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WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS (BERNE UNION)

ASSEMBLY

Fifteenth Session (4th Extraordinary) Geneva, April 28 and 29, 1994

REPORT

adopted by the Assembly

I. Introduction

1. The authority for the convocation of this Fifteenth Session (4th Extraordinary) of the Assembly of the International Union for the Protection of Literary and Artistic Works (Berne Union) (hereinafter referred to as "the Assembly") is constituted by a decision of the Assembly, made in September 1993 (see document AB/XXIV/2, Item 01(3), and document AB/XXIV/18, paragraph 267). The convocation, by circular letters C.L 1109 and 1110, dated March 25, 1994, follows a request received from the Government of the United States of America, contained in a letter dated March 23, 1994, from Mr. Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, a copy of which was annexed to the above-mentioned circular letters. In that letter, the United States requested that the meetings of the Committee of Experts on a Possible Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, scheduled for June 6 to 17, 1994 (hereinafter referred to as "the June meetings") be reconsidered.

2. Representatives from the following 44 States (members of the Berne Union) attended the meeting: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Ireland, Italy, Japan, Kenya, Libya, Malta, Mexico, Morocco, Netherlands, Norway, Pakistan, Paraguay, Peru, Portugal, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States of America, Uruguay and Venezuela. Four observer States, Algeria, Indonesia, the Republic of Korea (not members of the Berne Union) and Turkey (member of the Berne Union, but not member of the Assembly), and one intergovernmental organization, the European Commission, also attended the meeting.

3. A list of participants is attached to this report.

II. Opening of the Session by the Director General

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

III. Election of a Chairman

5. As the Chairman and both Vice-Chairmen elected at the last session of the Assembly in September 1993 were not present, an ad hoc chairman had to be elected. Mr. Henry Olsson (Sweden) was unanimously elected ad hoc Chairman for the present Session of the Assembly.

IV. Examination of the request made by the Government of the United States of America

General statements

6. The only item on the agenda was the question of whether or not to maintain the dates of the sessions of the Committee of Experts on a Possible Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms (June 6 to 17, 1994), established by the Assembly during its September 1993 session (see document AB/XXIV/18, paragraphs 225-226 and 267).

7. The Delegation of Mexico, on behalf of a group of Latin American countries, raised a point of order. It noted and regretted that interpretation into and from the Spanish language had not been made available. The Delegation of Spain seconded this statement. The Director General explained that, as this extraordinary session had to be convened precipitously, there had not been sufficient time to make the necessary arrangements. After a brief suspension of the meeting requested by the Delegation of Mexico, interpretation from Spanish into English and French was immediately made available, and, as from the beginning of the afternoon meeting of the first day, interpretation into Spanish was also made available.

8. The Delegation of Egypt stated that interpretation into Arabic was important for Arab delegations, notably for note-taking and the subsequent preparation of their internal report.

9. The Chairman then opened the discussion on the only agenda item.

10. The Delegation of the United States of America first wished to reiterate its strong support of WIPO and underlined the importance of its work in the field of copyright and neighboring rights. The objective of the request for a postponement was also to ensure that WIPO's contribution would be maximized. The countries here have just concluded seven years of negotiations on intellectual property in the Uruguay Round. In the last few weeks of those negotiations, some difficult and divisive issues in the field of copyright and neighboring rights had arisen. Therefore, additional time was required, first, to assess the direction and content of future work at the international level and, second, to look carefully at how the difficult outstanding issues could be addressed. The United States Government had clearly opted for international cooperation in the field of intellectual property, to build bridges between the copyright and authors' rights systems. To this aim, steps had been taken to introduce concepts previously unheard of in the legislation of its country, such as a royalty on digital audio recording devices and media and a proposed digital performance right in respect of sound recordings. Moreover, the United States was currently examining the intellectual property implications of the setting up of its National Information Infrastructure (NII), also referred to as the "electronic superhighway." Similar studies in other countries were also underway. A draft report by the United States Government was to be published in May or June 1994, outlining possible problem areas and the current thinking concerning possible solutions. While it seemed that a complete revision of existing rights would not be required, certain rights, e.g., the rights of distribution and public performance, would in all likelihood have to be reexamined. In conclusion, the Delegation suggested that the memoranda prepared by the International Bureau for the June meetings be circulated as discussion papers, together with a request for comments. Revised memoranda, or an addendum thereto, could then be prepared by the International Bureau, and new meeting dates set for the end of the current calendar year.

11. The Delegation of the United Kingdom preferred to go ahead as planned with the June meetings. In its country and in other member States of the European Union, there was a willingness, notably on the part of interested circles, to continue to examine the substantive issues currently on the agenda of both committees of experts. While the Delegation would understand if the meetings were postponed in order to give participants in both committees more time to examine and discuss the proposals of the International Bureau, any such postponement would have to be for a short period to avoid any loss of momentum. A long postponement would be counter-productive and incite some participants to set aside the discussion rather than speed it up. In its opinion, the meetings should in any event take place before the end of the calendar year 1994. As regards the suggestion by the Delegation of the United States concerning the circulation of the draft memoranda of the International Bureau prepared for the June meetings, it was interesting, but its acceptance should not lead to any delay in the issuance of such documents.

12. The Delegation of Brazil considered the work of both committees of experts very valid and helpful, notably in the preparation of new legislation in its country. It considered that the three points contained in the above-mentioned letter of the Government of the United States of America did not justify the reconsideration of the dates of the meetings. In relation to the first point, because it would be more appropriate to consider the intellectual property aspects of new technologies in a multilateral instance, before the consolidation of national positions. In relation to the second point, because it was not possible to avoid the fundamentally distinct legal basis of the rights of authors and the neighboring rights. Finally, the

conclusion of the Uruguay Round, and in particular of the TRIPS Agreement, was not a reason to delay the work of WIPO; in fact, those negotiations were mentioned on several occasions as a reason to delay work in the past. It had, therefore, a strong preference for the maintenance of the agreed dates, but it was encouraged to see that the Delegation of the United States of America had suggested that the meetings could take place before the end of the year, and had not suggested their indefinite postponement, as the above-mentioned letter seemed to imply. In relation to the documentation, it supported its circulation at the earliest possible time. It also considered that it would be inappropriate for the International Bureau to issue new documents incorporating amendments made on the basis of written observations by member States.

13. The Delegation of Egypt was not in favor of postponing the June 1994 meetings. In its view, draft domestic legislation was not a sufficient reason to interfere with prior obligations accepted by a State.

14. The Delegation of Belgium indicated that it did not support the proposal of the United States of America. The fact that one country was assessing domestically the impact of new technologies on intellectual property protection should not be invoked to delay the work carried out by 80 other countries. As regards the TRIPS Agreement, its foreseeable contents had been known for a long time. The Delegation thus wished that the memoranda prepared for the June meetings be distributed and that the committees of experts be convened as quickly as possible.

15. The Chairman summarized the discussion up to this point and made reference to the request of the United States of America and the flexibility shown by other delegations. If an appropriate timetable could be agreed upon, perhaps a solution acceptable to all Assembly members could be found.

Detailed discussion

16. After informal consultations, comments were made with respect to, on the one hand, the requested postponement and, on the other, the preparation and distribution of the working documents for the future meetings of both committees of experts.

- Postponement

17. All delegations that took the floor on this point and the observer from the European Commission stressed the great importance of WIPO's role and recognized expertise in the field of norm-setting, notably in respect of copyright and related rights. This unique role should continue and even be enhanced, both to fill lacunae of the TRIPS Agreement and to take account of recent technological developments. Three delegations also underlined the urgent need for updated international standards in the field of copyright and neighboring rights, and the importance of establishing such new norms at the multilateral level. Many delegations and the observer from the European Commission also reaffirmed their commitment to continue to work constructively and positively within the WIPO framework and in particular the two committees of experts.

18. A great number of delegations and the observer from the European Commission stated that, while they would prefer maintaining the dates as originally scheduled for the June meetings, they understood the reasons for a relatively short postponement; those reasons included giving all participants adequate time to study the memoranda prepared by the International Bureau and for consultations with interested circles and among groups of countries with certain common interests; this would also ensure that the work would go ahead on a consensus basis.

19. Other delegations found that the reasons given to seek the postponement were not valid; however, to allow the work of the two committees to continue in a constructive spirit of cooperation, they could accept the proposal to postpone the meetings until the end of 1994.

20. A delegation said that there was no need to wait even more to study the problems arising out of the application of new technologies, including digital information networks. In fact, it was better to examine such questions before problems were definitively settled at the national level. In contemplating solutions to these problems, the clear distinction between copyright and neighboring rights should be made. The delegation wanted that the dates as originally scheduled for the future meeting be maintained.

21. As regards the timing of a possible postponement, several delegations that could agree to a limited deferment insisted that the postponement should not go beyond the end of 1994. One delegation stated that it would prefer having more time to reflect, but could nonetheless accept this deadline. Another delegation expressed the opinion that the meetings should be postponed until next spring, so as to give all participants more time to carefully study all the issues involved. Successful discussions were more important than maintaining strict timetables.

- Documents

22. A great number of delegations and the observer from the European Commission wished that the memoranda prepared for the June meetings be distributed as soon as possible. Several delegations expressed the view that such documents should be published in a provisional form. Many delegations added that the International Bureau should offer member States of the two committees of experts and the European Commission the possibility to comment on the provisional documents, until September 15, 1994. A delegation, speaking on behalf of a group of Latin American countries, proposed that the documents be distributed as soon as possible, and the question whether the comments made by governments should be annexed to the documents or incorporated in a revised version of those documents should be discussed at the next session of the Assembly in September 1994. Comments should be distributed according to established WIPO practices.

23. Some delegations also stated that the International Bureau should have the discretion to revise the provisional memoranda, if warranted by the comments received. A delegation, speaking on behalf of a group of industrialized countries having certain common interests, added that this would be the case if a significant number of countries made similar comments or proposals. Other delegations believed that comments received should only be annexed to the memoranda and reiterated that, in any event, full transparency should be maintained in the process.

24. A delegation, speaking on behalf of a group of Latin American countries, requested that the International Bureau prepare an analysis of the TRIPS Agreement and its implications for the WIPO-administered conventions. It added that it did not insist that a decision be taken about that request at this extraordinary session of the Assembly.

Conclusions

25. After a pause for further informal consultations, the following decisions were unanimously made:

(i) by May 10, 1994, two memoranda prepared by the International Bureau on the basis of the two committees' discussions of June and November 1993, respectively, should, together with an invitation for comments, be sent as provisional drafts, to the governments of the countries member of the Berne Union and the European Commission; the said invitation should state that comments should reach the International Bureau by September 1, 1994;

(ii) the International Bureau should make available to the extraordinary session of the Assembly of the Berne Union (September 26 to October 4, 1994) the texts of all comments received;

(iii) in the light of those comments, the Assembly should decide whether the comments should be taken into account in preparing the definitive version of the two memoranda or to decide that the provisional drafts should, without any change, be issued as definitive public documents, the comments being simply attached to them;

(iv) the documents referred to in the preceding paragraph should be mailed by the International Bureau to all entities invited to the committees (governments, intergovernmental and non-governmental organizations) by November 1, 1994;

(v) the two committees should be convened and meet on the following dates: the Committee of Experts on a Possible Protocol to the Berne Convention, from December 5 to 9, 1994, and the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, from December 12 to 16, 1994, both at the headquarters of WIPO.

V. Adoption of the Report and Closing of the Session

26. The Assembly unanimously adopted this report. Then, after the usual statements of thanks, the Chairman declared the session closed.

[Annex follows]

ANNEXE/ANNEX

LISTE PROVISOIRE DES PARTICIPANTS
PROVISIONAL LIST OF PARTICIPANTS

I. ETATS MEMBRES/STATES MEMBERS

(dans l'ordre alphabétique des noms français des Etats/
in the alphabetical order of the names in French of the States)

ALLEMAGNE/GERMANY

Jürgen SCHMID-DWERTMANN, Deputy Director General, Federal Ministry of Justice,
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ARGENTINE/ARGENTINA

María Cristina TOSONOTTI (Srta.), Segundo Secretario, Misión Permanente,
Ginebra

AUSTRALIE/AUSTRALIA

Frank Robert SCHONEVELD, Minister-Counsellor (Legal), Attorney-General's
Department, Australian Embassy, Brussels

AUTRICHE/AUSTRIA

Hugo Maria SCHALLY, Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Carine DOUTRELEPONT (Mme), conseiller, Ministère de la justice, Bruxelles

BRESIL/BRAZIL

Roberto JAGUARIBE, Counsellor, Permanent Mission, Geneva

Frederico ARRUDA, First Secretary, Permanent Mission, Geneva

CANADA

Madeleine T. BETTS (Mrs.), Senior Analyst, Intellectual Property, Mission of Canada to the European Union, Brussels

Allen Zangwil HERTZ, Senior Policy Analyst Intellectual Property (EEI), Department of Foreign Affairs, Ottawa

Patricia SMITH (Ms.), Senior Policy Analyst, Copyright Department of Canadian Heritage, Ottawa

Anne McCASKILL (Ms.), Counsellor, Permanent Mission, Geneva

CHILI/CHILE

Alejandro ROGERS, Primer Secretario, Misión Permanente, Ginebra

CHINE/CHINA

YU Pingan (Ms.), Deputy Chief of International Division, National Copyright Administration of China (NCAC), Beijing

GU Keping (Mrs.), Counsellor, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Fernando ZAPATA LOPEZ, Director General, Unidad Administrativa Especial, Dirección Nacional del Derecho de Autor, Santa Fe de Bogotá

Juan Carlos ESPINOSA, Primer Secretario, Misión Permanente, Ginebra

COSTA RICA

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DANEMARK/DENMARK

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EGYPTE/EGYPT

Hisham SHUAER, Second Secretary, Permanent Mission, Geneva

EQUATEUR/ECUADOR

Martha PARRA (Srta.), Segundo Secretario, Misión Permanente, Ginebra

ESPAGNE/SPAIN

Teresa PEREA, Jefe, Sección de Estudios Jurídicos, Ministerio de Cultura,
Subdirección General de la Propiedad Intelectual, Madrid

ETATS-UNIS D'AMERIQUE/UNITED STATES OF AMERICA

Representative

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Alternative Representatives

Michael KEPLINGER, Senior Attorney Adviser, Office of Legislation and
International Affairs, Patent and Trademark Office, United States Department
of Commerce, Washington, D.C.

Howard H. LANGE, Director, Office of Intellectual Property and Competition,
Bureau of Economic and Business Affairs, Department of State, Washington, D.C.

Marybeth PETERS (Mrs.), Policy Planning Adviser to the Register of Copyrights,
Copyright Office, Library of Congress, Washington, D.C.

Advisers

Michael T. BARRY, First Secretary, Permanent Mission, Geneva

FINLANDE/FINLAND

Jukka LIEDES, Special Government Adviser, Ministry of Education, Helsinki

FRANCE

Hélène DE MONTLUC (Mme), chef, Bureau de la propriété littéraire et
artistique, Ministère de la culture et de la francophonie, Paris

Frédérique GENTON, chargée de mission, Ministère de la culture et de la
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Joëlle ROGE (Mme), conseiller juridique, Mission permanente, Genève

GABON

Venance MBINGT-ABDOULAYE, premier conseiller, Mission permanente, Genève

GHANA

Yao EKAR, Counsellor, Permanent Mission, Geneva

GRECE/GREECE

Antonios YGONTZAS, Senior Legal Adviser of the Minister, Prime Minister Office, Greek Parliament, Athens

Christina TSALAMATA (Miss), Legal Adviser of the Minister, Prime Minister Office, Greek Parliament, Athens

HONGRIE/HUNGARY

Gábor FALUDI, Legal Director, Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS), Budapest

IRLANDE/IRELAND

Vincent OREILLY, Head, Intellectual Property Unit, Department of Enterprise and Employment, Dublin

ITALIE/ITALY

Antonio BENARDINI, First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Masato KITANI, Director, International Copyright Office, Copyright Division, Agency for Cultural Affairs, Tokyo

Hitoshi WATANABE, First Secretary, Permanent Mission, Geneva

Hiroshi TAKAHASHI, First Secretary, Permanent Mission, Geneva

KENYA

Daniel D.C. DON NANJIRA, Ambassador, Permanent Representative, Permanent Mission, Geneva

LIBYE/LIBYA

Mohamed EL-FAKIH SALEH, Second Secretary, Permanent Mission, Geneva

MALTE/MALTA

Martin VALENTINO, First Secretary, Chargé d'affaires a.i., Permanent Mission, Geneva

MAROC/MOROCCO

Fatima BAROUDI (Mlle), troisième secrétaire, Mission permanente, Genève

MEXIQUE/MEXICO

Dolores JIMENES HERNANDEZ (Sra.), Consejero, Misión Permanente, Ginebra

NORVEGE/NORWAY

Helge SÖNNELAND, Director General, Royal Norwegian Ministry of Cultural Affairs, Oslo

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Wouter Jan LOK, First Secretary, Permanent Mission, Geneva

PEROU/PERU

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REPUBLIQUE TCHEQUE/CZECH REPUBLIC

Richard WAGNER, conseiller, Mission permanente, Genève

ROYAUME-UNI/UNITED KINGDOM

Peter BRITTON, Head of Copyright Policy, Intellectual Property Policy Directorate, The Patent Office, London

SUEDE/SWEDEN

Henry OLSSON, Special Government Adviser, Ministry of Justice, Stockholm

SUISSE/SWITZERLAND

Carlo GOVONI, chef du service droit d'auteur, Office fédéral de la propriété intellectuelle, Berne

TUNISIE/TUNISIA

Fatima DABOUSSI (Mme), attaché près la Mission permanente, Genève

TURQUIE/TURKEY

Bayram KACAR, Deputy Counsellor, Permanent Mission, Geneva

URUGUAY

Carlos AMORIN, Consejero, Misión Permanente, Ginebra

VENEZUELA

Violeta FONSECA (Srta.), Segundo Secretario, Misión Permanente, Ginebra

II. ETATS OBSERVATEURS/OBSERVER STATES

ALGERIE/ALGERIA

Salah ABADA, directeur général, Office national du droit d'auteur, Ministère de la culture, Alger

INDONESIE/INDONESIA

Kusumo Priyo HANDRIYO, First Secretary, Permanent Mission, Geneva

Leonardo DOS REIS, Third Secretary, Permanent Mission, Geneva

REPUBLIQUE DE COREE/REPUBLIC OF KOREA

Yang Sup CHUNG, Intellectual Property Attaché, Permanent Mission, Geneva

III. ORGANISATION INTERGOUVERNEMENTALE/
INTERGOVERNMENTAL ORGANIZATION

COMMISSION EUROPEENNE (CE)/EUROPEAN COMMISSION (EC)

Paul VANDOREN, Head of Unit, Directorate-General XV E-4, Copyright and
Neighboring Rights, Brussels

Jonathan STOODLEY, Administrator, Directorate-General XV E-4, Internal Market
and Financial Services, Brussels

Keith MELLOR, administrateur principal, Secrétariat général, Conseil de
l'Union européenne, Bruxelles

IV. BUREAU/OFFICERS

Président ad hoc/ad hoc Chairman: Henry OLSSON (Suède/Sweden)

Secrétaire/Secretary: Mihály FICSOR (OMPI/WIPO)

V. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
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OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Arpad BOGSCH, directeur général/Director General

Mihály FICSOR, sous-directeur général/Assistant Director General
Jørgen BLOMQVIST, chef de la Section de l'information sur le droit
d'auteur/Head, Copyright Information Section

Daniel GERVAIS, chef de la Section des projets en matière de droit
d'auteur/Head, Copyright Projects Section

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