

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

GOVERNING BODIES OF WIPO AND THE UNIONS ADMINISTERED BY WIPO

**Thirtieth Series of Meetings
Geneva, March 20 and 21, 1997**

PREPARATORY WORK ON A PROTOCOL (TO THE WIPO PERFORMANCES AND
PHONOGRAMS TREATY) CONCERNING AUDIOVISUAL PERFORMANCES

Memorandum of the Director General

1. The WIPO Diplomatic Conference, held in Geneva in December 1996 on Certain Copyright and Neighboring Rights Questions (hereinafter referred to as “the 1996 Diplomatic Conference”) has adopted two treaties, one of them being the WIPO Performances and Phonograms Treaty (hereinafter referred to as “the WPPT”). As far as performances are concerned, the WPPT grants certain rights to the performers in their unfixed performances (Article 6) whether they are aural or audiovisual, but, in respect of their fixed performances, the WPPT grants certain rights to the performers only where the fixation is a purely aural one, that is, is a fixation in a phonogram (see Articles 7 to 10).
2. As can be seen from the Resolution adopted by the Diplomatic Conference on that matter (quoted in the next paragraph), the fact that the WPPT does not cover the rights of performers in audiovisual fixations was regretted by the Diplomatic Conference, and, at the same time, the Diplomatic Conference contemplated the adoption of a protocol (hereinafter referred to as “the Audiovisual Protocol”), “not later than in 1998,” which should grant rights to performers in the audiovisual fixations of their performances.

3. The full text of the Resolution is as follows:

“The Delegations participating in the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions in Geneva,

Noting that the development of technologies will allow for a rapid growth of audiovisual services and that this will increase the opportunities for performing artists to exploit their audiovisual performances that will be transmitted by these services;

Recognizing the great importance of ensuring an adequate level of protection for these performances, in particular when they are exploited in the new digital environment, and that sound and audiovisual performances are increasingly related;

Stressing the urgent need to agree on new norms for the adequate legal international protection of audiovisual performances;

Regretting that, in spite of the efforts of most Delegations, the WIPO Performances and Phonograms Treaty does not cover the rights of performers in the audiovisual fixations of their performance;

Call for the convocation of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on the schedule of the preparatory work on a protocol to the WIPO Performances and Phonograms Treaty, concerning audiovisual performances, with a view to the adoption of such a protocol not later than in 1998.”

4. The present memorandum is prepared for the extraordinary session of the competent WIPO Governing Bodies, mentioned in the last paragraph of the above-quoted Resolution.

5. The following tentative schedule is proposed for the preparatory work:

(a) a Committee of Experts would be convened by WIPO in Geneva on September 8, 9 and (for the adoption of the report) 12, 1997, in order to consider a first draft of the Audiovisual Protocol; that draft, accompanied by explanatory notes, would be prepared by the International Bureau taking into account written proposals of governments and the European Community, which proposals the International Bureau would invite in writing by the end of March 1997, with a request for reply by the end of May 1997; all States members of WIPO and the European Community would be invited, and the interested intergovernmental and non-governmental organizations would be invited as observers; the International Bureau would finance the participation of one government-designated representative from each of 38 countries: ten developing countries from Africa, ten developing countries from Asia, ten developing countries from Latin America and the Caribbean, China and seven “transition” countries from Eastern Europe and Central Asia; the selection of the countries would be made by the International Bureau after consultation with the coordinators of the interested groups of countries; the cost of financing the participation of 38 persons and the cost of interpretation in six languages in this session of the Committee of Experts is estimated to be around 300,000 francs; the needed amount would be covered, to the extent possible, from economies made in

the budget for the current (1996-97) biennium; otherwise, from the budget item "Miscellaneous and Unforeseen" or the reserve funds;*

(b) the results of the above mentioned Committee of Experts would be reported to and considered by the next ordinary session of the Governing Bodies to be held from September 22 to October 1, 1997; that session would make decisions on further steps, particularly on the need for one or more further preparatory meetings as well as its or their date(s) and tasks;

(c) the Diplomatic Conference to adopt the Audiovisual Protocol would meet in 1998; for its cost, provision is made in the draft program and budget of WIPO for the 1998-99 biennium; this draft program and budget will be considered by the Budget Committee in its April 16 to 18, 1997, session; the exact date of the Diplomatic Conference could be decided in the above-mentioned ordinary session (September 22 to October 1, 1997) of the competent Governing Bodies or, should one or more further preparatory meetings (see subparagraph (b), above) be necessary, in an extraordinary session of the competent Governing Bodies to be convened shortly after such further preparatory meeting or meetings.

6. The WIPO Coordination Committee is invited to give its advice on, and the WIPO General Assembly and the Berne Union Assembly are invited to decide, the schedule of preparatory work on the Audiovisual Protocol and to note the financial implications referred to in paragraph 5(a), above.

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* The cost of the meeting of the Committee of Experts on the Database Treaty (see document AB/XXX/3) would be 280,000 francs, so that the total cost of the two meetings would amount to 580,000 francs. However, if some or all of the participants financed by WIPO would be the same in the two meetings (which are proposed to be held during the same week), the total cost would be reduced, depending on how many of the participants are the same in the two meetings, by an amount of up to 250,000 francs.