

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

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

ASSEMBLY

Sixteenth Session (5th Extraordinary)
Geneva, September 26 to October 4, 1994

REPORT

adopted by the Assembly

INTRODUCTION

1. The Assembly was concerned with the following items of the Consolidated Agenda (document AB/XXV/1 Rev.): 1, 2, 7, 14 and 15.
2. The report on the said items, with the exception of item 7 is contained in the General Report (document AB/XXV/6).
3. The report on item 7 is contained in the present document.

ITEM 7 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING A POSSIBLE PROTOCOL TO THE BERNE
CONVENTION AND A POSSIBLE INSTRUMENT FOR THE PROTECTION OF
THE RIGHTS OF PERFORMERS AND PRODUCERS OF PHONOGRAMS

4. Discussions were based on documents B/A/XVI/1 and B/A/XVI/1/Add.

5. The Delegation of the United States of America referred to its written statement of September 19, 1994, contained in document B/A/XVI/1, and stated that, subject to some modifications, it accepted that the provisional documents prepared by the International Bureau, dated April 29, 1994, along with the written comments submitted by five governments and by the Commission of the European Communities, would constitute the documentation for the sessions of the two Committees of Experts to take place from December 5 to 9, 1994, in the case of the possible Protocol to the Berne Convention, and December 12 to 16, 1994, in the case of the possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms. The Delegation highlighted certain points from its written submission. It stated that there was little to be gained from consideration of matters that had been settled by the TRIPS Agreement, and, consequently, that paragraphs 11 to 23 of the provisional document for the Committee of Experts on a Possible Protocol to the Berne Convention, concerning the protection of computer programs, should be deleted from the document, and, likewise, that the provisions on enforcement of rights should be deleted from the documents for the next sessions of both Committees. As an alternative to deletion of the enforcement provisions, it said, the enforcement provisions included in the TRIPS Agreement could be incorporated with as little change as possible in the documents for the two Committees. It noted that the future work of both Committees, by focusing on the development of copyright rules applicable to the electronic transmission of works rendered in digitized form, including digital transmissions, would promote both the development of a National Information Infrastructure (NII) in its own country, and the development of a Global Information Infrastructure (GII) with benefits for all countries. In that regard, the Delegation expressed the view that the development of such rules could result in the amendment, rather than the rewriting, of existing national copyright laws. In respect of the Committee of Experts on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, the Delegation stated that domestic uncertainties made rapid progress difficult at this time.

6. The Delegation of Germany, speaking on behalf of the European Union, referred to the written comments submitted by the Commission of the European Communities and included in document B/A/XVI/1. It stated that the work of the two Committees of Experts should continue, and that no change in their mandate was necessary at this stage. The Delegation noted that the two Committees provided the appropriate forum for discussion of the implications of digital technologies, and said that it would be inappropriate for any other committee of experts to discuss this issue before the next meetings of the Governing Bodies in 1995. The documentation issued by the International Bureau in connection with the possible Protocol to the Berne Convention provided a useful basis for discussion. It reiterated the wish of the European Union for inclusion of treaty language, in the document for the next

session of the Committee on the possible New Instrument, on the rights of performers in the audiovisual sector. The Delegation agreed with the proposal of the Delegation of the United States of America to delete paragraphs 11 to 23 of the provisional document for the next session of the Committee of Experts on the possible Protocol to the Berne Convention, on the understanding that such deletion did not affect the mandate of the Committee and would not preclude the examination of any of the issues covered in those paragraphs during its next session in December. The Delegation supported the holding of further meetings of the two Committees in the first half of 1995, thus resuming what can be described as the "normal rhythm of work."

7. The Delegation of Sweden stated that it attached great importance to continuation of the work of the two Committees of Experts, and that the provisional documents formed an appropriate basis for future work. It said that it could accept the U.S. proposal to delete paragraphs 11 to 23 of the provisional document for the next session of the Committee of Experts on the possible Protocol, and proposed that discussions be based on the so-called "three-party proposal" referred to in paragraph 9 of that document. The Delegation observed that this would facilitate a broader discussion of relevant questions concerning the protection of computer programs under copyright, and, in particular, the question of appropriate limitations on rights.

8. The Delegation of the United Kingdom supported the statement of the Delegation of Germany, and agreed that the problems incidental to the creation of a Global Information Infrastructure could be addressed in the future work of the two Committees. It stated that it could accept deletion of the paragraphs referred to in the U.S. proposal, on the understanding that future discussions could be more flexible as a result of the deletion.

9. The Delegation of Argentina expressed support for use of the provisional documents as the basis for the work of the next sessions of the two Committees.

10. The Delegation of Hungary supported further consideration of all issues concerning the protection of computer programs, even if the U.S. proposal to delete the relevant paragraphs from the provisional document were accepted. It supported use of the provisional documents, with annexes containing the comments received by the International Bureau, as the basis for the work of the next sessions of the Committees. The Delegation noted that the balance between copyright and neighboring rights should be kept in mind, consistent with the existing structure of the international conventions in the field, and with the growing number of States party to the Rome Convention. It took the view that the scope of discussions in respect of the possible Protocol should be broadened rather than limited further, and commented in particular on the exclusion of home taping from the present terms of reference of the Committee. The Delegation observed that the evolution of the Berne Convention should not lag behind the development of regional and bilateral agreements in the field of copyright.

11. The Delegation of Brazil supported continuation of the work of both Committees of Experts and use of the provisional documents as a basis for the next sessions of each Committee. It stated that it would restrict itself to a few procedural remarks. It reaffirmed its belief that it is not possible for the International Bureau to modify documents on the basis of observations by member States. Therefore, it did not agree, at the present stage and in the

present forum, with the U.S. proposal to delete paragraphs 11 to 23 of the provisional document for the next session of the Committee examining the possible Protocol, stating that the Committee itself should decide whether such deletion was appropriate.

12. The Delegation of France supported the statement of the Delegation of Germany on behalf of the European Union. It noted that the emerging questions related to digital technology, including multimedia works, could be examined by both Committees. It stressed, in particular, the need for development of new international rules for the protection of performers, and for an appropriate balance among authors' rights and the various categories of neighboring rights.

13. The Delegation of Switzerland expressed its support for the statement by the Delegation of Sweden, and for the U.S. proposal concerning deletion of paragraphs 11 to 23 from the document for the next session of the Committee of Experts on a possible Protocol.

14. The Delegation of Finland expressed its thanks to those countries which had submitted written comments. It stated that the two Committees should continue their work based on the provisional documents, and that it had no difficulty accepting the U.S. proposal concerning deletion of certain paragraphs. It stated that the next sessions of the Committees would provide an opportunity to address the issues raised by digital technology.

15. The Delegation of Spain supported the statement by the Delegation of Germany on behalf of the European Union, emphasizing its support for inclusion of specific provisions on the protection of audiovisual performers. It stated that the two Committees were the proper fora for updating the international copyright and neighboring rights systems. The Delegation agreed that the impact of digital technology should be a focus of the work of the two Committees, but stated that such work should also include examination of older problems which were still unresolved. It agreed with the U.S. proposal to delete certain paragraphs from the document for the next session of the Committee of Experts on a possible Protocol, and proposed that both Committees, in their next sessions, should have the competence to set dates for the following sessions, rather than wait for the next meeting of the Governing Bodies.

16. The Delegation of Chile supported continuation of the work of both Committees, based on the provisional documents and accompanying written comments. It also supported the comment of the Delegation of Spain that in the future, the International Bureau should prepare documents in treaty language. The Delegation stated that it could accept the U.S. proposal concerning the deletion of certain paragraphs, provided that the overall question of the protection of computer programs was retained on the agenda.

17. The Delegation of Canada stated that it accepted the U.S. proposal to delete paragraphs 11 to 23 from the relevant document, in the interest of a more flexible examination of the various questions by the Committee.

18. The Delegation of Norway expressed its support for the statement of the Delegation of Germany on behalf of the European Union.

19. The Delegation of Japan referred to its written comments, and stated that it supported use of the provisional documents as the basis for the next sessions of the two Committees. It said that it did not intend to stand in the way of accepting deletion of the paragraphs concerning computer programs as proposed by the U.S. Delegation, as long as such deletion did not prevent further consideration of all relevant issues in the future work of the Committee.

20. The Delegation of China stated that the next sessions of the two Committees in December should take place as scheduled, using the provisional documents as the basis for discussion and using the opinions put forward by delegations of some member States as an Appendix to the provisional documents. The Delegation said that WIPO has the competence to maintain an appropriate balance between the interests of developed and developing countries, to harmonize the relationship between existing and new technologies in the field of copyright, and to harmonize the relationship between WIPO and the WTO.

21. The Delegation of Denmark supported the statement of the Delegation of Germany on behalf of the European Union, emphasizing the need for new minimum levels of protection under the Berne Convention and in the context of neighboring rights. It supported the consideration, by the Committees, of issues raised by the advent of digital technology.

22. The Delegation of Kenya supported continuation of the work of the two Committees, using the provisional documents as a basis for discussion. It stated that it accepted the U.S. proposal to delete the paragraphs concerning computer programs, in order to facilitate the future work of the relevant Committee.

23. The Delegation of Togo supported continuation of the work of the two Committees, based on the provisional documents.

24. The Delegation of Zambia supported continuation of the work of the two Committees.

25. The Delegation of the Commission of the European Communities referred to its written comments, and reiterated its support for the inclusion of language on the protection of audiovisual performers in the document for the next session of the Committee of Experts on a possible New Instrument.

26. An observer from CISAC expressed its satisfaction that the December sessions of the two Committees would be held as scheduled, and accepted deletion of the paragraphs proposed by the U.S. Delegation. It stressed the need to maintain a balance between the rights of authors and beneficiaries of neighboring rights, and regretted that its prior suggestions, concerning expansion of the terms of reference of the Committee of Experts on a possible Protocol, had not been followed.

27. An observer from the International Federation of Film Archives (FIAPF) opposed consideration of the rights of audiovisual performers by the Committee of Experts on a possible New Instrument, stating that the needs of performers whose performances are included in sound recordings, in respect of legal rights, were different in kind from those of audiovisual performers.

28. An observer from the European Broadcasting Union (EBU) reiterated its view that the rights of broadcasting organizations should be included in the future work of the Committee of Experts on a possible New Instrument.

29. An observer from the International Federation of Actors (FIA) expressed its support for the statement of the Commission of the European Communities concerning the inclusion of language on the protection of audiovisual performers in the document for the next session of the Committee of Experts on a possible New Instrument. It did not agree with the statement of the observer from FIAF which opposed the inclusion of such language, and noted that, under current conditions, nearly all performers operate in the audiovisual realm, making it unrealistic to attempt to separate the needs of performers in the audio sphere from those of performers in the audiovisual sphere.

30. The Delegation of Mexico stated its support for use of the provisional documents as a basis for future work of the two Committees, but added that it reserved its position in respect of the content of the documents until the next sessions of the Committees.

31. The Delegation of Uruguay supported continuation of the work of the two Committees in the December sessions, on the basis of the provisional documents and annexed written comments. It stated that the contents of the documents should not be modified at the present time and in the present forum.

32. An observer from the International Federation of Reproduction Rights Organizations (IFRRO) regretted the exclusion of the questions concerning reprography from the terms of reference of the Committee of Experts on a possible Protocol. It noted that, in the context of digital transmissions of text-based works, the limitations on the exclusive rights of authors might be narrower, and that it would look forward to the future discussions of the Committee in respect of the inclusion of data bases in digital transmissions.

33. The Director General of WIPO noted that it would be difficult, prior to the December sessions of the two Committees, for the International Bureau to formulate treaty language on the rights of performers in audiovisual fixations, and that, as the written proposal of the European Union in that respect would be part of the documentation for the next session of the Committee of Experts on a possible new Instrument, including proposals in treaty language concerning the rights of performers in audiovisual fixations, there would be an appropriate basis for the said Committee to discuss such rights. He agreed that paragraphs 11 to 23 of the document for the next session of the Committee of Experts on a possible Protocol could be deleted, on the understanding that such deletion would not affect the competence of the Committee to examine the questions raised in such paragraphs. The Director General said that he would also have supported deletion, from the provisional documents, of the proposals of the International Bureau concerning enforcement of rights, in light of the inclusion of such provisions in the TRIPS Agreement, but he noted that, the Assembly, at least for the time being, did not favor such omission. He said that the two Committees of Experts should have the competence, during their next sessions in December, to set the approximate dates for future sessions.

34. The Delegation of Brazil stated that the proposal of the U.S. Delegation to delete paragraphs 11 to 23 from the document for the next session of the Committee of Experts on a possible Protocol had not been submitted by the September 1, 1994, deadline set by the Assembly at its previous session in April 1994, and that it had not been made available to other Delegations for consideration prior to the present session of the Assembly of the Berne Union.

35. The Chairman noted that the proposal of the Delegation of the United States of America was a working proposal, rather than a substantive proposal. It would be understood that the deletion of the said paragraphs would not affect the competence of the Committee to discuss all issues raised.

36. The Assembly of the Berne Union decided that the preparatory documents for the December 1994 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, respectively, should consist of the provisional documents prepared by the International Bureau, dated April 29, 1994, (with their annexes) and the written comments submitted by the Governments of Argentina, Japan, Lesotho, the United States of America, South Africa, and by the Commission of the European Communities, appearing in documents BA/XVI/1 and 1 Add. It also decided that paragraphs 11 to 23 of the provisional document concerning the Berne Protocol should be omitted, on the understanding that all matters raised could be discussed fully by the Committee, including by reference to specific language in the said paragraphs of the provisional document. The Assembly also decided that the two Committees had the competence to set, during the sessions in December, the approximate dates for their ensuing sessions in consultation with the Director General.

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