of the Netherlands should propose the words "inter alia" at that stage. He recalled that the problem had been discussed at length by the Working Group, which had considered the insertion of the words "if necessary" to be a compromise solution; he expressed the hope that the compromise in question could be accepted by the Main Committee.

377. The CHAIRMAN thought that there were also other delegations that preferred the words "inter alia."

378. Mr. WALLACE (United Kingdom) said that he had always interpreted the provision as meaning that experts were allowed a hearing in questions related to the protection of type faces. He understood very well the concern of the Delegate of Japan not to have provisions by which the courts would be firmly bound, but he expected that the testimony of experts would also be accepted in Japan if it was presented. He declared that he was not satisfied with the words "if necessary" because he was not sure of their meaning. Therefore, the Delegate of the United Kingdom preferred the addition of a sentence to the effect, for instance, that expert evidence would "normally be admissible" in judging such questions. However, he was prepared to accept the text proposed if that was necessary.

379. Miss NILSEN (United States of America) recalled that she had taken part in the work of the Working Group and had not objected to the formula adopted by the Group. However, she had always preferred a stronger formulation, such as "inter alia." The proposal of the Delegate of the United Kingdom to add that expert evidence should "normally be admissible" seemed quite acceptable to her. She thought that it would be useful to know any views that the Observer from ATYPI might have on the subject.

380. Mr. KÄMPP (Switzerland) remembered that everyone had agreed that Article 5(2) in no way bound the judge and that a formula had to be found that made that idea quite clear. On the other hand, in order to assess novelty and originality, an expert had to be consulted. The Delegate of Switzerland therefore proposed that the words "having regard to" in the Draft be replaced by the words "taking into consideration."

381. Mr. DE SANCTIS (Italy) was also of the opinion that the judge should not be under such an obligation. The criteria observed by the competent professional circles could sometimes be sacrificed to the general interest. He therefore proposed saying, as the Delegate of Switzerland had suggested, "taking into consideration the criteria..." or "having regard, in general, to the criteria..." but never "if necessary."

382. Mr. FRANÇON (France) indicated that the text chosen by the Working Group was still preferred by the Delegation of France.

383. Mr. MURAOKA (Japan) shared the opinion expressed by the Delegate of France and considered that, as far as experts in English-speaking countries were concerned, there was no great difference between the expressions "taking into consideration" and "having regard to."

384. The CHAIRMAN observed that he had before him the various proposals for the amendment of Article 5(2), which suggested the use of the following wordings: (1) "taking into consideration"; (2) "having regard, if necessary, to"; (3) "inter alia." There was in addition another proposal by the Delegate of the United Kingdom. The Chairman did not know whether there was actually a great difference between the wording of the Draft and that of the Swiss Delegation ("having regard to" and "taking into consideration"). Before calling for a vote on the matter, he asked the Delegate of the United Kingdom whether he wished to have his proposal voted upon also.

385. Mr. WALLACE (United Kingdom) replied that he would not press his proposal; he thought however that if the courts were allowed a free choice, there was little likelihood of their refusing to hear the testimony of an expert. A term such as "normally" or "if necessary" should therefore be used. The dilemma was that, on the one hand, one wished to provide security for the creators of type faces, and the certainty that matters concerning type faces would not be judged by the uninitiated, and, on the other hand, one wished to avoid obliging the courts to accept the expert's testimony in every case.

386. The CHAIRMAN said that it would appear in the minutes that the consensus of the Main Committee was that the courts were not bound by the opinion expressed by the experts. He noted that the proposal to use the expression "inter alia" in the English text and "entre autres" in the French text was the furthest removed from the Draft and, consequently, should be voted upon first.

387. Mr. KAMPF (Switzerland) drew attention to the fact that the Main Committee had already voted on and accepted the text of Article 5. He asked the Chairman whether he was taking account of that vote, which was already on record, before moving on to another vote.

388.1 The CHAIRMAN reminded the Delegate of Switzerland that the Main Committee's vote on Article 5 had concerned the proposal by the Delegation of Japan that the words "having regard to the criteria recognized by the competent professional circles" be deleted, and that the proposal in question had been rejected. There had not yet been a vote, however, on the adoption of Article 5 as presented in the Draft. Two different questions were therefore involved.

388.2 The Chairman called for a vote on the proposal that the words "inter alia" be inserted in Article 5(2).

389. The proposal that the words "inter alia" be inserted in Article 5(2) was rejected by 8 votes to 7, with 8 abstentions.

390. The CHAIRMAN called for a vote on the proposal that the words "if necessary" be inserted in Article 5(2).

391. The proposal that the words "if necessary" be inserted in Article 5(2) was adopted by 13 votes to 2 with 8 abstentions.

392. The CHAIRMAN called for a vote on the amended text of Article 5(2) as a whole.

393. The amended text of Article 5(2) was unanimously adopted.

[Suspension]

Article 6 (Article 8 of the Text as Adopted): Content of Protection

394.1 The CHAIRMAN resumed the meeting and opened discussions on Article 6. He indicated that the following proposals had been submitted by: (1) the eight Delegations--on Article 6(3)--document CT/DC/8; (2) the Delegation of Japan --on Article 6(3)--document CT/DC/12; (3) the Delegation of Switzerland --on a new Article 6(4)--document CT/DC/6; (4) the Delegation of Australia --on Article 6--document CT/DC/15.

394.2 The proposal made by the Delegation of Switzerland was, in the opinion of the Chairman, closely related to paragraph (1) of the Draft. For that reason the Chairman proposed that the amendment submitted by the Delegation of Switzerland be discussed at the same time as Article 6(1) of the Draft, and that the amendments to Article 6(3) be dealt with later.

395. Mr. DE SANCTIS (Italy) recalled that the Working Group had drawn attention in its report (document CT/DC/14) to the fact that the text of Article 6 should be harmonized with that which would be adopted for Article 2. That recommendation should therefore be borne in mind when amendments to Article 6 were adopted.

396. Mr. MURAKOKA (Japan) considered that the proposal by the Delegation of Australia provided a better basis for discussion within the Main Committee than the text of the Draft as appearing in document CT/DC/1. It covered also the problem raised by the Delegation of Italy. The Delegation of Japan withdrew its proposal contained in document CT/DC/12.

397. The CHAIRMAN commended the Delegation of Australia for the very clear form in which its proposal was presented, and suggested that it should be used as a basis for discussion.

398. Mr. WALLACE (United Kingdom) supported the proposal of the Chairman.

399. Miss NILSEN (United States of America) also shared the Chairman's opinion on the proposal by the Delegation of Australia.

400. The CHAIRMAN opened discussions on Article 6(1) as proposed by the Delegation of Australia.

401. Mr. KÄMPF (Switzerland) wished to provide some explanations on the subject of the proposal by his Delegation regarding Article 6(1) of the Draft. He recalled that, at the beginning of the Conference on Type Faces, the Delegation of Sweden had expressed the view that it was necessary to specify the legal status of the printer who came into possession of type faces. The Delegation of Switzerland shared that view, which indeed provided the basis for its proposal, appearing in Part II of document CT/DC/16. Certain modern type setting processes necessarily involved the printer in the manufacture of individual letters for the composition of texts. In that case the printer seemed to come under Article 6(1), which did not correspond--in the opinion of the Delegate of Switzerland--to the idea of the draft Agreement. It had therefore to be arranged that parties acquiring type faces were not prevented by the provisions of the paragraph in question from manufacturing reproductions for their own use, when for technical reasons it was impossible to compose texts without making reproductions.

402. The CHAIRMAN pointed out that the draft submitted by the Delegation of Australia offered some protection for printers. The setting up and printing of a text did not constitute reproduction in terms of Article 6. The problem raised by the Delegation of Switzerland was that of the situation that would arise if, in order to compose texts, the printer reproduced individual letters or had them reproduced, for instance by linotype methods. The Chairman confirmed that reproduction in terms of Article 6(1) was only the reproduction of whole type faces or of a substantial part thereof. He wondered whether one should not, in order to satisfy the Delegate of Switzerland, state more clearly in Article 6(1)(i) "the making without his consent, of any reproduction, whether identical or slightly modified, of a set of designs intended to provide a pattern."

403. Mr. WAS (International Chamber of Commerce (ICC)) pointed out that the Agreement under discussion would either create protection for type faces or strengthen it. He wondered even if one was not putting too much emphasis on that protection, which made it necessary to look for certain safeguards for innocent infringers. The Observer from the ICC considered that the question was one to be dealt with by national legislation, and hoped that national laws based on the Agreement under discussion would not confer rights that went beyond the reasonable needs of the creators of type faces. Article 6, whether in the form of the Draft (document CT/DC/1) or in that proposed by the Delegation of Australia (document CT/DC/15), provided that the owner of the protected type faces had the right to prohibit the making of any reproduction by a third person, irrespective of whether or not the type faces had been known to the latter. But in practice, one could only prohibit the making by informing the maker of the reproduction of the fact of his infringement. The Observer from the ICC considered that the wording of Article 6 was ill-conceived. He would prefer to have the Article disregard the question of knowledge, which could be left to national legislation. As far as commercial distribution and importation were concerned, the text of the Draft made no mention of knowledge whereas in the proposal by the Delegation of Australia, knowledge extended as far as the distributor, and even the importer, which made the wording rather more inconvenient than the text of the Draft.

404. The CHAIRMAN proposed that the discussion be confined to Article 6(1) and to the proposal by the Delegation of Switzerland. He asked the Delegation of Switzerland whether the words "reproduction of the whole type face" inserted in Article 6(1) satisfied him.

405. Mr. KÄMPF (Switzerland) thought that the Chairman's interpretation was quite correct, and that the introduction of the word "whole" could provide a solution. He stressed the fact that the subject matter under discussion was completely new, and that there was as yet no case law on it. The question of the legal status of printers was a very important one, however. For that reason the Delegate of Switzerland would nevertheless prefer that it be expressly stated in the text that the manufacture of type faces by printers for the composition of texts should not come under the Agreement. For the time being, therefore, he maintained the proposal of his Delegation.

406. The CHAIRMAN observed that it might perhaps be necessary to discuss such a difficult question within a working group, after the opinions of the delegations within the Main Committee had been heard.

407. Mr. HADDRICK (Australia) provided some explanations on the proposal of his Delegation (document CT/DC/15). The reason for which the proposal had been submitted was that the text of Article 6 of the Draft did not seem to take sufficiently into account the problem of originality in the case of countries affording protection by copyright. As far as originality was concerned, the question of knowledge did not arise at all and, consequently, it seemed to the Delegation of Australia that it would be better to remove knowledge from the text so that it was clear that the provision under discussion was not applicable in the case of copyright countries. The Delegate of Australia referred to the question raised by the Observer from the ICC, and admitted that it had not occurred to him at the time of drafting his Delegation's proposal. They had not wished to go into detail at that particular time, and had confined themselves, in Article 6(2)(a) to referring to paragraph (1) of the same Article. The Delegate of Australia wondered whether the wording of Article 6 could not be improved by making, in paragraph (3), a reference to paragraph (1)(i) instead of paragraph (1).

408. The CHAIRMAN recalled that the discussion concerned Article 6(1) for the time being. The proposal of the Delegation of Australia on Article 6(2) would be discussed afterwards.

409. Mr. KELBEL (Federal Republic of Germany) referred to the proposal of the Delegation of Switzerland (document CT/DC/6) and asked for an interpretation of the expression "technical reasons."

410. The CHAIRMAN was of the opinion that the question was an important one. Certainly a printer could make reproductions of individual letters, but it had to be decided whether he could also make reproductions of the whole type face, or whether instead he was obliged to buy it or obtain a license for such reproduction. The question was an essential one for practitioners, and it would be interesting to know the opinion of the Observer from ATYPI on the subject.

411.1 Mr. DREYFUS (International Typographic Association (ATYPI)) said that in the drafting of provisions of that kind, it was ATYPI's constant concern to ensure that the person acquiring the type face had the possibility of using it lawfully and, consequently, the possibility of reproducing the letters exclusively for the composition of texts, the resale of the type face being prohibited.

411.2 With regard to the problem raised by the Delegate of the Federal Republic of Germany, the Observer from ATYPI pointed out that if a printer broke part of a set of type faces, it would be normal for him to order replacement characters from his supplier and not to make them himself.

411.3 The Observer from ATYPI was prepared to give the delegates satisfaction and accept the principle according to which a person having lawfully acquired a type face might use it freely for the composition of texts.

412. Mr. WALLACE (United Kingdom) said that, if he had understood correctly, there were two eventualities. The first was that in which the printer bought the original, protected type face from the manufacturer. The second was that in which the printer had acquired what in fact was an infringing type face. The proposal by the Delegation of Switzerland (document CT/DC/6), which spoke of "the person who has acquired the type face in good faith" seemed to cover both eventualities.

413. The CHAIRMAN pointed out that, according to Article 6(1) as appearing in the Draft and in the proposal by the Delegation of Australia, the printer was free to use the infringing type face, and it was not necessary for him to be "bona fide." On the other hand, according to the Delegation of Switzerland, it was immaterial whether the characters bought by the printer were infringing characters or not, whereas the printer himself had to be acting in good faith. The question still outstanding was whether one should decide to use, in Article 6(1), the expression "reproduction of the whole type face" or whether the proposal by the Delegation of Switzerland should be accepted.

414. Mr. DE SANCTIS (Italy) said that, if he had understood the meaning of Article 6(1) and (2) correctly in relation to the proposal by the Delegation of Switzerland, it was only a question of prohibiting the making of any reproduction of a type face, and not the use of that type face. If, on the other hand, one went further, the freedom of the press would be affected and the Delegation of Italy would be even more reluctant than before to accept the Agreement. The Delegate of Italy wondered whether, in a given case, one could not say that the type face was not infringed but acquired from a third party, and whether it would really be possible to prohibit the circulation of books printed with the type face. In Italy seizure had already been prohibited where the press and the right to information were involved, and there was no question of inflicting sanctions of any kind. The proposal of the Delegation of Switzerland concerned in particular the makers of reproductions for their own use where those reproductions were technically essential for the composition of texts. The Delegate of Italy observed that that proposal could also affect other subject matter; according to him, it gave cause for serious misgivings and made adoption of the proposed text by Italy even more difficult.

415. The CHAIRMAN was of the opinion that the first question was already answered, notably by the text of Article 6(2). Only the making of type faces was involved, not their use. It could therefore be said that the making of whole type faces was prohibited.

416. Mr. LARREA RICHERAND (Mexico) endorsed the opinion expressed by the Delegate of Italy, adding that the freedom of the press and information, as well as the accessibility to developing countries of cultural materials, and their use in the latter's campaign against illiteracy, should not be affected in any way by the prohibition of the circulation of books printed with type faces made without authorization.

417. The CHAIRMAN pointed out once again that it had never been a question of prohibiting the circulation or distribution of books printed with given type faces, but only the making of the type faces and their distribution. As far as the other question raised in the proposal by the Delegation of Switzerland was concerned, the Chairman thought that it would be necessary to discuss it within a working group and proposed that Article 6(1) be accepted in the form submitted by the Delegation of Australia with the exception of the question raised by the Delegation of Switzerland.

418. The SECRETARY wished to draw the attention of the Chairman and of the Main Committee to the difference between the text of the Draft and the text of the proposal by the Delegation of Australia with respect to Article 6(1). The text of the Draft said that "protection of type faces shall confer on the owner thereof...," whereas in the proposal by the Delegation of Australia "the creator" and "his successor in title" were referred to. The words "creator" and "his successor in title" did not cover the "owner" referred to in the proposal by the Delegation of Poland. The Secretary thought therefore that, if the same text was to be retained, the word "owner" should be used.

419. The CHAIRMAN asked the Delegate of Australia if he agreed to the replacement, in his proposal, of the words "creator" and "his successor in title" by the word "owner."

420. Mr. HADDRICK (Australia) replied that the word "owner" might create confusion with the expression "owner of the international deposit" and indicated that the proposal of his Delegation had been drafted before the proposal of the Delegation of Poland had been considered by the Working Group. He declared however that his Delegation would not oppose the choice of the most appropriate word.

421. The CHAIRMAN proposed that the text of Article 6(1) as proposed by the Delegation of Australia be retained provisionally with the word "owner" instead of the phrase "creator or his successor in title," and that the proposal of the Delegation of Switzerland be reverted to later.

422. Mr. WALLACE (United Kingdom) admitted that he failed to understand how one could be the owner of a type face if one was not the creator or the successor in title.

423. The CHAIRMAN recalled that, on submitting his proposal, the Delegate of Poland had said that there were national legislations in which the right could be acquired in the first instance by a legal entity, for instance by an industrial establishment. In that case, therefore, the creator or the successors in title were not involved. The idea of the acquisition of the right in the first instance by the employer was--he thought--foreign to British Law.

424. Mr. WALLACE (United Kingdom) indicated that the term "successor in title" was regarded in the United Kingdom as covering the employer, who became the owner of the right in the first instance by virtue of an employment contract. For his part, he personally preferred the expression "creator or his successor in title" but, in view of the fact that the Article related only to the content of protection and not to the eligibility criteria, he could also accept the expression "owner."

425. Article 6(1), thus amended, was adopted subject to subsequent consideration of the proposal by the Delegation of Switzerland and its harmonization with Article 6(1).

426. The CHAIRMAN opened discussions on Article 6(2) as proposed by the Delegation of Australia.

427. The SECRETARY pointed out that, according to the proposal by the Delegation of Australia, knowledge of the imitated type faces was of no significance in terms of copyright. That question was mentioned in the proposal only as far as industrial property was concerned. It was in the field of industrial property that one encountered the principle of absolute protection, the application of which meant that the imitator-infringer acting in good faith could have the continuation of his infringement prohibited. The situation would perhaps be different if damages were provided for under such circumstances because, under many legislations, damages were contingent on the commission of an offense. However, the Secretary did not know of any legislations that made prohibition subject to the commission of an offense, or even to the knowledge of the prior type face or of the imitated object in a more general way. He wondered therefore whether Article 6(2) might not be deleted entirely, and asked the Chairman to express his view.

428. The CHAIRMAN replied that, in his opinion, that was not possible because there was in the copyright field a general rule according to which copyright was violated only if the author of a reproduction knew of the protected work. The Chairman added that the same rule existed in the Federal Republic of Germany where the design law required, as conditions of protection, novelty and originality.

429. The SECRETARY thanked the Chairman for his explanations, and said that he had perhaps misunderstood the proposal of the Delegation of Australia.

430. Mr. WALLACE (United Kingdom) said that he was interested in the Secretary's proposal that Article 6(2) be deleted. One problem arose, however, namely that of what was meant by "reproduction": something that looks like a type face, irrespective of copying, or something that has been copied. The purpose of paragraph (2) was merely to resolve that ambiguity, and to say that, in countries that afforded protection by industrial property means, an infringement can take place without copying. In copyright countries there was infringement only where there had been copying.

431. Mr. FRANCON (France) reverted to the Chairman's statement that, in the copyright field, there was no violation of copyright without knowledge, on the part of the infringer, of the existence of the protected work. He did not think that that reflected the situation exactly, at least as far as French law was concerned, as where a reproduction had been made of a protected work without the authorization of the author, that reproduction introduced at least a presumption of bad faith, whereupon the burden of proof was on the infringer. The Delegate of France did not think, therefore, that the proposal made by the Chairman had absolute and general significance.

432. The CHAIRMAN recognized that the observations by the Delegate of France were also valid as far as the Federal Republic of Germany was concerned, where there was violation of copyright only in the case of the infringer having knowledge of the protected work. If the infringing work resembled the protected work, there was a presumption of infringement which naturally could be rejected, but the greater the similarity between the two works, the more difficult it was to reject that presumption. The criteria of novelty and originality applied also to the field of designs, where protection was granted to the creator only if the infringer had knowledge of the protected type face.

433. Mr. DE SANCTIS (Italy) pointed out that the Italian law went much further, as it allowed in the field of copyright bona fide possession, in which respect it differed from other national legislations. The Delegate of Italy thought that it was a fortiori right to defend the bona fide possessor of a material object such as a type face.

434.1 The CHAIRMAN pointed out that if works were infringed, their use could also be prohibited, but in the case of the creator who had created a work without knowing about a similar protected work there was no violation of copyright.

434.2 The Chairman then called for a vote on Article 6(2) as proposed by the Delegation of Australia.

435. Article 6(2) was unanimously adopted as proposed by the Delegation of Australia.

436. The CHAIRMAN opened discussions on Article 6(3) as proposed by the Delegation of Australia, which raised the problem of the deformation of type faces.

437. Mr. WALLACE (United Kingdom) asked whether the reference contained in Article 6(2) concerned "the right defined in paragraph (1)" or "the right defined in paragraph (1)(i)," according to the proposal by the Observer from the International Chamber of Commerce.

438. The CHAIRMAN pointed out that the proposal by the Delegation of Australia had to be taken as it stood, as the proposal by the ICC had not been accepted; he asked the meeting to return to consideration of Article 6(3).

439. Article 6(3) was unanimously adopted as proposed by the Delegation of Australia.

440. Article 6 was adopted, subject to the subsequent consideration of the proposal by the Delegation of Switzerland regarding a new paragraph (4) (document CT/DC/6).

<u>Fourth Meeting</u>
<u>Monday, May 28, 1973,</u>
<u>afternoon</u>

Article 6bis: Legislative Measures to Avoid Abuses (Article 8(5) of the Text as Adopted - Content of Protection)

441. The CHAIRMAN opened the fourth meeting of the Main Committee and asked the Delegate of Australia to present his Delegation's proposal regarding Article 6bis (document CT/DC/17).

442. Mr. HADDRICK (Australia) pointed out that the proposal submitted by his Delegation was based on the principle of an independent agreement as proposed by the Working Group. Where monopolies or exclusive rights were granted, one must take due account of the public interest. The Delegat of Australia said that his country was interested in the commercialization of designs for type faces and, consequently, some balance had to be established in the interests of users. Australia would for some time be primarily an importer of type faces, and that matter had particular interest for it. The Australian governmental report on the law on industrial designs recommended the introduction in that field of provisions similar to those found in the patent laws of a certain number of countries. If the industrial property route were used, there would be difficulties if different provisions had to be made concerning type faces from those

generally applicable. That was why the proposal contained in document CT/DC/17 had been drafted in the light of Article 5 of the Paris Convention. That provision had optional character, which meant that Contracting States were free to decide whether or not to incorporate it in their national laws.

443. The CHAIRMAN noted that the question was one of providing for a compulsory license, which was similar to Article 5A(2) of the Paris Convention, concerning patents and not designs. The Chairman wondered in what instances such a compulsory license would be necessary, and concluded that, in general, it would not be necessary for the printing of books, newspapers, etc. However, he thought there would be a need for such a license for certain type faces which were essential for the dissemination of culture by means of modern technology, for computers, etc.

444. Mr. DE SANCTIS (Italy) had studied the proposal of the Delegation of Australia with great interest. He said that his Delegation had some misgivings as to the need for the conclusion of such an agreement conferring such extensive rights for such a long period of protection. The Delegate of Italy considered that it would indeed serve no public purpose to expropriate certain original type faces and to use and manufacture certain type faces in preference to others, particularly as far as the dissemination of culture was concerned. What was necessary was to have interesting books or pictures. Nevertheless, he considered that the proposal of the Delegation of Australia deserved to be studied carefully. As far as the Delegation of Italy was concerned, it would abstain if there was a vote.

445. Mr. KAMPF (Switzerland) fully shared the point of view expressed by the Delegate of Italy. He also found that there was not an absolute need to be able to use one type face rather than another, available one. In certain technological fields, there might perhaps be a need to be able to use a specific type face, but it was precisely for that reason that the protection of type faces intended for purely technical purposes had been excluded.

446. Mr. DREYFUS (International Typographic Association (ATYPI)) endorsed the view expressed by the Delegate of Switzerland. He felt unable to imagine a kind of type face in respect of which a State might take the legislative measures contemplated in the proposal by the Delegation of Australia and, as an expert in the field of type faces, he could not think of a case in which such a provision would be applied.

447. Mr. FRANCON (France) said that his Delegation, for its part, was somewhat reticent in the presence of the proposal by the Delegation of Australia. The text under discussion, which overlapped both industrial property and copyright, was based on Article 5 of the Paris Convention. However, there was no equivalent provision in either the Berne Convention or the Universal Copyright Convention. There were of course cases of legal licenses, but there was no provision which,

in a general way, allowed States to intervene in the manner provided for in Article 6bis (document CT/DC/17). For that reason, the Delegation of France was very reticent with regard to such a text.

448. Mr. MURAOKA (Japan) regarded the proposal by the Delegation of Australia as an excellent compromise between the interests of the creators of the type faces on the one hand and those of the users on the other. The proposal deserved to be studied in depth. He declared himself in favor of the amendment proposed by the Delegation of Australia.

449. Mr. KEYES (Canada) said that he was interested in the proposal by the Delegation of Australia, which aimed to combat abuses and to establish some balance in the interests of society.

450. Mr. van WEEL (Netherlands) accepted everything that had been said by the Delegate of Switzerland and saw no purpose in introducing the provision that had been submitted into the Agreement.

451. Mr. DE OURO-PRETO (Brazil) expressed his support for the proposal of the Delegation of Australia.

452. The CHAIRMAN repeated that it was necessary to distinguish the instances in which abuse of the exclusive right was possible. There were many type faces that were public property. It was not necessary, therefore, in the printing trade, to have a compulsory license. As far as type faces intended for technical purposes were concerned, there was a proposal by the Delegation of Switzerland. The Chairman thought that in the case of type faces that were intended for technical and artistic purposes at the same time, it would perhaps be possible to allow compulsory licenses as an exceptional measure. He considered that the possibility of compulsory licensing had to be very strictly limited. The Main Committee should therefore decide on whether or not it wished to accept the proposal under discussion--obviously with the strict limitations that were called for. The Chairman asked the Delegate of Australia whether he thought that it would be possible to limit the application of a compulsory license.

453. Mr. HADDRICK (Australia) would prefer not to have the recourse to compulsory licensing strictly limited, because it was not possible to foresee everything that the future might bring.

454. The CHAIRMAN observed that there were marked differences of opinion. He was reluctant to call for a vote on the matter and suggested that the Working Group be entrusted with the task of preparing a common proposal providing for very limited recourse to compulsory licensing.

455. Mr. DE SANCTIS (Italy) agreed with the Chairman as far as his last proposal was concerned. However, he considered that the Working Group should be reminded that the question was one of providing for licenses for certain cases of abuse only, and not of introducing a generalized legal license similar to that provided for in the Berne Convention with respect to the right of broadcasting. Consequently, the Working Group that was to deal with the problem should list all cases of abuse in which a compulsory license would be necessary.

456. The proposal by the Chairman regarding the inclusion of the question under discussion in the agenda of the Working Group was unanimously adopted.

Article 7 (Article 9 of the Text as Adopted): Term of Protection

457. The CHAIRMAN opened discussions on Article 7, and recalled that the two proposals for the amendment of this Article had been submitted by the Delegations of Poland (document CT/DC/11) and Italy (documents CT/DC/9 and CT/DC/13). In document CT/DC/9, it was merely said that the Italian Delegation wished to point out that the term of protection provided (Article 7) was too long. In document CT/DC/13, the Delegation of Italy repeated its earlier view, and suggested that the term of protection for type faces could be reduced to 15 years with the possibility of a ten-year renewal. The Chairman said that the matter had already been discussed at length within the Committee of Experts, which had shortened the term of protection to 25 years instead of the 35 years that had been proposed before.

458. Mr. DE SANCTIS (Italy) pointed out that the question of the term of protection could represent an obstacle to ratification of the Agreement by Italy. The Italian law on industrial designs provided for a term of four years. The 25-year term would, in his opinion, be somewhat too long. He therefore asked the delegates to take into account the position of countries whose national laws provided in such cases for a shorter term of protection.

459. The CHAIRMAN pointed out that a 15-year term with the possibility of a ten-year renewal would in fact allow type faces to be protected for a total period of 25 years. The possibility of dividing the term of protection into several periods was already provided for, moreover, in Article 7(2) of the Draft.

460. Mr. DE SANCTIS (Italy) emphasized the advantages of the wording proposed by the Delegation of Italy in relation to that of the Draft, which specified that "the term of protection may not be less than 25 years." He considered clearer the formula that spoke of 15-year protection with the possibility of extending the term up to 25 years.

461. Mr. FRANCON (France) said that, from the point of view of its domestic law, France was capable of granting protection for a period even longer than that provided for in the Draft. He understood that certain countries might wish to have protection of shorter duration. Nevertheless, it seemed paradoxical to him

that in the Agreement under discussion there should be a minimum term of protection that was shorter than that provided for, for instance, in the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (20 years).

462. The CHAIRMAN recalled that, as far as countries that protected type faces by means of copyright were concerned, it would be necessary to have a 25-year protection period.

463. Mr. HADDRICK (Australia) considered that there would be no commitment to the 25-year term once a decision had been taken on the question of giving the Agreement under discussion the character of an independent agreement. Everything depended on the choice by a given State of the medium of protection, whether by means of copyright or, for instance, by means of industrial design provisions. The Delegate of Australia declared himself in favor of a 15-year term.

464. The CHAIRMAN pointed out that type faces could enjoy copyright protection under certain national laws and international copyright conventions. On the other hand, the international legal position of phonograms was governed by neighboring rights. He asked for the discussion to continue on the question whether the term of protection provided for in the Agreement should be 25 years, 15 years, 20 years or any other term.

465. Mr. DE OURO-PRETO (Brazil) declared himself in favor of a term shorter than 25 years, namely, in principle, 15 years.

466. Mr. MOROZOV (Soviet Union) suggested that the problem should be solved on the basis of the solutions available in either industrial property or copyright, and that national legislations should be left free to lay down the term of protection of type faces. Personally, he was in favor of the 15-year term.

467. Mr. LARREA RICHERAND (Mexico) gave his support to the view expressed by the Delegation of Brazil, and spoke in favor of the shorter period, namely 10 or 15 years. He feared that industrialized countries whose national laws provided for the protection of type faces by means of copyright might, in a sense, violate the Universal Copyright Convention and the Berne Convention as revised at Paris. The latter provided certain facilities for developing countries, whereas the proposed Agreement contained no provision of that kind.

468. Mr. KIMPF (Switzerland) thought that the question at issue was not so much a legal question as a question of equity. The reference by the Delegate of France to the Convention for the Protection of Phonograms convinced him that equity called for protection at least as long for type faces, which were creative works, as for phonograms. For that reason, the Delegation of Switzerland declared itself in favor of a term of protection of a minimum of 20 years.

469. Mr. CADMAN (United Kingdom) said that the suggestion by the Delegation of France, supported by the Delegation of Switzerland, was of some value. He considered that it would be dangerous for the success of the Agreement to leave national legislation free to decide on the term of protection. The principle of reciprocity could not be observed in fact, as certain countries bound by the provisions of the Berne Convention provided for a term of protection of at least 25 years for works of the applied arts (Article 7(4)), and would therefore afford to type faces protection that was much longer than in other countries.

470. Mr. KELBEL (Federal Republic of Germany) recalled that the question of the term of protection had been discussed within the Committee of Experts, and that the 25-year term was a compromise between two extremes. His Delegation would prefer the solution provided for in Article 7 of the Draft (document CT/DC/1), but it endorsed the proposal by the Delegation of France that the term be shortened to 20 years.

471. Mr. van WEEL (Netherlands) indicated that his country proposed to afford protection to type faces by establishing a special deposit precisely on account of the term of protection. The industrial designs law of the Netherlands provided for 15-year protection. That term was considered sufficient in the case of industrial designs, which were often of an ephemeral nature. However, that was not the case with type faces, which often required a long period of introduction. For that reason, the Delegate of the Netherlands declared himself in favor of an equitable term of 25 years.

472. Mr. KEYES (Canada) said that he had a slight preference for a 15-year term, for the same reasons as those put forward by the Delegate of Australia.

473. The CHAIRMAN asked whether it would not be possible to agree to a compromise and set the term at 20 years.

474. Mr. WAS (International Chamber of Commerce (ICC)) said that the ICC looked on the problem not from the point of view of the protection of authors but rather from the point of view of the protection of investments. As a general principle, he was in favor of a shorter protection period, whether 15, 20 or 25 years, and did not consider the actual term essential in practice. What was important was what could be done on expiration of the term of protection: was it possible to produce the type faces in question and export them abroad? The draft Agreement was silent on that problem. The United Kingdom protected type faces by its industrial design legislation, but there was no certainty that, on expiration of the term of protection, the type faces would be protected by copyright. The Observer from the ICC favored the shortening of the term of protection to a reasonable length--namely 15 years--and left open the question of what one could do at the end of that term.

475. Mr. DREYFUS (International Typographic Association (ATYPI)) recalled that the question of the term of protection had been under discussion within the Committee of Experts for 12 years. The 35-year term of protection proposed at the outset had been reduced to 25 years. The Observer from ATYPI emphasized the highly specialized nature of the subject matter and the need for special technical ability that characterized the process of creation of type faces; he asked for the 25-year period, which he considered reasonable, to be adopted.

[Suspension]

476. The CHAIRMAN resumed the meeting and said that his proposal of a compromise on a 20-year term of protection was almost equivalent to the proposal by the Delegation of Italy, which provided for protection for 15 years with the possibility of a five-year renewal, which solution was moreover expressly provided for in the Draft.

477. Mr. OPALSKI (Poland) remarked that there were three proposals on Article 7, namely that of his Delegation (15 years), that of the Draft (25 years) and finally the compromise proposal submitted by the Chairman (20 years). The problem that arose at that point, therefore, was that of deciding which proposal should be voted on first. In order to clarify the situation, the Delegation of Poland said that it did not agree to the compromise proposal and intended to maintain its own proposal of a 15-year term of protection. It fully shared the point of view expressed by the Delegate of Australia according to which, if an instrument independent of existing conventions was decided upon, the periods provided for in those conventions had no bearing on it.

478. The CHAIRMAN observed that if the Delegate of Poland maintained his proposal regarding the 15-year term, it would be necessary to vote on that proposal first, because it was the farthest removed from the Draft.

479. The proposal by the Delegation of Poland for the provision in Article 7(1) of a 15-year term was accepted by 12 votes to 8, with 4 abstentions.

480. Article 7(2) as appearing in the Draft, was unanimously adopted.

Article 8 (Article 10 of the Text as Adopted): Cumulative Protection

481. The CHAIRMAN opened discussions on Article 8 of the Draft.

482. Article 8, as appearing in the Draft, was unanimously adopted.

Article 9 (Article 11 of the Text as Adopted): Right of Priority

483. The CHAIRMAN opened discussions on Article 9 of the Draft.

484. Article 9, as appearing in the Draft, was unanimously adopted.

Article 10 (Article 12 of the Text as Adopted): International Deposit and Recording in the International Register

485. The CHAIRMAN opened discussions on Article 10 of the Draft and recalled that the Delegation of Poland had submitted a proposal (document CT/DC/11) containing a new wording for the Article in question. The essential feature of that proposal appeared in the proposed paragraph (2), which said that "The national law of any Contracting State may provide that international deposits by applicants residing in the respective State may be effected through the intermediary of the national Office of that State." The Chairman thought that perhaps the simplest thing, at the international level, would be to effect deposits directly with the International Bureau of WIPO, and asked the Delegate of Poland to present the arguments in favor of his proposal.

486. Mr. OPALSKI (Poland) said that the Delegation of Poland, when submitting its proposal, had had in mind above all the harmonization of the system for the protection of type faces with the system for the protection of industrial designs.

487. Mr. MOROZOV (Soviet Union) expressed certainty that the Main Committee would be able to accept the proposal by the Delegation of Poland, following the example of what had been done recently by the Main Committee of the Diplomatic Conference on the Trademark Registration Treaty. He added that a similar solution had also been adopted in the Patent Cooperation Treaty of 1970. The Delegate of the Soviet Union proposed the creation of a working group composed of representatives of interested countries, the task of which would be the closer study of the proposal concerned.

488. The CHAIRMAN asked the Secretary whether the International Bureau of WIPO could accept the proposal of the Delegation of Poland without difficulty.

489.1 The SECRETARY replied that WIPO was accustomed to receiving deposits from member States, and that that did not present any particular difficulties. Such was the case, for instance, with trademarks filed under the Madrid Agreement. The Secretary recalled that the Committee of Experts had thought that, in that case, things would be simpler if it were always possible or mandatory to deposit directly with WIPO in Geneva.

489.2 The proposal of the Delegation of Poland should--in his opinion--be completed or at least clarified on one point, namely the expression "by applicants residing in the respective State" (paragraph (2)). National laws often required a prior national filing or an intermediary--the national Office. However, the "residence" concept was fairly broad as, under the Paris Convention, it covered also persons who had a real and effective commercial establishment in the country. In fact it was quite possible for a person to have his residence in a member country and an establishment in another. It should therefore be specified which would be the determining country in such cases. It was equally

possible for the same person also to have establishments in two different countries; in such cases, which was the determining country? Could the person in question choose at his discretion, for instance the country whose national legislation did not require deposit, or the country that did not require the intervention of a national Office? The Secretary considered that a decision had to be taken, in the same way as for the Madrid Agreement, on what would be regarded as the country of origin. The problems that he had just pointed out might perhaps not arise if, in the proposal by the Delegation of Poland, not an obligation but only a possibility were involved.

490. The CHAIRMAN thought that, if the proposal by the Delegation of Poland was adopted, it would be necessary to settle one additional point, namely the legal status of a natural person or legal entity possessing several residences in different countries. The Chairman recalled that the Delegate of the Soviet Union had proposed the creation of a working group to study the matter, which now seemed to have been clarified. He asked him therefore whether he would agree to an immediate vote on the question within the Committee.

491. Mr. MOROZOV (Soviet Union) replied in the affirmative.

492. The new wording of Article 10 proposed by the Delegation of Poland was adopted with 4 abstentions, the question of residence remaining open.

Article 11 (Article 13 of the Text as Adopted): Right to Effect International Deposits and to Own Such Deposits

493. The CHAIRMAN noted that the creation of a working group to study the proposal by the Delegation of Poland was no longer necessary, and opened discussions on Article 11.

494. Article 11, as appearing in the Draft, was unanimously adopted.

Article 12 (Article 14 of the Text as Adopted): Content and Form of the International Deposit

495. The CHAIRMAN opened discussions on Article 12(1).

496. Mr. PROŠEK (Czechoslovakia) referred to Article 12(2) which, among the optional indications that the international deposit was allowed to contain, mentioned the indication of the name of the creator of the type faces. The Delegation of Czechoslovakia considered that that indication was such an important one that it should be included among the mandatory indications under Article 12(1), provided of course that the deposit was not effected by the creator of the type faces himself. For that reason it asked for paragraphs (1) and (2) of Article 12 to be redrafted to that effect.

497. The CHAIRMAN said that the proposal by the Delegation of Czechoslovakia that the words "an indication of the name of the creator of the type faces" be included in Article 12(1) seemed very valid to him.

498. Mr. FRANCON (France) considered that there should nevertheless be provision for cases where, for reasons of his own, the creator of the type faces wished to remain anonymous.

499. The CHAIRMAN pointed out that, in the case of patents, it was generally compulsory to indicate the name of the inventor. He asked whether the Main Committee would agree to say "the indication of the name of the creator shall be mandatory if such is the said creator's desire."

500. Mr. PROSEK (Czechoslovakia) agreed with the President.

501. Mr. KÄMPF (Switzerland) proposed a small amendment, namely the replacement of the words "if such is the said creator's desire" by the words "unless the said creator expressly waives that indication." The Delegate of Switzerland considered that the creator should be given the right to forgo being named.

502. Mr. FRANCON (France) proposed that the same idea be phrased in a different way, namely by saying that "the instrument had to indicate the name of the creator of the type faces except where the latter signified a wish to the contrary."

503. The CHAIRMAN added to the wording of the Delegate of France the word "expressly" after the word "latter," and asked whether the Main Committee agreed to the proposal by the Delegation of Czechoslovakia, thus amended.

504. Mr. DE SANCTIS (Italy) declared himself in favor of the proposal by the Delegation of France.

505. Mr. MURAOKA (Japan) pointed out that, as far as industrial designs were concerned, Japanese law expressly required that the name of the creator be mentioned.

506.1 The CHAIRMAN pointed out that the provision was one that concerned not the national deposit but only the international deposit.

506.2 He called for a vote on the proposal by the Delegation of Czechoslovakia concerning Article 12(1), as amended by the proposal by the Delegation of Switzerland.

507. Article 12(1), thus amended, was unanimously adopted.

508. The CHAIRMAN opened discussions on Article 12(2) and pointed out that paragraph (2)(ii) had to be deleted and the numbering changed accordingly.

509. Article 12(2), thus amended, was unanimously adopted.

510. The CHAIRMAN opened discussions on Article 12(3).

511. Article 12(3), as appearing in the Draft, was unanimously adopted.

Article 13 (Article 15 of the Text as Adopted): Recording or Declining of the International Deposit

512. The CHAIRMAN opened discussions on Article 13(1) and mentioned that the amendment by the Delegation of Poland concerning that Article (document CT/DC/11), was the consequence of the proposal for the amendment of Article 10, submitted by the same Delegation.

513. Article 13(1), as proposed by the Delegation of Poland, was unanimously adopted.

514. The CHAIRMAN opened discussions on Article 13(2) and mentioned that the Delegation of Poland had suggested the addition, after the words "three months," of the words "from the date on which it sent the respective invitation." He asked the Secretary for his views on the subject.

515. The SECRETARY replied that the proposal by the Delegation of Poland clarified the meaning of Article 13(2) and seemed quite acceptable to him.

516. The proposal by the Delegation of Poland on Article 13(2) (document CT/DC/11), and Article 13(2), thus amended, as a whole, were unanimously adopted.

Article 14 (Article 13 of the Text as Adopted): Avoiding Certain Effects of Declining. Article 15 (Article 17 of the Text as Adopted): Publication and Notification of the International Deposit

517. The CHAIRMAN opened discussions on Articles 14 and 15.

518. Articles 14 and 15, as appearing in the Draft, were unanimously adopted.

Article 16 (Article 18 of the Text as Adopted): Effect of the International Deposit

519. The CHAIRMAN opened discussions on Article 16(1).

520. Mr. HADDRICK (Australia) foresaw some difficulties that might arise at the time of the implementation of the international deposit system provided for in Articles 12 and 16. The Delegate of Australia wondered whether it would not be advisable to examine the provisions of the Draft on the subject of the revision of the Agreement, and to give the Assembly the right to revise certain provisions, notably Article 16.

521. The CHAIRMAN proposed that the problem raised by the Delegate of Australia be reverted to when examining the provision concerning the revision of the Agreement.

522. Article 16(1), as appearing in the Draft, was unanimously adopted.

523. The CHAIRMAN opened discussions on Article 16(2) and recalled that the Delegation of Poland proposed the addition, after the words "appropriate fees," of the words "provided for in their laws for examination, the grant of protection and the renewal thereof...."

524. The SECRETARY asked the Delegate of Poland if the words "with the exception of the publication fee" remained in his proposal.

525. Mr. OPALSKI (Poland) replied in the affirmative.

526. The amendment proposed by the Delegation of Poland to Article 16(2) and Article 16(2), thus amended, as a whole, were unanimously adopted.

527. Mr. PROŠEK (Czechoslovakia) apologized for reverting to Article 16, which referred either to States that undertook an ex officio novelty examination, or to States that made provision for opposition proceedings. What all that meant, of course, according to the Delegation of Czechoslovakia, was that the novelty examination could also result in the declining of the deposit for want of novelty. Yet the draft Agreement did not provide for any notification by the national Office of such negative decisions of the International Bureau. Consequently, in contrast to the situation in the field of trademarks, a party interested in entering into a license contract concerning type faces would have no means of ascertaining rapidly, for instance by means of an extract from the international register, the state of protection in member countries that undertook novelty examination. The Delegate of Czechoslovakia wondered therefore whether the Agreement under discussion should not take account of such practical needs, and give interested parties the possibility of ascertaining the state of protection.

528. The CHAIRMAN asked the Secretary for his opinion on the subject.

529. The SECRETARY said that the question required some time for reflection. He recalled that the draft Agreement had been prepared on the advice of the Committee of Experts, which had thought that things should be kept as simple as possible, that there should be no registration effect, that there should be only a national deposit effect and that, consequently, there should be no provision for a declining procedure on completion of subsequent national examination. It

seemed to the Secretary that the Delegate of Czechoslovakia had raised a somewhat different problem. If member States wished to notify the declining of deposits, the International Bureau could record the fact in the Register without publishing the notifications because, at the present time, the declining of deposits was not published. In that way, any person requesting an extract from the Register could see what deposits had been declined, or what States had declined deposits. It was however necessary that the States be willing to indicate faithfully to the International Bureau what deposits they declined.

530. The CHAIRMAN proposed that the question be reverted to later.

531. It was so decided.

Article 17 (Article 19 of the Text as Adopted): Right of Priority. Article 18 (Article 20 of the Text as Adopted): Change in the Ownership of the International Deposit. Article 19 (Article 21 of the Text as Adopted): Withdrawal and Renunciation of the International Deposit

532. The CHAIRMAN opened discussions on Articles 17, 18 and 19.

533. Articles 17, 18 and 19, as appearing in the Draft, were unanimously adopted.

Article 20 (Article 22 of the Text as Adopted): Other Amendments to the International Deposit

534. The CHAIRMAN opened discussions on Article 20.

535. The SECRETARY pointed out a small error that had found its way into paragraph 140 of the comments on Article 20, where the reference to the change in ownership should be deleted.

536. Article 20, as appearing in the Draft, was unanimously adopted.

Article 21 (Article 23 of the Text as Adopted): Term and Renewal of the International Deposit

537. The CHAIRMAN opened discussions on Article 21, on the term and renewal of the international deposit.

538. The SECRETARY observed that the possibility of renewal for a further period of ten years as provided in Article 21(2) had less practical importance, the minimum protection period being 15 years. He wondered whether the words "or ten" should not be deleted.

539. The CHAIRMAN added that in the countries where the protection granted is longer, it is possible to ask for several extensions of five years.

540. Mr. KELBEL (Federal Republic of Germany) proposed the reduction to five years of the initial ten-year period referred to in Article 21(1), and the maintenance of the wording of Article 21(2) as appearing in the Draft.

541. Mr. POINTET (Switzerland) declared himself in favor of leaving the wording of Article 21(1) and (2) as it was in the Draft. He announced that his Delegation, acting in conjunction with other delegations, intended to propose to countries that might grant longer protection the signature of a protocol providing for a period longer than the 15 years that had been adopted. That would be in line with the Protocol adopted in 1960 under the Hague Agreement Concerning the International Deposit of Industrial Designs.

542. The CHAIRMAN asked the Main Committee what--in its opinion--the length of the initial period should be: ten years or five years.

543. Mr. KELBEL (Federal Republic of Germany) thought that it was a question of fees, and that the life of modern type faces was not as long as it used to be.

544. Mr. POINTET (Switzerland) said that an initial period of five years seemed, to the Delegation of Switzerland, too short for type faces to be publicized and delivered. He also said that one should try to avoid excessive fees. A ten-year period seemed to him to be a minimum.

545. The CHAIRMAN asked the Delegate of the Federal Republic of Germany whether he was maintaining his proposal.

546. Mr. KELBEL (Federal Republic of Germany) replied that he was able to subscribe to the view of the Delegation of Switzerland, because he did not consider the question at issue to be particularly important.

547. Article 21(1), as appearing in the Draft, was unanimously adopted.

548. The CHAIRMAN noted that the Secretary had proposed the deletion, in Article 21(2), of the words "or ten," whereas the Delegate of Switzerland had proposed leaving the wording of the Article as it was.

549. Mr. van WEEL (Netherlands) supported the proposal of the Delegation of Switzerland.

550. Mr. MOROZOV (Soviet Union) observed that the question of five or ten years was merely one of arithmetic. If some countries wished to grant protection for a longer period, that should be dealt with in another article.

551. The CHAIRMAN recalled that the Main Committee had to decide on the proposal made by the Secretary, namely the deletion in Article 21(2) of the words "or ten."

552. The SECRETARY pointed out that he did not have the right to submit proposals. He had merely raised the question.

553. The CHAIRMAN observed that the proposal by the Secretary had been supported by the Delegation of the Soviet Union and, consequently, could be voted upon.

554. Mr. POINTET (Switzerland) wished to make some further observations before voting started. He shared the opinion of the Delegate of the Soviet Union, to the effect that the question was merely one of arithmetic, for countries that

wished to provide for a 15-year term (10 + 5 = 15) as well as for countries that acceded to the Protocol and provided, for instance, for a term of 20 years (10 + 10 = 20). For that reason the Delegate of Switzerland considered that, by leaving the words "five or ten years" one satisfied both countries that adopted a 15-year term and countries that adopted a longer term.

555. The CHAIRMAN asked the Delegate of the Soviet Union whether he was maintaining his proposal.

556. Mr. MOROZOV (Soviet Union) remarked that, since Article 71, as adopted by the Main Committee, provided that "the term of protection may not be less than fifteen years," that did not mean that interested countries could not adopt a 50-year term. Consequently, if certain countries wished to adopt a term of protection longer than the initial period, they could certainly have different renewal periods.

557. Mr. HADDRICK (Australia) suggested that the study of this question should be adjourned until the draft Protocol was submitted.

558. The CHAIRMAN observed that the question was not really all that difficult. If countries wished to have a longer term of protection, they could provide for the possibility of making the five-year renewal two or three times.

559. Mr. DE SANCTIS (Italy) had some doubt as to the need in Article 21 for a provision such as the one in paragraph (2).

560. The CHAIRMAN called for a vote on the proposal that the words "or ten" in Article 21(2) be deleted and that renewal be provided for periods of five years.

561. The proposal concerning the words "or ten" was adopted by 10 votes to 6, with 6 abstentions.

562. Paragraph (2), thus amended, and paragraphs (3), (4), (5) and (6) of Article 21 were unanimously adopted.

Article 22 (Article 24 of the Text as Adopted): Regional Treaties

563. The CHAIRMAN opened discussions on Article 22.

564. Article 22, as appearing in the Draft, was unanimously adopted.

Article 23 (Article 25 of the Text as Adopted). Representation before the International Bureau

565. The CHAIRMAN opened discussions on Article 23.

566. The SECRETARY recalled that attempts had been made to harmonize the draft Agreement with the TRT Draft on a number of points, notably with respect to the settlement of disputes, but without intending to establish an instrument as complete as the TRT. The draft Agreement under discussion was simpler in many respects. There was one point, however, on which--in the Secretary's opinion--harmonization seemed particularly desirable, namely the question of representa-

tion. To this effect, the Secretary proposed to submit to the Delegates the following day a document that would contain certain amendments to Article 23(3) of the Agreement, with a view to bringing about that harmonization of the corresponding provisions of the two instruments involved.

567. The CHAIRMAN proposed that Article 23(3) be left open until the document referred to by the Secretary was studied.

568.1 The SECRETARY announced that the discussion that was to take place at the joint meeting of the three Main Committees, planned for the following day, would probably relate to the administrative provisions as a whole, and at least to two other points, namely the question of the reference to Article 24 of the Paris Convention and the question of the settlement of disputes (proposal by the Delegation of the Netherlands--document CT/DC/7).

568.2 In order to gain time, the Secretary suggested that the study of the Draft should continue, noting that, where decisions taken jointly had a bearing on administrative provisions that had already been discussed, the Main Committee could reconsider the provisions.

Administrative Provisions

Article 24 (Article 26 of the Text as Adopted): Assembly

569. The CHAIRMAN opened discussions on Article 24.

570. The SECRETARY pointed out that the Drafting Committee would naturally have to adapt the wording of Article 24 to the decisions that had already been taken, and in particular delete the word "Special" each time the Special Union was referred to.

571. Mr. CADMAN (United Kingdom) submitted two proposals of a drafting nature concerning Article 24(1). He suggested that the wording of Article 24(1)(a) be as follows: "The Assembly shall consist of representatives of the Contracting States," and that, in Article 24(1)(b), the words "the Government of" should be deleted.

572. The CHAIRMAN considered that the wording of Article 24(1) as proposed in the Draft was better.

573. The SECRETARY shared the Chairman's opinion.

574. The CHAIRMAN proposed that the wording of Article 24 be accepted as proposed in the Draft, subject to final drafting which would be left to the Drafting Committee.

575. Mr. HADDRICK (Australia) wished to raise a question that was closely related to his suggestion for the amendment of Article 24(2)(a)(ix). According to that suggestion, the Assembly would be competent to amend not only Articles 24, 25, 26 and 27, but also Article 16 and, where appropriate, other articles of the Agreement. The Delegate of Australia said that this was not the case.

Committee details concerning the competence, if any, of the Assembly to revise certain treaty provisions other than the administrative provisions and the final clauses. Finally, he wondered whether the question of the amendment of the Agreement should be mentioned specifically in Article 24(2)(a)(ix).

576. The SECRETARY replied that, until the 1967 Stockholm Conference, conventions could be revised only by Diplomatic Conferences, and amendments had to be adopted unanimously. Since the Stockholm Conference, provision had indeed been made for an Assembly's competence to revise, subject to a majority, certain parts of treaties. To date, however, only administrative provisions or final clauses had been involved. The suggestion of the Delegate of Australia went somewhat further because the question was a substantive one, the revision of which might come under the jurisdiction of the Assembly. If, in the Plenary of the Diplomatic Conference, States were prepared to entrust that competence to the Assembly, one might then provide for a fairly highly qualified majority.

577.1 The CHAIRMAN considered it possible to allow the Assembly the competence to amend the provisions of the Agreement in the case of administrative questions, but he was hesitant in the case of substantive provisions, which only a conference of revision could amend.

577.2 He asked whether the Delegations wished to support the view of the Delegate of Australia.

578. Mr. SOURGOV (Bulgaria) said that he was not in agreement with the proposal by the Delegation of Australia. According to him, international agreements had to be ratified by the competent national authorities, and the amendment of their provisions, with the exception of their administrative provisions, could take place only at a Diplomatic Conference, whereupon separate ratification would be required. For all those reasons, the Delegate of Bulgaria declared himself in favor of the wording in the Draft.

579. The CHAIRMAN shared the opinion of the Delegate of Bulgaria, noted that the proposal of the Delegation of Australia had not been supported by other delegations, and called for successive votes on paragraphs (1) to (6) of Article 24.

580. Paragraphs (1) to (6) of Article 24, as proposed in the Draft, were unanimously adopted.

581. The CHAIRMAN opened discussions on Article 24(7).

582. Mr. van WEEL (Netherlands) recalled that the Diplomatic Conference on the International Classification of the Figurative Elements of Marks had accepted a minor amendment to the article corresponding to the one under discussion. He asked the Secretary to provide details on the subject.

583. The SECRETARY pointed out that there was indeed a slight difference between the text of Article 24(7)(a) of the Draft (document CT/DC/1) and the text of the corresponding article (Article 7(4)(a)) provisionally accepted by the Main Committee of the Diplomatic Conference on the International Classification of the Figurative Elements of Marks. Article 7(4)(a) used the expression

"in the absence of exceptional circumstances" instead of "preferably," which was somewhat more positive. Moreover, he said that the Assembly met during the same period and at the same place as "the General Assembly of the Organization" and not "the Coordination Committee of the Organization." However, in view of the fact that the two bodies of the Organization met during the same periods every three years, there did not seem to be a substantive difference. Finally, according to the text adopted by the other Main Committee, the Director General could convene the Assembly to meet in extraordinary session only at the request of one-fourth of the countries members of the Assembly, whereas, according to the draft Agreement for the Protection of Type Faces, he could convene it also on his own initiative. The Secretary explained that the text prepared for the Agreement Establishing an International Classification of the Figurative Elements of Marks had followed the wording of other classification Agreements fairly closely in order that there might be the same texts as far as possible in that field. In conclusion, the Secretary wondered whether one might not try to harmonize all the texts with the TRT; and, if a decision was taken to do so, it was rather the text adopted by the Main Committee of the Diplomatic Conference on the International Classification of the Figurative Elements of Marks that would have to be adapted.

584. The CHAIRMAN proposed that the question of the acceptance of Article 24(7) be left open pending the harmonization of the corresponding provisions of the three instruments elaborated during the Vienna Diplomatic Conferences.

585. Mr. LORENZ (Austria) pointed out in connection with the discussion of Article 24(7)(a) that, apart from the question of harmonization, there was also --in his opinion--an essential difference of which account should be taken. The meetings of the General Assembly of WIPO were triennial, whereas the meetings of the Coordination Committee were annual. It had therefore to be decided whether meetings were to be held every three years or once a year.

586. The CHAIRMAN proposed that the question be held over for the time being and opened discussions of Article 24(8).

587. Article 24(8), as appearing in the Draft, was unanimously adopted.

588. The SECRETARY indicated that the meeting of the three Main Committees would take place on the following day, and recalled that the Working Group responsible among other things for the final drafting of Articles 3 and 6 had to be set up; he proposed that it be composed of representatives of the following countries: Australia, Brazil, Canada, France, Germany (Federal Republic of), Mexico, Netherlands, Poland, Soviet Union, Switzerland, United Kingdom, United States of America.

589. The CHAIRMAN felt that it would be very useful if the Observer from ATYPI were to attend the meetings of the Working Group in an observer capacity, as it had among other things to deal with highly technical questions in relation to the proposal by the Delegation of Switzerland.

590. It was decided that the Working Group be set up with the composition proposed by the Secretary.

Fifth Meeting
Tuesday, May 29, 1973,
morning

Article 23 (Article 25 of the Text as Adopted): Representation before the International Bureau

591.1 The CHAIRMAN opened the meeting and informed the delegates that the joint meeting of the three Main Committees, which was to take place on the following day, would be devoted to the consideration of two questions, namely the competence of the International Court of Justice of The Hague and the territorial application of the three Vienna instruments.

591.2 He thanked the Secretariat for having prepared the proposals for the amendment of the administrative provisions of the Draft (document CT/DC/18), and proposed that the discussion be resumed with Article 23(3).

592. The SECRETARY wished to inform the Main Committee, before the discussion of Article 23(3) began, that the Delegation of Czechoslovakia, which had raised the question of the notification by States of the declining of deposits for want of novelty, was not pressing the matter.

593. The CHAIRMAN pointed out that the new wording of Article 23(3) included a new subparagraph (c), which seemed justified to him.

594. The SECRETARY added that the text under consideration had been improved by the addition of a qualifying sentence according to which, "where there are several applicants, they shall appoint a common representative."

595. Article 23(3), as proposed by the Secretariat (document CT/DC/18), was unanimously adopted.

Article 24 (Article 26 of the Text as Adopted). Assembly

596. The CHAIRMAN opened discussions on Article 24(2)(a), and pointed out that the proposal by the Secretariat (document CT/DC/18) consisted in the deletion of item (ix), whereupon item (x) became item (ix).

597. The SECRETARY recalled that Article 24(2)(a)(ix) dealt with the Assembly's competence with respect to the amendment of Articles 24, 25, 26 and 29. That competence was already mentioned in Article 29. The amendment was therefore a drafting one.

598. Article 24(2)(a), as proposed by the Secretariat (document CT/DC/18), was unanimously adopted.

599. The CHAIRMAN opened discussions on Article 24(7).

600. The SECRETARY observed that there was indeed a difference between the proposal for the Agreement on the International Classification of the Figurative Elements of Marks and the proposal for the Agreement on the Protection of Type Faces. The text of the latter proposal was based exactly on the corresponding provisions of the PCT and TRT. As far as the text of the former proposal was concerned, it had been thought preferable to abide by the pattern applicable to the other international classification Agreements. Consequently, if at the present stage a change had to be made, it should rather be to the corresponding article of the Agreement on the International Classification of the Figurative Elements of Marks, which would have to be amended by the Main Committee of the Diplomatic Conference dealing with that Agreement.

601. Mr. LORENZ mentioned that he wished to draw the attention of the Main Committee on the periodicity of the Assembly meetings of the Union: every three years at the same time as WIPO Assembly or every year at the same time as the Coordination Committee.

602. The CHAIRMAN thought that it would be more practical to convene meetings of the Union Assembly at the same time as those of WIPO Assembly, i.e. every three years, since not all States were represented in the Coordination Committee.

603. The SECRETARY said that, in his opinion, the problem raised by the Delegate of Austria did not really arise, because it was expressly provided in the Draft that the Coordination Committee met at the same time as the Assembly. Another problem was that of knowing whether, in the opinion of the Delegation of Austria, the Assembly should meet every year.

604. Mr. LORENZ (Austria) expressed the opinion that every Special Union could give preference to meetings every year or every three years, and adopt, at its discretion, a particular procedure. In the case under discussion, it was not necessary to harmonize the texts but rather to make the choice. The Delegate of Austria said that, as far as he was concerned, he could content himself with either solution.

605. The CHAIRMAN proposed that the Assembly of the Union meet every three years, and called for a vote on Article 24(7).

606. Article 24(7), as proposed by the Secretariat, was unanimously adopted.

Article 25 (Article 27 of the Text as Adopted): International Bureau

607. The CHAIRMAN opened discussions on Article 25.

608. Article 25, as proposed in the Draft, was unanimously adopted.

Article 26 (Article 28 of the Text as Adopted): Finances

609.1 The CHAIRMAN opened discussions on Article 26 and noted that the wording of paragraphs (1), (2) and (3)(a) and (b) raised no objections.

609.2 He recalled that the Secretariat had submitted an amendment proposal concerning Article 26(3)(c) of the Draft, which entailed its replacement by a new paragraph 4(a), (b) and (c) (document CT/DC/18).

610. The SECRETARY pointed out that the amendment in question had become necessary owing to the fact that one could no longer merely refer to the Paris Convention, as one would have done in the past. That was why, in the draft Agreement, the corresponding provisions of the Paris Convention had been incorporated in their entirety, with only certain drafting amendments.

611.1 The CHAIRMAN noted that the Main Committee did not object to paragraph (3)(c) of Article 26, as appearing in the Draft, being replaced by the new paragraphs (4)(a), (4)(b) and (4)(c). The former paragraphs (3)(d) and (3)(e) became paragraphs (4)(d) and (4)(e) respectively, and the former paragraphs (4) and (5) became paragraphs (5) and (6) respectively.

611.2 The Chairman recalled that, as far as the former paragraph (4) was concerned, which, according to the proposal by the Secretariat, was to become paragraph (5), the Delegation of Poland proposed that a new subparagraph (e) be added at the end of the paragraph, the wording of which would be as follows: "If a working capital fund of sufficient amount can be constituted by borrowing from the reserve fund, the Assembly may suspend the application of subparagraphs (a) to (d)."

612. Mr. OPALSKI (Poland) confirmed that, if the reserve fund referred to in the former paragraph (4)(a) and the new paragraph (4)(e) was sufficient and capable of being used for the working capital fund, it would not be necessary to ask States to pay additional amounts.

613. The CHAIRMAN asked the Secretary for his opinion on the subject of the proposal by the Delegation of Poland.

614. The SECRETARY observed that the proposal by the Delegation of Poland, which moreover was based to some extent on the TRT, was, from the Secretariat's point of view, quite acceptable. He thought however that, if the proposal were accepted, the text proposed by the Secretariat should be completed with a sentence on the lines of that appearing in Article 32(4)(b) of the TRT Draft, namely: "If the income exceeds the expenses, the difference shall be credited to a reserve fund." The sentence would naturally be followed by another stating the principle mentioned by the Delegation of Poland, namely that, if the reserve fund was sufficient, it would no longer be necessary to provide for a working capital fund.

He added that, if the principle were adopted, the provisions as a whole would in any event have to be reviewed, and the Drafting Committee entrusted with bringing the various provisions into harmony with each other.

615. Mr. MOROZOV (Soviet Union) asked for details regarding the size range of the fund in question. He presumed that the fund was going to be small and that it could be financed by the Paris and Berne Unions.

616. The SECRETARY shared the opinion of the Delegate of the Soviet Union according to which there would be a rather small reserve fund or working capital fund, of some 20,000 Swiss francs--as indicated by the long-term projections. It was not necessary for the working capital fund to be more than half the budget which, according to the long-term projections, would be a maximum of 30,000 to 50,000 Swiss francs. Everything could work very well with, if necessary, a loan from the Paris and Berne Unions. In conclusion, the Secretary said that what was happening was that the text was being harmonized with the other agreements and a precaution was being taken, rather than a threat being made to the finances of member States.

617. Mr. MOROZOV (Soviet Union) declared that he felt some sympathy for the proposal of Poland. For the working capital fund, the simplest solution would be to have a loan from the Paris and Berne Unions without having to ask the Contracting States. All the provisions dealing with this starting fund could be suppressed.

618. Mr. HOFFMANN (Luxembourg) was not entirely convinced of the necessity of the creation of two funds, namely a reserve fund and a working capital fund. He wondered therefore why, where there was a surplus, that surplus should not be paid into the working capital fund until the prearranged amount of the fund was reached. The Delegate of Luxembourg did not very well see the purpose of having another reserve fund alongside the working capital fund.

619. The SECRETARY thought that the question was essentially one of harmonizing the texts. If, therefore, similar provisions had been adopted for the other agreements, there was no reason for departing from that principle.

620. The CHAIRMAN asked the Main Committee whether it accepted, in principle, the proposal made by the Delegation of Poland, and proposed that the wording of paragraph (5) be left to the Drafting Committee.

621. It was so decided.

Article 27 (Article 29 of the Text as Adopted). Regulations

622. The CHAIRMAN opened discussions on Article 27.

623. Article 27, as appearing in the Draft, was unanimously adopted.

Article 28 (Article 31 of the Text as Adopted). Revision of the Agreement

624. The CHAIRMAN opened discussions on Article 28 and noted that the Main Committee was prepared to accept paragraphs (1) and (2). As for paragraph (3), he said that it concerned the procedure for the amendment of Articles 24, 25, 26 and 29.

625. Mr. MOROZOV (Soviet Union) proposed that consideration of Article 28(3) be resumed after the adoption of Article 29.

Article 29 (Article 32 of the Text as Adopted): Amendment of Certain Provisions of the Agreement

626. The CHAIRMAN agreed that Article 28(3) should be held over for the time being and opened discussions on Article 29.

627. Article 29, as appearing in the Draft, was unanimously adopted.

Article 28 (Article 31 of the Text as Adopted): Revision of the Agreement (continued)

628. The CHAIRMAN returned to Article 28(3) and opened discussions on it.

629. Article 28(3), as appearing in the Draft, was unanimously adopted.

Final ClausesArticle 30 (Article 33 of the Text as Adopted): Becoming party to the Agreement

630. The CHAIRMAN opened discussions on Article 30.

631. Mr. MOROZOV (Soviet Union) asked how the problem corresponding to the one under discussion had been resolved in the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Geneva Convention).

632. The CHAIRMAN replied that, in the Geneva Convention, it was provided that all States could accede to the Convention, whereas, as far as the Agreement under discussion was concerned, the principle had already been adopted according to which only States party to the Paris Convention or to the two main copyright conventions could become party.

633. Mr. HADDRICK (Australia) said that the question raised by the Delegate of the Soviet Union also interested his own Delegation. He said that his Delegation had adopted its position at the time when an independent agreement had been envisaged.

634. The CHAIRMAN recalled that the Main Committee had already adopted the principle of the complete autonomy of the Agreement. In order to revert to that question, according to the Rules of Procedure, there would have to be a vote and a two-thirds majority would have to be obtained.

635. Mr. DE SANCTIS (Italy) recalled that his Delegation was opposed to the complete autonomy of the Agreement, considering that it was better to place it within the framework of the Paris Union.

636. The CHAIRMAN asked whether he should call for a vote in order that the question might be reopened.

637. Mr. MOROZOV (Soviet Union) replied that he would not press for such action. He asked whether one should not start the discussion by consideration of the text of Article 30(1)(b) (document CT/DC/18).

638. The CHAIRMAN agreed to the consideration of Article 30(1)(b) first. He recalled that, according to the principle adopted, industrial property States had to be members of the Paris Union and copyright States had to be party to the Berne Convention or to the Universal Copyright Convention. It followed that States that granted protection under industrial design law on the one hand and under copyright law on the other had to be party to the Paris Convention and to the Berne Convention or the Universal Copyright Convention, which was possible, but somewhat complicated. As far as the wording of the last sentence of Article 30(1)(b) was concerned, the Chairman suggested the replacement of the formula "which intend to ensure the protection of type faces only by..." by the formula "which ensure the protection... by...." their opinions on the subject.

639. Miss NILSEN (United States of America) fully shared the opinion expressed by the Chairman. She had intended to raise the problem of the word "only" which had already arisen within the Working Group during the discussion of Article 3, and suggested that the wording of Article 30(1)(b) should be considered at the next meeting of the Working Group at the same time as that of Article 3.

640. It was so decided.

641. The CHAIRMAN noted that the discussion of Article 30(1)(a) and (b) would continue later. For the time being, he suggested that the discussion continue on Article 30(2).

642. Article 30(2), as appearing in the Draft, was unanimously adopted.

643. The CHAIRMAN proposed that paragraphs (3) and (4) of Article 30 should not be discussed for the time being.

644. It was so decided.

Article 31: Indication of the Type of National Protection (Article 34 of the Text as Adopted - Declarations Concerning National Protection)

645. The CHAIRMAN opened discussions on Article 31.

646. The SECRETARY thought that the contents of Article 31 were also conditioned to some extent by what would be decided on the subject of Article 30. Article 31(1)(a) and (b) had in any case also to be completed. He suggested that Article 31 should not be decided upon for the time being.

647. It was so decided.

Article 32 (Article 35 of the Text as Adopted): Entry Into Force of the Agreement

648. The CHAIRMAN opened discussions on Article 32.

649. Article 32(1) and (2), as appearing in the Draft, was unanimously adopted.

650. The SECRETARY recalled that, according to the draft of Article 32(3), Chapter II of the Agreement would enter into force only if at least three States afforded protection to type faces by the establishment of a special national deposit. However, the Secretary pointed out, if those three States were party to a regional treaty, there would therefore be only one Office for the three of them, and it would really be unnecessary to establish a system of international registration for just one regional Office. The Secretary wondered therefore whether the provision was not in need of completion, and proposed saying in French, subject to final drafting, that "Au sens de l'article 32.3), les Etats parties à un traité régional selon l'article 22, comptent pour un seul Etat".

651. Mr. LEDAKIS (WIPO) gave the English translation of the text proposed by the Secretary: "For the purposes of Article 32(3), States party to a regional treaty under Article 22 shall count as one State only."

652. The proposal by the Secretary concerning the addition to the text of Article 32(3) was unanimously adopted.

Article 33 (Article 36 of the Text as Adopted). Reservations

653. The CHAIRMAN opened discussions on Article 33.

654. Mr. PROSEK (Czechoslovakia) proposed that the Article in question be considered once the problem of the contents of Article 30(3) and (4) had been finally decided upon.

655. It was so decided.

Article 34: Duration of the Agreement (Article 37 of the Text as Adopted - Loss of Status of Party to the Agreement)

656. The CHAIRMAN recalled that the Secretariat was suggesting that Article 34 as appearing in the Draft should be deleted and replaced by the text proposed in document CT/DC/18, paragraph 5, entitled "Loss of status of party to the Agreement." In view of the fact that the decision on Article 30(1)(b) had been postponed, the Chairman proposed that the same be done with Article 34.

657. It was so decided.

[Suspension]

Article 35 (Article 38 of the Text as Adopted): Denunciation of the Agreement

658. The CHAIRMAN resumed the meeting and opened discussions on Article 35.

659. Article 35, as appearing in the Draft, was unanimously adopted.

Article 36 (Article 39 of the Text as Adopted): Signature and Languages of the Agreement

660. The CHAIRMAN opened discussions on Article 36.

661. Article 36(1)(a), as appearing in the Draft, was unanimously adopted.

662. The CHAIRMAN recalled that the Delegations of the Federal Republic of Germany, Italy, the Soviet Union, Spain and Switzerland had submitted observations and a proposal for the amendment of Article 36(1)(b) (document CT/DC/19). He opened discussions on that provision.

663. Mr. DE OURO-PRETO (Brazil) gave his support to the proposal by the five Delegations, which was based on the TRT and the PCT.

664. Mr. HADDRICK (Australia) asked for some details on the number of persons using the languages referred to in Article 36(1)(b) as proposed by the five Delegations.

665. The CHAIRMAN said that German was used by about 100 million people in the Federal Republic of Germany, the German Democratic Republic, Switzerland and Austria, and Italian by about 50 million, in Italy and Switzerland. He asked the delegations to provide details on this subject.

666. Mr. MURAKA (Japan) estimated that more than 104 million people living in Japan alone spoke Japanese. Account would also have to be taken of Japanese-speaking people living in Korea and other parts of the world.

667. Mr. DE OURO-PRETO (Brazil) thought that Portuguese was spoken by about 120 million people, including 102 to 103 million in Brazil, about 10 million in Portugal and the remainder in Africa.

668. Mr. MOROZOV (Soviet Union) said that Russian was used by about 300 million people.

669. Mr. RUA BENITO (Spain) said that Spanish was used by 30 million people in Spain and by more than 300 million in America and in other parts of the world.

670. The proposal by the five Delegations on Article 36(1)(b) (document CT/DC/19), was unanimously adopted.

671. Article 36(2), as proposed in the Draft, and then Article 36, thus amended, as a whole, were unanimously adopted.

Article 37 (Article 40 of the Text as Adopted). Depository Functions

672. The CHAIRMAN opened discussions on Article 37.

673. Article 37(1), as appearing in the Draft, was unanimously adopted.

674. The CHAIRMAN mentioned that the Secretariat had submitted a proposal for the amendment of Article 37(2). In view of the fact that the discussion on Article 30(1)(a) had been postponed, he suggested that the same be done with Article 37(2).

675. It was so decided.

676. Article 37(3) and (4), as appearing in the Draft, was unanimously adopted.

Article 38 (Article 41 of the Text as Adopted): Notifications

677. The CHAIRMAN opened discussions on Article 38 and mentioned that the Secretariat had suggested, in document CT/DC/18, paragraph 7, that the beginning of the Article should read as follows: "The Director General shall notify the Governments of the States referred to in Article 30(1)(a)...." He proposed that consideration of the Article in question be postponed.

678. It was so decided.

679. The CHAIRMAN noted that the Main Committee had for the time being finished its consideration of the draft Agreement and would resume its discussion with the examination of the proposals of the Working Group.

680. Mr. DE SANCTIS (Italy) asked whether it would be possible for a member of the Delegation of Italy to take part in the discussions of the Working Group.

681. The SECRETARY proposed that the Committee declare that a member of the Delegation of Italy might take part in the discussions of the Working Group.

682. It was so decided.

683-731. Sixth and seventh meetings of the Main Committee - Joint meetings of the Main Committees of the three Diplomatic Conferences which took place within the framework of the Vienna Diplomatic Conference on Industrial Property, i.e., in addition to the Diplomatic Conference on Type Faces which forms the subject of these Records, the Diplomatic Conference on the Trademark Registration Treaty and the Diplomatic Conference on the International Classification of the Figurative Elements of Marks. The summary minutes of the joint meetings have been published in the Records of the Vienna Diplomatic Conference on the Trademark Registration Treaty, 1973 (pages 401 to 406) and are reproduced here as published therein. Article 37 referred to in these minutes is Article 37 of the TRT Draft; it corresponds to Article 30 of the Draft Agreement on the Protection of Type Faces and their International Deposit (Article 33 of the Final Text). Article 42bis referred to in these minutes corresponds to Article 30 of the Final Text of the Vienna Agreement for the Protection of Type Faces and their International Deposit.

Sixteenth Meeting *
Wednesday, May 30, 1973,
morning

Opening of the Joint Meeting

1517. Mr. BODENHAUSEN (Director General, World Intellectual Property Organization (WIPO)) opened the meeting and said that, pursuant to a decision by the Steering Committee of the Vienna Conference, a joint meeting was being held of the Main Committees of the three Diplomatic Conferences in order to consider two questions of common interest to the three Main Committees. He invited the joint meeting to elect a Chairman.

1518. Mr. ARMITAGE (United Kingdom) proposed that the joint meeting be chaired by Mr. Schönherr, Head of the Delegation of Austria.

1519. Mr. ULMER (Federal Republic of Germany) seconded the proposal of the Delegation of the United Kingdom.

1520. Mr. Schönherr (Austria) was elected Chairman of the joint meeting by acclamation.

Article 37: Becoming Party to the Treaty (Continued from 1072)

1521. The CHAIRMAN ** opened the discussion on Article 37(4) of the TRT Draft and on the corresponding provisions of the Drafts of the other two Agreements submitted to the Vienna Conference. Subparagraph(a) of Article 37(4) provided that the provisions of Article 24 of the Stockholm Act of the Paris Convention allowing for the extension of the effects of the Convention to certain territories by means of a declaration by the State responsible for the external relations of such territories would apply to the TRT, whereas sub-

* This is the first joint meeting of the Main Committees of the three Diplomatic Conferences comprising the Vienna Conference.

** In this meeting, "The Chairman" refers to Mr. Schönherr (Austria).

paragraph (b) provided as did the corresponding provision in the Patent Cooperation Treaty that subparagraph (a) was not to be understood "as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said subparagraph (a)"

1522. Mr. ARMITAGE (United Kingdom) said that the need for Article 37(4) was a practical one. If it were not adopted, then, for example, the United Kingdom could not extend the application of the TRT to such territories under its control as Hong Kong, which would mean that residents of Hong Kong could not file international applications and international applications filed by others could not have effect in Hong Kong.

1523. Mr. VAN WEEL (Netherlands) said that the Kingdom of the Netherlands, too, needed Article 37(4), consisting as it did of three parts, one being in Europe, the other two being the Netherlands Antilles and Surinam. Without that provision, no independent decision in respect of the various parts of the Kingdom could be made on the basis of what was in their best interest.

1524. Mr. EKANI (Congo) said that the best way to respect the interests of territories was to allow them to decide for themselves. The resolutions of the United Nations concerning territories made the proposed provision anachronistic. However, the compromise arrived at in Washington in 1970 for Article 62(3) and (4) of the Patent Cooperation Treaty of which the proposed Article 37(4) was an exact copy—was an acceptable compromise since it expressly negated the recognition of the factual international situation of those territories.

1525. Mr. VACHATA (Czechoslovakia) said that his Delegation proposed that Article 37(4) of the TRT Draft, and the corresponding provisions of the other two draft instruments, be omitted. It was true that similar provisions appeared in other treaties sponsored by WIPO. However, those were older texts. In the meantime, the practice had changed and, in conformity with the resolutions of the United Nations, more recent treaties no longer contained any so-called "colonial" clauses. The WIPO policy should follow the more recent practice of the United Nations. It would be desirable to establish a Working Group consisting of experts in international public law to discuss all the final clauses of all three instruments.

1526. Mr. LABRY (France) said that, in substance, his Delegation agreed with the views expressed by the Delegations of the United Kingdom and the Netherlands. It saw no reason why residents of French territories "d'outre-mer" ("overseas") should not be able to benefit from the TRT. The compromise arrived at in Washington in 1970 should also hold today. Circumstances had not fundamentally changed since then. The issue was a simple one and did not require the establishment of a Working Group.

1527. Mr. HEMMERLING (German Democratic Republic) said that his Delegation was in entire agreement with the views expressed by the Delegation of Czechoslovakia. The provision in question did not correspond to the international situation. Its deletion would promote cooperation between the Member States of WIPO.

1528. Mr. TASNÁDI (Hungary) said that his Delegation fully shared the views expressed by the Delegation of Czechoslovakia.

1529. Mr. MOROZOV (Soviet Union) said any "colonial" or "territorial" clause would be in contradiction to Resolution No. 1514/XV of December 14, 1960, of the General Assembly of the United Nations. Not all texts adopted under the aegis of WIPO contained such a clause. The WIPO Convention itself did not contain one. The compromises arrived at in 1970 and on other occasions were unsatisfactory. They were applicable also to real colonies. Colonies should be excluded *expressis verbis* from the provision under discussion. It might be desirable to establish a Working Group to deal with the matter and to propose a more satisfactory compromise.

1530. Mr. VRABIE (Romania) expressed his Delegation's agreement with the statements made by the Delegations of Czechoslovakia and the Soviet Union.

1531. Miss NILSEN (United States of America) said that her Delegation agreed with the views expressed by the Delegations of the United Kingdom and France.

1532. Mr. BENCHERCHALF (Algeria) said that his Delegation would be greatly in favor of omitting Article 37(4).

1533. Mr. RIZK (Egypt) said that his Delegation did not favor the maintenance of Article 37(4) and did not object to the creation of a Working Group.

1534. Mr. BODENHAUSEN (Director General, World Intellectual Property Organization (WIPO)) said that the constitution of a Working Group to deal with all the final clauses of all three treaties would cause practical difficulties both for the Conference (because it did not have much time at its disposal) and also, if the treaties were to be changed substantially, for their uniform administration (since the proposed final clauses were practically the same as in all treaties administered by WIPO). The creation of a Working Group on Article 37(4) was another matter; it would not cause any practical difficulties.

1535. Mr. VACHATA (Czechoslovakia) said that the Working Group which he proposed should deal with three provisions: the colonial clause, the clause on disputes, and the clause on reservations. In any case, as far as Article 37(4) was concerned, he thought that subparagraph (a) contradicted subparagraph (b): how could the first refer, in fact, to colonies and the second negate the recognition of the same colonies?

1536. The CHAIRMAN asked whether the Delegation of Czechoslovakia would agree to the proposal of the Delegation of the Soviet Union, that is, that any Working Group to be set up would deal only with Article 37(4).

1537. Mr. VACHATA (Czechoslovakia) said that as long as no Delegation supported his proposal he could agree to the proposal of the Delegation of the Soviet Union.

1538. Mr. HEDAYATI (Iran) said that he shared the views expressed by the Delegations of Algeria and Egypt.

1539. Mr. ARMITAGE (United Kingdom) said that there was no reason to set up a Working Group. The issue connected with Article 37(4) was straightforward and well known.

1540. *The proposal to set up a Working Group to deal with Article 37(4) was rejected by 13 votes against to 9 in favor, with 14 abstentions.*

1541. The CHAIRMAN said that a vote should next be taken on the proposal to delete Article 37(4).

1542. Mr. VACHATA (Czechoslovakia) proposed that such a vote should be by roll-call since the question was an important political one.

1543. Mr. HEMMERLING (German Democratic Republic) seconded the motion of the Delegation of Czechoslovakia.

1544. Mr. BRAENDER (Switzerland) said that the question was not a political one but a practical one and, in voting, his Delegation would be led by practical and not by political considerations.

1545. *As a result of drawing by lot, the Netherlands was the first country to vote on the proposal of the Delegation of Czechoslovakia to delete Article 37(4) of the TRT Draft and the corresponding provisions of the other two Drafts. (Countries were called in the French alphabetical order of their names.)*

(a) *The following Delegations voted in favor of the proposal of the Delegation of Czechoslovakia: Poland, German Democratic Republic, Romania, Czechoslovakia, Soviet Union, Algeria, Bulgaria, Egypt, Hungary, Iran, Nigeria;*

(b) *the following Delegations voted against the said proposal: Netherlands, United Republic of Tanzania, United Kingdom, Sweden, Switzerland, South Africa, Germany (Federal Republic of), Austria, Belgium, Canada, Denmark, United States of America, France, Italy, Japan, Luxembourg, Norway.*

(c) *the following Delegations declared their abstention: Portugal, Syrian Arab Republic *, Senegal, Yugoslavia, Australia, Brazil, Cameroon, Congo, Spain, Finland.*

1546. *The Chairman said that the proposal to delete Article 37(4) was rejected by 17 votes against to 11 in favor, with 10 abstentions.*

1547. Mr. SOURCIOV (Bulgaria) asked whether any Delegations whose credentials were not yet recognized had participated in the vote.

* The Delegation of the Syrian Arab Republic later declared that it had abstained owing to a misunderstanding. It had meant to vote for the proposal.

1548. Mr. BOGSCHE (World Intellectual Property Organization (WIPO)) said that, under the Rules of Procedure, even Delegations whose credentials were not yet approved could provisionally participate. In any case, the final and sole decisive vote would be taken in the Plenaries of each of the three Diplomatic Conferences.

1549. Mr. MOROZOV (Soviet Union) asked which were the Delegations that had voted but whose credentials were not yet approved by the Credentials Committee.

1550. Mr. BOGSCHE (World Intellectual Property Organization (WIPO)) replied that those Delegations were the Delegations of Cameroon, Congo and Spain, all of which had abstained in the roll-call vote.

1551. *Article 37(4) was adopted as appearing in the TRT Draft.*

Seventeenth Meeting *
Wednesday, May 30, 1973,
afternoon

1558. The CHAIRMAN ** invited the Committee to continue the discussion on the proposed new Article on the settlement of disputes.

1559. Mr. MOROZOV (Soviet Union) said that his Delegation no longer intended to submit a proposal for the amendment of the proposal contained in document TRT/DC/17. It would rather simply oppose the proposal to insert any new Article in the Draft dealing with the settlement of disputes. Such an Article was superfluous. If some States wished to submit their disputes to the International Court of Justice, they could always agree to do so without any provision in the TRT or the other two instruments.

1560. Mr. PIETERS (Netherlands) said that the first aim of the proposal contained in document TRT/DC/17 was that no special agreement should be necessary among States party to a dispute for submitting it to the International Court of Justice.

1561. Mr. FRAYNE (United States of America) said that the proposal contained in document TRT/DC/17 took into account the situation of those countries which could not accept, in advance and generally, the jurisdiction of the International Court of Justice. Such countries could make use of the possibility of reservation provided for in the proposal in question.

1562. Mr. HADORICK (Australia) said that his Delegation continued to support the proposal contained in document TRT/DC/17.

1563. Mrs. WASILEWSKA (Poland) said that her Delegation agreed with the views expressed by the Delegation of the Soviet Union: the proposal contained in document TRT/DC/17 should not be adopted.

1564. Mr. VACHATA (Czechoslovakia) said that, unless the proposed modification of his Delegation -namely, that the International Court of Justice would have jurisdiction only if the parties to a given dispute agreed to submit such dispute to it - was accepted, it would support the position of the Delegation of the Soviet Union, that is, that the proposal contained in document TRT/DC/17 should be rejected.

1565. *By a vote of 19 in favor to 8 against, with 7 abstentions, it was decided to adopt the Article proposed in document TRT/DC/17.*

* This is the second and last joint meeting of the Main Committees of the three Diplomatic Conferences comprising the Vienna Conference.

** In this meeting, "The Chairman" refers to Mr. Schönherr (Austria).

Article 42bis (new): Settlement of Disputes

1552. The CHAIRMAN opened the discussion on the proposal of the Delegations of Australia, France, Japan, the Netherlands and Switzerland contained in document TRT/DC/17, requesting the insertion of a new article in the TRT Draft and the Drafts of the other two instruments to deal with the settlement of disputes.

1553. Mr. VAN WEE (Netherlands) introduced the proposal contained in document TRT/DC/17. He said that it followed the recent trend in intellectual property treaties: paragraph (1) provided for the compulsory jurisdiction of the International Court of Justice; paragraph (2) allowed each Contracting State to make a reservation which would negate, for that State, such jurisdiction; paragraph (3) permitted the withdrawal of the reservation.

1554. Mr. TSUCHIYA (Japan) said that although his Delegation hoped that there would be no disputes between Contracting States it might be safer to provide for such a case.

1555. Mrs. GORODETZKAJA (Soviet Union) proposed that the Article on disputes should provide for the jurisdiction of the International Court of Justice only where all the parties to any particular dispute accepted such jurisdiction.

1556. Mr. VACHATA (Czechoslovakia) said that he fully supported the proposal of the Delegation of the Soviet Union.

1557. The CHAIRMAN invited the Delegation of the Soviet Union to file the text of its proposal in writing and said that the discussion would continue in the next meeting.

<u>Eighth Meeting</u>
<u>Friday, June 1, 1973,</u>
<u>morning</u>

Protocol Concerning the Term of Protection

732. The CHAIRMAN opened the meeting and invited the Main Committee to continue its discussions on the proposal regarding the Protocol, submitted by the Delegations of France, the Netherlands and Switzerland (document CT/DC/20).

733. Mr. KÄMPF (Switzerland) wished to give some explanations on the subject of the Protocol. He pointed out that the decision taken by the Main Committee to set the term of protection at 15 years instead of 25 years had come as a surprise to a number of delegations. A solution had to be found to provide a longer term of protection, at least in relations between certain countries. The draft Protocol had been written very rapidly, and its wording (notably item 2) had therefore to be given additional consideration. The effect of setting the term of protection at 15 years was that the draft Agreement lost much of its value, particularly for countries that intended to ensure the protection of type faces on the basis of their industrial design legislation, which provided for the same term of protection. The Delegate of Switzerland added that a similar situation had arisen in 1960 at the time of the revision of the Hague Agreement Concerning the International Deposit of Industrial Designs, where the term of protection had been shortened to ten years. Certain countries had then decided to provide for longer protection in an additional Protocol to the Hague Agreement.

734. The CHAIRMAN pointed out that the wording of item 1(a) and (b) of the draft Protocol was based on the text of Article 3 as appearing in the Draft (document CT/DC/1), and mentioned that Article 3 of the Draft had in the meantime been amended according to the proposal by the Working Group (document CT/DC/21), in order to resolve the problem of the expression "only."

735. Mr. KÄMPF (Switzerland) considered that the text of the draft Protocol should in that case be adapted to the text of the draft Agreement as amended.

736. Mr. FRANCON (France) fully shared the opinion expressed by the Delegate of Switzerland. He considered that the satisfactory protection of intellectual creators in general had to be guaranteed by protection of long duration. The level of economic and social development of certain countries perhaps prevented them from providing for protection of long duration, but according to the Delegate of France such protection was desirable. As for the amendment to the drafting of the Protocol, the Delegate of France endorsed it fully.

737. Mr. KELBEL (Federal Republic of Germany) supported the proposal by the three Delegations and also the proposal that the text of the draft Protocol be aligned on the text of the draft Agreement itself.

738. Mr. HADDRICK (Australia) said that he had no intention of obstructing countries that favored a longer term of protection. However, he foresaw difficulties, particularly for countries that exported equipment to which type faces are applied. He recalled that the Main Committee had already taken the decision concerning the application of the national treatment principle, in accordance with the provisions of the Paris Convention (document CT/DC/21, paragraph 6), which principle seemed to have been abrogated in the draft Protocol (document CT/DC/20).

739. Mr. MOROZOV (Soviet Union) said that in relation to the proposal by the three Delegations, contained in document CT/DC/20, the Delegation of the Soviet Union considered that the 15-year term of protection was sufficient. However, in view of the fact that accession to the Protocol was not mandatory for countries party to the Agreement, and that the matter of the longer term of protection was resolved by national legislation, the Delegation of the Soviet Union was not opposed to the idea of the Protocol.

740. The CHAIRMAN reverted to the problem raised by the Delegate of Australia concerning national treatment. The effect of the Protocol was to impose the obligation to protect for a minimum period of 25 years only the nationals of other countries that had acceded to it. There was therefore no question of national treatment in the strict sense. However, a logical consequence would be the grant to nationals of protection of the same duration, namely a minimum of 25 years. Nevertheless, if national legislation was amended in order to provide for a 25-year term of protection, the natural result under the Paris Convention would be the obligation to grant national treatment to all States members of the Paris Union.

741. Mr. van WEEL (Netherlands) gave his support to the proposal of the three Delegations. He recalled that the Netherlands intended to protect type faces within the framework of the Paris Union, and that any person who deposited type faces in the Netherlands would enjoy 25-year protection.

742. Miss NILSEN (United States of America) said that she was in favor of a drafting amendment to the Protocol concerning the expression "only."

743. Mr. CADMAN (United Kingdom) considered it desirable to provide, for States whose legislation granted longer protection, the possibility of doing so on the basis of reciprocity. Consequently, changes of a drafting nature would be necessary.

744. The CHAIRMAN repeated that, if a provision affording protection for 25 years was incorporated in national legislation, protection of the same duration would have to be granted to nationals of member States of the Paris Union. It is not a matter of reciprocity and it is difficult to change this point. The Chairman thought that a vote could already be taken on the proposal of the three Delegations.

745. Mr. HADDICK (Australia) felt that the difficulties raised by the Protocol could be eliminated by means of certain amendments of a drafting nature.

746. The proposal concerning the Protocol, submitted by the Delegations of France, the Netherlands and Switzerland (document CT/DC/20), was adopted subject to a drafting amendment by 10 votes in favor, 1 vote against and 10 abstentions.

Regulations

747. The CHAIRMAN opened discussions on the revised draft Regulations prepared by the Secretariat (document CT/DC/22). He thanked the Secretariat, and in particular the Secretary, Mr. Voyame, for the excellent revision work accomplished during a work-free day and asked the Secretary to give explanations of a general character.

748. The SECRETARY recalled that the first draft Regulations, contained in document CT/DC/2, had been aligned as far as possible on the draft Regulations under the TRT and contained a fairly large number of simplifications, as the international deposit procedure for type faces was certainly less complex than the procedure for the international registration of marks. The draft Regulations under the TRT had subsequently been amended, once even before the beginning of the Vienna Diplomatic Conference, and then quite recently, pursuant to decisions taken within the TRT Main Committee. For the revision of the draft Regulations contained in document CT/DC/2, account had had to be taken not only of the successive amendments made to the draft Regulations under the TRT, but also of the decisions taken by the Main Committee of the Vienna Conference on the Protection of Type Faces.

Rule 1: Abbreviated Expressions

749. The CHAIRMAN opened discussions on Rule 1.

750. Rule 1, as proposed by the Secretariat, was unanimously adopted.

Rule 2: Representation Before the International Bureau

751. The CHAIRMAN opened discussions on Rule 2.

752. Mr. BUSHELL (Chartered Institute of Patent Agents (CIPA)), referring to Rule 2.2(d), pointed out that in the list of representatives, the phrase "or patent or trademark agents" should be deleted, as those terms could have different meanings from country to country.

753. The CHAIRMAN asked the Secretary to explain the position on that question in the light of the provisions of the TRT.

754. The SECRETARY replied that the text of Rule 2.2 had been taken over word for word from the revised draft Regulations under the TRT. The final text of the TRT Regulations was not yet available. As it had yet to be worked on by the Drafting Committee of the Diplomatic Conference on the TRT, the two texts would probably have to be harmonized, which--according to the Secretary--would be essentially a question of drafting.

755. The CHAIRMAN pointed out that the draft Agreement (Article 23) and the draft Regulations spoke of a "duly appointed representative," but one could also say a "partnership or firm of attorneys."

756. The SECRETARY said that, in his opinion, the proposed wording did not mean that an authorization to practice as a representative or in a professional capacity was required, but only that the representative had to be duly appointed by the party appointing him.

757. The CHAIRMAN proposed that the matter be left to the Drafting Committee, which would choose a wording similar to that finally adopted for the TRT Regulations.

758. Mr. FALSAFI (Iran) mentioned a case in which a firm of attorneys was not duly appointed in the sense given by the Secretary, and asked whether that firm had to have legal personality or not. He wished to hear the opinion of the Secretary on the subject.

759.1 The SECRETARY pointed out that the question was one of those that had been discussed at length in the Committees of Experts on the TRT. The Drafts concerned did not require that the representative possess any kind of State authorization. It was not necessary, therefore, that he be an attorney duly authorized by the State, or a patent agent, or an industrial property consultant, because there were a certain number of States in which anyone could act as a representative in industrial property matters without any authorization on the part of the State. To require State authorization would in that case be to introduce unequal treatment.

759.2 As for the question of firms of attorneys, depending on whether or not they had legal personality, the Secretary said that there were firms of attorneys or patent agents that were constituted as companies and which, as a result, possessed legal personality. In that case it was the firm as such that acted as representative, being itself represented by the natural persons who constituted it. Where the firm of attorneys did not have legal personality (for instance in the case of an interest group), it also acted but in that case through one of its members. The draft Regulations contained a series of rules based on the TRT which dealt with all those questions in a fairly precise way.

760. The CHAIRMAN proposed the postponement of the question whether or not the words "or patent or trademark agents" should be deleted, it had not yet been dealt with by the TRT; he proposed also that the Drafting Committee be entrusted with the task of making a proposal once the decision concerned had been taken in respect of the TRT.

761. It was so decided.

762. Mr. KELBEL (Federal Republic of Germany) pointed out that Article 23 of the draft Agreement specified that applicants and owners of international deposits might be represented before the International Bureau by any person empowered by them to that effect, but did not indicate who those persons were. He thought that the matter should be clarified in the Regulations (Rule 2.2). His Delegation did not intend to propose an amendment that would make the Rule in question different from the corresponding Rules in other Regulations. The Delegate of the Federal Republic of Germany thought, however, that, the Agreement being a separate instrument, the Main Committee should make it clear who the persons were who could be empowered by the applicant to represent him. He therefore proposed the insertion in Rule 2.2(a), after the words "duly appointed representative," of the words "if he is entitled to act as a representative in a member State and, if his appointment complies with....," etc.

763. The CHAIRMAN opened discussions on the proposal presented by the Delegate of the Federal Republic of Germany.

764. The SECRETARY pointed out that one should not overestimate the importance of the Agreement and Regulations under discussion. The problem of the position of attorneys and patent agents had more theoretical than practical importance. The Secretary considered that to make an exception, for the Type Faces Agreement, to rules that were more or less generally accepted, was to complicate things somewhat. The Secretary said once again that there were many countries in which any person was free to practice. Imposing the strict requirement that the representative be "duly appointed" by the State authorities meant that there would be a situation of inequality to the disadvantage of nationals of countries having a much stricter system.

765. The CHAIRMAN said that, if he had understood correctly, the Delegation of the Federal Republic of Germany was proposing that only such persons could be representatives as had been authorized to be representatives in a Contracting State. He considered that it would be difficult to accept such a proposal, in view of the fact that in Switzerland, for instance, any person could be a representative.

766. Mr. KELBEL (Federal Republic of Germany) understood the objections put forward by the Secretary and withdrew his proposal.

767. The CHAIRMAN opened discussions on Rule 2.2.

768. Rule 2.2, as proposed by the Secretariat, was unanimously adopted.

769. The CHAIRMAN opened discussions on Rule 2.3.

770. Mr. RUA BENITO (Spain) referred to Rule 2.2(c), which provided that, where there were several applicants or owners of the international deposit, the document containing or constituting the appointment of their common representatives had to be signed by all of them. If, therefore, for the appointment of a common representative, the intervention of all those persons was required, the Delegate of Spain failed to understand that, for the revocation of the appointment of the representative, which produced the same legal effects, the signature of only one of the persons who had appointed the representative was sufficient. The Delegate of Spain considered that the same principle should be observed in both cases, as was provided moreover in Spanish national legislation.

771. The SECRETARY pointed out that the Rule in question was exactly the one that appeared in the Regulations under the TRT, and that it was justified for the following reasons: the mandate reflected a relationship of trust; in order to create a mandate, therefore, all the mandators had to agree to entrust a certain mandate to a specific person, who then became their representative. The mandate had to continue for as long as the relationship of trust existed, and it had to be sufficient that one person lose confidence in his representative for the mandate to be susceptible of revocation. If one required unanimity on the part of the mandators, it would in many cases be impossible to revoke the mandate. The position of the representatives was not liable to suffer in such a case of revocation because, as soon as there was no longer a duly appointed representative, and if another representative was not appointed immediately, it was the first of the owners of the international deposit who could act as representative and who, consequently, if for instance there were time limits to be respected, could safeguard the interests of the group.

772. The CHAIRMAN was of the opinion that the idea of the representative having to have the trust of all the owners of the deposit was justified. He asked the Delegation of Spain if he wished to submit a proposal for the amendment of Rule 2.3(a).

773. Mr. RUA BENITO (Spain) thanked the Secretary for the explanations given by him. He thought that Rule 2.3(a) could be completed by the addition, at the end, of the words "provided that a new representative has been designated" ("siempre que exista un nuevo mandatario nombrado"). As the new representative would be in most cases a professional, there would be the guarantee that the position of the mandators would not be harmed because of the revocation of the mandate by one of them.

774. The CHAIRMAN asked whether there was a delegation that wished to support the proposal by the Delegation of Spain, and noted that that was not the case. It was therefore not necessary to call for a vote on the proposal.

775. Rule 2.3, as proposed by the Secretariat, was unanimously adopted.

776. The CHAIRMAN opened discussions on Rule 2.4.

777. Rule 2.4, as proposed by the Secretariat, was unanimously adopted.

778. The CHAIRMAN opened discussions on Rule 2.5.

779. The SECRETARY explained that the provision in question was patterned on a similar provision in the TRT Regulations, in which a whole series of scattered provisions dealing with the question of the substitute representative had been grouped. It was therefore not a new provision but merely a new presentation of existing provisions.

780. Rule 2.5, as proposed by the Secretariat, was unanimously adopted.

781. The CHAIRMAN opened discussions on Rule 2.6.

782. Rule 2.6, as proposed by the Secretariat, was unanimously adopted.

783. Mr. FALSAFI (Iran) thought that it would be necessary for the International Bureau to have a team of attorneys to examine all questions concerning the mandate (validity, revocability, liability, etc.).

784. The SECRETARY pointed out that a distinction had to be made between the relations between the representative and the International Bureau--known as external relations--and the relations between the representative and his mandator--known as internal relations. As far as external relations were concerned, if national law was to be relied upon, the position of the International Bureau would be even more difficult, as about 90 different national laws would have to be applied. In addition, the International Bureau was not concerned solely with attorneys, but also with patent agents, whose status differed from country to country. It would therefore have to be determined whether those who intervened did so as attorneys or as patent agents. As for internal relations, those were relations that were governed by civil law and, consequently, were subject to the national legislation of each State.

Rule 3: International Register

785. The CHAIRMAN opened discussions on Rule 3.1(a), and noted that the draft Regulations contained the same text as those of the TRT.

786. Mr. DREYFUS (International Typographical Association (ATYPI)) preferred to avoid the expression "reproduction" in Rule 3.1(a)(ii), and suggested replacing it by the expression "print" in English and "épreuve" in French.

787. The SECRETARY recognized that it would be better to avoid using the same word "reproduction" to denote two completely different things. For his part, he was thinking of the term "facsimile," and he asked the Observer from ATYPI what he thought of it.

788. Mr. DREYFUS (International Typographical Association (ATYPI)) said that he preferred the expression "print" (épreuve) because the expression "facsimile" suggested dimensions identical with those of the original.

789. Mr. OPALSKI (Poland) suggested the use in Rule 3.1(a)(ii) of the expression "reproduction of the print" or "facsimile of the print."

790. Mr. CADMAN (United Kingdom) proposed that the wording of Rule 3.1(a)(ii) in English be "the representation of the deposited type faces."

791. The CHAIRMAN asked whether in French one could use the expression "représentation."

792. Mr. KELBEL (Federal Republic of Germany) proposed the use of the expression "model of the deposited sets of type faces."

793. The CHAIRMAN wondered whether one could say "model of the deposited sets of type faces." In his opinion, it was essentially a drafting matter, which could be left to the Drafting Committee. The word "reproduction" had in the case in point a meaning different from the word "reproduction" used in the Agreement. He proposed that the consideration of the matter be postponed.

794. It was so decided.

795. The CHAIRMAN opened discussions on Rule 3.1(b).

796. Rule 3.1(b), as proposed, was unanimously adopted.

Rule 4: Applicants; Owners of International Deposits

797. The CHAIRMAN opened discussions on Rule 4.1.

798. Rule 4.1, as proposed, was unanimously adopted.

799. The CHAIRMAN opened discussions on Rule 4.2, appearing between square brackets, and asked the Secretary what the meaning of the square brackets was.

800. The SECRETARY pointed out that, as a result of discussions that had taken place within the Committee of Experts, it had been decided that the provision in question should be placed between square brackets in both the TRT Regulations and the Type Faces Regulations, even though the position had been somewhat different in the two cases. The problem of associations of natural persons or legal entities had been dealt with and settled for the first time by the TRT. The square brackets also had the meaning that it was perhaps not indispensable to have a provision of that kind in the Regulations.

801. The CHAIRMAN recognized that according to some national legislations certain civil or commercial associations were not legal entities. That was the case in Austria, the Federal Republic of Germany, the Netherlands and Switzerland. However, in other international instruments, it had been accepted that such associations were legal entities, and that was why no express provisions on the subject had been included in the texts of those instruments. According to the Chairman, a partnership was not a legal entity in national law, but it was in international law.

802. Mr. FALSAFI (Iran) did not understand how an association that had no legal personality could assume responsibility, or how legal action could be taken against it. The Delegate of Iran would have no objection if, in each association, there was at least one responsible person.

803.1 Mr. KAMPF (Switzerland) said that his country was indeed one of those that allowed associations that did not have any legal personality. He was therefore interested in the question under discussion. The Delegate of Switzerland regretted that the question had been raised within the Main Committee on the TRT, and foresaw a definite risk if it was not settled in the Agreement under discussion, because that would leave room for the argument according to which the persons in question were not entitled to effect deposits of type faces. He thought, however, that it would be sufficient to mention in the minutes that the Main Committee considered that such groups of persons were entitled to effect deposits of type faces.

803.2 As for the question raised by the Delegate of Iran, the Delegate of Switzerland said that there were always responsible persons in all the associations concerned. The persons were collectively liable, which merely made for increased security.

804. Mr. FALSAFI (Iran) said that he was satisfied by the additional details given by the Delegate of Switzerland.

805. The CHAIRMAN regretted that the question had been settled expressis verbis in the TRT Regulations and that, for the Diplomatic Conference on Type Faces, there was no provision for the preparation of a report of the Main Committee. It would have been very useful for the clarification of questions such as that one.

806. Mr. FRANCON (France) said that France was one of the countries for which

that type of association presented problems, because there was no exact equivalent in French law. That was why the Delegation of France earnestly hoped that the solution found would be the same as for the TRT, and that the text concerning it would appear in the Agreement itself and not in the Regulations. The Delegate of France saw no really compelling reason why the question should not be settled according to the same procedure in both instruments.

807. The CHAIRMAN asked the Main Committee whether it agreed to have the matter settled in the Agreement.

808. Mr. HADDRICK (Australia) foresaw difficulties for the courts in the recognition of certain associations as being legal entities. Consequently, he supported the proposal submitted by the Delegation of France.

809. It was decided that the provision in Rule 4.2 of the Regulations would be deleted and included in the text of the Agreement.

[Suspension]

Rule 5: Mandatory Contents of the Instrument of International Deposit

810. The CHAIRMAN resumed the meeting and opened discussions on Rules 5.1 and 5.2.

811. Rules 5.1 and 5.2, as proposed, were unanimously adopted.

812. The CHAIRMAN opened discussions on Rule 5.3, mentioning that, for the creator, there existed the possibility of renunciation.

813. The SECRETARY pointed out that the provision in question only specified the manner in which the name of the creator was to be indicated, but it was quite clear that, according to the Agreement, the creator could decide not to be identified as such. A provision on the subject was to be found in the rule concerning registration.

814. Rule 5.3, as proposed, was unanimously adopted.

815. The CHAIRMAN opened discussions on Rule 5.4.

816. Rule 5.4, as proposed, was unanimously adopted subject to final drafting with respect to the word "reproduction."

817. The CHAIRMAN opened discussions on Rule 5.5.

818. Rule 5.5, as proposed, was unanimously adopted.

819. The CHAIRMAN opened discussions on Rule 5.6.

820. Mr. OPALSKI (Poland) was of the opinion that the Rule in question should contain a full specification of the obligations of national Offices with respect to the content of the instrument of international deposit filed in the case provided for in Article 10(3) of the Agreement (as proposed by the Delegation of Poland--document CT/DC/11). The Delegate of Poland mentioned that the said

Article 10(3) provided that procedural details would be specified in the Regulations and that a similar solution had been envisaged in Rule 5.8(a) of the TRT. For that reason, the Delegation of Poland proposed the insertion of the provisions in question, drafted in a manner similar to those of the TRT, in the Regulations and not in the Administrative Instructions.

821. The SECRETARY recalled that, in Rule 5.8 of the TRT Regulations, there were different kinds of rules which could be divided into two categories. The provisions belonging to the first category indicated what should be the content of the indication by which the Office of the Contracting State receiving a deposit stated that it had received that deposit on a given date. If the Delegation of Poland wished, and if the Main Committee agreed, something similar could very well be included in the Type Faces Regulations, although it had seemed that a mere matter of wording such as that one could be settled in the Administrative Instructions. The provisions in the second category were of a completely different nature. They spoke of the obligation of the Office of the Contracting State acting as intermediary to send--at least once a week--a note to the International Bureau, which would be a sort of list indicating all the international applications filed through it during the preceding week, even if no international application had been filed with that Office during the week in question. Moreover, they provided for a reminder on the part of the International Bureau where it did not receive, within 15 days following the receipt of such a note, any of the international applications listed in it. The Secretary did not think that the provisions of Rule 5.8(b) of the TRT Regulations could be adopted, and such a comprehensive and complex system thereby introduced for type faces.

822. The CHAIRMAN asked the Delegate of Poland if he would agree to have only the provisions of Rule 5.8(a) taken from the TRT Regulations and inserted in Rule 5.6 of the Regulations under discussion.

823. Mr. OPALSKI (Poland) insisted that the instrument of international deposit should contain confirmation of the date on which the instrument was filed with the national Patent Office.

824. It was decided that, in Rule 5.6, the words "The Administrative Instructions shall regulate the tenor of the indication referred to in Article 10(3)" would be replaced by the words "The indication referred to in Article 10(3) shall be worded as follows: "the ... (1) certifies that the present international deposit was filed with it on ... (2)."}

- (1) indicate the name of the national Office
- (2) indicate the date."

825. Rule 5.6, thus amended, was unanimously adopted.

Rule 6: Optional Contents of the Instrument of International Deposit

826. The CHAIRMAN opened discussions on Rule 6.1.

827. Rule 6.1, as proposed, was unanimously adopted.

828. The CHAIRMAN opened discussions on Rule 6.2 and asked the Secretary for explanations on the wording of Rule 6.2(a)(i). He wished to know whether, in the case provided for in that provision, there was also a right of priority.

829. The SECRETARY indicated that the question had already been raised within the Committee of Experts, where a case had been discovered in which an international deposit could serve as the basis for priority, namely the case where a less extensive international deposit was replaced by a more extensive one.

830. Rule 6.2, as proposed, was unanimously adopted.

831. The CHAIRMAN opened discussions on Rule 6.3, and proposed that its substance be accepted while its final wording would be entrusted to the Drafting Committee.

832. It was so decided.

Rule 7: Language of the Instrument of International Deposit, Recordings, Notifications and Correspondence

833. The CHAIRMAN opened discussions on Rules 7.1 and 7.2.

834. Rules 7.1 and 7.2, as proposed, were unanimously adopted.

Rule 8: Form of the Instrument of International Deposit

835. The CHAIRMAN opened discussions on Rule 8.1.

836. Mr. BUSHELL (Chartered Institute of Patent Agents (CIPA)) asked whether the printed copies of the model form issued by the International Bureau, when reproduced in different countries, had to have headings in languages other than English and French.

837. The SECRETARY was not in a position to say whether the question raised had been discussed in connection with the TRT. He thought that it could be dealt with in the Administrative Instructions. In his opinion it was not an obligation to have other languages appear on the forms printed by the different countries, or even by different representatives. The purpose of that additional printed matter was merely to facilitate deposits in certain countries, not to oblige everybody to have forms in a wide variety of languages.

838. The CHAIRMAN asked the Secretary what the meaning of the words between square brackets was.

839. The SECRETARY replied that they denoted a question of drafting that was pending in connection with the TRT. He proposed that the decisions taken in connection with the TRT be awaited and that the Drafting Committee be entrusted with the task of making a proposal.

840. It was so decided.

841. The CHAIRMAN opened discussions on Rules 8.2 and 8.3.

842. Rules 8.2 and 8.3, as proposed, were unanimously adopted.

Rule 9: Reproduction of Type Faccs

Rule 10: Fees Payable with the International Deposit

843. The CHAIRMAN opened discussions on Rules 9 and 10.

844. Rules 9 and 10, as proposed, were unanimously adopted.

Rule 11: Defects in the International Deposit

845. The CHAIRMAN opened discussions on Rule 11, pointing out that a new wording was proposed by the Secretariat.

846. Rule 11, as proposed by the Secretariat, was unanimously adopted.

Rule 12. Procedure Where Avoiding Certain Effects of Declining is Sought

847. The CHAIRMAN opened discussions on Rule 12, indicating that, in the wording proposed by the Secretariat, the expression "national Office" had been replaced by the expression "competent Office."

848. Rule 12, as proposed by the Secretariat, was unanimously adopted.

Rule 13: International Deposit Certificate

Rule 14: Publication of International Deposits

Rule 15. Notification of International Deposits

849. The CHAIRMAN opened discussions on Rules 13, 14 and 15.

850. Rules 13, 14 and 15, as proposed, were unanimously adopted.

Rule 16. Changes in Ownership

851. The CHAIRMAN opened discussions on Rule 16.1 and asked the Secretary whether--in his opinion--in the case of a change of ownership, it was necessary for the new owner to be also a national or resident of a Contracting State.

852. The SECRETARY mentioned that the Agreement ruled expressly that certain conditions had to be met not only to make an international deposit but also to be the owner of such a deposit. It followed, therefore, that the new owner would also have to meet those conditions.

853. Mr. FRANCON (France) made a comment which he regarded as concerning form rather than substance. Rule 16.1(b) said that "The request shall be signed by the earlier owner or, if he is unable to sign, by the new owner." The Delegate of France wondered whether the term "unable," ("incapable" in French) which had a very definite meaning, was correct in that case, and whether signature by the new owner should not be required every time the earlier owner could not sign the request for a legal or factual reason.

854. The SECRETARY proposed that the Drafting Committee be entrusted with the task of harmonizing the text in question with the corresponding provision of the TRT Regulations.

855. Rule 16 was unanimously adopted as a whole, subject to the harmonization of Rule 16.1(b) with the corresponding rule of the TRT Regulations.

Rule 17: Withdrawal and Renunciation of International Deposits

856. The CHAIRMAN opened discussions on Rule 17.

857. Mr. BUSHELL (Chartered Institute of Patent Agents (CIPA)) mentioned that the TRT and the TRT Regulations contained provisions concerning changes in the name of the holder of the international registration, and asked the Main Committee whether it intended to include a corresponding provision in the Agreement for the Protection of Type Faces.

858. The SECRETARY admitted that there was an article in the TRT and a rule in the TRT Regulations that dealt fairly completely with the question of changes of name. As far as type faces were concerned, it had been considered that such a complicated system was not necessary. That was why, in the Drafts of the Agreement (Article 20) and of the Regulations (Rule 18), provisions of a general nature had been included to cover all other cases of changes to the international deposit which were not expressly mentioned, provided for or settled in another way.

859. Rule 17, as proposed, was unanimously adopted.

Rule 18: Other Amendments to International Deposits

Rule 19: Renewal of International Deposits

860. The CHAIRMAN opened discussions on Rules 18 and 19 in succession.

861. Rules 18 and 19, as proposed, were unanimously adopted.

Rule 20: Transmittal of Documents to the International Bureau

862. The CHAIRMAN opened discussions on Rule 20.

863. Mr. FRANCON (France) pointed out a typing error that had been made in the French text of Rule 20.4, where the word "législation" should be replaced by the word "légalisation."

864. The SECRETARY thanked the Delegation of France for having drawn attention to the mistake and apologized on behalf of the Secretariat.

865. Rule 20, as proposed and corrected, was unanimously adopted.

Rule 21: Calendar; Calculation of Time Limits

Rule 22: Fees

Rule 23: The Bulletin

Rule 24. Copies, Extracts and Information; Certification of Documents Issued by the International Bureau

Rule 25. Expenses of Delegations

Rule 26: Absence of Quorum in the Assembly

Rule 27: Administrative Instructions

Final Clause. Rule 28. Entry Into Force

866. The CHAIRMAN opened discussions on Rules 21 to 28 in succession.

867. Rules 21 to 28, as proposed, were unanimously adopted.

Annex to the Regulations. Table of Fees

868. The CHAIRMAN opened discussions on the Annex to the Regulations, containing the Table of Fees.

869. Mr. DREYFUS (International Typographical Association (ATYPI)) asked for clarification on the subject of the relationship between the Table of Fees and Rule 9.1(c), which said that "The reproduction of the type faces shall also include a text of not less than three lines composed with the characters which are the subject of the international deposit."

870. The SECRETARY pointed out that the deposit fee obviously included the three lines (referred to in Rule 9.1(c)), but that the decisive factor in that case was merely the number of letters or signs that were deposited. If the size of the type faces that were the subject of the international deposit required the making of a publication of more than three lines, the publication fee would naturally be increased.

871. The Table of Fees, as proposed by the Secretariat, was unanimously adopted.

Organization of Work

872. The CHAIRMAN noted that the Main Committee had completed its consideration of the Regulations, and indicated that the meeting of the Drafting Committee would take place in the afternoon of Monday, June 4, 1973.

873. The SECRETARY recalled that the Drafting Committee consisted of representatives of the following Delegations: France, Germany (Federal Republic of), Israel, Italy, Netherlands, Romania, South Africa, Switzerland, United Kingdom.

Ninth Meeting

Thursday, June 7, 1973,
morning

Text of the Agreement Proposed by the Drafting Committee (CT/DC/23) (all the Articles of the Agreement)

874. The CHAIRMAN opened the last meeting of the Main Committee and gave the floor to Mr. van Weel, Delegate of the Netherlands and Chairman of the Drafting Committee, asking him to present the results of the work of the Committee.

875. Mr. van WEEL (Netherlands), taking the floor in the capacity of Chairman of the Drafting Committee, said that the Committee's work had been relatively easy thanks to the effective assistance afforded by the Secretariat and the excellent texts prepared by it. He mentioned that certain amendments had been made to the provisions of Articles 2(i), 5, 8(4), 13(2), 26 and 33 of the Agreement (document CT/DC/23), and to item 1 of the Protocol (document CT/DC/24). In addition, the titles of the Articles had been added.

876.1 The CHAIRMAN congratulated the Drafting Committee and its Chairman for their excellent work, and proposed that the Main Committee begin consideration of the draft Agreement submitted by the Drafting Committee (document CT/DC/23).

876.2 The Chairman indicated that the Drafting Committee had thought that one could leave the title "Vienna Agreement for the Protection of Type Faces and their International Deposit." The instrument under discussion was no longer a "special Agreement" under the Paris Union as had been proposed in the first Draft (document CT/DC/1) but, on the other hand, it was not entirely independent-- Contracting States had to be party to the Paris Convention or to either the Berne Convention or the Universal Copyright Convention. The use of the term "Convention" was not justified either, because the scope of the instrument concerned was not particularly great.

877. The title, as proposed by the Drafting Committee, was unanimously adopted.

878. The CHAIRMAN recalled that the text of the preamble had been proposed by the Delegate of the Soviet Union and had not been amended by the Drafting Committee.

879. The preamble, as proposed, was unanimously adopted.

880. Article 1, as proposed, was unanimously adopted.

881. The CHAIRMAN pointed out a small change in Article 2. In order to afford protection to figures as such, the word "numerals" had been deleted in Article 2(i)(a) and the words "numerals and" had been added at the beginning of Article 2(i)(b).

882. Mr. HADDRICK (Australia) raised a small problem of a drafting nature concerning Article 2(i) in the English version. The French "par toutes techniques

graphiques" was translated in the English version by the words "by any graphic techniques." The Delegate of Australia considered that, if the word "any" was used, the word "techniques" should not be in the plural. Moreover, the expression "all graphic techniques" seemed to him to be a more accurate translation of the corresponding French expression. Both English expressions seemed equally satisfactory to him.

883. Mr. CADMAN (United Kingdom) shared the opinion of the Delegate of Australia. For his part, he preferred the use in English of the word "technique" in the singular. In other words, he was speaking in favor of the expression "any graphic technique."

884. The CHAIRMAN asked the Delegate of Australia if he was in agreement with saying "by any graphic technique."

885. Mr. HADDRICK (Australia) replied in the affirmative and pointed out that, consequently, the same expression would have to be corrected in Article 8(1).

886. Article 2, with the above minor amendment to the English text, was unanimously adopted.

887. Article 3, as proposed, was unanimously adopted.

888. The CHAIRMAN recalled that the Drafting Committee had added a paragraph (3) to Article 4 concerning associations of natural persons or legal entities.

889. Mr. HADDRICK (Australia) pointed out that Article 4(3) as proposed by the Drafting Committee, and shortened, was more substantial than the original provision. He asked the Main Committee to confirm that the significance of the new wording was the same as before.

890. The CHAIRMAN indicated that the formulation in question had been accepted on the basis of a proposal by the Secretariat. In his opinion, it had the same meaning as the original text.

891. The SECRETARY added that the Secretariat had considered that, in the articles concerning national protection, a wording somewhat different from that concerning international registration had to be provided. A more general clause had been inserted in order that it might not be thought that there was in all cases an administrative authority with the power to make rulings. The Secretary agreed with the Delegate of Australia that that would in no way change the substance.

892. Article 4, as proposed by the Drafting Committee, was unanimously adopted.

893. The CHAIRMAN pointed out that the Drafting Committee had amended the wording of Article 5(2) somewhat on the basis of a corresponding provision in the Universal Copyright Convention.

894. Miss NILSEN (United States of America) had no objections as far as the change made was concerned. However, she would have preferred the original wording

"authorized type faces distributed to members of the public," which she considered clearer.

895. Mr. FRANCON (France) said that he had no intention of questioning Article 5 again. He merely wished to point out that application of the national treatment principle was liable to result in quite considerable differences in treatment from one country to another, depending on the type of protection adopted. The Delegate of France regretted that the text of the Agreement under discussion did not contain a provision comparable to that of Article 2(7) of the Berne Convention, which provided that "Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models."

896. The CHAIRMAN asked the Delegate of France whether he intended to submit a proposal on the subject.

897. Mr. FRANCON (France) replied that he did not think that the discussion should be resumed at such an advanced stage. He merely wished to point to the likelihood of considerable differences in treatment.

898. The CHAIRMAN examined rapidly the possibility of including a similar provision in the Agreement for the Protection of Type Faces and, taking account of the situation in countries that afforded protection to type faces only by copyright, came to the conclusion that it would not be possible to accept that solution.

899. Mr. FRANCON (France) repeated that he had merely made an observation, not a proposal.

900. Article 5, as proposed by the Drafting Committee, was unanimously adopted.

901. Articles 6 and 7, as proposed, were unanimously adopted.

902. The CHAIRMAN indicated a small change in the English text of Article 8(4), where the expression "the making of characters of type faces" had been replaced by the expression "the making of elements of type faces." Personally, he did not consider the amendment in question to be essential. It was a matter of stating that it was not the reproduction of a set that was concerned but only the reproduction of certain characters.

903. Article 8, as proposed by the Drafting Committee, was unanimously adopted.

904. Articles 9 to 16, as proposed, were unanimously adopted.

905. The CHAIRMAN, referring to Article 17, raised the question--which was particularly important to countries that protected type faces by means of copyright--whether publication of the international deposit in the Bulletin constituted at the same time publication of the type face within the meaning of Article 4.

906. Mr. MOROZOV (Soviet Union) hoped that the Administrative Instructions drawn up by the International Bureau would provide for the affixing of the © symbol of international publication, thereby meeting the conditions laid down by Article 5.

907. The CHAIRMAN admitted that, where publication within the meaning of the Agreement for the Protection of Type Faces was concerned, it would be necessary to affix the © symbol.

908. Mr. HADDRICK (Australia) wished to raise a very important and interesting question. As he understood it, publication of type faces for copyright countries would be publication within the meaning of copyright, in other words, the placing of copies of the type face at the disposal of the public. He did not think that mere publication in the Bulletin would be publication in the copyright sense, because the owner of the type face was not placing it at the disposal of the public. In order that the situation might be clear, the Delegate of Australia thought that copyright countries should base the protection of type faces on the nationality criterion and regard protection through publication as an additional form of protection.

909. The CHAIRMAN was of the opinion that national legislation had to be allowed some leeway as far as application of the criterion of first publication was concerned. He recalled that the problem of the publication of type faces had already been discussed. The printing of books or newspapers using specific type faces and their distribution could not be regarded as publication of the type faces, because the whole set of type faces was not published. The situation was different in the case of publication of the whole set of type faces in the Bulletin. In that case, one could speak of actual publication of the type faces. The Chairman recognized the importance of the question raised by the Delegate of the Soviet Union. Should one include the © symbol with the required data in the Bulletin or not? He asked the Delegate of the United States of America for her opinion on the subject.

910. Miss NILSEN (United States of America) understood the problem as set forth by the Chairman. It seemed to her that it would not be necessary to affix the © symbol in the Bulletin, and considered that the wording of Article 17 should be left the way it was.

911. Mr. CADMAN (United Kingdom) was of the same opinion regarding the importance of publication in the Bulletin. He said that, if the United Kingdom ratified the Agreement and protected type faces by its national copyright legislation, that legislation would have to contain a provision specifying that the fact of publication in the Bulletin constituted publication of the type face.

912. Mr. DREYFUS (International Typographical Association (ATYPI)) apologized for having, as a printer, little knowledge of copyright. It seemed to him that the inclusion of a copyright notice in the first publication of the Bulletin issued by the International Bureau in Geneva would be highly appropriate and in line with the statements made by the Delegates of the United Kingdom and the Soviet Union.

913. Mr. FRANCON (France) recognized that the problem raised was of very great importance. It seemed to him however that, if that solution were to be adopted, it would be essential to mention it in the text of the Agreement as, if nothing were said, it was by no means certain that publication, as envisaged at the present stage, really constituted publication in terms of the Berne Convention or the Universal Copyright Convention, all the more so since both Conventions contained definitions of the publication concept which were not exactly the same.

914. The CHAIRMAN said that it would be possible to say in Article 17(2) that, for the purposes of the present Agreement, the representation of type faces in the Bulletin was regarded as publication. The effect would be twofold. If the first publication was the first publication in a Contracting State, the protection of type faces would be ensured also in copyright countries. It would be necessary to affix the  symbol on that first publication.

915. Mr. KÄMPF (Switzerland) said that the Delegation of Switzerland--a country that was party to both the Berne Convention and the Universal Copyright Convention--also supported the proposal by the Chairman, which had been formulated in a more concrete manner by the Delegate of France.

916. Mr. HADDRICK (Australia) referred to his earlier interventions on the subject of publication in terms of copyright, and also to the intervention of the Delegate of the United Kingdom. The Delegate of Australia was not an expert in the legislation of the United States of America, but it seemed to him that, according to the legislation in force, the United States of America could become party to the Agreement as proposed by amending only the rules of the Copyright Office, and not the Copyright Statute itself. On the other hand, if the Main Committee accepted the proposal concerning Article 17(2), the United States of America might have to amend their law, which could be a matter of difficulty. The Delegate of Australia added that, to his knowledge, the creators of type faces enjoyed common law protection until such time as the type faces were published in accordance with the legislation of the United States of America. Copies of the publication placed at the disposal of the public had to bear a copyright notice.

917. The CHAIRMAN asked the Delegation of the United States of America whether the proposed amendment of Article 17 of the draft Agreement would be acceptable for it.

918. Miss NILSEN (United States of America) answered that she foresaw that such an amendment might create some difficulties and that she preferred having the text of Article 17 as it was proposed in the Draft submitted by the Drafting Committee in document CT/DC/23.

919. The CHAIRMAN proposed therefore that the text of Article 17 be left as it was.

920. Mr. KEYES (Canada) announced that Canada would also be obliged to amend its national legislation, which was why he preferred that the text of Article 17 be left unchanged.

921. Mr. MOROZOV (Soviet Union) considered that, if the wording of Article 17 was left as proposed by the Drafting Committee, the study of the question could be continued by the International Bureau. The administrative instructions could --as stated in Rule 23.1(b)--provide for the insertion of other matter in the Bulletin. If therefore publication and the notification of the international deposit, as proposed, were to prove insufficient for the competent authorities of the United States of America and Canada, the International Bureau could, with the assistance of the States concerned, prepare administrative instructions containing a solution to the problem.

922. The CHAIRMAN was very interested by the suggestion of the Delegate of the Soviet Union. He thought that only the legislation of the United States of America could settle the question whether it was necessary to include, in the Bulletin containing the publication of the type faces, the (C) symbol with the indication of the name of the author, etc. The Chairman admitted that the question could be clarified later by correspondence between the International Bureau and the authorities of the United States of America, and if it was found really useful to include the (C) symbol with all the necessary indications in the Bulletin, the International Bureau could provide for such obligations in the Administrative Instructions. For the time being, the Chairman suggested that Article 17 should be left as proposed by the Drafting Committee (document CT/DC/23).

923. The SECRETARY shared the opinion expressed by the Delegate of the Soviet Union and the Chairman. However, he thought the subject matter might, in the course of the work discussions, turn out to be sufficiently important to feature in the Regulations themselves. In that case, the International Bureau would make a proposal to that effect to the Assembly of the Union for the Protection of Type Faces.

924. Article 17, as proposed, was unanimously adopted.

925. Articles 18 to 29, as proposed, were unanimously adopted.

926. The CHAIRMAN pointed out that a new chapter should be introduced to distinguish the problem of disputes.

927. It was decided that a new Chapter IV--Disputes, containing Article 30, would be introduced, whereupon the former Chapters IV and V would become Chapters V and VI respectively.

928. Articles 30 to 32, as proposed, were unanimously adopted.

929. The CHAIRMAN indicated that, in Article 33(1)(b), not only the Universal Copyright Convention of 1952 was meant, but also that Convention as revised in 1971.

930. Article 33, as proposed by the Drafting Committee, was unanimously adopted.

931. Articles 34 to 41, as proposed, were unanimously adopted.

932. The CHAIRMAN noted that the entire Agreement had been accepted by the Main Committee.

[Suspension]

Text of the Protocol Concerning the Term of Protection Proposed by the Drafting Committee (Document CT/DC/24)

933. The CHAIRMAN reopened the meeting and drew the attention of the Main Committee to document CT/DC/24, containing the draft "Protocol Annexed to the Vienna Agreement for the Protection of Type Faces and their International Deposit Concerning the Term of Protection," submitted by the Drafting Committee. He indicated that the Drafting Committee had simplified item 1 of the Protocol by saying merely that, "In derogation of Article 9(1) of the Agreement, the term of protection shall be a minimum of twenty-five years."

934. Mr. KEYES (Canada) preferred "notwithstanding" to "in derogation of."

935. Mr. CADMAN (United Kingdom) agreed with the Delegate of Canada.

936. The CHAIRMAN declared that he also had had some misgivings about the word "derogation" but finally thought that it was in fact a derogation.

937. Mr. KÄMPF (Switzerland) explained that the term "derogation" had been chosen precisely to emphasize that it was merely a derogation from Article 9, whereas the remainder of the Agreement was applicable also to countries that signed and ratified or acceded to the Protocol. The Delegate of Switzerland pointed out that Article 9 spoke of the term of protection, which could not be less than 15 years. Countries were free to grant protection even for 25 years, as provided in the Protocol. The word "derogation" therefore concerned the word "minimum."

938. Mr. FRANCON (France) expressed the view that the word "dérogation" in French did not have a restrictive sense as it appeared to have in English. He suggested that item 1 of the Protocol should use a formula closer to that of Article 9(1) of the Agreement, namely "In derogation of Article 9(1) of the Agreement, the term of protection may not be less than twenty-five years."

939. Miss NILSEN (United States of America) supported the opinion expressed by the Delegates of Canada and the United Kingdom, thus speaking in favor of the expression "notwithstanding." The Delegate of the United States of America suggested, in addition, that the word "annexed" in the title should be deleted.

940. The SECRETARY saw no objection to deleting the word "annexed" in the title.

941. The title "Protocol to the Vienna Agreement..." was unanimously adopted.

942. Mr. DUDESCHEK (Austria) mentioned that he was not in favor of the Protocol and had voted against it, which was not to be understood as meaning that he was against the protection of type faces in general. During the meetings of the

Committee of Experts that had taken place in Geneva, the question of the term of protection had been discussed at length, and the compromise of a term of protection of 25 years had been adopted. The Main Committee had decided to shorten the term of protection to 15 years, however. The choice of the expression "in derogation" or "notwithstanding" meant to the Delegate of Austria that part of the Agreement was being derogated from. The Delegate of Austria considered that the Protocol should add new provisions to the Agreement (for instance an additional protection period of 10 years), but never cause provisions of the Agreement to be altered.

943.1 The CHAIRMAN repeated that the Protocol did not in any way change the Agreement, which merely said that the term of protection might not be less than 15 years. All countries were free to grant a longer period if they wanted to, and could therefore accept the Protocol.

943.2 The Chairman considered that the question was one of drafting. In view of the fact that it was difficult to say "notwithstanding" in the English text and "par dérogation" in the French text, the Chairman proposed the following wording: "In the States party to this Protocol, the term of protection shall be not less than 25 years instead of the 15 years referred to in Article 9(1)." In that way Article 9(1) was quoted without using the words "in derogation."

944. Mr. HADDRICK (Australia) preferred the expression "notwithstanding" to the expression "in derogation." However, he did not intend to oppose the proposal of the Chairman, because the Delegation of Switzerland felt the need for a reference to Article 9.

945. Mr. KEYES (Canada) supported the proposal of the Chairman.

946. Mr. KAMPF (Switzerland) also agreed that the Chairman's proposal expressed clearly the idea that the only derogation from the Agreement was from the minimum term of protection; all the other provisions of the Agreement remained applicable also to countries that signed the Protocol. For that reason, the Delegation of Switzerland could accept the Chairman's proposal.

947. Mr. FRANCON (France) said that his Delegation was glad to endorse the suggestion of the Chairman, and that it proposed at the same time that the drafting be improved somewhat by saying "instead of the minimum of fifteen years referred to in Article 9(1) of the Agreement."

948. The CHAIRMAN accepted the suggestion of the Delegate of France, and called for a vote on his proposal, thus amended.

949. The drafting of item 1 of the Protocol, as proposed by the Chairman with the amendment suggested by the Delegate of France, was unanimously adopted, with one abstention.

950. The CHAIRMAN asked whether, in the view of the Main Committee, it would be necessary to have a meeting of the Drafting Committee for possible improvements to the text.

951. The SECRETARY did not think that would be necessary.

952. Mr. van WEEL (Netherlands) shared the Secretary's view.

953. The Protocol, as a whole, was unanimously adopted, with one abstention.

Text of the Regulations Proposed by the Drafting Committee (Document CT/DC/25)
(all the Rules of the Regulations)

954. The CHAIRMAN drew the Main Committee's attention to document CT/DC/25, which contained the "Draft Regulations under the Vienna Agreement for the Protection of Type Faces and their International Deposit," submitted by the Drafting Committee.

955. Rules 1 to 22, as proposed, were unanimously adopted.

956. Mr. MOROZOV (Soviet Union) recalled that it had been decided, in the course of the discussion, that the International Bureau would study the question whether the Administrative Instructions should contain the information referred to in Article 5 of the Agreement.

957. The CHAIRMAN said that the suggestion would appear in the minutes.

958. Rules 23 to 28, as proposed, were unanimously adopted.

959. The Table of Fees, as proposed, was unanimously adopted.

960. The Regulations, as a whole, as proposed, were unanimously adopted.

Closing of the Meetings

961. The CHAIRMAN noted that the task of the Main Committee had been completed, and thanked the Secretariat for its diligence, which had made it possible to carry out the work rapidly.

962. Mr. PEIGNOT (International Typographical Association (ATYPT)), Honorary Chairman of ATYPI, took the floor to express, on behalf of all the artists and industrialists who were members of ATYPT, hearty thanks to the Chairman of the Main Committee, to the Director General of WIPO and to his Deputy Director General, Mr. Voyame, Secretary of the Conference, who had concerned themselves personally with the matter of typography. Mr. Peignot declared that the positive results of the Conference were a great event, not only for artists but also for booklovers, publishers and printers. While architecture had revealed the existence of ancient civilizations, it was their writings that had made it possible to penetrate and publicize their secrets. Culture consisted in the interchange of ideas, and the protection of type faces was bound to induce creators to improve the forms given to letters, which ultimately were the vehicles of thought. Its quality of observer did not prevent ATYPI from measuring and appreciating the amount of work done. Mr. Peignot commended Mr. Lorenz (Austria), who had played such an important part in the crystallization of the legal conceptions on which the protection of type faces was based, Mr. Dudeschek (Austria), who had taken such an active part in the last Committee

of Experts, noted with regret the absence from the Conference of Mr. Phuf, the expert from the Netherlands, one of the most effective artisans of the success of the Agreement and paid tribute to the former Director of BIRPI, the late J. Secrétan. Finally he thanked the translators and secretaries and all the staff of WIPO who had taken part in the preparation and holding of the Diplomatic Conference.

963. The CHAIRMAN expressed thanks for the very kind words addressed to himself and to his collaborators, and said how pleasant it had been to work on the present Conference. He thanked everybody for their spirit of collaboration, and especially Professor Voyame, Deputy Director General of WIPO and Secretary of the Conference, and his collaborators, for their valuable assistance and for the excellent preparation of all the documents for the work of the Main Committee.

964. Mr. KEYES (Canada), on behalf of all the delegations and representatives of organizations taking part in the Diplomatic Conference, expressed his hearty thanks to the Chairman for the efficient manner in which he had conducted the discussions.

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A. Member Delegations having participated in the Plenary of the Diplomatic Conference on Industrial Property and in the Diplomatic Conference on the Protection of Type FacesALGERIAHead of Delegation

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[Austria, continued]

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POST - CONFERENCE DOCUMENTS

LIST OF THE POST-CONFERENCE DOCUMENTS "CT/PCD"
(CT/PCD/1 and CT/PCD/2)

Document Number	Submitted by	Subject
1	The International Bureau of WIPO	Provisional Verbatim Minutes of the Meetings of the Plenary of the Vienna Diplomatic Conference on the Protection of Type Faces
2	The International Bureau of WIPO	Provisional Summary Minutes of the Meetings of the Main Committee of the Vienna Diplomatic Conference on the Protection of Type Faces

TEXT OF THE POST-CONFERENCE DOCUMENTS "CT/PCD"
(CT/PCD/1 and CT/PCD/2)

CT/PCD/1

August 31, 1978 (Original: English/French)

INTERNATIONAL BUREAU OF WIPO

Provisional Verbatim Minutes of the Meetings of the Plenary of the Vienna Diplomatic Conference on the Protection of Type Faces

Editor's Note: This document has not been reproduced here since it contains the provisional minutes of the meetings of the Plenary of the Vienna Diplomatic Conference on the Protection of Type Faces which are reproduced, with a few amendments proposed by the participants, on pages 229 to 252.

CT/PCD/2

August 31, 1978 (Original: English/French)

INTERNATIONAL BUREAU OF WIPO

Provisional Summary Minutes of the Meetings of the Main Committee of the Vienna Diplomatic Conference on the Protection of Type Faces

Editor's Note: This document has not been reproduced here since it contains the provisional minutes of the meetings of the Main Committee of the Vienna Diplomatic Conference on the Protection of Type Faces which are reproduced, with a few amendments proposed by the participants, on pages 253 to 351.

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NOTE CONCERNING THE USE OF THE INDEXES

These Records contain five indexes: two indexes to the Vienna Agreement on the Protection of Type Faces and their International Deposit, to the Regulations under the Agreement and to the Protocol to the Agreement Concerning the Term of Protection; one index to the States which were represented at the Conference and/or were signatories of the Agreement or the Protocol; one index to the Organizations represented at the Conference; and one index to the participants.

The first of the two indexes to the Agreement, the Regulations thereunder and the Protocol to the Agreement lists all the provisions; the second is a catchword (subject matter) index. These two indexes refer to the provisions by their numbers as found in the final texts. The numbers of the provisions in the drafts submitted to the Conference are also indicated. Anyone using these two indexes may refer either directly to a particular provision as found in the first index or may consult the second index with a catchword or subject matter indication to determine the relevant provision citations to be used in consulting the first index.

Throughout the indexes with the exception of the Catchword Index, which cites the provisions, all the underlined numbers refer to the pages of these Records and the numbers which are not underlined refer to the paragraphs of the verbatim or summary minutes.

INDEXES TO THE VIENNA AGREEMENT
FOR THE PROTECTION OF TYPE FACES
AND THEIR INTERNATIONAL DEPOSIT

A. INDEX TO THE ARTICLES OF THE VIENNA AGREEMENT FOR THE PROTECTION
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- Secretariat of the Conference (CT/DC/CR/1): 208
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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
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- Drafting Committee (CT/DC/23): 204

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Corresponding Article in the Draft: [there is no corresponding provision in the Draft]

Text of the Article in the Draft: —

Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
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 - Secretariat of the Conference (CT/DC/CR/1): 208
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 Written proposals for amendments:
 - Secretariat of the Conference (CT/DC/CR/1): 208
 - Drafting Committee (CT/DC/23): 204
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- Secretariat of the Conference (CT/DC/CR/1): 208
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Text of the Article in the Draft: 28

Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
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- Drafting Committee (CT/DC/23): 204

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Adoption in the Plenary: 112.2

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

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- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

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- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 519-531, 925, 932

Adoption in the Plenary: 112.2

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Text of the Article in the Draft: 36

Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 532-533, 925, 932

Adoption in the Plenary: 112.2

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Text of the Article in the Draft: 38

Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Secretariat of the Conference (CT/DC/CR/4): 211
- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 532-533, 925, 932

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Text of the Article in the Draft: 38

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- Drafting Committee (CT/DC/23): 204

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

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- Secretariat of the Conference (CT/DC/CR/1): 208
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Adoption in the Plenary: 112.2

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- Secretariat of the Conference (CT/DC/CR/1): 208
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- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 565-568, 591-595, 925, 932

Adoption in the Plenary: 112.2

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- Secretariat of the Conference (CT/DC/18): 196
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Discussion in the Main Committee: 569-587, 596-606, 875, 925, 932

Adoption in the Plenary: 112.2

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
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Corresponding Article in the Draft: [there is no corresponding provision in the Draft]
Text of the Article in the Draft: —
Written proposals for amendments:
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- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 656-657, 931, 932

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Corresponding Article in the Draft: Article 35

Text of the Article in the Draft: 70

Written proposals for amendments:

- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204

Discussion in the Main Committee: 658-659, 931, 932

Adoption in the Plenary: 112.2

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- Germany (Federal Republic of), Italy, Soviet Union, Spain, Switzerland (CT/DC/19): 198
- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204
Discussion in the Main Committee: 660-671, 931, 932
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- Secretariat of the Conference (CT/DC/CR/1): 208
- Drafting Committee (CT/DC/23): 204
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- Secretariat of the Conference (CT/DC/CR/1): 208
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- Drafting Committee (CT/DC/25): 205
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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
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- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
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- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
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- Secretariat of the Conference (CT/DC/CR/3): 210
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- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
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- Secretariat of the Conference (CT/DC/CR/3): 210
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- Secretariat of the Conference (CT/DC/CR/3): 210
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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
Discussion in the Main Committee: 851-855, 955, 960
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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205
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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 860-861, 955, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
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Discussion in the Main Committee: 860-861, 955, 960

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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 862-865, 955, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 866-867, 955, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 866-867, 955, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 866-867, 958, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 866-867, 958, 960

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Written proposals for amendments:

- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

Discussion in the Main Committee: 866-867, 958, 960

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- Secretariat of the Conference (CT/DC/22): 201
- Secretariat of the Conference (CT/DC/CR/3): 210
- Drafting Committee (CT/DC/25): 205

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