

WIPO



B/A/XIII/2

ORIGINAL: English

DATE: September 29, 1992

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

ASSEMBLY

Thirteenth Session (3rd Extraordinary)
Geneva, September 21 to 29, 1992

REPORT

adopted by the Assembly

INTRODUCTION

1. The Assembly was concerned with the following items of the Consolidated Agenda (documents AB/XXIII/1 Rev.2 and AB/XXIII/6, paragraphs 16 and 17):
1, 2, 3, 7, 9bis, 13 and 14.
2. The report on the said items, with the exception of item 7, is contained in the General Report (document AB/XXIII/6).
3. The report on item 7 is contained in this document.

ITEM 7 OF THE CONSOLIDATED AGENDA:

QUESTIONS CONCERNING A POSSIBLE PROTOCOL TO THE BERNE CONVENTION

4. Discussions were based on document B/A/XIII/1.

5. The Delegation of the United Kingdom, speaking on behalf of Group B, said that there was a unanimous view within Group B that the preparatory work on a possible Protocol to the Berne Convention should continue, that preparatory work should also be started on a separate instrument on the protection of the rights of performers and producers of phonograms and that, after a suitable preparation, at least one meeting should be held on each of the said two instruments in 1993.

6. The Delegation of the United Kingdom added, on behalf of its own Government, that the discussions on a possible Protocol to the Berne Convention should be restricted to eight issues in respect of six of which consensus had been achieved, or at least was reasonably near to being achieved, at the first two sessions (November 1991, February 1992) of the Committee of Experts on a Possible Protocol to the Berne Convention, namely: (i) computer programs, (ii) data bases, (iii) rental right, (iv) abolition of non-voluntary licenses for sound recordings of musical works (Berne Convention, Article 13), (v) abolition of non-voluntary licenses for primary broadcasting and satellite communication (Berne Convention, Article 11bis(2)); indeed the general issue of communication to the public by satellite should be discussed, and (vi) duration of protection for photographic works, and two other issues that had not been discussed so far, or at least not in such a context, namely, (vii) distribution right including importation right and (viii) enforcement of rights. The Delegation said that it was not yet in a position to put forward proposals in detail concerning the contents of the possible instrument on the protection of the rights of performers and producers of phonograms, but it was ready to submit such proposals in the coming months.

7. The Delegation of Sweden said that it agreed with all that the Delegation of the United Kingdom had proposed, but wished that a ninth item be added to the list of issues, namely, the definition of the notion of "public" in respect of certain rights to authorize public uses. The Delegation added that, during the preparatory work on the possible instrument on the protection of the rights of performers and producers of phonograms, the following issues should be discussed: (i) the strengthening of the rights provided for in existing conventions on the rights of performers and producers of phonograms, (ii) certain new rights, such as rental right and distribution right, in general, including importation right, (iii) the duration of protection and (iv) enforcement of rights. The Delegation also stressed that there should be an appropriate link between the proposed Protocol to the Berne Convention and the proposed instrument on the protection of the rights of performers and producers of phonograms. Furthermore, the Delegation proposed that the scope of the preparatory work on a WIPO Model Law on the Protection of Producers of Sound Recordings should be extended so that the Model Law also covered the protection of performers and broadcasting organizations. The preparation of the Protocol and the other new instrument should be given priority.

8. As far as the possible Protocol to the Berne Convention is concerned, the Delegation of the United States of America expressed agreement with the list of issues proposed by the United Kingdom and Sweden, and proposed that a further (tenth) issue be added to that list, namely, the applicability of national treatment to all works and rights, including the right to remuneration for private copying for personal purposes. With respect to the new instrument on the rights of performers and producers of phonograms, the Delegation stressed that, in the preparatory work on such an instrument, both the relevant existing international instruments and the standards emerging from national laws should be taken into account. The preparation of the possible Protocol and the other new instrument should take place in tandem, that is, simultaneously. A meeting should take place on each of the two instruments before the end of the 1992-93 biennium, and the dates of them should be so set that there is sufficient time for both the International Bureau and the Governments for the preparatory work.

9. As far as the possible Protocol to the Berne Convention is concerned,

(a) the Delegations of Finland, Japan, Greece, Portugal, Canada, Romania, Norway, Chile, France, Belgium, Germany, Israel, Netherlands, Switzerland and Hungary, as well as the representative of the Commission of the European Communities, agreed with the proposals made by the Delegation of the United Kingdom;

(b) the Delegations of Canada, Finland, Japan, Romania, Norway, Germany, Israel, Netherlands and Switzerland, as well as the representative of the Commission of the European Communities, said that they also agreed with the proposal of the Delegation of Sweden to add a ninth item (definition of "public");

(c) the Delegation of Japan also supported the proposal of the United States of America that the applicability of national treatment, particularly in respect of private reproduction for personal purposes, should also be discussed;

(d) the Delegation of Israel also stated its agreement with the Delegation of the United States of America;

(e) the Delegations of Finland and Chile said that they had a flexible attitude concerning the list of issues to be discussed during the preparatory work;

(f) the Delegation of Australia noted that, in its reply to the invitation of the International Bureau to submit written proposals concerning the provisions of a possible protocol, it had proposed treaty language on a number of the items mentioned by the Delegation of the United Kingdom, but those items did not include the rental right or the importation right. It proposed that the questions of reprographic reproduction and communication to the public by satellite broadcasting should also be discussed.

10. The Delegation of Burkina Faso agreed, with the exception of the two items on compulsory licenses, with the list of issues proposed by the Delegations of the United Kingdom and Sweden and with the addition of the issue on communication to the public by satellite broadcasting.

11. The Delegation of Mexico agreed with the list of issues proposed by the Delegations of the United Kingdom and Sweden but it proposed that the protection of moral rights should also be included. The Delegation stressed that, during the preparatory work on the possible Protocol to the Berne Convention, the priority of rights of authors vis-à-vis the beneficiaries of neighboring rights should be preserved.

12. The Delegation of Hungary also advocated the maintenance of a balance between the interests of authors and those of the beneficiaries of neighboring rights and said that the principle laid down in Article 1 of the Rome Convention should serve as basis for the preservation of the said balance in any new instrument on neighboring rights. The observer from the International Federation of Societies of Authors and Composers (CISAC) made a statement to the same effect.

13. The Delegation of China expressed agreement that the preparation of a possible Protocol to the Berne Convention should be continued. The Delegation stressed that, during the preparatory work, the basic principles of the Berne Convention should be respected, the specific conditions in developing countries should be taken into account and an adequate balance between the interests of the right owners and the needs for economic, social and cultural development should be preserved. The Delegation referred to the fact that it had participated in the first two sessions of the Committee of Experts on a Possible Protocol to the Berne Convention in observer capacity. On July 15, 1992, China had deposited its instrument of accession to the Berne Convention and the Convention would enter into force in respect of it on October 15, 1992. As a member of the Berne Union, China would take part in the preparatory work in an even more active way and was ready to cooperate with the other member countries of the Union for a successful outcome of that work.

14. A number of Delegations and the representative of the Commission of the European Communities warmly welcomed China's accession to the Berne Convention and congratulated the Delegation of China.

15. The Delegation of India supported the continuation of the preparatory work on a possible Protocol to the Berne Convention and the commencement of the preparatory work on a new instrument on the protection of performers and producers of phonograms, and, in general, agreed with the list of issues to be discussed as proposed by the Delegation of the United Kingdom, although it was not persuaded that it was necessary to review the provisions on the duration of protection of photographic works. The Delegation agreed with the Delegation of the United States of America that the application of national treatment in respect of new rights and new categories of works should also be discussed, since the erosion of the principle of national treatment was a major concern. The Delegation opposed the idea that the protection of moral rights should also be discussed, since those rights had not been questioned and no new circumstance had emerged that would justify putting moral rights on the agenda.

16. In a discussion following that statement, the Delegations of the United States of America and Japan also opposed the inclusion of moral rights in the list of issues to be discussed, while the Delegations of Chile and Guinea stated that they would be ready to support a discussion on moral rights.

17. As a result of the discussion, the Delegation of Mexico said that, having heard the assurances that moral rights would be fully respected, it did not insist on the inclusion of moral rights in the list of issues to be discussed.

18. The Delegation of Colombia welcomed the agreement on the need for the continuation of the preparation of a possible Protocol to the Berne Convention and for the preparation of a new instrument on the rights of performers and producers of phonograms, stating that it considered that such multilateral instruments were preferable to bilateral arrangements and that, in the field of intellectual property, WIPO was the appropriate forum for the preparation and adoption of such multilateral instruments.

19. The Delegation of Morocco also welcomed the continuation of the preparatory work for a possible Protocol to the Berne Convention and also agreed with the idea that a new instrument be considered for the protection of performers and producers of phonograms. The Delegation stressed that, during the preparatory work, the present structure and principles of the Berne Convention should be respected and the specific interests of developing countries should be duly taken into account. The Delegation questioned whether it was really justified to include computer programs in the list to be considered as possible subjects of the proposed Protocol and said that further study seemed necessary in that respect.

20. The Delegation of Guinea proposed that the question of the protection of folklore should also be studied during the preparation of the two instruments.

21. The observer from the African Intellectual Property Organization (OAPI) agreed with the continuation of the preparatory work on a possible Protocol to the Berne Convention and the consideration of a new instrument on the protection of performers and producers of phonograms and expressed the hope that the two new instruments would also be helpful for updating the legislation of African countries.

22. In conclusion, the Assembly decided

(i) the establishment of two Committees of Experts, one for the preparation of a possible Protocol to the Berne Convention and another for the preparation of a possible new instrument on the protection of the rights of performers and producers of phonograms;

(ii) that the titles of the committees would be "Committee of Experts on a Possible Protocol to the Berne Convention" and "Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers and Producers of Phonograms," respectively;

(iii) that, in the Committee of Experts on a Possible Protocol to the Berne Convention, the States party to the Berne Convention and the Commission of the European Communities would have the status of members, whereas the member States of WIPO that were not party to the Berne Convention would have the status of observers;

(iv) that, in the Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers and Producers of Phonograms, the member States of WIPO and the Commission of the European Communities would have the status of members;

(v) that the intergovernmental organizations and the non-governmental organizations that are usually invited to such meetings would be invited to the meetings of the two Committees of Experts as observers;

(vi) that each of the two Committees of Experts would meet once in 1993, and that the meeting of the Committee of Experts on a Possible Protocol to the Berne Convention would be immediately followed by the meeting of the Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers and Producers of Phonograms;

(vii) that the issues to be discussed by the Committee of Experts on a Possible Protocol to the Berne Convention would be the following ten:

- (1) computer programs,
- (2) data bases,
- (3) rental right,
- (4) non-voluntary licences for the sound recording of musical works,
- (5) non-voluntary licenses for primary broadcasting and satellite communication,
- (6) distribution right, including importation right,
- (7) duration of the protection of photographic works,
- (8) communication to the public by satellite broadcasting,
- (9) enforcement of rights, and
- (10) national treatment;

(viii) that the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms would discuss all questions concerning the effective international protection of the rights of performers and producers of phonograms;

(ix) that, in the preparatory documents for the Committee of Experts on a Possible Protocol to the Berne Convention, the International Bureau would deal with items (6), (9) and (10) ("the new items") mentioned in subparagraph (vii), above, in a manner similar to the one which was followed in the preparatory documents prepared for the first two sessions of the said Committee, whereas, in respect of the questions already discussed by the said Committee (items (1) to (5), (7) and (8), above), the preparatory document would contain what was contained in the preparatory documents prepared for the first two sessions of that Committee (BCP/CE/I/2 and 3) and the relevant passages of the reports of those sessions (BCP/CE/I/4 and BCP/CE/II/1);

(x) that, in the preparatory documents for the Committee of Experts on a Possible Instrument on the Protection of the Rights of Performers and Producers of Phonograms, the International Bureau would deal with all questions in the way it will deal with the new items mentioned in the preceding subparagraph.

23. The Director General said that the preparatory documents would be ready by the end of March 1993, and he asked for instructions on for what dates the meetings of the two committees should be convened in the light of the time required for each Government to prepare its position for those meetings. The Delegation of the United States of America said that it needed four months from the date of the receipt of the preparatory documents; the Delegation of the United Kingdom said that two months should suffice. The Director General suggested six months.

24. It was agreed that the meetings should take place late in June or early in July 1993, which would leave some three months between the receipt of the documents and the dates of the meetings.

25. Concerning the proposal of the Delegation of Sweden asking for the extension of the terms of reference of the Committee of Experts on a WIPO Model Law on the Protection of Producers of Sound Recordings, the Assembly, after discussion, decided,

that the Model Law should cover also the protection of the rights of performers, [the title of the Committee of Experts becoming "Committee of Experts on a WIPO Model Law on the Protection of the Rights of Performers and Producers of Sound Recordings."]

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