

Preparatory Committee of the Diplomatic Conference on the Protection of Audiovisual Performances

Geneva, November 30 and December 1, 2011

**DRAFT ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES FOR THE TREATY
TO BE CONSIDERED BY THE DIPLOMATIC CONFERENCE**

Prepared by the Secretariat

OBSERVATIONS OF THE INTERNATIONAL BUREAU

PRESENTATION OF THE DRAFT PROVISIONS

1. The proposed draft administrative provisions and final clauses are modeled on the corresponding provisions of the WPPT and the Singapore Treaty on the Law of Trademarks, as the most recent and relevant expression of the will of the Member States of WIPO with respect to international legal instruments. To facilitate reference and comparison, the Notes concerning each Article reproduce the corresponding provision of the WPPT or Singapore Treaty on the Law of Trademarks, as appropriate, in a clearly distinguishable box.

Draft

WIPO Audiovisual Performances Treaty

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Notes on Article 21

21.01 *Paragraph (1)(a) of Article 21* envisages separate Assemblies for the Contracting Parties to the proposed Treaty and for the Contracting Parties to the WPPT.

21.02 The provisions of *paragraphs (1)(b) and (c) of Article 21* mirror the corresponding provisions in the WPPT and strongly resemble the equivalent provisions in other treaties administered by WIPO.

Article 24 of the WPPT

Assembly

(1)(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

[continues]

Article 21

Assembly

- (1)(a) The Contracting Parties shall have an Assembly.
- (b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
- (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

[Article 21 continues]

[Notes on Article 21, continued]

21.03 *Paragraphs (2)(a) and (2)(b)* incorporate the corresponding provisions of the WPPT (Articles 24(2)(a) and 24(2)(b)).

Article 24 of the WPPT

[continued]

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

[continues]

[Article 21, continued]

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 23(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

[Article 21 continues]

[Notes on Article 21, continued]

21.04 *Paragraph (2)(c)* mirrors Article 25 of the Singapore Treaty on the Law of Trademarks with regards to the convocation of, amendment by, and revision by diplomatic conference.

Article 25 of the Singapore Treaty on the Law of Trademarks

Revision or Amendment

This Treaty may only be revised or amended by a diplomatic conference. The convocation of any diplomatic conference shall be decided by the Assembly.

[Article 21, continued]

(2)(c) This Treaty may only be revised or amended by a diplomatic conference. The convocation of any diplomatic conference shall be decided by the Assembly.

[Article 21 continues]

[Notes on Article 21, continued]

21.05 *Paragraphs (3) and (4)* mirror the corresponding provisions of the Singapore Treaty on the Law of Trademarks (Articles 23(6) & (7)) and harmonizes this instrument with the constitutional amendments that, once they enter into force, will provide for Assemblies to meet in ordinary session every year.

Article 23 of the Singapore Treaty on the Law of Trademarks

[continued]

(6) [*Sessions*] The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(7) [*Rules of Procedure*] The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

[continues]

[Article 21, continued]

(3) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(4) The Assembly shall establish its own rules of procedure, including rules for the convocation of extraordinary sessions.

[Article 21 continues]

[Notes on Article 21, continued]

21.06 *Paragraph (5)* mirrors the quorum provision of the Singapore Treaty on the Law of Trademarks (Article 23(3)).

Article 23 of the Singapore Treaty on the Law of Trademarks

[continued]

(3) [*Quorum*]

(a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

[continues]

[Article 21 continued]

(5)(a) One-half of the members of the Assembly which are States shall constitute a quorum.

(b) Notwithstanding subparagraph (a), if, in any session, the number of the members of the Assembly which are States and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect, provided that at the same time the required majority still obtains.

[Article 21 continues]

[Notes on Article 21, continued]

21.07 *Paragraph (6)* mirrors the provision of the Singapore Treaty on the Law of Trademarks that corresponds to decision taking in the Assembly (Articles 23(4)(a) & (b)).

Article 23 of the Singapore Treaty on the Law of Trademarks

[continued]

(4) [*Taking Decisions in the Assembly*]

(a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

[continues]

[Article 21, continued]

(6)(a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

[Article 21 continues]

[Notes on Article 21, continued]

21.08 *Paragraph (7)* is in the same form as the corresponding provision of the WPPT (Article 24(3)).

Article 24 of the WPPT

[continued]

(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

[continues]

[Article 21, continued]

(7)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

[Article 21 continues]

[Notes on Article 21, continued]

21.09 *Paragraph (8)* mirrors the corresponding provisions of the Singapore Treaty on the Law of Trademarks (Article 23(5)).

Article 23 of the Singapore Treaty on the Law of Trademarks

[continued]

(5) [*Majorities*]

(a) Subject to Articles 22(2) and (3), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

[continues]

[Article 21, continued]

- (8)(a) The decisions of the Assembly shall require two-thirds of the votes cast.

- (b) In determining whether the required majority is attained, only votes actually cast shall be taken into consideration. Abstentions shall not be considered as votes.

[End of Article 21]

Notes on Article 22

22.01 This Article is in standard form and is self-explanatory.

Article 25 of the WPPT

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 22

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

[End of Article 22]

Notes on Article 23

23.01 *Article 23* mirrors the provisions contained in Article 26 of the WPPT.

Article 26 of the WPPT

Eligibility for Becoming Party to the Treaty

- (1) Any Member State of WIPO may become party to this Treaty.
- (2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
- (3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 23

Eligibility for Becoming Party to the Treaty

- (1) Any Member State of WIPO may become party to this Treaty.

- (2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

- (3) The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

[End of Article 23]

Notes on Article 24

24.01 *Article 24* is in the same form as Article 27 of the WPPT. It is intended to clarify that, in the case of shared competence between an intergovernmental organization and a Member State of that organization and where both are party to the proposed Treaty, each party enjoys all of the rights and assumes all of the obligations created by the proposed Treaty.

Article 27 of the WPPT

Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 24

Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

[End of Article 24]

Notes on Article 25

25.01 A treaty may be signed only by a State or intergovernmental organization that is eligible to become party to it. *Article 25* is in the same terms as Article 31 (2) of the Singapore Treaty on the Law of Trademarks.

Article 31 of the Singapore Treaty on the Law of Trademarks

[continued]

(2) [*Time Limit for Signature*] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

[continues]

Article 25

Signature of the Treaty

This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

[End of Article 25]

Notes on Article 26

26.01 *Article 26* deals with the number of instruments of ratification or accession that would be required to bring the proposed Treaty into force. During the Diplomatic Conference of 2000, Member States expressed concern that the WPPT requirement of thirty instruments of ratification or accession is too large, whereas five instruments is too few. This Treaty, like the Singapore Treaty on the Law of Trademarks (Article 28(2)), requires ten instruments of ratification or accession to bring the proposed Treaty into force.

26.02 The proposed *Article 26* mirrors Article 28(2) of the Singapore Treaty on the Law of Trademarks by including intergovernmental organizations, as referenced in *Article 24(2)* of this proposed Treaty and Article 26(1)(ii) of the Singapore Treaty, among the ten instruments of ratification or accession required to bring the Treaty into force.

Article 28 of the Singapore Treaty on the Law of Trademarks

[continued]

(2) [*Entry into Force of the Treaty*] This Treaty shall enter into force three months after ten States or intergovernmental organizations referred to in Article 26(1)(ii) have deposited their instruments of ratification or accession.

[continues]

Article 26

Entry into Force of the Treaty

This Treaty shall enter into force three months after ten States or intergovernmental organizations referred to in Article 23(2) have deposited their instruments of ratification or accession.

[End of Article 26]

Notes on Article 27

27.01 *Article 27(1)* mirrors the corresponding provision of the Singapore Treaty on the Law of Trademarks (Article 26(2)).

**Article 26 of the Singapore Treaty on the Law of Trademarks
Becoming Party to the Treaty**

- (2) [*Ratification or Accession*] Any entity referred to in paragraph (1) may deposit
- (i) an instrument of ratification, if it has signed this Treaty,
 - (ii) an instrument of accession, if it has not signed this Treaty.

[continues]

Article 27

Effective Date of Becoming Party to the Treaty

- (1) Any entity referred to in Article 23 may deposit
 - (i) an instrument of ratification, if it has signed this Treaty,
 - (ii) an instrument of accession, if it has not signed this Treaty.

[Article 27 continues]

[Notes on Article 27, continued]

27.02 *Article 27(2)* is a mechanical provision that establishes when the proposed Treaty would bind a State, the European Union, or any other intergovernmental organization which accedes to or ratifies it. It follows the equivalent provision in Article 30 of the WPPT, with the exception of (i), which references the ten States referred to in *Article 26* above.

Article 30 of the WPPT

Effective Date of Becoming Party to the Treaty

This Treaty shall bind

- (i) the 30 States referred to in Article 29, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 29, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

[Article 27, continued]

(2) This Treaty shall bind

- (i) the ten States referred to in Article 26, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Union, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 26, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

[End of Article 27]

Notes on Article 28

28.01 This provision, which is in the same form as Article 31 of the WPPT, is the standard provision on denunciation that is contained in recently concluded treaties administered by WIPO and is self-explanatory.

Article 31 of the WPPT

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 28

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

[End of Article 28]

Notes on Article 29

29.01 *Article 29* sets out *in extenso* the same provision on languages as is contained in Article 32 of the WPPT. It provides in *Paragraph (1)* for the new Treaty to be signed in English, Arabic, Chinese, French, Russian and Spanish and establishes that each such text will be authentic. Each of the treaties concluded under the auspices of WIPO since 1990 has authentic versions in these six languages.

29.02 *Paragraph (2)* provides for the Director General to establish official texts of the new Treaty on the request of an interested party and in consultation with all interested parties.

Article 32 of the WPPT

Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 29

Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

[End of Article 29]

Notes on Article 30

30.01 *Article 30* sets out the usual provision on depositary functions that is now to be found in treaties administered by WIPO. It mirrors Article 33 of the WPPT.

30.02 The functions of the depositary of a treaty are summarized in Article 77(1) of the Vienna Convention on the Law of Treaties, which is in the following form:

“Functions of depositaries”

“1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

- (a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
- (b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
- (c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
- (d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
- (e) informing the parties and States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
- (f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;
- (g) registering the treaty with the Secretariat of the United Nations;
- (h) performing the functions specified in other provisions of the present Convention.”

Article 33 of the WPPT
Depositary

The Director General of WIPO is the depositary of this Treaty.

Article 30

Depositary

The Director General of WIPO shall be the depositary of this Treaty.

[End of Article 30 and of document]