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

28th year – No. 2
February 1992

Copyright

Monthly Review of the
World Intellectual Property Organization (WIPO)

Contents

(Continued overleaf)

ISSN 0010-8626

COPYRIGHT AND NEIGHBORING RIGHTS LAWS AND TREATIES
(INSERT)

Editor's Note

The publication of the present issue marks a partial change in the nature of the contents of WIPO's monthly review *Copyright/Le Droit d'auteur.*

Henceforth, articles or "letters" written by individual authors on various aspects of intellectual property or on news covering intellectual property in given countries or organizations will no longer be published in the review, because there are now in the world many specialized periodicals that publish articles on doctrine and reports on developments in the legislation (proposed or enacted), court decisions or practice of the various countries.

Hereinafter, the review will mainly contain information on events occurring in WIPO: studies carried out by WIPO, meetings held or to be held under the auspices of WIPO, technical and legal assistance furnished by WIPO to developing countries and contacts of the International Bureau of WIPO with governments and international organizations. The said contents will generally be arranged under the following headings:

– notifications concerning treaties administered by WIPO in the field of copyright (ratifications, accessions, etc.);

– normative activities of WIPO in the field of copyright (meetings, documents, etc.);

– registration systems administered by WIPO (meetings, documents, statistics, etc.);

– activities of WIPO in the field of copyright specially designed for developing countries (meetings, documents, etc.);

– activities of WIPO in the field of copyright specially designed for European countries in transition to market economy (meetings, documents, etc.);

– contacts of the International Bureau of WIPO with governments and international organizations in the field of copyright (meetings, documents, etc.);

– miscellaneous news;

– selected WIPO publications;

– calendar of meetings.

The publication of the (translations of) legislative texts of States members of WIPO and of intergovernmental organizations, as well as of multilateral and bilateral treaties in the field of intellectual property, will be continued as before (that is, as a special supplement to each issue of the review).

Two major considerations lie behind the decision to change the coverage of the contents of the review.

In the first place, it is to be recalled that *Copyright* was first published, in the French language (as *Le Droit d'auteur*), in 1888 and has been published each year since. Throughout many years of its existence, the review was the only or one of the very few specialized publications in the field of intellectual property. That situation has, as already stated, radically changed. There are now available a multitude of reviews in the field of intellectual property, and the specialized and nonaffiliated nature of those reviews is better suited to the expression of the manifold views to be found among the various sectors of the international intellectual property community than an official publication of an international organization that is involved in policy-making.

In the second place, it is recalled that, over the same period of the existence of the review, the nature and range of the activities of the International Bureau have also changed radically. The International Bureau has become the initiator and the drafter of new treaties and the initiator, organizer and administrator of worldwide cooperation among States and interested private circles in the field of intellectual property. A predominant position in its program is occupied by assistance for developing countries and, very recently, for European countries in transition to market economy. Such expansion of the activities of WIPO has brought with it the need for more extensive and more prompt reporting on those activities, a need which it is hoped will be met by the new editorial policy introduced with this issue.

Notifications Concerning Treaties Administered by WIPO in the Field of Copyright

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

Communication by the Russian Federation

The Director General of the World Intellectual Property Organization (WIPO) has been requested by the Permanent Representative of the Russian Federation to the United Nations Office and Other International Organizations in Geneva, in a letter dated December 26, 1991, and received on January 6, 1992, to communicate the following note of the Ministry for Foreign Affairs of the Russian Federation:

"The Ministry for Foreign Affairs of the Russian Federation presents its compliments to the Director General of the World Intellectual Property Organization and has the honour to inform him that the membership of the Union of Soviet Socialist Republics in the World Intellectual Property Organization and all its bodies as well as participation in all the conventions, agreements and other international legal instruments signed in the framework of the World Intellectual Property Organization or under its auspices is continued by the Russian Federation (RF), and that in this connection the name 'The Russian Federation' in place of the name 'The Union of Soviet Socialist Republics' is to be used in the World Intellectual Property Organization.

The Russian Federation remains responsible in full for all rights and obligations of the USSR in the World Intellectual Property Organization, including the financial obligations.

This note certifies the credentials to represent the Russian Federation in the bodies of the World Intellectual Property Organization for all those currently possessing the credentials to represent the USSR in the World Intellectual Property Organization.

The Ministry for Foreign Affairs of the Russian Federation avails itself of this opportunity to present to the Director General of the World Intellectual Property Organization the assurances of its highest consideration."

The Director General believes that the reference (made in the above quoted communication) to "all the conventions, agreements and other international legal instruments signed in the framework of the World Intellectual Property Organization or under its auspices" is to be understood as a reference to the following treaties:

- the Paris Convention for the Protection of Industrial Property
- the Madrid Agreement Concerning the International Registration of Marks
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- the Locarno Agreement Establishing an International Classification for Industrial Designs
- the Patent Cooperation Treaty
- the Strasbourg Agreement Concerning the International Patent Classification
- the Trademark Registration Treaty
- the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- the Nairobi Treaty on the Protection of the Olympic Symbol

It is recalled that the Director General of WIPO is the depositary of each of the said treaties with the exception of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the depositary of which is the Secretary-General of the United Nations, who issues notifications concerning the status of parties to that Convention.

WIPO Notification No. 154, Nairobi Notification No. 37, of January 20, 1992.

Rome Convention

Ratification

ARGENTINA

The Secretary–General of the United Nations, in a letter dated January 3, 1992, informed the Director General of the World Intellectual Property Organization that the Government of Argentina deposited, on December 2, 1991, its instrument of ratification of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) done at Rome on October 26, 1961.

In accordance with Article 25, paragraph 2, the Convention will enter into force, with respect to Argentina, on March 2, 1992.

Normative Activities of WIPO in the Field of Copyright

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

First Session

(Geneva, November 4 to 8, 1991)

QUESTIONS CONCERNING A POSSIBLE PROTOCOL TO THE BERNE CONVENTION

PART I

MEMORANDUM

prepared by the International Bureau

Table of Contents

INTRODUCTION

1. In accordance with the program of WIPO for the 1990–91 biennium (document AB/XX/2, Annex A, item PRG.02(2)), a Committee of Experts has been convened from November 4 to 8, 1991, for its first session to examine questions concerning a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention" which, unless expressly stated otherwise, means the 1971 Paris Act of the Berne Convention). This memorandum has been prepared for that Committee of Experts (hereinafter referred to as "the Committee").

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

"The International Bureau will prepare, convene and service a committee of governmental experts in one or more meetings in order to examine whether the preparation of a protocol to the Berne Convention for the Protection of Literary and Artistic Works should start, and—if so—with what content, with a view to submitting for adoption the draft of such a protocol to a diplomatic conference after 1991. The protocol would be mainly destined to clarify the existing, or establish new, international norms where, under the present text of the Berne Convention, doubts may exist as to the extent to which that Convention applies.

"The need for such an exercise lies in the fact that there are certain questions in respect of which professional circles have no uniform views and, what is of particular concern in international relations, even governments which legislated or plan to legislate on such questions seem to interpret their obligations under the Berne Convention differently. Such discrepancies in views already surfaced, or are likely to surface in the near future, in respect of certain subject matters of protection (e.g., computer programs, phonograms, computer-generated works), certain rights (e.g., right of rental, public lending right, right of distribution of copies of any kind of works, right of display), the applicability of the minima (no formalities, term of protection, etc.) and the obligation of granting national treatment (without reciprocity) to foreigners. In this connection, it will also be examined whether countries whose national law protects subject matters as works under their copyright law, or recognize the protection of certain rights in their copyright law, may refuse the application of the minima or the granting of national treatment to foreigners or make the protection of

foreign works or the application of certain rights to foreigners dependent on reciprocity."

3. The expression "protocol" (to the Berne Convention) is used tentatively. Whether the new instrument, if any, will be called a protocol or by another name (for example, "Treaty Supplementing the Berne Convention for the Protection of Literary and Artistic Works") is not yet decided. In any case, the new instrument would be a multilateral treaty under Article 20 of the Berne Convention, which provides that "[t]he Governments of the countries of the [Berne] Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention." In other words, the new instrument—that from here onwards is called a Protocol—could not contain provisions that would diminish the rights of authors existing under the Berne Convention.

4. This memorandum will be issued in two documents.

5. The present document will be the basis of the discussions in the first session of the Committee, convened for November 4 to 8, 1991.

6. The second document—expected to be issued in provisional form in September or October 1991—will not be put before the first session of the Committee for discussion but merely for information in order to give the participants a precise idea of which topics will be put before the second session of the Committee that will, in all probability, be convened a few months after the first session. That document will, in the light of the experience the International Bureau will gain during the first session, be revised, and it will be that revised document that will be the basis for discussions in the second session.

7. The present document is divided into three chapters: Chapter I, "Applicability of the Berne Convention"; Chapter II, "Works Protected" (subdivided as follows: Computer Programs; Data Bases; Expert Systems and Other Artificial Intelligence Systems; Computer-Produced Works) and Chapter III, "Producers of Sound Recordings (Phonograms)."

8. The second document will deal with the other subjects mentioned in the program item quoted in paragraph 2, above, in particular with the rights protected and the term of protection.

CHAPTER I

APPLICABILITY OF THE BERNE CONVENTION

9. The present memorandum is based on the assumption that the possible Protocol would be open to countries which are party to the Berne Convention and that, consequently, on all points on which the Protocol does not supersede it, the relevant provisions of the Berne Convention would continue to apply.

10. *It is proposed that the possible Protocol state that it is open only to countries that are party to the Berne Convention and that that Convention continues to bind them.*

11. One could, alternatively, envisage the possibility that the Protocol—once there will be one—would be open also to countries that are not party to the Berne Convention and even to supranational organizations (like the European Communities) which have and exercise a legislative power in copyright matters in the territory of their member States. Under that hypothesis, however, the Protocol would have to contain provisions according to which countries or supranational authorities party to the Protocol (but not party to the Berne Convention) have the same obligations as have countries party to the Berne Convention, in particular in respect of the protection of all works the country of origin of which is a country party to the Berne Convention but not party to the Protocol.

12. The alternative outlined in the preceding paragraph would have two advantages: *one* is that a country which is not party to the Berne Convention could become *de facto* party to it by simply adhering to the Protocol; the *other* is that certain supranational authorities could *de facto* become members of the Berne Union which, as known, is open for adherence only to States. However, the said alternative raises some difficulties too—well known in connection with other efforts of WIPO—in particular the question whether supranational authorities could be voting members of the Assembly of the Berne Union. It is because of the said difficulties that this alternative possibility is not—at least for the moment—proposed but merely mentioned. Perhaps, at a later stage, it should be seriously considered.

13. But even if only countries party to the Berne Convention could become party to the possible Protocol, the question arises whether a country party to both the Protocol and the Berne Conven-

tion should be obliged to apply not only the Berne Convention but also the Protocol to works whose country of origin is a country party to the Berne Convention but not party to the Protocol. If one considers Article 32(2) of the Berne Convention as a precedent—and there is no substantive reason not to do so—the answer to this question should be affirmative. (It is recalled that according to the said Article, countries party to the 1971 Paris Act, even if that is the only Act to which they are party, must apply it with respect to countries party to the Berne Convention but not party to the 1971 Paris Act (even though the latter countries may, in their relation to countries bound (also or only) by the 1971 Paris Act (only) apply the provisions of the most recent Act (for example the 1948 Brussels Act) by which they are bound.)

> 14. *It is proposed that the possible Protocol provide that it applies also in respect of works whose country of origin is a country party to the Berne Convention but not party to the Protocol.*

15. It is to be noted that one could also argue that no express provision of the kind mentioned in the preceding paragraph is needed because the obligation to apply the Protocol to the said works follows from the fact that, where a country party to the Protocol conforms (as it has to) its national law to the Protocol, it will have to apply, by virtue of the principle of national treatment (see Berne Convention, Article 5(1)) and by virtue of the Berne Convention (to which it is necessarily party) that law to all the works whose country of origin is a member of the Berne Convention.

16. However, should the Protocol provide also for the protection of producers of sound recordings, it (the protocol) will have to provide *expressis verbis* for national treatment of foreigners since (as discussed in paragraphs 60 and 61, below), within the meaning of the Berne Convention, sound recordings are not works and their producers are not authors, so that the Berne Convention, in general, and that Convention's rule concerning national treatment in particular, do not apply.

CHAPTER II
WORKS PROTECTED

17. The program item quoted in paragraph 2, above, refers, *inter alia*, to "certain subject matters of protection" in respect of which "discrepancies in views already surfaced, or are likely to surface in the near future," and mentions computer programs, phonograms and computer-generated works as examples.

18. The present chapter of the memorandum deals with two of the three categories mentioned above, namely computer programs and "computer-generated" works (which are referred to in the memorandum as "computer-produced" works). It also deals with two more categories of creations not specifically mentioned in the said program item, but in respect of which discrepancies in views have surfaced or are likely to surface, namely, data bases and artificial intelligence systems. The third category of subject matters mentioned in the preceding paragraph, namely phonograms (sound recordings) is dealt with in the following chapter (Chapter III) separately.

Computer Programs

19. The WIPO Model Provisions on the Protection of Computer Software published in 1978 define a computer program as a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-readable medium, of causing a 'computer'—an electronic or similar device having information-processing capabilities—to perform or achieve a particular task or result. This definition is more than 10 years old but it still seems to be usable since it reflects appropriately the essential elements of the notion of computer programs.

20. The first question that should be discussed is whether it may be considered an obligation under the Berne Convention to protect computer programs as a category of literary and artistic works.

21. Article 2(1) of the Berne Convention provides that "[t]he expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression." This general description of the meaning of "literary and artistic works" is followed by a non-exhaustive list of such works.

22. It is not stated explicitly in Article 2(1) of the Berne Convention, but the records of the various diplomatic conferences adopting and revising the Berne Convention—and, in respect of collections, also the text (Article 2(5)) of the Convention itself—indicate that the "productions" considered works are those which constitute original intellectual creations.

23. The questions of the intellectual property protection of computer programs were first discussed at the international level during the preparation of the Model Provisions on the Protection of Computer Software referred to in paragraph 19, above.

24. At that time, the relative newness of computer technology and the scarcity of relevant legislation and case law resulted in considerable uncertainty in this field. The 1978 Model Provisions offered certain minimum provisions that constituted a *sui generis* system. At the same time, the commentary to the said Model Provisions stressed that they should not be understood as necessarily requiring adoption of a separate *sui generis* law, and that they could be implemented by a copyright law.

25. Since then, the trend towards copyright protection has prevailed over *sui generis* protection throughout the world.

26. Notwithstanding this prevailing trend, it cannot be said that the professional circles uniformly believe that copyright is the best kind of protection of computer programs, and that granting copyright protection is required by the Berne Convention.

27. The following main doubts were raised concerning copyright protection of computer programs: (a) the purpose of computer programs is to cause a computer—that is, a machine—to perform or achieve a particular task or result, which is alien to the notion of literary and artistic works; (b) although computer programs in source code form can be perceived by human beings, that is not the case in respect of computer programs in object code form; (c) computer programs are frequently made of sub-routine elements, and such programs may not be considered original; (d) copyright laws cannot be applied directly for the protection of computer programs; specific provisions are necessary; (e) the 50 year *post mortem auctoris* minimum term of protection under the Berne Convention is too long, since computer programs usually become outdated in a much shorter time; (f) copyright does not protect algorithms, which are considered the most fundamental creative elements of computer programs.

28. When copyright protection for computer programs was granted in various countries, either by legislation or by court decisions, the following answers were given to the doubts referred to in the preceding paragraph: (a) computer programs are basically writings, and, under Article 2(1) of the Berne Convention, the purpose for which writings are created is irrelevant from the viewpoint of their qualifying as literary works; not only works of literature proper, but also scientific writings and writings with a purely utilitarian or commercial aim should be protected as literary works, if they are original intellectual creations; (b) computer programs in object code form share the copyright status of other literary and artistic works stored in computer systems in machine-readable form; they can be retreived—"decompiled"—into a form in which they are available to human beings; if it were true that works in machine-readable form—from which they can be retrieved and made available in such a way—were not protected, that would be the end of copyright protection because, with the quick development of computer technology, nearly all categories of works can be included in computer systems in such a way; storage of works in a computer system must be considered reproduction; (c) with the exception of a few simple programs, there is sufficient room for creativity in making computer programs; unless an unreasonably high originality test is applied, nearly all computer programs would pass such a test; (d) the need for specific provisions does not mean that the protection of a certain category of works would be alien to copyright; the Berne Convention and national copyright laws also include specific provisions in respect of various other categories of literary and artistic works; (e) the alleged problem of too long term of protection is of an academic nature; there are a number of other categories of literary and artistic works which may become obsolete within a much shorter period than 50 years; the latter should be considered nothing other than an upper limit; (f) it is quite appropriate that copyright does not protect algorithms—as it does not protect any idea, procedure, process, method of operation, concept, principle or discovery, in general—but only the concrete expressions thereof; this is precisely why copyright can offer appropriate protection for computer programs without creating unreasonable obstacles to independent creation of such programs.

29. The reasons discussed in the preceding paragraph seem convincing, and have also been justified by the actual application of copyright protection of computer programs in a number of countries.

30. *It is proposed that the possible Protocol*

(a) should provide that countries party to the Protocol are obliged to grant copyright protection to computer programs and that the protection must be the same (subject to certain exceptions

specified below) as the Berne Convention provides for literary and artistic works, and

(b) should indicate that the notion of computer programs comprises both operation system programs and application programs, whether in source code form or in object code form.

31. One of the consequences of such provisions in the proposed Protocol would be that all provisions of the Berne Convention which do not deal with special kinds of works, as for example cinematographic works, would apply also to computer programs. Such provisions (mentioned in the order in which they appear in the Berne Convention) would, in particular (since the following list is not exhaustive), include the following:

(i) the protection of computer programs would "operate for the benefit of the author and his successors in title" (Article 2(6)); if one should allow that the protection operate in favor of someone else, for example the person who directs the creation of the computer program, the Protocol should so state; this solution would be analogous to the solution of Article 14[bis] of the Berne Convention concerning cinematographic works;

(ii) the criteria of eligibility for protection under the Berne Convention (Article 3(1) and (2)) would apply also to computer programs; if, however, one would adopt the solution indicated in item (i), *in fine*, above, the Protocol should parallel Article 4*(a)* in respect of computer programs;

(iii) the definition of publication (Article 3(3)) should also apply to computer programs; however, since most computer programs are not made available in a number of copies sufficient "to satisfy the reasonable requirements of the public," most computer programs would remain unpublished, and the rules concerning unpublished works should apply to them;

(iv) the requirement of national treatment and the minimum rights ("rights specially granted by [the] Convention") (Article 5(1)) would apply to computer programs; any present national law not respecting those minima would have to be modified;

(v) the enjoyment and the exercise of these rights (that is, national treatment and the rights specially granted by the Convention) could not be subject to any formality (Article 5(2)) even in the case of computer programs;

(vi) the prohibition of reciprocity (Article 5(1)) would (subject to the possibility of "comparison of terms" under Article 7(8) and the unimportant and so far never applied exception provided for in Article 6), apply to computer programs; consequently, those national laws that today allow reciprocity would have to be changed;

(vii) moral rights (Article 6[bis]) would apply to authors of computer programs, unless the solution referred to in item (i), *in fine*, is adopted; but even if that solution is not adopted, moral rights could be claimed in practice rarely since in most cases the authors of computer programs are unidentifiable;

(viii) the minimum term of protection generally applicable (Articles 7(1), (3) and (5) to (8) and 7[bis]) would apply also to computer programs; if one would adopt the solution indicated in item (i), *in fine*, above, the Protocol should provide for a term of protection for computer programs that are similar to the one provided for in Article 7(2) for cinematographic works, namely, for 50 years from their publication, or, in the absence of publication, for 50 years from their making; consequently, those national laws that today protect computer programs for less than 50 years (from the death of the author, from first publication or from first making available to the public, as the case may be) would have to be changed;

(ix) the exclusive right of authorizing alterations (Article 12) would apply to computer programs; the transformation of computer programs from one computer "language" into another should be considered to be covered by this right rather than by the right of translation (Article 8) in view of the fact that the notion of translation under the Convention was and is intended to cover real, that is, human languages, and that the use of the word "language" in the field of computers is merely a symbolic designation;

(x) the provisions on the right to enforce protected rights (Article 15(1), (2) and (4)) would apply to computer programs;

(xi) the provisions on seizure (Article 16) would apply to computer programs.

32. Of the provisions on the minima under the Berne Convention, there seems to be one, namely Article 9(2)—free reproduction in certain special cases—concerning which, when applied to computer programs, the views of professional circles significantly differ, and concerning which governments having legislated or planning to legislate in this field do not seem to agree.

33. The question is which are the special cases where free reproduction of computer programs

does not conflict with normal exploitation and does not unreasonably prejudice the legitimate interests of copyright owners and, thus, where such reproduction can be allowed.

34. Although differences in views still exist, there seems to be growing agreement concerning the following points: (a) taking into account the purpose and value of computer programs, free copying for private purposes—except for cases that are covered by points (b) and (c), below—should not be allowed; (b) free copying by lawful owners, that is, persons who have acquired ownership of copies of (not of the copyright in) computer programs should be allowed in certain circumstances; (c) free decompilation of computer programs (see paragraph 37, below) should also be allowed under certain conditions.

35. As regards paragraph 34(b), above, it is obvious that copying should be allowed if it is indispensable for the use of a program in conjunction with a machine for the purpose, and to the extent of use, for which the program has been lawfully obtained. Furthermore, it also seems justified to allow making a "back-up copy" for archival purposes, as a security measure, for cases where the replacement of the program may become necessary.

36. In addition to clarifying the extent to which a lawful owner of a computer program may make a copy, it also seems necessary to make it clear that the right of adaptation under Article 12 of the Berne Convention does not include the right to prevent an adaptation that is indispensable for using the computer program in conjunction with a machine for the purpose, and to the extent of use, for which the program has been lawfully obtained.

37. Decompilation of computer programs means reproduction and adaptation ("translation") of computer programs into a form in which the coding and structure of the program can be examined and analyzed. It seems that such decompilation by lawful owners of computer programs should be allowed, since such decompilation would not conflict with any normal exploitation of the program and would not cause any unreasonable prejudice to the legitimate interests of copyright owners, in cases where decompilation is needed to obtain information necessary to achieve interoperability of independently created programs with the original programs concerned (from which it follows that decompilation must not be allowed if such information is readily available from other sources), in respect of those parts of the original program concerned that are necessary to achieve interoperability. However, to avoid any conflict and prejudice referred to above, the information thus obtained should not be used for the development, production or distribution of a program substantially similar in its expression to the original program, or for any other act infringing copyright.

38. *It is proposed that the possible Protocol should provide*

(a) that, without the authorization of the owner of the copyright in it, it is, subject to (b) and (c) below, not permitted to reproduce a computer program for private purposes and

(b) that it is a matter for national legislation to permit the lawful owner of a copy of a computer program to make, without the authorization of the owner of the copyright in the computer program, another copy or an adaptation of such a program, provided that such a copy or adaptation is

(i) indispensable for using the computer program in conjunction with a machine for the purpose, and to the extent of use, for which the program has been lawfully obtained; or

(ii) for archival purposes and, if necessary (in the event that the original copy of the program is lost, destroyed or rendered unusable), for the replacement of the copy lawfully obtained; provided that such a copy or adaptation may not be used for any purposes other than the ones mentioned above and must be destroyed when the continued possession of copies or adaptations of the computer program ceases to be lawful;

(c) it is also a matter for national legislation to permit the lawful owner of a copy of the computer program to decompile, without the authorization of the owner of the copyright in the computer program, the program into a form in which its coding and structure can be examined, provided that

(i) such decompilation should only be allowed in cases where the information necessary to achieve interoperability of other independently created computer programs with the original program concerned is not readily available from other sources, and only in respect of those parts of the original program concerned that are necessary to achieve interoperability;

(ii) the information obtained through such decompilation may only be

used to achieve interoperability of an independently created computer program, and may not be used for making a program substantially similar in its expression to the original program, or for any other act infringing copyright.

39. These three provisions, that is, those proposed in points (a), (b) and (c) of the preceding paragraph, would be compatible with the Berne Convention, because they would simply clarify, for certain situations, the meaning of Article 9(2) of the Berne Convention, and the provision under (a) also because it gives a "greater protection" (Article 19) to computer programs than to other types of works.

Data Bases

40. The notion of "data base" was first used in a narrower sense, to only mean "electronic data base," an aggregate of information which is systematically arranged and stored in a computer system. As a result of a more thorough study, it has become clear that the notion should not be connected to the element of computer storage; all compilations of information (data, facts, etc.) should be considered "data bases," irrespective of whether they exist in print, in computer storage units or in other forms.

41. There is now growing agreement that data bases—whether in print, in computer storage units or any other form—deserve protection of the kind provided for under Article 2(5) (dealing with "collections") of the Berne Convention, if they constitute intellectual creations by reason of the selection, coordination or arrangement of their contents. It cannot be said, however, that the views of professional circles are uniform in this respect. Therefore, it seems desirable to deal with the protection of data bases in the possible Protocol.

42. Article 2(5) of the Berne Convention provides as follows: "Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections." This provision only refers to *the collection of literary and artistic works*. However, since the emphasis is on *the original nature of the selection and arrangement of the contents of the collection*, a number of national copyright laws grant protection not only to collections composed of works but to *any collection of information, data, and the like*, if such collections are original by reason of selection, coordination or arrangement. A somewhat extensive interpretation of the Berne Convention to cover such collections seems justified.

43. It follows from the assimilation of data bases to collections of works that all provisions of the Berne Convention applicable to collections would be applicable also to data bases.

44. *It is proposed that the possible Protocol*

(a) provide that collections of mere data or other unprotected material are to be considered as literary and artistic works and are to be protected in the same way as the collections of works mentioned in Article 2(5) of the Berne Convention whenever such collections constitute intellectual creations by reason of the selection, coordination or arrangement of such data or other material;

(b) mention data bases in the provision proposed under point (a), above, as an example (in the same way as Article 2(5) of the Berne Convention mentions encyclopaedias and anthologies as examples);

(c) clarify that the protection of collections of data or other unprotected material does not make the data or other unprotected material themselves eligible for copyright protection.

Expert Systems and Other Artificial Intelligence Systems

45. "Artificial intelligence" is an expression commonly used to designate those types of computer systems that display certain capabilities associated with human intelligence, such as perception, understanding, learning, reasoning and problem-solving.

46. A specific branch of computer science deals with research and development of artificial intelligence systems. It is usual to identify three categories of artificial intelligence: expert (or knowledge-base) systems, perception systems and natural-language systems. Of those three categories, the latter two are still in research stages and are, moreover, less relevant from the viewpoint of copyright protection. Therefore, it seems sufficient at present to

consider whether it is necessary to deal with expert systems in a possible Protocol.

47. Expert systems—the most important artificial intelligence category from the viewpoint of existing practical application—have at their disposal, in their memory, comprehensive knowledge ("expertise") in a certain field and a mechanism that enables them to answer questions and solve problems; expert systems can also explain the solutions offered and the means by which those solutions were reached. Expert systems consist of two main elements: a knowledge base and a so-called "inference engine" which uses the rules of logic to process and manipulate the knowledge base. As a rule, expert systems are accompanied by two other elements, a "knowledge editor" which assists the loading of the knowledge base with information, and an "explanation facility" which can demonstrate how the system has arrived at an answer to a given problem. The inference engine, the knowledge editor and the explanation facility are together called the "shell" of an expert system (as opposed to the knowledge that the "shell" contains). It is on the basis of the knowledge included in them and by means of their inference engines (which may be considered specifie computer programs) that expert systems can solve problems and answer questions (for example, they can determine the cause of the failure of a machine, identify an illness on the basis of certain symptoms, or describe the legal issues in a case on the basis of the facts input).

48. The intelleetual property status of expert systems was discussed in detail at the WIPO Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence in Stanford in March 1991. In general, two opinions emerged: according to the first, expert systems should be considered a specific category of computer programs, and, according to the second, they are combinations of computer programs and data bases. Under the second opinion, expert systems need not be considered a special category, and would share the intellectual property status of computer programs and data bases. It is proposed to follow the second opinion since, at least for the time being, it is not clear why the first opinion (special status) should be followed and, if followed, what such a status would entail. Nevertheless, further studies could be initiated to elucidate whether certain more recent types of systems, such as "neural networks" (which are deemed to be able to "learn" on their own, and, thus, to have particular features from the viewpoint of intellectual property) necessitate a different answer. It would seem premature, however, to deal with such systems in a possible Protocol.

49. *Expert systems should be considered to share the intellectual property status of computer programs and data bases; therefore, no separate provisions seem necessary on such systems in the possible Protocol. There is, likewise, no need to deal with any other artificial intelligence category in the possible Protocol.*

Computer-Produced Works

50. The Copyright, Designs and Patents Act 1988 of the United Kingdom is the first national law to include provisions on what that law calls "computer-generated works." According to section 178 of the United Kingdom Act, "'computer-generated', in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work." Section 9(3) of the United Kingdom Act provides that "[i]n the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken;" and, section 12(3) of the United Kingdom Act provides that the term of protection of such a work is 50 years from its making.

51. The above-quoted provisions seem to be based on the presumption that computers may be able to "create" literary and artistic works without any human creative contribution. There are doubts, however, whether there is really an "artificial" computer "intelligence" that can *create* "works" *without* any human creative contribution, at least at the present time.

52. In respect of works referred to as "computer-generated," it seems to be the case that the human contributions are so numerous, and merge into the totality of the works in such a way, that it is difficult or impossible to recognize each contribution and its individual author separately. Such contributions and (if the contributions are original) authors unquestionably do exist, however. Therefore, it seems more appropriate in the copyright context to use a different expression, for example the expression "computer-produced" works.

53. The above-mentioned features of computer-produced works are similar to those of "collective works" in the sense that, although it is clear that the works involved result from human intellectual contributions, it is impossible to attribute separate authorship to individual contributors.

54. Since computer-produced works have no identifiable authors, it is necessary to include specific provisions in the possible Protocol concerning original ownership and the term of protection of copyright in such works; for the same reasons, moral rights would not be applicable in the case of such works. In other respects, the relevant minima under the Berne Convention (particularly the ones on rights protected, possible limitations of rights, the principle of formality-free protection and term of protection) should be applied, and the obligation to grant national treatment also extends to computer-produced works.

55. *It is proposed that, in the possible Protocol,*

(a) the following definition should be included: "a 'computer-produced work' is a work that has been produced by means of a computer, where the creative contributions of human beings are merged in the totality of the work in a way that it is impossible to attribute authorship in respect of such contributions";

(b) it should be provided that the provisions of the Berne Convention and of the possible Protocol on the protection of literary and artistic works should, subject to points (c) to (e), below, apply to the protection of computer-produced works;

(c) it should be provided that the original owner of copyright in a computer-produced work is the physical person or legal entity by whom or by which the arrangements necessary for the creation of the work are undertaken;

(d) it should be provided that Article 6bis of the Berne Convention is not applicable in respect of computer-produced works;

(e) it should be provided

(i) that a computer-produced work—unless it is a computer-produced work of applied art—is to be protected for 50 years from the date of its making;

(ii) that, in respect of a computer-produced work of applied art, Article 7(4) of the Berne Convention is applicable (that is, such a work is to be protected for 25 years from its making); and

(iii) that Article 7(5), (6) and (8) of the Berne Convention is applicable also in respect of computer-produced works.

CHAPTER III

PRODUCERS OF SOUND RECORDINGS (PHONOGRAMS)

56. Under the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations), "phonogram" is any exclusively aural fixation of sounds of a performance or other sounds (Article 3*(b)*), and "producer of phonograms" denotes a person who, or a legal entity which, first fixes the sounds of a performance or other sounds (Article 3*(c)*). In some countries the expression "sound recordings" is used rather than the expression "phonograms" with practically the same meaning. The expression "sound recordings" is used also in the present memorandum.

57. Views differ whether sound recordings are or should be considered as works and whether the producers of sound recordings are authors.

58. Today, there are some 40 countries that provide protection to the producers of sound recordings in their copyright laws and, among those 40 countries, some 12 not only do that but expressly state that sound recordings are literary and artistic works and a few of the 12 also state that copyright vests in the producer.

59. Any such country would have to apply the Berne Convention—because that Convention applies to all kinds of literary and artistic works (see Article 2(1))—also where the country of origin of the sound recording is another country party to the Berne Convention. Applying the Berne Convention means, among other things, that the rights of public performance and broadcasting must be recognized, that reciprocity cannot be a condition of protection and that the minimum term of the protection is 50 years after the death of the author. The fact, however, is that several of the above-mentioned 12 countries do not recognize the said rights, do require reciprocity (that is, that *their* producers enjoy at least the same degree of protection in the other country) and have a term of protection different from the one prescribed by the Berne Convention.

60. The fact that the Berne Convention does not apply to producers of phonograms seems to follow not only from the said attitude of the said countries but also from the text of the Convention itself. The Convention applies to authors and not to producers. There is an exception to this rule (it is in Article 14bis) which speaks of the owners of copyright in (rather than the authors of) cinematographic works and states that "[t]he owner of copyright in a cine-

matographic work shall enjoy the same rights as the author of an original work...." This exception is not paralleled, in the Berne Convention, in respect to the producers of sound recordings. Neither is a sound recording a work, within the meaning of the Berne Convention, since the Berne Convention requires that the production be original, which sound recordings are not. It is sometimes said that the production *is* original, not because of the non-existent artistic contribution of the producers but because of the contribution of the sound engineers involved in the production. It is very doubtful whether such a contribution exists in respect of all sound recordings and, even if it does, whether it is of sufficient importance and of a sufficient degree of artistic originality to render the sound engineer an author and the sound recording a work. But if one accepts the view that a sound engineer is an author, the rights would have to vest in him. This is not the purpose of the proposal made in this document. The purpose is to have the producer of the sound recording to be the person or legal entity in whom or in which the protection vests.

61. That the above views are correct also flows from the Rome Convention and the Phonograms Convention. They were created, in 1961 and 1971, respectively, because producers wanted and needed protection and that protection was not available under the Berne Convention or the Universal Copyright Convention. Had it been, the Rome and Phonograms Conventions would not have been wanted and needed since practically all of the countries that created those Conventions are party to the Berne Convention or the Universal Copyright Convention or both.

62. All this does not mean that the producers should be satisfied with the degree of protection they enjoy thanks to the Rome and Phonograms Conventions. The degree is no longer high enough and the possible Protocol would be a good vehicle to provide for a higher degree of protection. At the same time, it could be hoped that—because of the ties the possible Protocol will have with the Berne Convention (to which 88 countries are party today)—more countries would eventually be party to the Protocol than to the Rome and Phonograms Conventions (to each of which a smaller number of countries are party than half the number of the members of the Berne Union).

63. It is therefore proposed that the possible Protocol provide for the protection of producers of phonograms. A better international protection for producers will not hurt—on the contrary, it will be advantageous to—the composers and other authors the performances of whose works are fixed in sound recordings. This is so because the interests of the producers and the authors are mostly similar: unauthorized fixation, reproduction and other commercial use of the recordings should be prohibited. The producers are powerful in international trade. They will be strong allies of the authors.

64. However, the inclusion of the protection of producers of phonograms into the possible Protocol is worthwhile only if the obligation of the parties to the possible Protocol goes beyond their obligations under the Rome and Phonograms Conventions and such obligation should be the same as if such inclusion would be made in the Berne Convention itself. This would mean, in particular, the prohibition of reciprocity, the strict application of national treatment and the recognition not only of the exclusive right of reproduction (which the Rome and the Phonograms Conventions already recognize) but, subject to possible reservations or other restrictions, also the other rights protected under the Berne Convention or to be protected under the possible Protocol (they will be discussed in the second document; see paragraph 8, above), in particular the rights of public performance, broadcasting, rental and importation.

65. It should be made clear that the ownership of the right is vested in the producer of the sound recording.

66. *It is proposed that, as far as the protection of producers of sound recordings is concerned, the following should be provided in the possible Protocol:*

(a) countries party to the Protocol should—subject to what is said in points (b) and (c), below, and irrespective of whether or not they recognize sound recordings as a category of literary and artistic works—be obliged to grant at least the following exclusive rights to the producers of sound recordings:

(i) the right of reproduction;
(ii) the right of distribution;
(iii) the right of importation;
(iv) the right of broadcasting and related rights as provided for in Article 11bis(1) of the Berne Convention;
(v) the right of public performance;
(vi) the right of communication to the public by wire;

(b) the limitations of rights provided for in respect of certain rights in works by Articles 9(2), 10, 10bis(2) and 11bis(3) of the Berne Convention and, if accepted, the limitations of the right of dis-

tribution to be proposed in the second document, should be poralleled in respect of the rights, mentioned in point (a), above, of producers of sound recordings;

(c) in any case, it should be a matter for national legislation to restrict, if so desired, the rights mentioned in points (a)(iv) to (vi), above—that is, briefly stated, the rights of broadcasting, public performance and communication to the public by wire—to a right to equitable remuneration;

(d) the rights mentioned in point (c), above, should be protected for at least 50 years from the first publication of the sound recording with the consent of its producer or, in the absence of publication, from the making (fixation) of the sound recording.

67. It may be that the proposal to recognize the rights of broadcasting, public performance and communication to the public by wire (mentioned in points (a)(iv), (v) and (vi), above) will be found too ambitious (even if subject to the possibility of non-voluntary licensing mentioned in point (c), above).

68. *In that case, one could consider the desirability of allowing any country party to the Protocol to recognize the rights mentioned in points (a)(iv), (v) and (vi) of paragraph 66, above (that is, briefly stated, the rights of broadcasting, public performonce and communication to the public by wire) in respect of a sound recording whose producer is a nationol of, or is domiciled in, onother country only where thot other country recognizes the soid rights in respect of its (i.e.,that country's) producers of sound recordings ("reciprocity").*

69. The above-mentioned solution—as indicated—would amount to reciprocity. Reciprocity is, in principle, not desirable in treaties dealing with intellectual property, and reciprocity is also disallowed, in particular, by the Berne Convention. But the possible Protocol could, if there is no other possibility to reach agreement, admit it, in this particular case, as an exception. Such solution would not be contrary to Article 20 of the Berne Convention—which disallows special agreements that diminish the scope of protection provided for in the Berne Convention—since, as far as producers of sound recordings are concerned, the Berne Convention provides for no protection, and thus there is nothing that could be diminished.

70. Questions other than the rights mentioned in paragraph 66, above, would also have to be regulated in the possible Protocol (if it is decided that the possible Protocol deals at all with the rights of producers of sound recordings). Such questions would include the definition of country of origin and the definition of publication, the prohibition (or not) of formalities and/or of comparison of terms (see Article 7(8) of the Berne Convention), the seizure of infringing copies (see Article 16 of the Berne Convention) and the question (mentioned in paragraph 16, above) whether a country party to the Protocol would have to apply the provisions on the protection for the producers of phonograms not only to phonograms whose country of origin is a party to the Protocol but also to phonograms whose country of origin is not party to the Protocol (but party only to the Berne Convention). It seems to be more practical to wait with the examination of these questions—which are important but, still, which relate to details—until it is decided whether the possible Protocol should or should not deal with the protection of producers of sound recordings.

REPORT

adopted by the Committee

I. Introduction

1. In pursuance of the decision taken by the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO at the twentieth series of meetings in Geneva, in September–October 1989 (see document AB/XX/2, Annex A, item PRG.02(2)), the Director General of WIPO convened a Committee of Experts on a Possible Protocol to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Committee") at the headquarters of WIPO, in Geneva, from November 4 to 8, 1991.

2. Experts from the following 45 States and one intergovernmental organization members of the Committee attended the meeting: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Libya, Luxembourg, Madagascar, Mexico, Morocco, Netherlands, Norway, Pakistan, Peru, Philippines, Portugal, Romania, Senegal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Commission of the European Communities.

3. Experts from the following 11 States participated in an observer capacity: Algeria, Burundi, China, Cuba, Democratic People's Republic of Korea, Haiti, Indonesia, Panama, Paraguay, Saudi Arabia, Soviet Union.

4. Representatives of three intergovernmental organizations, namely: United Nations Conference on Trade and Development (UNCTAD), United Nations Educational, Scientific and Cultural Organization (UNESCO), General Agreement on Tariffs and Trade (GATT), participated in an observer capacity.

5. Observers from 39 non-governmental organizations, namely: Agency for the Protection of Programs (APP), Business Software Alliance (BSA), Computer and Business Equipment Manufacturers Association (CBEMA), Computer and Communication Industry Association (CCIA), European Alliance of Press Agencies (EAPA), European Association of Manufacturers of Business Machines and Information Technology Industry (EUROBIT), European Broadcasting Union (EBU), European Committee for Interoperable Systems (ECIS), European Computing Services Association (ECSA), European Tape Industry Council (ETIC), European Writers' Congress (EWC), Information Industry Association (IIA), Intellectual Property Owners (IPO), Inter-American Copyright Institute (IIDA), International Advertising Association (IAA), International Alliance for Distribution by Cable (AID), International Association for the Protection of Industrial Property (AIPPI), International Association of Audio-Visual Writers and Directors (AIDAA), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Copyright Society (INTERGU), International Federation of Actors (FIA), International Federation of Film Producers Associations (FIAPF), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organisations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Group of Scientific, Technical and Medical Publishers (STM), International Intellectual Property Alliance (IIPA), International Literary and Artistic Association (ALAI), International Organization of Journalists (IOJ), International Publishers Association (IPA), International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU), International Union of Architects (IUA), International Video Federation (IVF), Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI), National Association of Broadcasters (NAB), Union of Industrial and Employers' Confederations of Europe (UNICE), also participated in the meeting.

6. The list of participants follows this report.

II. Opening of the Meeting

7. The Director General of WIPO welcomed the participants and opened the meeting.

III. Election of Officers

8. Mr. Jukka Liedes (Finland) was unanimously elected Chairman and Mr. György Boytha (Hungary) and Mrs. Hilda Retondo (Argentina) were unanimously elected Vice-Chairmen of the Committee.

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

9. Discussions were based on the first part of the memorandum prepared by the International Bureau of WIPO entitled "Questions Concerning a Possible Protocol to the Berne Convention" (document BCP/CE/I/2). The Secretariat noted the interventions made and recorded on tape. This report summarizes the discussions without reflecting all the observations made. Speakers are only identified in respect of their interventions during the general discussion of the memorandum.

10. The Director General said that the form of any future instrument and to whom such instrument should be open were questions that were mentioned in the document but, in his opinion, should be discussed after at least the tentative views of the Committee become clear concerning what subject matters of protection and what rights should be covered by the possible future instrument.

General Discussion

11. The Delegation of Hungary noted that it had become indispensable to provide for new international regulations concerning the application of the Berne Convention due to the technological developments emerging since its last substantive revision in 1967. It supported the suggestion made by the

Director General that considerations should not be devoted at first to the form of the proposed special agreement, but should focus on the contents of the protection, having in mind the protection already secured by the Berne Convention. The Delegation referred to the proposed rights in the possible protocol and suggested that along with collective administration of rights, also individual contracts for certain uses should be considered.

12. The Delegation of France pointed out the necessity for improvement and modernization of the Berne Convention in view of recent technological developments. It referred to a special agreement under Article 20 of the Berne Convention as a possible framework for such improvement. The Delegation was in favor of examining the contents of the possible protocol prior to examining its legal nature, but only if the purpose of the protocol was to increase the protection of authors' rights. The Delegation said that tbe distinction should be maintained between copyright, as secured on the international level by the Berne Convention, and neighboring rights, as secured on the international level by the Rome Convention.

13. The Delegation of the United Kingdom said that the Secretariat's proposals were of three types: those which would clarify the Berne Convention, those which would adjust the Berne Convention and those which would propose new rights. It expressed doubts whether all three could be dealt with in the same international instrument. It also said that the existing level of protection for sound recordings was insufficient, and urged prompt action in that respect.

14. The Delegation of Greece favored the idea of a protocol as a means of clarifying and supplementing the Berne Convention, while eliminating the need for a general revision. The Delegation raised the possibility of more than one new international instrument, dealing with new rights, on the one hand, and new subject matter, on the other. The latter would be outside the Berne Convention. The Delegation stressed that improvement of the level of protection for producers of phonograms should be undertaken in the context of the existing neighboring rights conventions.

15. The Delegation of Japan supported clarification of some international obligations by means of a possible protocol in view of technological developments which have emerged in tbe last decades affecting creation and exploitation of works. It stated that the best way would be to revise the Berne Convention; however, it had to be recognized that a revision of the Berne Convention would not be a rapid procedure and was not envisageable due to the condition of unanimity required by that Convention. It added that this Committee should not jump to conclusions, but should try to have careful and thorough discussions in each subject. It also stated that a distinction should be made between copyright and neighboring rights and that the basic principles of the Berne and Rome Conventions should be maintained.

16. The Delegation of Australia favored the elaboration of a new international instrument protecting computer programs given their special characteristics, while affirming its support for strong protection. It also welcomed the proposal to clarify protection for data bases and computer–produced works. It added that the form of such an instrument could be determined at a later stage. The Delegation referred to discussions currently taking place in its country concerning the appropriate level of protection for sound recordings.

17. The Delegation of Israel referred to constantly evolving technological developments and expressed its general support for the proposals of the International Bureau.

18. The Delegation of the Soviet Union referred to recent developments in the copyright legislation in its country. It strongly supported the proposal to prepare a protocol to avoid differing interpretation among national legislators as to obligations under the Berne Convention.

19. The Delegation of Romania described recent proposals for copyright legislation in its country and welcomed generally the Secretariat's proposal for a protocol to the Berne Convention.

20. The Delegation of the United States of America stressed that careful legal study of the nature of the proposed instrument was needed to clarify whether a revision of the Berne Convention should be involved, what the word "protocol" meant, and, if the proposed instrument was to be a treaty under Article 20 of the Convention, wbich proposals would mean more extensive rights than those granted by the Convention and which proposals would involve otber provisions "not contrary" to the Convention. In that context, the application of the protocol to "new" subject matter could carry the unintended, yet damaging, negative connotation that the protocol was granting "more extensive rights" and, therefore, States party to the Berne Convention but not adhering to the protocol were free to deny protection to that subject matter or qualify it in ways not generally allowed by the Convention. The Delegation said that, although the

memorandum dealt with a number of issues of contemporary importance, the States party to the Berne Convention should be given the opportunity to suggest in writing further issues for consideration and such suggestions should be duly circulated to the members of the Union. Finally, the Delegation pointed out that there were three groups of questions related to the possible protocol, namely, first, issues involving subject matter, second, issues involving rights protected and, third, questions related to the applicability of the rule of national treatment and the minima under the Berne Convention in respect of any new subject matter or new right. It stated that the third group was the most important to the future of the Berne Convention and to any determination of whether a protocol was necessary and what its contents should be.

21. The Delegation of Egypt expressed the view that the existing Berne Convention and, particularly its Annex providing facilities for developing countries, should not be called into question. It reiterated that any new instrument should not diminish the access of developing countries to new works and technologies. While phonograms should be given an adequate protection, computer programs should also be protected taking into consideration their special nature. In this latter respect, the Delegation reserved its position on specific points, particularly on the question of decompilation. It added that the international conventions should be the main binding instruments in this respect. As regards bilateral agreements, they had to be in conformity with the spirit of and obligations under those international instruments. The Delegation was of the opinion that, for the time being, considerations of the legal nature of the possible protocol should be deferred.

22. The Delegation of Germany stated that a special agreement under Article 20 of the Berne Convention, rather than a revision, was the appropriate legal instrument in this context, due to the condition of unanimity required to revise the Convention. It stated that the Commission of the European Communities had competence to conduct international negotiations concerning protection of computer programs, which are binding upon its country. The Delegation expressed hesitation concerning the inclusion of phonograms in a possible protocol, without also considering increased protection for performers.

23. The Delegation of India stressed the need for harmonizing national legislations in a practical way conducive to creativity and innovation. It favored a free standing agreement under Article 20 over revision of the Berne Convention and stated that any new norms developed should not reduce developing countries' access to new technology for the purposes of national development. The Delegation cautioned against moving away from the principle of national treatment and expressed support for inclusion of sound recordings in a possible protocol. It shared the view expressed by the Egyptian Delegation that, in keeping with the tradition of the Berne Convention, WIPO and in particular this Committee should consider ways and means of providing more favorable treatment to developing countries.

24. The Delegation of Chile was of the view that discussion should focus on the substantive matters to be included in the possible protocol. It referred to the ongoing GATT negotiations and their impact on the discussions concerning a protocol.

25. The Delegation of the Commission of the European Communities referred to the recent directive on the legal protection of computer programs as the first in a series of harmonization instruments on copyright within the Community. It pointed out the threat to copyright posed by the spread of piracy and technological developments. It stated that the legal nature of any proposed instrument should be discussed at an early stage. It also stated that existing Berne Convention obligations should not be diminished. For example, computer programs were presently protected as literary works under the Berne Convention as well as in the European Communities member States and the present debates should not call this into question. It also referred to the need to maintain the balance between copyright and neighboring rights since the proposals of the European Commission took both the Berne and Rome Conventions as a basis.

26. The Delegation of Czechoslovakia stated that it supported the proposals of a possible protocol indicating that it would have some comments on certain details. The Delegation stressed the need to maintain the balance between copyright and neighboring rights, which were protected under the Rome and Phonograms Conventions.

27. The Delegation of Finland referred to the situation in its country where neighboring rights are dealt with in the same context and also addressed when revisions of authors' rights were undertaken. It noted the need to bridge the two existing systems of protecting sound recordings while maintaining the balance between performers, producers of phonograms and broadcasting organizations. Therefore, the Delegation was of the view that it was also appropriate to consider other options for the legal

framework including the international neighboring rights conventions. It added that its Delegation, as others, favored examination of the substantive contents of the possible protocol, leaving discussion of the legal nature of the instrument for a later time.

28. The Delegation of Canada expressed its preference for an examination of the legal nature of the possible protocol at the outset, particularly with respect to issues concerning national treatment. It supported a high level of protection for computer programs, being in conformity with the legislation of its country. It supported the inclusion of a reproduction right for sound recordings in the context of the Berne Convention. It indicated its interest in neighboring rights with respect to sound recordings and, in general, said that neighboring rights would best be dealt with in the context of the Rome Convention.

29. The Delegation of Mexico stated that the inclusion of new subject matter within the scope of the Berne Convention would represent a split in the concept of authors' rights, by diminishing the rights of artistic and literary creators in favor of the interests of producers, be it of computer programs or sound recordings. The adoption of a "protocol" in those terms could distort Mexican legislation, which clearly favored authors and authors' rights. Furthermore, the nature, purpose and scope of application of a possible protocol should be clearly examined, and the protection of neighboring rights should not be mixed with tbat of authors' rights. In this regard, perhaps other alternatives should be explored, such as the promotion of the accession to the Rome Convention. It also referred to the ongoing GATT negotiations and their impact on the deliberations.

30. The Delegation of Morocco welcomed the initiative of the Secretariat and supported the idea of a possible protocol. It pointed out that such special agreement could only be considered in light of Article 20 of the Berne Convention. It expressed some reservations towards the inclusion of protection of sound recordings in the possible protocol and expressed its preference for considering such protection in the framework of neighboring rights.

31. The Delegation of the Netherlands stated that there was an urgent need to harmonize and increase copyright protection in certain fields in view of recent technological developments. A binding international instrument should be prepared which would give an adequate answer to those new developments. The new instrument should not diminish the existing protection. It was of the view that examination of the legal nature of the proposed international instrument was necessary before entering into a discussion on the substance. As regards the protection of sound recordings, it considered that such protection should be dealt with in the context of the Rome Convention. Although the Delegation agreed that the level of protection of sound recordings should be increased, it mentioned that the interests of other categories of neighboring rights beneficiaries should also be taken into account.

32. The Delegation of Spain welcomed the idea of a possible protocol on the basis of Article 20 of the Berne Convention. It stated that its country's legislation on the protection of computer programs was in conformity with the directive of the European Communities. The Delegation was in favor of protecting sound recordings in the context of the Rome Convention and raised the question of a possible revision of that Convention. Also, the Delegation referred to the impact of the ongoing negotiations in the context of GATT.

33. The Delegation of Colombia stated that updating the Berne Convention should be a matter of priority and took the view that examination of the legal nature of any possible new international instrument was appropriate. The Delegation added that inclusion of new categories of works and new rights of exploitation should not alter the present structure of the Berne Convention. It also referred to the ongoing GATT negotiations.

34. The Delegation of Switzerland said that computer programs were covered by the Paris Act of the Berne Convention and that the possible protocol could deal with appropriate limitations on rights. As regards expert systems and other artificial intelligence systems and computer–produced works, it stated that it would be premature to deal with such works in a possible protocol. It added that increased protection for sound recordings should be addressed in the context of a possible revision of the Rome Convention.

35. The Delegation of Ireland stated that questions concerning the legal nature of a possible new instrument should be addressed early in the discussions. It added that increased protection for producers of phonograms was more appropriate for discussion in the context of the Rome Convention and took the view, concerning the rule of national treatment, that application of reciprocity might be appropriate in certain circumstances.

36. The Delegation of Peru said that WIPO was the appropriate forum to discuss international intellectual property matters and was in favor of

strong multilateral protection for computer programs and stressed that any new initiative should not diminish existing levels of protection in the Berne Convention. It also stressed that producers of phonograms should enjoy a higher level of international protection in as many countries as possible. The improvement of their protection should be achieved more rapidly than would be possible through a revision of the Rome Convention, but without conflicting with the basic principles of the Berne Convention.

37. The Delegation of Brazil referred to the detrimental effect of the ongoing GATT negotiations on the present exercise. It considered that the discussion should focus on the international protection of the subject matters identified by the International Bureau and on the applicability of the Berne Convention thereto. It also considered that the contents of the proposed protocol should be guided by the principles of equilibrium and of benefits to economic development. As regards computer programs, the Delegation noted that some adjustments in the present copyright system were needed in particular to avoid the rigidities of the existing regime of protection as a mere literary work. It also noted the need to improve the protection of sound recordings and considered that such improvement could take place in the framework of the Rome Convention.

38. The Delegation of Argentina said that WIPO was the appropriate forum for discussions on international intellectual property matters and was of the view that there was a need to modernize the Berne Convention. It referred to the situation in its country where national legislation on intellectual property was under revision.

39. The Delegation of Ecuador recalled that its country had recently adhered to the Berne Convention. It expressed the view that a possible protocol was an appropriate way to clarify and improve certain new subject matter protected by copyright.

40. The Delegation of Italy said that the possible protocol must preserve all rights presently secured by the Berne Convention. The Delegation added that the protection of phonograms under the Berne Convention could have the effect of making the Rome Convention obsolete, to the detriment of performers, and mentioned the possibility of revising the Rome Convention.

41. The Delegation of Sweden stated that discussion of the legal nature of the possible protocol could take place later. It noted that the balance between producers of phonograms, performers and broadcasting organizations should be maintained.

42. The Delegation of China said that its country was planning to become a party to the Berne Convention in the near future. It expressed the view that the possible protocol should be a free standing agreement creating obligations separate from the Berne Convention.

43. The Delegation of Algeria referred to national legislation under preparation in its country to permit its adherence to the Berne Convention. Concerning the inclusion of computer programs in a possible protocol to the Berne Convention, it stated that harmonization is necessary in light of divergent national legislations. It also favored the proposed inclusion of data bases in such a protocol, but expressed serious doubts concerning inclusion of sound recordings. It added that the legal nature of a possible protocol could be examined following discussion as to its desired contents.

44. The Delegation of Senegal expressed reservations concerning the inclusion of sound recordings in a possible protocol. In its view, such inclusion would create difficulties in the functioning of newly-established collective administration organizations in African countries.

45. The Delegation of Norway expressed the view that it was necessary to maintain the balance between producers of phonograms and other neighboring rights beneficiaries under the Rome Convention.

46. The Delegation of Paraguay referred to the recent accession of its country to the Berne Convention. It expressed its support for the proposed protocol to the Convention, which had as its purpose the updating of international norms in the field of copyright without lessening the protection afforded by the Paris Act of the Berne Convention.

47. The observer from the International Union of Architects (IUA) referred to the impact of computer technology on the creation of works of architecture, which could affect the means of creating and exploiting such works.

48. The observer from the International Publishers Association (IPA) supported development of a possible protocol to the Berne Convention, citing a need to update protection for the rights of authors and publishers. He took the view that computer programs and data bases were presently protected under the Berne Convention, but stated that special provisions might be necessary given the particular characteristics of such works.

49. The observer from the International Group of Scientific, Tecbnical and Medical Publishers (STM) urged inclusion of the rights of publishers in a possihle protocol, stating that the relation of puhlishers to their products was no different than that of producers of phonograms to theirs.

50. The observer from the European Computing Services Association (ECSA) stated that any provisions on computer programs in a possihle protocol should follow closely the directive of the European Communities on the legal protection of computer programs.

51. The ohserver from the International Federation of Actors (FIA) took the view that the rights of performers should be included in a possihle legal instrument which would include provisions on producers of phonograms, since both groups of rights owners were covered by the Rome Convention. He stated that performers should he recognized as creators of artistic works.

52. The observer from the Union of Industrial and Employers' Confederations of Europe (UNICE) stated its agreement with the statement of the Delegation of the Commission of the European Communities concerning computer programs, and expressed the view that programs were presently covered by the Berne Convention.

53. The ohserver from the Intellectual Property Owners (IPO) stated tbat the strong consensus regarding tbe Berne Convention's present coverage of computer programs should not be cast in doubt, and that certain provisions regarding protection of computer programs for which, in his opinion, no international consensus had developed were not ripe to be addressed now.

54. The ohserver from the European Association of Manufacturers of Business Machines and Information Technology Industry (EUROBIT) expressed his expectation that no negative implications would arise from the present discussions and their results to the protection of works to which the Berne Convention presently applied. With regard to a possible future revision of tbat Convention, he also deemed it appropriate to identify those subjects on which consensus existed.

55. The ohserver from the European Broadcasting Union (EBU) stated that the proposed protocol should not include provisions on sound recordings, because they were already covered by the Rome and Phonograms Conventions, and because such inclusion would elevate producers of phonograms to a position superior to that of the other neighboring rights beneficiaries of the Rome Convention.

56. The observer from the International Literary and Artistic Association (ALAI) said that a possihle protocol to the Berne Convention was a logical consequence of WIPO meetings in the field of copyright held since 1986 and recognized the need to modernize the Berne Convention. He added that the legal nature of the proposed protocol should be discussed as a first priority. He took the view that computer–produced works should not be included in a protocol to the Berne Convention. As far as sound recordings are concerned, he expressed the view that only a comprehensive protocol to the Berne, Rome and Geneva Conventions could resolve the existing difficulties.

57. The observer from the Computer and Business Equipment Manufacturers Association (CBEMA) stated that the present discussions should not cast doubt upon existing Berne Convention coverage of computer programs.

58. The observer from the Information Industry Association (IIA) took the view that computer programs and data bases should be excluded from the present discussions, because they were already protected as literary works under the Berne Convention. He stated that the legal nature of the possible protocol should be examined hefore a discussion of its possible contents and added that the relationship between the Berne Convention and other multilateral, regional and bilateral copyright instruments should he clarified.

59. The observer from the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM) expressed support for the development of uniform principles governing exceptions to the right of reproduction under Article 9 of tbe Berne Convention, which would contribute to the fight against piracy and enhance contractual security. He emphasized the need for an increased protection of neighhoring rights but only within the context of tbe Rome Convention. He favored the proposals in Part II of the memorandum concerning the rights of rental and public lending, private copying and the aholition of non–voluntary licenses.

60. The observer from the International Confederation of Societies of Authors and Composers (CISAC) stated that it was necessary to modernize the Berne Convention and that a special agreement under Article 20 might be appropriate. He said that there should be no doubt that the purpose of such modernization must be to improve the rights of

authors. He added that protection for producers of phonograms was linked to that of performers and that modernization of the rights of both categories of neighboring rights beneficiaries should be undertaken within the context of the Rome Convention.

61. The observer from the International Federation of Reproduction Rights Organisations (IFRRO) expressed support for a protocol to the Berne Convention, stating that the scope of free uses and non–voluntary licenses should be limited in light of the possibilities for exercise of rights offered by collective administration. She added that the principle of national treatment should be maintained as to existing Berne Convention rights, but stated that reciprocity might be appropriate in the context of some compensation systems.

62. The observer from the Computer and Communication Industry Association (CCIA) stated the view that the Berne Convention presently protected computer programs, but that there would be no international consensus concerning appropriate limitations on rights in computer programs. Consequently, it would be premature to include provisions on decompilation or other exceptions to exclusive rights in a possible protocol.

63. The observer from the International Association for the Protection of Industrial Property (AIPPI) stated that any new instrument in the field of copyright should not prejudice rights provided under other international conventions, particularly in the field of industrial property.

64. The observer from the European Committee for Interoperable Systems (ECIS) expressed support for a protocol to the Berne Convention with provisions concerning computer programs. He added that such provisions should not present impediments to competition, and stated that the protocol should include a list of the elements of computer programs which were not protected, as well as an elaboration of the limitations on rights.

65. The observer from the International Federation of Library Associations and Institutions (IFLA) stated that efforts to improve protection for owners of rights should not impede access to information and ideas.

66. The observer from the International Federation of the Phonographic Industry (IFPI) voiced his support for a possible protocol to the Berne Convention and stated that the substance of such a protocol should be examined before determining its legal nature. He added that the inclusion of sound recordings in a protocol would not imply that they were literary and artistic works under the Berne Convention. He stated that the recording industry needed proper protection which would also benefit the interests of composers, authors and performers, all of whose creative contributions were included in phonograms.

67. The observer from the International Federation of Musicians (FIM) stated that the inclusion of phonograms in a possible protocol to the Berne Convention without integrating simultaneously the performers in the process would be detrimental to the interests of performers, who were also deserving of an improved legal protection.

68. The observer from the European Alliance of Press Agencies (EAPA) expressed support for a possible protocol to the Berne Convention and, in particular, for the protection of press agencies' news services with a view to combating increasing piracy. He underlined that press agencies developed intellectual, creative and original works presented in a specific format, also involving huge economic and financial costs as well as significant personal and professional efforts to create, divulgate and disseminate productions of great commercial and social value.

69. The observer from the International Intellectual Property Alliance (IIPA) expressed the view that computer programs were presently protected under the Berne Convention, and stated that the effect of a possible protocol to the Berne Convention on such coverage should be examined. He supported inclusion of sound recordings in a possible protocol, adding that such inclusion would not imply necessarily that sound recordings were protected under the Berne Convention.

70. The observer from the National Association of Broadcasters (NAB) stated that there was no international consensus as to the rights to be provided to producers of phonograms, and expressed the view that a possible protocol should not include provisions concerning phonograms. If such provisions were to be included, proposals relating to performance and broadcast rights in phonograms should be deleted.

71. The observer from the Business Software Alliance (BSA) said that the legal nature of a possible protocol to the Berne Convention should be examined, especially in light of the existing protection for computer programs provided under the Convention, which in his view should be maintained.

72. The Chairman stated that the general discussion had reflected agreement that the legal nature of

a possible protocol should be a special agreement under Article 20 of the Berne Convention as proposed in paragraph 3 of the memorandum. The questions of which proposed provisions would involve "more extensive rights tban those granted by the Convention" and which would be "other provisions not contrary to the Convention," as well as how those two categories of provisions might or should be distinguished and the question of whether one single protocol or two or three protocols would be needed, could only be answered after a preliminary discussion of the various issues whose consideration was proposed in the memorandum and what the participants might still wish to propose for discussion. After such a preliminary discussion, the Committee should bave a more in-depth discussion about the legal nature and the contents of a possible protocol or possible protocols.

Computer Programs

73. A great number of delegations and observers from non-governmental organizations expressed the view that computer programs were already protected under the Berne Convention as literary works, and referred to various national laws and the directive of the European Communities which all reflected that understanding.

74. Some of those delegations and observers proposed, therefore, that the possible protocol should contain an interpretive provision clarifying the already existing obligation under the Berne Convention to protect computer programs. One delegation suggested, for example, that such an interpretive provision could be worded in the following way: "The protection granted by the Berne Convention for computer programs extends to both operation system programs and application programs and both programs in source code form and programs in object code form." A number of delegations supported a solution along this line. The Director General said that States not party to the protocol but party to the Berne Convention would not be bound by the protocol, whether the latter's provisions were interpretive or created new rules.

75. One delegation and observers from several non-governmental organizations questioned the advisability of inclusion of any provision on computer programs in a possible protocol. They were of the view that any reference to computer programs in a protocol might imply tbat the present text of the Berne Convention did not oblige States party to it to apply the Berne Convention to computer programs and might, thus, give rise to an interpretation that those members of the Berne Union that did not adhere to the protocol were not obliged to protect computer programs.

76. Some other delegations and observers from non-governmental organizations pointed out that the view according to which there was full agreement that the Berne Convention obligated countries party to it to protect computer programs as "literary" works did not reflect reality, neither from the viewpoint of legal theory nor from the viewpoint of existing national laws, many of which did not contain provisions on computer programs. Therefore, some clarification in tbe protocol would not only be helpful but would be necessary; computer programs represented such a specific category of works that silence about them in tbe Berne Convention or in a possible protocol would contribute to maintaining rather than to eliminating doubts about their legal nature.

77. It was also stressed by some delegations and observers from non-governmental organizations that because of the specific nature of computer programs, it was not sufficient merely to recognize the copyright protection of computer programs; it was also necessary to include specific provisions concerning, e.g., the scope of protection (operation system programs and application programs, source code, and object code), tbe problem of tbe idea/expression dichotomy (particularly in respect of algorithms and interfaces), the extent of rights protected (particularly, the question of a right of rental and public lending) and exceptions to rights (with special attention to the extremely specific problem of "decompilation" of programs).

78. In connection with the protection of computer programs under a possible agreement supplementary to the Berne Convention, three delegations said that the content of such an agreement should include and be limited to the following points: (i) considering that computer programs are literary works and are therefore already protected under Article 2 of the Berne Convention, such protection has to be understood as including application programs and operating systems, whether in source or object code; (ii) this protection given by the Berne Convention (1971) is understood to apply to the expression of a program and not to ideas, procedures, methods of operation or mathematical concepts; (iii) limitations or exceptions to exclusive rights should be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightholder.

79. Some delegations and observers from non-governmental organizations expressed agreement

with the memorandum that the protection of computer programs should extend to both operation system programs and application programs, whether in source code form or in object code form. An observer from another non-governmental organization warned, however, that with the development of computer programs, new types of programs and new forms of expression could emerge; therefore, the wording of the provision concerning the scope of protection of programs, if any, should be sufficiently general and flexible.

80. Several delegations and observers from non-governmental organizations expressed the view that the scope of copyright protection for computer programs was limited by the so-called "idea/expression dichotomy." All delegations which, and all observers who, took the floor, on this issue agreed that the protection of computer programs should apply only to the expression of a program and not to its underlying ideas, procedures, methods of operation or mathematical concepts. One delegation and some observers from non-governmental organizations stated their agreement with paragraph 28(f) of the memorandum, and proposed that the same should be stated concerning programming languages and rules.

81. Some delegations said that they agreed with the exclusion of free private reproduction of computer programs according to paragraph 38(a) of the memorandum, as that also corresponded to various national laws. Another delegation was of the view that the proposed principle was too rigid; on the basis of the fair use doctrine, free reproduction of computer programs for private purposes might be allowed. An observer from a non-governmental organization suggested that this question should be discussed along with other aspects of private reproduction dealt with in the second part of the memorandum.

82. In general, there was agreement that a provision corresponding to paragraph 38(b) to allow free making of a back-up copy and certain indispensable adaptations by the lawful owner of a program was acceptable in national laws. Some delegations and observers from non-governmental organizations questioned, however, whether it was desirable to include such a detailed provision in the possible protocol.

83. A number of comments were made concerning paragraph 38(c) proposing the possibility of free decompilation of programs under certain conditions. The delegations and observers from non-governmental organizations were divided in respect of both the desirability of inclusion of provisions in the proposed protocol on this issue and the possible contents thereof.

84. Several delegations and observers from non-governmental organizations stressed that it would be premature to establish international standards on such a highly technical issue; it was sufficient to leave this to Article 9(2) of the Berne Convention, at least for the time being.

85. Some delegations and observers from non-governmental organizations were of the view that free decompilation under certain conditions was justified under Article 9(2) of the Berne Convention and that it would be useful to clarify this in a possible protocol. One delegation suggested that the limitations on this free use be clarified as regards computer programs. Views differed, however, to a large extent concerning the desirable scope and conditions of free decompilation. One delegation stressed that under Article 9(2) of the Berne Convention, free decompilation should be allowed in all cases without restriction. Another delegation and some observers from non-governmental organizations were in favor of more liberal conditions than the ones proposed in the memorandum. Still other delegations and an observer from a non-governmental organization expressed agreement with the essence of the provisions proposed in paragraph 38(c) of the memorandum. Finally, certain delegations and observers from non-governmental organizations were in favor of more strict conditions if free decompilation were to be allowed.

86. Some delegations and observers from non-governmental organizations suggested that, if provisions were included in a possible protocol concerning free decompilation, as well as any other aspects of the protection of computer programs, the proposed provisions should be as much in harmony with the directive of the European Communities as possible, so that the provisions would be acceptable to the member States of the said Communities.

87. An observer from a non-governmental organization expressed the view that both the directive of the European Communities and the provisions proposed in the memorandum concerning free decompilation of computer programs were incompatible with Article 9(2) of the Berne Convention. One delegation and some observers from non-governmental organizations said that there could be at least doubts about the compatibility of free decompilation with the said provision of the Convention.

88. The Chairman summarized the discussion and stated that, because of the widely differing

opinions, no conclusions could be drawn at the present stage, so that matters relating to the protection of computer software were postponed for possible later consideration by this Committee. There seemed to be no obstacle for the International Bureau to continue the work and, if it was found appropriate, to submit a revised working document on computer programs to a later session of the Committee.

Data Bases

89. Several delegations and observers representing non-governmental organizations expressed their support for the proposals contained in paragraphs 40 and 44 in the memorandum; some of those delegations particularly underlined the appropriateness of using the term "data base" not only for collections of data stored electronically but also for collections existing in other forms. Two delegations said that it might also be useful to explore the feasibility of a right more limited than an exclusive right for at least some types of data bases.

90. One delegation, while expressing its support for the proposals in the memorandum, said that if a compilation contained works it would be covered by Article 2(5) of the Berne Convention and if it contained mere data it would be covered by Article 2(1). Another delegation expressed its preference for a solution along the lines of Article 2(1) so as to make it clear that the notion of literary and artistic works already covered data bases.

91. One delegation said that there existed presently no clear international obligation for the protection for data bases but that such protection was necessary; in paragraph 44(a) one should consider replacing the notion "unprotected material" by "material other than literary and artistic works." This was supported by an observer representing a non-governmental organization. That observer also stressed that the criterion of originality for data bases should be the same as for other types of works.

92. One delegation said that it considered it premature to deal with data bases in the context of the possible protocol.

93. Another delegation expressed its agreement with the statement in paragraph 40 in the memorandum that data bases should enjoy protection regardless of the medium in which they were stored and said that language should be used which implied a confirmation that the Berne Convention already offered protection for data bases. In particular, it was important to avoid the possible negative implications of the words "in the same way as," contained in paragraph 44(a), which may suggest that data bases were not yet protected as other works. Also, some other delegations said that the provision should be drafted so as to make it clear that it only confirmed protection already existing under the Berne Convention. This view was supported by some observers representing non-governmental organizations, while another delegation said that it was not obvious that protection was already ensured under the Berne Convention.

94. One delegation stated that the national law of its country contained specific provisions providing for protection outside copyright law of such large collections of data which did not reach the level of originality. The delegation suggested that this solution be studied as a type of "safety net" for the protection of certain data bases which, while not original, did nevertheless represent a considerable amount of effort and investment. This view was supported by some observers representing non-governmental organizations. An observer representing another non-governmental organization said that he objected to the creation of such a second-tier protection.

95. The Chairman concluded as a result of the discussion that the question of protection of data bases should be dealt with in the context of the proposed protocol, and also said that, in view of some of the statements made, it would be desirable that the future working document include a study of the possibility to protect also data bases which contained large amounts of data or information items but did not meet the criterion of originality, such as some catalogs of goods offered for sale.

Expert Systems and Other Artificial Intelligence Systems

96. Some delegations and an observer from a non-governmental organization stated their agreement with the analysis of the intellectual property status of expert systems, while other delegations stressed that further studies were needed before it could be determined whether the said analysis was really correct.

97. All the participants who took the floor on this issue agreed with the view expressed in paragraph 49 of the memorandum according to which a possible protocol should not contain provisions on expert systems or any other category of artificial intelligence systems.

98. Some delegations and an observer from a non-governmental organization found it desirable,

however, to devote further study to developments in the field of artificial intelligence and that this question, if needed, be revisited by WIPO in the future. Reference was made to the recent publication of the proceedings of the WIPO Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence held in Stanford in March 1991, as an appropriate basis for continuing study of this issue.

99. The Chairman summarized the discussion stating tbat tbere was agreement that the proposed protocol should not deal with artificial intelligence systems.

Computer-Produced Works

100. There was agreement among all those delegations which and all those observers from non-governmental organizations who took the floor on tbis chapter of the memorandum, that it would be premature to include provisions in a possible protocol on computer-produced works.

101. The Delegation of tbe United Kingdom explained the reasons and possible effects of the provisions in its country's Copyright, Designs and Patents Act 1988 on "computer-produced" works, and pointed out that those provisions seemed appropriate to offer a "safety net" for works in the case of which (for example, in the case of computerized satellite weather information) tbere was no human contribution or, at least, the existence of such a contribution was doubtful. The Delegation said that it might be appropriate to study the possibility of working out international arrangements along the lines of the United Kingdom solution, rather than to try to establish the category of "computer-produced" works. Another delegation expressed its agreement witb that idea.

102. Some other delegations and observers from non-governmental organizations expressed the view that "computer-generated" works as defined in the United Kingdom law, if existing at all, were very rare; at the same time, there seemed to be, somewhere between "computer-assisted" works—in the case of which computers were clearly mere tools used by identifiable authors—and "computer-generated" works, a category that by and large corresponded to what the memorandum called "computer-produced" works, and which, as paragraph 53 of the memorandum stated, was similar to the category of "collective works." Those participants agreed that this category should be further studied, but they did not agree whether as an independent category or within tbe more general category of "collective works."

103. Some delegations and observers from non-governmental organizations were of the view that, in the context of the Berne Convention, it was sufficient to consider the protection of "computer-assisted" works whose protection should correspond to the minima under the Convention; no protection should be extended under the Convention or in a protocol to it for productions without human contributions.

104. The Chairman summarized tbe discussion and stated the general agreement that it would be premature to deal with "computer-produced" works in a possible protocol.

Producers of Sound Recordings (Phonograms)

105. All tbe delegations which, and all the observers from non-governmental organizations who, took the floor on this chapter agreed that producers of sound recordings should enjoy strong intellectual property protection duly adapted to new technological developments. A great number of them stressed, however, that the strengthening of the protection of producers of sound recordings should not weaken the position of authors and should not endanger the delicate balance between the rights of neighboring rights beneficiaries. One delegation and a few observers from non-governmental organizations suggested that the interests of users of sound recordings also should be considered.

106. Views differed as to the questions in which way and in the framework of what kind of instrument the modernization of the protection of producers of sound recordings and the otber neighboring rights beneficiaries should take place.

107. Some delegations and observers from non-governmental organizations supported the idea that the proposed protocol should cover the question of the protection of producers of sound recordings. One delegation added that the recognition of sound recordings as works of authorship would have been more ideal, but the solution proposed in the memorandum was a reasonable compromise. That delegation and two other delegations as well as a few observers from non-governmental organizations expressed, however, reservations concerning the proposed recognition of certain rights, particularly the right of rental and public lending, the right of importation, the right of broadcasting and the right of communication to the public. One delegation suggested that the recognition of a reproduction right for sound recordings in the context of the Berne Convention would be an appropriate com-

promise between common law and continental traditions, but that neighboring rights would be best dealt with in the context of the Rome Convention.

108. Several delegations and observers emphasized that the low number of States party to the Rome Convention would not make it possible to offer an appropriate global regulation concerning rights in literary and artistic works, sound recordings and performances at the same time in respect of certain urgent questions raised by new technologies; a protocol to the Berne Convention which according to Article 20 of the Convention could also contain "other provisions not contrary to this Convention" seemed an appropriate instrument. If in the instrument there was a need for separate provisions on literary and artistic works and on the subject matter of neighboring rights, there was no obstacle to that, and two separate instruments could also be adopted for that purpose.

109. Some other delegations and observers from non-governmental organizations stressed that they were open concerning any legal solution to be chosen for the joint or parallel modernization of the international protection of copyright and neighboring rights; neighboring rights could be dealt with in a protocol to the Berne Convention that could be the same as the one dealing with literary works or a separate one or could be the subject of a revision, or a special agreement under Article 22, of the Rome Convention. As a possible solution, it was mentioned that the balance between various categories of rights owners could also be guaranteed by obliging countries party to the proposed protocol to protect neighboring rights according to the Rome and Phonograms Conventions with some improvements, however, in relation to those conventions. Some delegations suggested as a possible alternative inclusion of a chapter on neighboring rights in the WIPO Model Law on Copyright.

110. A great number of delegations and observers from non-governmental organizations insisted that modernization of the protection of producers of sound recordings should take place in the context of the Rome Convention and other appropriate instruments, either in the form of a revision or of a special agreement under Article 22 of the Convention, and that consequently sound recordings and those who produce them should not be covered by a possible protocol since they were not works within the meaning of the Berne Convention. They stressed that that solution was the only guarantee for maintaining the appropriate balance between the three categories of beneficiaries of the Rome Convention and for not endangering authors' rights by affording a disproportionately high level of protection involving certain competing rights as possible obstacles to the appropriate enjoyment and exercise of authors' exclusive rights. One delegation wondered whether the reasoning of paragraph 69 of the memorandum was in line with the spirit of the Berne Convention, and especially Article 5(1) thereof.

111. The Chairman noted that there was agreement in the Committee to the effect that the protection of the rights of phonogram producers should be strengthened. There were several ways to obtain that goal. He referred to the statements insisting that a distinction should be made between copyright and neighboring rights and that a balance should be maintained between the various rights. The International Bureau should look into the nature of the possible new instrument, particularly whether it should be limited to copyright or also include neighboring rights. The work should continue without waiting for years although it had to be recognized that the outcome of the GATT negotiations would have an impact on the efforts of the Committee. In its work, the International Bureau should take into account the interests of all three categories of neighboring rights and all matters which had been raised in the course of the discussion.

Next Session of the Committee

112. The Director General informed the participants that the next session of the Committee would take place from February 10 to 18, 1992, and that Part II of the memorandum prepared by the International Bureau (contained in document BCP/CE/I/3), as already distributed, would be the working document for that session.

V. Adoption of the Report and Closing of the Session

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

LIST OF PARTICIPANTS*

I. Members

Argentina: H. Reiondo; A.G. Trombetta; M.A. Emery; L.M. Rodriguez Miglio; D. Lipszyc; C.A. Villalba. **Australia**: C. Cres-

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

well. **Austria**: G. Auer; W. Dillenz. **Belgium**: M. Gedopt; J. Lemoine. **Brazil**: P. Tarrago; V. Santiago. **Canada**: H.P. Knopf; K.A. McGaskill; M. Labelle. **Chile**: P. Romero. **Colombia**: F. Zapata Lopez; J.F. Rubio Torres; R. Salazar. **Costa Rica**: J. Rhenan. **Czechoslovakia**: J. Karhanová; V. Popelková. **Denmark**: J. Norup-Nielsen. **Ecuador**: E.J. Lopez Merizalde; M. Guerrero. **Egypt**: N. Gabr. **Finland**: J. Liedes; H. Wager. **France**: P. Florenson; A. Kerever; P. Delacroix; N. Renaudin; P. Girard-Thuilier; M. Guerrini; L. Guenot. **Germany**: K. Kemper; K.J. Meyer; M. Fluegger. **Greece**: G. Koumantos. **Hungary**: G. Boytha. **India**: L. Puri; V.M. Kwatra. **Ireland**: T.M. McMahon. **Israel**: R. Walden. **Italy**: M. Fortini; P. Iannantuono; G.C. Aversa; M. Fabiani. **Japan**: H. Saito; T. Naito; M. Noriyuki; Y. Takagi; A. Yoshikawa. **Libya**: S. Shaheen; S. Almahdi. **Luxembourg**: F. Schlesser. **Madagascar**: P. Verdoux. **Mexico**: J.M. Morfín Patraca; J.M. Terán Contreras; J. Neri; J.R. Obón León; D. Jiménez Hernández. **Morocco**: A. Kandil. **Netherlands**: J. Meijer-Van der Aa; L.M.A. Verschuur-de Sonnaville. **Norway**: B.O. Hermansen; R. Nygaard; E. Ova; T. Nordvik. **Pakistan**: F. Abbas. **Peru**: R.A. Ugarteche Villacorta; R. Saif de Préperier; G.A. León y León Duran; G. Bracamonte. **Philippines**: D. Menez-Rosal. **Portugal**: P.J. Costa Cordeiro; A.Q. Ferreira. **Romania**: N. Vrînceanu; C. Moisescu; P. Ohan; D.E. Şova. **Senegal**: A.A. Dabo. **Spain**: E. de la Puente García; L. Martinez-Garnica. **Sweden**: S. Strömberg; M. Widebeck. **Switzerland**: C. Govoni; D. du Pasquier. **Turkey**: M. Onaner. **United Kingdom**: A. Sugden; J.P. Britton; R. Knights. **United States of America**: R. Oman; L. Flacks; K. Robb; D. Panethiere; T. Stern; J. Bliss; A. Marcus; M.T. Barry. **Uruguay**: C. Amorin. **Venezuela**: L. Molinos. **Yugoslavia**: O. Spasić. **Commission of the European Communities (CEC)**: J.-F. Verstrynge; B. Czarnota; L.M. Chaves Fonseca Ferrão; K. Mellor; A. Wilkinson; M. De Cock Buning.

II. Observer States

Algeria: S. Abada; H. Yahia-Cherif. **Burundi**: A. Negamiye. **China**: Gao Linghan; Sun Jianhong; Ying Ming. **Cuba**: F.R. Martinez Hinojosa. **Democratic People's Republic of Korea**: C. R. Pak. **Haiti**: S. Theard Mevs. **Indonesia**: K.P. Handriyo; E.D. Husin. **Panama**: O. Velasquez; L. Vallarino. **Paraguay**: M.E. Ojeda Cantero. **Saudi Arabia**: K. Beadie. **Soviet Union**: S. Rozina; R. Mukhamadiev.

III. Intergovernmental Organizations

United Nations Conference on Trade and Development (UNCTAD): C. Radhakishun. **United Nations Educational, Scientific and Cultural Organization (UNESCO)**: E. Guerassimov. **General Agreement on Tariffs and Trade (GATT)**: A. Otten; M. Geuze.

IV. Non-Governmental Organizations

Agency for the Protection of Programs (APP): D.H. Duthil. **Business Software Alliance (BSA)**: B.L. Smith. **Computer and Business Equipment Manufacturers Association (CBEMA)**: W.A. Maxwell; O. Smoot. **Computer and Communication Industry Association (CCIA)**: G. Gorman. **European Alliance of Press Agencies (EAPA)**: I. Diaz. **European Association of Manufacturers of Business Machines and Information Technology Industry (EUROBIT)**: M. Kindermann. **European Broadcasting Union (EBU)**: M. Burnett. **European Committee for Interoperable Systems (ECIS)**: A. Riviere; P. Wacker; J.R. Beery. **European Computing Services Association (ECSA)**: A. Bojanowsky; A. Neumeier. **European Tape Industry Council (ETIC)**: S.D. Greenstein. **European Writers' Congress (EWC)**: P. Liedes; G. Adams. **Information Industry Association (IIA)**: M.D. Goldberg. **Intellectual Property Owners (IPO)**: R.E. Myrick. **Inter-American Copyright Institute (IIDA)**: G.E. Larrea Richerand. **International Advertising Association (IAA)**: M. Ludwig. **International Alliance for Distribution by Cable (AID)**: P. Kokken. **International Association for the Protection of Industrial Property (AIPPI)**: G.W.G. Karnell; T. Mollet-Vieville. **International Association of Audio-Visual Writers and Directors (AIDAA)**: P.-H. Dumont. **International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM)**: A. Vacher-Desvernais. **International Chamber of Commerce (ICC)**: J.H. Kraus. **International Confederation of Societies of Authors and Composers (CISAC)**: J.-A. Ziegler; R. Abrahams; A. Delgado; T. Desurmont. **International Copyright Society (INTERGU)**: L. Baulch. **International Federation of Actors (FIA)**: R. Rembe; M. Crosby. **International Federation of Film Producers Associations (FIAPF)**: A. Chaubeau; N. Alterman. **International Federation of Library Associations and Institutions (IFLA)**: R.M. Shimmon. **International Federation of Musicians (FIM)**: Y. Burckhardt. **International Federation of Reproduction Rights Organisations (IFRRO)**: F. Melichar; T. Koskinen; O. Stokkmo. **International Federation of the Phonographic Industry (IFPI)**: I.D. Thomas; N. Garnett; M.K.H. Kains; G.C. Marriott; D. De Freitas; E. Thompson; J.C. Muller Chaves; N. Turkewitz. **International Group of Scientific, Technical and Medical Publishers (STM)**: P. Nijhoff Asser. **International Intellectual Property Alliance (IIPA)**: E.H. Smith. **International Literary and Artistic Association (ALAI)**: H. Cohen Jehoram. **International Organization of Journalists (IOJ)**: A. Angelov; M. Husseini. **International Publishers Association (IPA)**: J.A. Koutchoumow; C. Clark; J. Baumgarten; S. Wagner. **International Secretariat for Arts, Mass Media and Entertainment Trade Unions (ISETU)**: Y. Burckhardt; R. Rembe. **International Union of Architects (IUA)**: J.-F. Duret. **International Video Federation (IVF)**: D. Gervais. **Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI)**: A. Dietz; T.K. Dreier. **National Association of Broadcasters (NAB)**: B.F.P. Ivins. **Union of Industrial and Employers' Confederations of Europe (UNICE)**: F. Blakemore; R.G. Broadie.

V. Officers

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

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

A. Bogsch *(Director General)*; H. Olsson *(Director, Copyright and Public Information Department)*; M. Ficsor *(Director, Copyright Law Division)*; P. Masouyé *(Senior Legal Officer, Copyright Law Division)*; R. Owens *(Senior Legal Officer, Copyright Law Division)*.

Informal Working Group on Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties

(Zurich, October 10 and 11, 1991)

NOTE

The program of the World Intellectual Property Organization (WIPO) for the 1990–91 biennium provides, in the section devoted to the exploration of intellectual property questions in possible need of norm setting, for the study by the International Bureau of the possibilities for establishing a mechanism to provide services for the resolution of disputes between private parties concerning intellectual property rights. This activity will continue in the present biennium (1992–93).

On October 10 and 11, 1991, the International Bureau convened an informal working group in Zurich to consider and to provide advice on the question of the possible provision by WIPO of services for the extrajudicial resolution of disputes between private parties in the field of intellectual property.

The informal working group comprised nine experts from Australia, Brazil, Germany, Hungary, India, Japan, Sweden, Switzerland and the United States of America. In addition, representatives of three international non–governmental organizations attended in an observer capacity. The list of participants is set out hereafter.

The meeting was presided over by the Director General, Dr. Arpad Bogsch.

The meeting considered two documents. The first was a study commissioned by the International Bureau from Mr. Tom Arnold, attorney (Arnold, White & Durkee, Houston, Texas), describing developments in extrajudicial dispute resolution in the United States of America. The study prepared by Mr. Arnold and his colleagues, entitled "Alternative Dispute Resolution—Patent Disputes—A Summary of Practices and Development in the United States of America," is available as document WIPO/ADR/91/1. The second document, entitled "Observations on a Possible Role for WIPO" (document WIPO/ADR/91/2), was prepared by the International Bureau.

The deliberations of the informal working group addressed three main questions:

(i) Is there a need for the institutional provision of specialized, extrajudicial services for the resolution of disputes in the field of intellectual property?

(ii) If such a need exists, is WIPO an appropriate organization to fulfill that need?

(iii) If WIPO were to provide extrajudicial dispute–resolution services, what is the nature of the services that should be established and what particular issues require attention in the establishment and provision of those services?

The next activity in this area will be a meeting of non–governmental organizations on the question of extrajudicial resolution of disputes between private parties in the field of intellectual property, which will be convened in Geneva, at the headquarters of WIPO, from May 25 to 27, 1992.

LIST OF PARTICIPANTS*

I. Experts

P. Anand, India; T. Arnold, United States of America; J.A. Faria Correa, Brazil; K. Horeczky, Hungary; Z. Kitagawa, Japan; F. Kretschmer, Germany; D.C. Maday, Switzerland; U.K. Nordenson, Sweden; L. Street, Australia.

II. Observers

International Association for the Protection of Industrial Property (AIPPI): J. Pagenberg. **International Federation of Industrial Property Attorneys (FICPI):** A. Briner. **Licensing Executives Society (International) (LES):** D.H. O'Connor.

III. International Bureau of WIPO

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

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

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

Africa

Regional Meetings

Joint Meeting of African Ministers of Planning, UNDP Resident Representatives and Representatives of the Agencies of the United Nations Common System in Africa (Namibia). The aim of this continent-wide ministerial meeting, which took place in Windhoek from November 25 to 28, 1991, and was attended by two WIPO officials, was essentially to review the allocation of financial resources worked out by the United Nations Development Programme (UNDP) in favor of Africa. The meeting reviewed the orientation of action envisaged in the UNDP fifth (1992–96) cycle of country and intercountry projects.

Seminars

Seminar on Intellectual Property for Magistrates of French-Speaking African Countries. A seminar on intellectual property, organized by WIPO in cooperation with the National Institute of Industrial Property (INPI) of France and with the assistance of UNDP was held in Geneva from November 13 to 15, 1991, and in Paris from November 18 to 22, 1991, for magistrates from some French-speaking African countries. The aim of the seminar was to increase awareness among magistrates with judiciary responsibilities notably in intellectual property. Seven participants, one from each of the following member countries of the African Intellectual Property Organization (OAPI), attended: Burkina Faso, Central African Republic, Chad, Guinea, Mali, Mauritania, Niger. Papers were presented by six WIPO consultants from France and OAPI and by three WIPO officials.

Assistance With Legislation and Modernization of Administration

Namibia. In November 1991, two WIPO officials visited Windhoek and held discussions with government officials on the subject of WIPO assistance to Namibia in the field of legislation, training and equipment for the Registry of Companies, Trade Marks, Patents, Designs and Copyright.

United Republic of Tanzania. In November 1991, a WIPO official visited Dar es-Salaam and had discussions with government officials on WIPO cooperation with the United Republic of Tanzania, with special emphasis on patent law questions, the holding of a national seminar or workshop on intellectual property, the teaching of industrial property at university, intellectual property licensing and the promotion of inventive and innovative activities through the industrial property system.

Asia and the Pacific

Seminars, Training Courses and Workshops

WIPO Asian Regional Seminar on Intellectual Property and Licensing for Industry (Singapore). A seminar on the above subject was organized in Singapore from November 11 to 13, 1991, in cooperation with the Singapore Institute of Standards and Industrial Research (SISIR) and with the assistance of UNDP. The aim of the seminar was to increase awareness, on the part of government authorities and private enterprise, of the use of intellectual property and licensing for industry. The seminar was attended by 14 government officials and representatives of the private sector from seven countries of Asia and the Pacific, namely the Democratic People's Republic of Korea, India, Indonesia, Malaysia, the Philippines, the Republic of Korea and Sri Lanka, and 40 local participants from government departments and private enterprise. Papers were presented by seven WIPO consultants from Australia, Japan, the Republic of Korea, Singapore and the United States of

America, by an expert from Singapore and by a WIPO official.

National Seminar on the Copyright and Neighboring Rights Questions of Broadcasting and Sound Recordings (Beijing). From November 25 to 29, 1991, a national seminar on the above subject was jointly organized by WIPO, the National Copyright Administration of China and the Ministry of Radio, Film and Television in Beijing. The aim of the seminar was to review, following the entry into force on June 1, 1991, of the Copyright Law of China, the copyright and neighboring rights questions of broadcasting and sound recording, the implementation of the new Copyright Law and the possible accession of China to the Berne Convention. One hundred and eighty participants attended the seminar. Papers were presented by four WIPO consultants from Argentina, France, Japan and the United States of America, and also by four Chinese experts who were government officials or university professors.

Assistance With Legislation and Modernization of Administration

China. The Director General and three WIPO officials visited Beijing from November 27 to 30, 1991. The Director General was received by Chinese leaders and also held discussions with senior officials of the National Copyright Administration of China on future cooperation between WIPO and China and on the planned accession of China to the Berne Convention in 1992.

Intellectual Property Situation in Hong Kong. Following his visit to China, the Director General paid a visit to Hong Kong on November 30, 1991, and had discussions with government officials there. The Director General also visited the Intellectual Property Department of Hong Kong.

Latin America

Assistance With Legislation and Modernization of Administration

Cuba. In November 1991, the Director General of the Centro Nacional de Derecho de Autor (CENDA) visited WIPO to discuss a new copyright law and the possible accession of Cuba to the Berne Convention.

Development Cooperation (in General)

Meeting of the Smaller Agencies of the United Nations Common System. On November 8, 1991, WIPO hosted a meeting of the smaller agencies of the United Nations common system, which reviewed recent developments in UNDP, the national execution of UNDP-financed development cooperation projects and the UNDP financial mechanism for the reimbursement of support costs to smaller agencies acting as executing agencies of UNDP-financed projects.

WIPO/ARTISJUS Training Course on Copyright and Neighboring Rights (Budapest, November 11 to 22, 1991). This training course, organized by WIPO in cooperation with the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), was attended by 22 trainees from Benin, Burkina Faso, China (two participants), Colombia, Egypt, Ghana, Guinea, India, Indonesia, Jamaica, Mali, Morocco, Nepal, Nigeria, the Philippines, the Republic of Korea, Romania, Saudi Arabia, Senegal, Sri Lanka and Thailand.

In addition to those given by officials of ARTISJUS and Hungary, and by 11 WIPO consultants from Austria, Belgium, Finland, France, Italy, Nigeria, Senegal, Switzerland and the United Kingdom, lectures were given by four WIPO officials.

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

Symposia, Seminars and Other Meetings

Copyright Seminar for Central and Eastern European Countries (Washington, D.C., November 18 to 22, 1991). This seminar, organized by the United States Copyright Office, was attended by 17 participants from Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and the Soviet Union, by a number of officials from the United States Copyright Office and the United States Department of State and by representatives of private organizations and companies of the United States of America. A WIPO official gave a keynote speech on the most important aspects of collective administration and contractual systems in copyright matters, with special reference to the situation in Central and Eastern European countries.

Assistance With Legislation and Modernization of Administration

Albania. From November 22 to 25, 1991, a WIPO official and a WIPO consultant from Switzerland had discussions in Tirana with government leaders and officials of Albania on the preparation of a new copyright law on the basis of a draft prepared by WIPO and handed over to the Minister of Culture, Youth and Sports of Albania on the occasion of his visit to WIPO in September 1991, and on the advantages for Albania of accession to the Berne Convention. Discussions were also held concerning the training of Albanian officials in copyright matters and concerning the setting up of an organization for the collective administration of authors' rights.

Latvia. In November 1991, a draft copyright law was prepared by WIPO and sent to the Government of Latvia at the latter's request.

Poland. In November 1991, at the request of the national authorities, WIPO prepared a note on the compatibility of the draft Polish copyright law with the Berne Convention.

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

United Nations

United Nations. Administrative Committee on Coordination (ACC) (New York, October 24 and 25, 1991). The Director General and a WIPO official participated in the work of the ACC, composed of the executive heads of all the organizations and programs of the United Nations system, under the chairmanship of the Secretary-General of the United Nations.

Meeting Between the United Nations and the Organization of the Islamic Conference (Geneva). From November 19 to 22, 1991, a meeting was held on cooperation between the United Nations system and the Organization of the Islamic Conference, which was attended by a WIPO official.

United Nations Conference on Trade and Development (UNCTAD). From November 16 to 23, 1991, a WIPO official attended the seventh UNCTAD Ministerial Meeting of the Group of 77 hosted by the Government of the Islamic Republic of Iran, in Teheran.

Intergovernmental

General Agreement on Tariffs and Trade (GATT). Two WIPO officials attended, as observers, a number of meetings held in Geneva from November 25 to 29, 1991, by the Negotiating Group on the Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Regional

European Economic Community. On November 21, 1991, a WIPO official participated in a hearing organized by the Commission of the European Communities on the subject of the *droit de suite* in Brussels.

Miscellaneous News

National News

Honduras. The Law on Intellectual Rights of Producers of Phonograms (Decree No. 131–91), of October 31, 1991, entered into force on the date of its publication in the official journal *La Gaceta* (November 13, 1991).

Romania. A draft law on copyright is currently under consideration as part of the legislation to bring about the transition to a market economy.

Selected WIPO Publications

The following new publications* were issued by WIPO between July 1 and September 30, 1991:

Directory of Associations of Inventors, 1991 edition, No. 622(EF), free.

Guide on Associations of Inventors, 1991 edition, No. 632(AE), 10 Swiss francs.

Guidelines for the Definition of Plans to Automate Trademark and Patent Operations in Industrial Property Offices of Africa, No. 692(EF), 15 Swiss francs.

Guidelines for the Definition of Plans to Automate Trademark and Patent Operations in Industrial Property Offices of Latin America and the Caribbean, No. 683(E), 15 Swiss francs.

Madrid Union Centenary 1891–1991, No. 880(EF), 50 Swiss francs.

Symposium on Industrial Designs, Amboise (France), 1990, No. 694(EF), 25 Swiss francs.

WIPO Asian Regional Seminar on the Use of Industrial Property and Technology Transfer Arrangements in the Agrochemical Industry, Sydney, 1990, No. 691(E), 25 Swiss francs.

WIPO Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence, Stanford, 1991, No. 698(E), 30 Swiss francs.

---

* WIPO publications may be obtained from the Publications Sales and Distribution Unit, WIPO, 34, chemin des Colombettes, CH–1211 Geneva 20, Switzerland (telex: 412 912 OMPI CH; fax: (41–22) 733 5428; telephone: (41–22) 730 9111).

Orders should indicate: (a) the number or letter code of the publication desired, the language (A for Arabic, E for English, F for French, S for Spanish), the number of copies; (b) the full address for mailing; (c) the mail mode (surface or air). Prices cover surface mail.

Bank transfers should be made to WIPO account No. 487080–81, at the Swiss Credit Bank, 1211 Geneva 20, Switzerland.

Calendar of Meetings

WIPO Meetings

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

1992

March 30 to April 3 (Geneva)

WIPO–IFIA Symposium on "Support to Inventors"

This symposium, which is the fifth symposium organized jointly by WIPO and the International Federation of Inventors' Associations (IFIA) since 1984 on questions of topical interest to inventors, will examine the assistance and services offered to inventors (both individual and corporate) by industrial property offices, innovation centers and universities.
Invitations: States members of WIPO, inventors' associations and certain organizations (R&D institutions, innovation centers). The symposium will be open to the public.

April 27 to 30 (Geneva)

Committee of Experts on the Development of the Hague Agreement (Second Session)

The Committee will continue to consider possibilities for revising the Hague Agreement Concerning the International Deposit of Industrial Designs, or adding to it a protocol, in order to introduce in the Hague system provisions intended to encourage States not yet party to the Hague Agreement to adhere to it and to make it easier for applicants to use the system.
Invitations: States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

May 25 to 27 (Geneva)

Meeting of Non-Governmental Organizations on Arbitration and Other Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties

The meeting will consider the desirability of establishing within WIPO a mechanism to provide services for the resolution of disputes between private parties concerning intellectual property rights, as well as the type of services that might be provided under such a mechanism.
Invitations: International non-governmental organizations having observer status with WIPO.

June 1 to 5 (Geneva)

Committee of Experts on the Harmonization of Laws for the Protection of Marks (Third Session)

The Committee will continue to examine a draft trademark law treaty, with particular emphasis on the harmonization of formalities with respect to trademark registration procedures.
Invitations: States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

June 15 to 19 (Geneva)

Committee of Experts on a Model Law on the Protection of the Intellectual Property Rights of Producers of Sound Recordings

The Committee will consider a draft Model Law dealing with the protection of the rights of producers of sound recordings, which could be used by legislators at the national or regional level.
Invitations: States members of the Berne Union or WIPO, or party to the Rome Convention or the Phonograms Convention, and, as observers, certain organizations.

September 21 to 29 (Geneva)

Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Third Series of Meetings)

Some of the Governing Bodies will meet in ordinary session, others in extraordinary session.
Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.

October 12 to 16 (Geneva)

Working Group on the Application of the Madrid Protocol of 1989 (Fifth Session)

The Working Group will continue to review joint Regulations for the implementation of the Madrid Agreement Concerning the International Registration of Marks and of the Madrid Protocol, as well as draft forms to be established under those Regulations.
Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non–governmental organizations.

November 2 to 6 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Tenth Session)

The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1991) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

November 9 to 13 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fifteenth Session)

The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (July 1991) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

November 30 to December 4 (Geneva)
N.B. New dates

Committee of Experts on a Possible Protocol to the Berne Convention (Third Session)

The Committee will continue to examine the question of the preparation of a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union, the Commission of the European Communities and, as observers, States members of WIPO not members of the Berne Union and certain organizations.

UPOV Meetings

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

1992

April 8 and 9 (Geneva)

Administrative and Legal Committee

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

October 26 and 27 (Geneva)

Administrative and Legal Committee

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

October 28 (Geneva)

Consultative Committee (Forty–Fifth Session)

Invitations: Member States of UPOV.

October 29 (Geneva)

Council (Twenty–Sixth Ordinary Session)

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

October 30 (Geneva)

Meeting with International Organizations

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

Other Meetings

1992

March 16 to 20 (Innsbruck-Igls)	International Federation of Industrial Property Attorneys (FICPI): Executive Committee
April 8 to 11 (St. Helena, California)	International Wine Lawyers Association (IWLA): 1992 Conference
May 11 to 15 (Marrakesh)	International Chamber of Commerce (ICC): Conference on "Development Dimensions in the '90s"
October 7 to 10 (Amsterdam)	International League of Competition Law (LIDC): Congress
October 18 to 24 (Maastricht/Liège)	International Confederation of Societies of Authors and Composers (CISAC): Congress
November 15 to 21 (Buenos Aires)	International Federation of Industrial Property Attorneys (FICPI): Executive Committee

1993

June 26 to July 1 (Berlin)	Licensing Executives Society (International) (LES): Annual Meeting

1994

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