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WIPO GENERAL ASSEMBLY

Twenty-Eighth (13th Extraordinary) Session Geneva, September 23 to October 1, 2002

REPORT

adopted by the Assembly

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/37/1 Prov.3): 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 23 and 24.
2. The report on the said items, with the exception of items 6, 10, 11, 13 and 14, is contained in the General Report (document A/37/14).
3. The reports on items 6, 10, 11, 13 and 14, are contained in the present document.
4. Mr. Bernard Kessedjian (France) was elected Chair of the General Assembly, and presided over the meeting of the General Assembly.

ITEM 6 OF THE CONSOLIDATED AGENDA:

COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on document WO/GA/28/1.
6. The Chair of the General Assembly noted that further to informal consultations among the regional groups and taking into consideration the need expressed by a number of delegations to improve the geographical representation in the Program and Budget Committee, the following proposal on the composition of the Committee was made to the WIPO General Assembly: Algeria, Argentina, Brazil, Bulgaria, Canada, Chile, China, Czech Republic, Ecuador, Egypt, France, Germany, Hungary, India, Japan, Mexico, Morocco, Netherlands, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Russian Federation, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Switzerland (*ex-officio*), Ukraine, United Kingdom, United States of America, Venezuela and Yugoslavia (35).
7. The Delegation of Mexico noted the increase in the Committee membership from 33 to 35 Member States and enquired as to which regional groups received the additional two seats.
8. The Chair indicated that the additional seats were given to the Asian Group and the Group of Central European and Baltic States following consultations among regional groups.
9. The Delegation of Mexico, while acknowledging a possible geographical imbalance in the Committee, requested for an opportunity to have additional consultations on the composition of the Committee before the next Assemblies, or at the latest during the next Assemblies.
10. The Delegation of Barbados associated itself with the statement made by the Delegation of Mexico and wished to see the matter resolved as soon as possible to the satisfaction of all parties. Speaking on behalf of GRULAC, the Delegation of Barbados stressed the importance it attaches to decisions within WIPO being reached in an open and transparent manner. In this regard, GRULAC wished to emphasize the role of the General Assembly as WIPO's supreme decision-making authority, and to point out that the right of individual Member States to participate fully in decisions on matters under consideration at the General Assembly should in no way be considered to be pre-empted by prior consultations. GRULAC had joined in the consensus on this matter in a spirit of compromise and with a view to ensuring a successful conclusion to this year's Assemblies and looks forward to a full and balanced discussion of the matter at next year's Assemblies. GRULAC trusts that Member States will be able to agree on a more equitable distribution of seats within the Program and Budget Committee.
11. The Delegation of Belarus, on behalf of the Group of Central Asian, Caucasus and Eastern European Countries, stated that they were deeply concerned not only by the redistribution of seats on the Program and Budget Committee, as a result of which, for example, one group of 15 countries received five seats and another, of 12 countries, only two, but also by the self-evident fact that the distribution had been done without the requisite transparency and consultations with interested regional groups, which was contrary to the previous common practice of WIPO. The Group noted that the principle of equitable geographical distribution was and remains one of the foundations of the formation of United Nations bodies, and that principle should not be neglected. They were, however, ready to join the consensus regarding the proposed composition of the Program and Budget Committee, but

only on the understanding that the consensus is of a temporary nature, relates to the composition of the Committee only for 2002-2003, and will be reviewed next year.

12. In response to a question from the Delegation of Argentina, the Chair elaborated on the number of seats by regional groups under the current proposal as follows: African Group (6), Asian Group (6), Group of Central European and Baltic States (5), Group of Central Asian, Caucasus and Eastern European Countries (2), Group B countries, including Switzerland (*ex-officio*) (9), GRULAC (6), China (1).

13. The Chair noted the concerns expressed by some members of the regional Groups with regards to the need to have adequate geographical representation in the Program and Budget Committee. He recalled the statements made during the 1998 and the 2001 Assemblies meetings on the matter. The Chair also recalled the current requests of the African Group as well as the Group of Central European and Baltic States to have one additional representation each in the Committee in view of the size of their country members. Given that these were not taken into consideration, the Chair, while emphasizing that this proposed arrangement was provisional, noted the following: first, that there were concerns expressed by some regional groups with regards to geographical representation, second that consultations would continue to be made and finally, that this matter would be included as part of the Agenda for the 2003 meetings of the Assemblies.

14. The General Assembly approved the composition of the Program and Budget Committee, as described in paragraph 6 above, for the period September 2002 to September 2003, and decided that the membership and composition of the Program and Budget Committee would be reviewed again in September 2003.

ITEM 10 OF THE CONSOLIDATED AGENDA:

DIPLOMATIC CONFERENCE ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

15. Discussion on the item was based on document WO/GA/28/5.

16. In introducing the subject matter, the Secretariat recalled that the document WO/GA/28/5 contained a proposal of the Director General to resume international discussions on the protection of audiovisual performances. In view of the importance of the issue and the need to ensure full transparency, an *ad hoc* informal meeting, which would be open to all Member States and interested intergovernmental and non-governmental organizations would be called. Because of the time which had passed since December 2000, that meeting was envisaged to take place in the first half of 2003. Such a meeting would be convened after a further assessment of the situation by the International Bureau. There would also be consultations with the regional group coordinators based in Geneva as to organizational, procedural and other matters. It was also proposed that the issue of the Diplomatic Conference on the Protection of Audiovisual Performances remain on the agenda of the WIPO General Assembly in its session of September 2003.

17. The Chair recalled that, at its meeting in September 2001, the General Assembly had decided that the item remain on the agenda of the meeting of the Assembly in 2002. Now, the calling of an informal *ad hoc* meeting was proposed, aiming at the resumption of international

discussions, with due regard to transparency. If it was decided to proceed further, a concrete agenda could be identified with the eventual possibility of reconvening the Diplomatic Conference.

18. The Delegation of Denmark, speaking on behalf of the European Community and its Member States, reiterated its continued commitment to a meaningful updating of the Rome Convention as regards the protection of audiovisual performances, to providing audiovisual performers with the international protection they deserve, and to settling finally the unfinished business from the 1996 Diplomatic Conference. Some progress had been made on that issue during the Diplomatic Conference in December 2000. It should be recognized, however, that the Conference had faced a rather difficult challenge in view of the different concepts at stake. Those differences could not be bridged in the run-up to the Diplomatic Conference of 2000, nor during the intensive negotiations at the latter Conference, or during other contacts over the last two years. Because of those circumstances, and their strong commitment, the European Community and its Member States welcomed the proposal of the Director General as a useful basis for assessing the future prospects of work and for giving a new impetus to the international discussions on that important issue. The European Community and its Member States had noted with interest that the Director General, in paragraph 4 of document WO/GA/28/5, proposed that the International Bureau assess the situation in the coming months with a view to possibly calling an *ad hoc* informal meeting in the first half of 2003. That appeared to be a timely initiative and worthwhile exploring further. The European Community and its Member States, like other delegations, had seen the document and the suggestions contained therein only very recently. In order to do it full justice and to explore its potential further, opportunities should be given to consult thoroughly with other delegations and with the International Bureau on, in particular, the appropriateness, timing, duration and agenda of such a meeting. They were determined to contribute in the most constructive manner to those consultations. Consequently, the Delegation was of the view that it would be premature to take any final decision at the present Assembly. Whatever the outcome of the consultations, it would be important to stress two considerations. First, given the complexity of the issues and keeping in mind the need to safeguard transparency, the European Community and its Member States shared the conclusion of the Director General that any informal meeting should, in any event, be open to all Member States and interested intergovernmental and non-governmental organizations. Second, the European Community and its Member States took note of the proposal in paragraph 5 of document WO/GA/28/5 that the issue of the Diplomatic Conference on the Protection of Audiovisual Performances remained on the agenda of the WIPO General Assembly for its session in September 2003.

19. The Delegation of Japan stated that, during the two years since the Diplomatic Conference of 2000, relevant parties, including the International Bureau of WIPO, had tried to find ways for the possible adoption of a treaty on audiovisual performances. There seemed to be, however, little progress on that issue and it was concerned that the momentum for the conclusion of a treaty could be lost, if the situation remained unchanged. In that respect, the proposal made by the Director General to hold an *ad hoc* informal meeting would be useful to maintain the momentum. Its Government fully supported the proposal and the procedure as suggested by the Director General, and hoped that that informal meeting would be the first international step towards the early reconvening of the Diplomatic Conference. It further stated that it would be important to reaffirm agreement on the articles on which consensus had been reached at the 2000 Diplomatic Conference, and discussions should not be reopened on those issues. In addition, the Delegation was of the view that attention should be paid to the balance among the related rights holders, namely, phonogram producers, performers and broadcasting organizations, which had been maintained since the establishment of the Rome

Convention. If the treaty on audiovisual performances was not adopted, that balance could be jeopardized.

20. The Delegation of Barbados, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), recalled that the group had participated actively in the proceedings of the Diplomatic Conference in 2000 and that significant progress had been made then towards the adoption of an international instrument. It simply remained to complete the work of that Diplomatic Conference on the one outstanding Article. In that regard, the group supported the suggestion that informal consultations on the reconvening of the Diplomatic Conference continue and that the matter be retained on the agenda of the next Assembly.

21. The Delegation of Algeria, speaking on behalf of the Group of African Countries, supported the proposed consultations on audiovisual performances with the strategic objective of preparing for the reconvening of the Diplomatic Conference. Such consultations should follow a work program that reaffirmed the issues on which agreement had already been reached in the Diplomatic Conference of 2000. The consultations should aim at protecting the economic and moral rights of performers at national and international levels, taking into account the evolution of current technologies.

22. The Delegation of Algeria, speaking on behalf of its own country, reiterated the importance its country attached to the reconvening of the Diplomatic Conference. It recalled that interest in such an international treaty had been shown at the regional consultation meeting held in Algiers before the Diplomatic Conference of 2000, as well as at the Conference itself. The Delegation fully supported the proposal by the Director General that an informal meeting be called so that, eventually, the Diplomatic Conference could be reconvened to adopt an international instrument on the issue.

23. The Delegation of Ghana congratulated the Chair for working so diligently, as well as the Vice-Chairs. The Delegation paid tribute to Dr. Kamil Idris for working so tirelessly with his excellent team to achieve so much within so short a time. Its country considered the protection of audiovisual performances a very important issue. Ghana was grateful for paragraphs 4 and 5 of the document under discussion, which were also welcome. The Delegation said that its Government was ready to participate in the meeting convened for the resolution of outstanding issues on the international protection of audiovisual performances.

24. The Delegation of Kyrgyzstan supported the proposals of the Director General that an informal meeting be convened in the first half of 2003 and that the issue be discussed in the next Assembly. It also agreed that the Diplomatic Conference should be reconvened. The issue of audiovisual performances was important in the development of the information society. The 2000 Diplomatic Conference, despite its heavily charged agenda, had reached agreement on a number of issues. The Delegation stated that it was prepared to participate in resolving the remaining issues.

25. The Delegation of Mexico supported the statement made by the Delegation of Barbados on behalf of GRULAC. The Delegation recalled that since 1992, when discussions started on that item, its country had accorded great priority to the protection of performers. Consequently, it supported the consultations leading to an *ad hoc* informal meeting, with a view to overcoming the remaining differences. Moreover, it was also of the view that the issue should remain on the agenda of the 2003 session of the General Assembly. The

Delegation would be an active participant in all such consultations in order to achieve a satisfactory solution.

26. The Delegation of Belarus, speaking on behalf of the Group of Eastern European, Caucasus and Central Asian Countries, expressed its full support to the proposals of the Director General, contained in document WO/GA/28/5, given the great importance of the matter for all countries, and in particular for the countries of its own group, and the fact that a great deal of work had already been done by all delegations that participated in the Diplomatic Conference of December 2000, with only a few issues remaining unsolved.

27. The Delegation of Norway expressed its commitment to updating the international protection of broadcasters and exploring new items for discussion in the Standing Committee on Copyright and Related Rights. However, it was most concerned by the lack of an appropriate basis for the protection of audiovisual performances. Performers were an important part of the cultural environment and the use of performances had become more international and of greater economic relevance. The justification for the protection of audiovisual performers was as strong and undeniable, as was that for protection of authors and musical performers. It was therefore necessary to continue working to find solutions, in order to reconvene the Diplomatic Conference as soon as possible. The Delegation fully supported the proposals made by the Director General.

28. The Delegation of South Africa supported the proposals of the Director General. However there were other important issues, such as the protection of traditional knowledge and folklore, which also merited the attention of the General Assembly, noting that the Intergovernmental Committee had not submitted an interim report on its work to the General Assembly. The Delegation was of the view that, as an interrelated subject it should not be treated in isolation. The work in the said Committee and that on the audiovisual question should be intertwined.

29. The Director General, in response to the concern expressed by the Delegation of South Africa, stated that the issue of audiovisual performances had been the subject of a Diplomatic Conference. The work of that Diplomatic Conference had to be completed. The issue of traditional knowledge, folklore and genetic resources had received a tremendous amount of attention from Member States and the International Bureau, and it was for that reason, an Intergovernmental Committee had been established. That Committee would meet next December and it would decide on whether or not to submit a progress report to the General Assembly, which the International Bureau would be glad to prepare.

30. The Delegation of South Africa, while agreeing with the points made by the Director General, reiterated that one should not overlook issues which were intertwined.

31. The Delegation of the Republic of Armenia stated that the issue of audiovisual performances had great importance and it, therefore, encouraged that informal consultations be held so that an informal meeting could take place as soon as possible. It also supported the need to retain the issue of the Diplomatic Conference on the Protection of Audiovisual Performances on the agenda of the WIPO General Assembly in its session in September 2003.

32. The Delegation of the United States of America recalled, and appreciated, the hard work of delegations, the Director General and the International Bureau in December 2000 for the purpose of concluding a Treaty for the Protection of Audiovisual Performances. That treaty continued to be of great importance to its Government as well as to performers and producers.

It found the proposal for consultations to be interesting and potentially very important, but having only just received the document, it needed to reflect on the process outlined therein. The Delegation called attention to subsequent events reflected in document IAVP/DC/39 of the Diplomatic Conference, regarding the declaration of the Chairman of Main Committee I which was reflected in paragraph 423 of document IAVP/DC/37, concerning royalties collected for performances, and stated its concern that the information reflected in those documents might cast some doubt on the continuing solidity of the consensus regarding the articles that had been agreed to. The Delegation was interested in participating in consultations with others delegations and with the International Bureau, and remained committed to participating in any process that might move the debate forward to ensure protection for that important group of related rights holders and copyright owners.

33. The Delegation of Latvia, speaking on behalf of the Group of Central European and Baltic States, stated that it considered the proposal of the Director General to hold an informal meeting in the first half of 2003 as reasonable. The 2000 Diplomatic Conference had been close to reaching an agreement, but as much time had since passed, it was necessary to exchange views on how to proceed. The Delegation also supported the proposal contained in paragraph 5 of the document. It expressed its hope that the present initiative would prevent the loss of momentum and help resolve the remaining differences.

34. The Delegation of Sudan endorsed the statement made by the Delegation of Algeria on behalf of the African Group. It recalled the progress made during the 2000 Diplomatic Conference, when a provisional agreement was reached on 19 articles, with only one outstanding article left unresolved. The Delegation supported the proposals contained in paragraphs 4 and 5 of the document. The informal meeting in the first half of 2003 should include all countries and all interested parties.

35. The Delegation of Canada joined the delegations that had previously supported the proposals made by the Director General. Ideally, it was of the opinion that the *ad hoc* meeting should take place adjacent to a session of the Standing Committee of Copyright and Related Rights.

36. The Delegation of India, speaking on behalf of the Asian Group, noted that the Diplomatic Conference on the Protection of Audiovisual Performances convened in December 2000 had not reached an agreement on outstanding issues. At its last session in September 2001, the Assembly had decided that contacts and discussions should continue to overcome the differences. The International Bureau, in paragraph 3 of document WO/GA/28/5, had stated that there had been no significant change in the positions since last year, in spite of some contacts between interested parties. In view of the importance of the issue, it requested the International Bureau to assess the situation in the coming months with a view to possibly holding *ad hoc* informal consultations in the first half of 2003, and report to the General Assembly at its next session.

37. On behalf of its own country, the Delegation of India reiterated that, in view of the complexity of the issue, there was a need to hold wide-scale consultations at the informal level, both regional and inter-regional. It therefore supported the proposal of the Director General that consultations should continue at the informal level towards evolving consensus on the unresolved issues.

38. The Delegation of Peru endorsed the statement made by the Delegation of Barbados on behalf of GRULAC. It expressed its full support for reconvening the Diplomatic Conference as soon as possible.

39. The Delegation of Kenya expressed its full support for the statement made by the Delegation of Algeria on behalf of the African Group. The protection of audiovisual performances was of outmost importance for its country and it was necessary to quickly overcome the current stalemate. It gave full support to the proposals contained in paragraphs 4 and 5 of the document.

40. The Delegation of Denmark, speaking on behalf of the European Community and its Member States, referred to the declaration contained in document IAVP/DC/39, to which the Delegation of the United States of America had made reference. It had been submitted in reaction to a declaration by the Chairman of Main Committee I of the Diplomatic Conference. The Delegation recalled that, during that particular meeting of Main Committee I of the Diplomatic Conference on December 20, 2000, the floor had not been opened for substantive discussions, and that the Chairman's declaration represented only his personal views in connection with a proposal by the Delegation of the United States of America on Article 4 of the draft treaty. Consequently, there had been no other possibility but to submit a declaration in writing which reiterated that the declaration of the Chairman of Main Committee I was of a unilateral nature and in no way implied a commitment for the members of Main Committee I or for the future contracting parties to the treaty.

41. The Chair concluded that there had been a practically unanimous support for the process proposed by the Director General to resume the work that could lead to the reconvening of the Diplomatic Conference. Everyone had underlined the importance of the subject and the importance of arriving, to the extent possible, at an international agreement on the matter. All delegations had expressed the will to see progress on the issue. The proposal set forth in document WO/GA/28/5 was a working method and procedure rather than of formal structures. He therefore proposed the following be decided upon:

(i) the Director General and the International Bureau would conduct informal consultations in the first quarter of 2003 with all interested parties to explore the possibilities of convening the informal meeting;

(ii) if those consultations proved to be successful, that an *ad hoc* informal meeting working group would be convened with the participation of all interested Member States and intergovernmental and non-governmental organizations to discuss exhaustively and in full transparency the renewal of the dialogue on protection of audiovisual performances;

(iii) a report would be made to the next session of the General Assembly. Furthermore, the issue would remain on the agenda of the General Assembly.

42. The General Assembly unanimously adopted the decision set forth by the Chair in paragraph 41, above.

ITEM 11 OF THE CONSOLIDATED AGENDA:

REPORT ON THE POLICY ADVISORY COMMISSION (PAC)

43. Discussion was based on document WO/GA/28/2.
44. At the invitation of the Chair Mr. Henry Olsson, Special Government Adviser, Ministry of Justice, Sweden, (member of the Policy Advisory Commission (PAC)) delivered the Report of the third meeting of the PAC.
45. Mr. Olsson recalled that the PAC had been initiated and introduced in the Program and Budget of WIPO for two main purposes; one was to advise the Director General on intellectual property policy issues, without prejudice to the Member States' policy-making authority, and the other was to raise awareness about intellectual property among political leaders and persons with political responsibilities. The Commission is composed of intellectual property experts, political leaders, ambassadors and high officials from Member States. The first Chairman of the Commission had been His Royal Highness, Prince Hassan bin Talal of Jordan.
46. The PAC held its most recent plenary meeting in Geneva, on October 11, 2001. The Chairman of that Meeting was His Excellency Guido de Marco, President of the Republic of Malta. Also participating in the meeting were several high level personalities, including the President (of Romania) and former Presidents (of Bulgaria, Moldova and the Philippines), and one former Secretary General of the United Nations. In addition, several ministers, ambassadors and other high-level officials took part.
47. There were two substantive issues on the agenda, namely the Agenda for Development of the International Patent System, and Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
48. In an in-depth discussion on the first topic, it was stated that the Commission supported and praised the initiative to present the issues for public discussion, with regard to both the substance and the timeliness of the project. The Commission had taken note that the patent system was in what might be termed a "crisis" in terms of the ever-increasing workload caused by, among other things, duplication of work.
49. The Commission also discussed general concerns, such as how much harmonization was possible, how the interests of the various stakeholders involved could be reconciled, and how the intellectual property system could be made affordable to all creative persons and entities. Emphasis was placed on the need to ensure that the system would operate to the maximum benefit of all participants, and especially that developing countries could effectively use it in their development efforts. At the end of its deliberations on this issue, the Commission expressed its strong support for the WIPO Patent Agenda and WIPO's efforts to create the political momentum worldwide so as to achieve its objectives.
50. In the discussion on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Mr. Olsson said that members of the Commission had stressed that this was a field of huge economic, social and cultural impact. This implied a critical need to enlarge the general debate and find solutions, and in this respect WIPO's initiative to create the Intergovernmental Committee (IGC) was highly acknowledged. Members discussed such issues as the respective advantages of taking a step-by-step approach or, alternatively, trying

to seek a rapid yet comprehensive solution. Overall, it was felt that WIPO should not attempt to force a one-size-fits-all solution, and it was suggested on the one hand that WIPO should help raise awareness of the importance of the matter, and on the other that the Intergovernmental Committee might wish to explore the soft-law approach.

51. At the October 11, 2001, meeting, a general discussion about WIPO and its role in a changing world also took place, and in the course of this it was affirmed that WIPO has the mandate, expertise, public acceptability, credibility and competence to play a leading role in the development of the intellectual property system in the new environment. The Commission particularly recognized and commended the considerable achievements of the Director General, Dr. Idris, in this respect.

52. Finally, the Commission had recommended that the WIPO Patent Agenda should be presented to political leaders at the highest possible level, and that in the genetic resources, traditional knowledge and folklore field, where the political will to move ahead already existed, emphasis should be placed on mobilizing the relevant technical expertise.

53. It was suggested that future discussions within the Policy Advisory Commission could explore the topics of enforcement of IPRs, WIPO's role in helping its Member States to meet the challenges of globalization, and the possible role of WIPO in the valuation of IPRs in the process of privatization.

54. The Chairman thanked Mr. Olsson for his detailed and precise presentation.

55. The representative of Latvia, speaking on behalf of the Regional Group of the Central European and Baltic States, stated that the Group had followed the work of the PAC with interest. The Group believed that the Commission had produced important output, including the World Intellectual Property Declaration, and it looked forward to the contribution of the PAC in the fields of enforcement, development of the intellectual property system in the context of globalization, and other emerging issues. The Group hoped that the Commission would continue to provide substantive input in the future, and further hoped that it would receive more information about the activities of the Task Force of the PAC, and also about the contributions of other high-level consultative bodies in WIPO.

56. The WIPO General Assembly noted the contents of document WO/GA/28/2 and the contents of the annex to that document.

ITEM 13 OF THE CONSOLIDATED AGENDA:

INTERNET DOMAIN NAMES

57. Discussions were based on documents WO/GA/28/3, WO/GA/28/3 Add. and WO/GA/28/3 Add.2.

58. The Secretariat stated that the background to the issues discussed in the above documents was the Uniform Domain Name Dispute Resolution Policy, a procedure which offers protection to trademarks against their abusive registration as domain names. The Secretariat explained that experience has shown that identifiers other than trademarks also were the subject of abuse in the Domain Name System (DNS). It recalled that the WIPO

Member States had requested that a process be undertaken to examine how to deal with the problems encountered in relation to those other identifiers. The Report of this process, known as the Second WIPO Internet Domain Name Process, was published on September 3, 2001, prior to the WIPO General Assembly of that year. At its meeting in September 2001, the WIPO General Assembly decided (document WO/GA/27/8) that the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) was to hold two special sessions on the Report of the Second WIPO Internet Domain Name Process. At the same time it was decided that “[a] report of the two special sessions of the SCT should be prepared which presents the options for the treatment of the issues dealt with in the Second Process Report ... [and which] should be transmitted to the meetings of the WIPO General Assembly in September 2002 for consideration and decision.” The Secretariat stated that the options for the treatment of the issues were reflected in document WO/GA/28/3 and referred specifically in this respect to the recommendations of the SCT (SCT recommendations) contained in paragraphs 11 (International Nonproprietary Names (INNs) for Pharmaceutical Substances), 15 (trade names), 18 (personal names), 24 (names and acronyms of international intergovernmental organizations (IGOs)), 31 (country names) and 45 (geographical indications). With respect to country names, the Secretariat clarified that a number of outstanding issues required further deliberation, including whether any protection envisaged should extend only to the official names of countries or also their short names, as well as the names by which they are commonly known. The Secretariat referred in this respect to documents WO/GA/28/3 Add. and WO/GA/28/3 Add.2.

59. Speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), the Delegation of Barbados expressed its support for the SCT recommendations regarding INNs and trade names. The Delegation also took note of the SCT recommendations regarding personal names and geographical indications. The Delegation requested that the deadline, previously scheduled at June 30, 2002, to notify a country name for which protection would be sought, be extended. On its own behalf, the Delegation endorsed the statement made by GRULAC and added that it had a special interest in the work related to the protection of country names in the DNS, as the Government of Barbados had found itself unable to use or authorize several domain names which could have provided the country with valuable portals for promoting the country’s goods and services on the Internet, due to the registration as domain names of the country’s official name by unauthorized persons. Although the Delegation recognized that country names were not imbued with intellectual property status, it considered that it was highly undesirable for private persons unconnected to the Government of Barbados and to whom no official endorsement had been given to hold the registration to such domain names. The Delegation therefore expressed its support for the SCT recommendation regarding protection of country names in the DNS. On the modalities of the protection, the delegation favored the use of the UN Bulletin as a basis for identifying the names to be protected and was of the view that protection should be extended to names by which countries were commonly known. The Delegation concluded that it was in favor of the introduction of an appropriate mechanism for obtaining the cancellation or transfer of the registrations of country names as domain names by registrants who are found to have acted in bad faith in accordance with the standard set out in paragraph 40 of document WO/GA/28/3.

60. The Delegation of Argentina had no objection to the recommendations formulated at the Special Session, contained in paragraph 11 for International Nonproprietary Names for Pharmaceutical Substances, in paragraph 15 for trade names and in paragraph 18 for personal names. It pointed out that the names and acronyms of international intergovernmental organizations (IGOs) were protected under Article 6^{ter} of the Paris Convention, by the TRIPS Agreement and also in accordance with various provisions appearing in other international

treaties, and that there was therefore a well-established legal framework for their protection. Accordingly, the Delegation considered itself able to support the recommendation contained in paragraph 24 of the report. With regard to the country names, it wished to point out that, while it considered that such names should not qualify for intellectual property rights, it saw a need for protection against their abuse in the domain names system by persons unconnected with the constitutional authorities of the country concerned. As for the list of countries, it maintained that it should include the exact names but also any variations on them that might mislead, including the names of the same countries in other languages, as indicated in the paragraph 2(iii) quoted in paragraph 31. With regard to possible lists of names, the Delegation considered it more suitable for the lists to be based on the United Nations Terminology Bulletin, or failing that on the list contained in ISO Standard 3166. It asked for the list to contain only the names corresponding to States members of the United Nations in addition those notified to the Secretariat of WIPO. With regard to geographical indications, the Delegation considered that the recommendation contained in paragraph 44 of document WO/GA/28/3 was the result of consensus on a compromise reached at the second Special Session, to which it had no objections.

61. On behalf of the European Union and its Member States, the Delegation of Denmark proposed that the General Assembly request the Secretariat to prepare a document for discussion at the SCT concerning the protection of geographical indications in the DNS.

62. The Delegation of the Former Yugoslav Republic of Macedonia expressed its support for the protection of country names in the DNS. The Delegation also expressed interest in having its constitutional name "Republic of Macedonia" protected in the DNS. The Delegation favored the use of the ISO-3166 Standard as a basis for the protection of country names in the DNS.

63. The Delegation of Mexico acknowledged the amount of work done by the International Bureau in connection with Internet domain names. With reference to the recommendations made by the Special Session of the Standing Committee on Trademarks on the Second WIPO Process, the Delegation suggested that WIPO should work hand in hand with the World Health Organization (WHO) in order to reach agreements that would favor the protection of International Nonproprietary Names for Pharmaceutical Substances, and proposed that the subject continue to be dealt with in the ordinary sessions of the SCT. It also reaffirmed its support for a broadening of the uniform policy in order to provide for the possibility of an intergovernmental organization submitting complaints in the cases described in the recommendation made by the Special Session, contained in paragraph 24 of document WO/GA/28/3. With reference to country names, the Delegation favored the broadening of the uniform policy to accommodate them in cases in where a domain name was registered with the characteristics described in paragraph 40 of the same document, namely where the registration was made in bad faith and was liable to mislead or confuse. It preferred the use of the United Nations Bulletin as a basis for determining what names had to be protected, as the protection of the names of States was thereby promoted; the list should not however be confined to countries members of the United Nations, but rather encompass all States. It recalled that Mexico would be seeking protection for the names "*Estados Unidos Mexicanos*," "*República Mexicana*" and "*México*," as mentioned in the addenda to the document referred to. With regard to the matter of trade names and geographical indications on which no agreement had been reached, the Delegation considered wise the Special Sessions's recommendation that they be considered within the ordinary sessions of the SCT.

64. The Delegation of Australia expressed its support for all SCT recommendations with the exception of the one related to country names. The Delegation stated that, for reasons that have been well debated, it was not administratively practical to provide protection for country names, as set out in paragraph 40 of document WO/GA/28/3.

65. The Delegation of Canada opposed the protection of country names within the DNS stating there was no basis for such protection in international law and that such protection is contrary to the basic principle of Internet regulation, which should be non-burdensome from a regulatory and administrative standpoint. The Delegation expressed the view that it was premature at this time to make a recommendation on country names until there had been an opportunity to build a common understanding of the issue.

66. The Delegation of South Africa noted that the issue of domain names and intellectual property has been much debated and that South Africa has actively participated in the discussions. The Delegation supported the creation of protection for country names and the names and acronyms of IGO in the DNS. It was in favor of such protection for both official and commonly known names of countries (e.g., for South Africa: SA, RSA, ZA, and for the United States of America: US and USA). The Delegation explained that its laws had been amended to protect country names and the names and acronyms of IGOs (e.g., UN and UNAIDS) in accordance with Article 6^{ter} of the Paris Convention. The Delegation was of the view that the question of bad faith was immaterial, as these identifiers were to be regarded as the property of the countries or organizations concerned. It pointed out that as South Africa has many official languages, they would like to submit other identifiers by which the country's acronyms may be known in future. The Delegation also believed that the SCT recommendation with respect to country names and the names and acronyms of IGOs should be applied retrospectively. Furthermore, the Delegation of South Africa submitted the following statement:

“The Republic of South Africa submits its proposal regarding the rights of sovereign nations to their own names (‘Country Names’) as Internet domain names to the WIPO General Assembly for its consideration at its meeting in September 2002. The proposal of the Republic of South Africa agrees with the substance of the proposal set forth in the report of the Second Special Session of the Standing Committee on the Law of Trademarks, Internet Domain Name Process, dated 24 May 2002 (SCT/S2/8), available at http://www.wipo.int/sct/en/documents/special_session/doc/sct_s2_8.doc.

“The Republic of South Africa, however, proposes two modifications to the Second Special Session report, which it believes are necessary to make the proposal an effective means of protecting the rights of sovereign nations to their own names as domain names in the gTLDs. As discussed more fully below, the Republic of South Africa proposes: 1) The dispute resolution procedure should be identical to the binding arbitration procedure that the Second Special Report has proposed for intergovernmental organizations (“IGOs”), in order to protect sovereign nations from the jurisdiction of national courts to the same extent as IGOs, and 2) The Second Special Session proposal should be clarified to make clear that any Country Name domain name registration that is unauthorised by the sovereign nation of that name should be subject to cancellation.

“BACKGROUND

“The vast majority of the names of sovereign nations have been registered as internet domain names in the gTLDs particularly in the dot-com gTLD, by individuals or entities with no association or affiliation with that sovereign nation. For example, the domain name <southafrica.com> was registered by a corporation in Seattle in the United States. Throughout the Second WIPO Internet Domain Name Process (“WIPO-2”), the Republic of South Africa has contended that sovereign nations have an inherent sovereign right to their own names as domain names in the gTLDs, and to prevent other from obtaining the exclusive world wide monopoly to use such names as internet domain names in the gTLDs. During the WIPO-2 Process, the Republic of South Africa proposed that WIPO recommend the adoption of a policy and procedure that would fully protect Country Name domain names in the gTLDs, by prohibiting registration of any such domain names except by or on behalf of the respective sovereign nations, and by providing a binding arbitration procedure to cancel any such domain names already registered. South Africa’s comments are posted at <http://wipo2.wipo.int/process2/rfc/rfc2-comments/2000/msg00059/wipo2-submission.doc>; <http://wipo2.wipo.int/process2/rfc/rfc3/comments/msg00099.html> and at http://www.wipo.int/sct/en/documents/special_session/doc/sct_s2_6.doc

“As set forth in greater detail in the above-referenced submissions, the Republic of South Africa has contended that second level domain names in all gTLDs that are the same as Country Names are valuable national assets that belong to the respective sovereign nations, and that control of the necessarily exclusive and monopolistic rights to such domain names must rest with the sovereign nations. Therefore, those unauthorized persons or entities that have registered Country Names do not have and never had any legitimate claim to the exclusive monopoly rights to such Country Names in that gTLD. Furthermore, the registrars of gTLDs had no right to give away the names of sovereign nations in the second level domain names to private entities acting without permission or authority of the nations whose names were registered.

“The Report of the Second WIPO Internet Domain Name Process (“WIPO-2 Report”) gave extensive consideration to the scope of protection that should be given to Country Name domain names in the gTLDs (WIPO-2 Report, Paragraphs 264-261, 264-269, 271-289, available at <http://wipo2.wipo.int/process2/report/word/report.doc>). The WIPO-2 Report “recommended that the question of the protection in the gTLDs of country names and of administratively recognised regions and municipalities be further considered in the appropriate intergovernmental fora, in particular with a view to a discussion on the need for new international rules for the protection of country names.” WIPO-2 Report, Paragraph 288.

“In September 2001, the WIPO General Assembly instructed the SCT to hold two special sessions on the WIPO-2 Report. At both Sessions, the issue of the protection of Country Names was extensively discussed, numerous Member States also filed written submissions on the issues. See <http://ecommerce.wipo.int/domains/sct/documents/index.html>

“Following these discussions and submissions, the Second Special Session Report recognized that “[m]ost delegations favored some form of protection for country names against registration or use by persons unconnected with the constitutional authorities of the country in question.” Second Special Session Report, para 210.

“The Report then recommended the following protection for Country Name domain names:

“(1) A list of Country Names should be made, using both the United Nations Terminology Bulletin 347/Rev. 1 and, as necessary, ISO Standard 3166, including both formal names and the short names of countries and any additional names by which countries are commonly known; (2) protection should cover both the exact names and misleading variations; (3) the Country Names should be protected in the official language (s) of the country concerned and in the six official languages of the United Nations; (4) the protection should be extended to all top-level domains, both gTLDs and ccTLDs; and (5) the protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question.”
Second Special Sessions Report, Para 210.

“The Second Special Session Report did not include recommendations on the nature of the dispute resolution mechanism, or whether it would be binding or non-binding. However, in the same Report, the SCT recommended that names of IGOs be protected through a special arbitration procedure that did not permit a losing registrant to file suit in a national court, in order to protect the privileges and immunities of IGOs from the jurisdiction of national courts. Second Special Session Report, Para 88(2).

“The Republic of South Africa concurs with the Second Special Session Report on the protection of Country Names, but believes that two modifications are essential in order to make the proposed protection of Country Names meaningful and effective.

“1. Ensuring that sovereign nations do not waive sovereign immunity

“It is imperative that the mechanism for protection of Country Names be designed to prevent a subsequent suit against the sovereign State in a foreign national court, on the same terms and for the same reasons as the recommendation for IGOs. Under the existing Uniform Dispute Resolution Procedure (“UDRP”), any registrants that is named as a respondent in an arbitration can file an action in a national court before, during or after the arbitration, and the challenging sovereign state is required to agree to submit to the jurisdiction of that national court. Thus, a sovereign nation, by instituting an arbitration against a registrant of a Country Name domain name, would almost certainly be found to have waived its sovereign immunity from jurisdiction by national court of another State, and would be forced to litigate its rights to its own name in a foreign court. Moreover, the laws that will most likely be applied in any such lawsuit will be the national laws of that court, not international law or the law of the challenging sovereign State. Thus, the existing UDRP, even if it is modified to provide protection for Country Names, likely will force sovereign States to submit to the jurisdiction of foreign courts, but any protections provided by the UDRP for Country Names will likely be nullified by actions of the national courts of the current registrants. Thus, South Africa recommends that WIPO General Assembly adopt the identical proposal as that recommended for the protection of the names of IGOs, in Paragraph 88 of the Second Special Session Report as follows:

“The UDRP should also be modified, for the purposes of complaints regarding Country Names, to take account of and respect the immunities of sovereign states in international law. In the respect, sovereign States should not be required, in using the UDRP, to submit to the jurisdiction of national courts. However, it should be provided that decisions given in a complaint filed under the modified UDRP by a sovereign State should be subject at the request of either party to the dispute, to *de novo* review through binding arbitration.”

“2. Any Country Name domain name registration in which the registrant is not authorized by the sovereign nation should be subject to cancellation

“The Second Process Report recommended that a Country name domain name be subject to cancellation “where the domain name holder has no right of legitimate interest in the name and the domain name is of a nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question.” This recommendation does not elaborate on the meaning of the terms “no right or legitimate interest in the name” and when a domain name will be sufficiently misleading. The Republic of South Africa is concerned that this ambiguous language may be construed to suggest that an unauthorized, unaffiliated private registrant may have a claim of right to a Country Name that is superior to the sovereign State, which would allow the private party to continue to monopolize and to expropriate of itself the value of the Country Name. The Republic of South Africa believes that an interpretation would be contrary to the views expressed at the Second Special Sessions and would be contrary to the rationale underlying the protection of Country Names, in which the attempt by a private party, unaffiliated with a sovereign, to appropriate to its own benefit the economic value of that sovereign’s name is *per se improper*. Furthermore, such an interpretation could result in numerous protracted disputes and could be sued to prevent numerous sovereigns from recovering the rights to their own names.

“Therefore, the Republic of South Africa recommends that the WIPO General Assembly modify the Second Special Session Report to clarify that a Country Name domain name is subject to cancellation when the registrant is not authorized by the respective sovereign nation to use its Country Name.

“The Republic of South Africa recognizes that some existing registrants may have, in good faith, invested money in the Country Name domain names that they have registered. Therefore, the Republic of South Africa further proposes that the arbitrator be granted the authority and discretion to award to an existing registrant reasonable compensation, up to \$10,000, upon a finding that the registrant acted in good faith in its registration and use of the domain name.”

67. The Delegation of the United States of America stated that it agreed with the recommendations of the SCT concerning INNs, trade names and personal names. However, the Delegation expressed strong disagreement with the SCT recommendations concerning the names and acronyms of IGOs and country names. The Delegation was of the view that the trademark law concerning these identifiers was far from settled and that disputes concerning them therefore would not be suitable for resolution through the UDRP. The Delegation joined the point of view of the Delegation of Canada to the effect that the UDRP is intended to be a quick, simple and cheap means of dispute settlement, but that these characteristics do

not obtain for the names and acronyms of IGOs and country names. With respect to geographical indications, the Delegation agreed with the SCT recommendation that further discussion on the issue should take place in the SCT.

68. The Delegation of Kenya recalled that it has been actively participating in the ongoing debate on the protection of identifiers in the DNS by attending the Special Sessions of the SCT and also by making submissions to the Secretariat on the various issues being discussed. The Delegation stated that INNs should be protected against their registration as domain names. The Delegation also expressed the view that it would be helpful if the World Health Organization (WHO) could send the latest list of INNs to the various industrial property offices of the Member States in a timely manner. The Delegation also noted that the UDRP should be extended to trade names. The Delegation expressed its support for the SCT recommendation regarding the names and acronyms of IGOs. The Delegation also expressed its support for the SCT recommendation concerning the protection of country names against their registration or use as domain names by persons unconnected with the constitutional authorities of the country in question. The Delegation stated, in addition, that a new list of country names should be drawn up on the basis of the UN Bulletin and, as necessary, the ISO Standard. The Delegation also stated that both the long and short names of countries should be protected, as well as any additional names by which countries are commonly known and which have been notified to the Secretariat. The Delegation expressed the view that each country name should be protected in the official language(s) of the country concerned and in the UN languages, both in gTLDs and in ccTLDs. The Delegation observed that protection should be operative against the registration or use of a domain name which was identical or misleadingly similar to a country name, where the domain name holder had no right or legitimate interest in the name, and the domain name was of a nature that was likely to mislead users into believing that there was an association between the domain name holder and the constitutional authorities of the country in question. On the issue of acquired rights, the Delegation concluded that no right could be acquired in a domain name which was registered in bad faith, and that, consequently, such registration should be cancelled. The Delegation supported the SCT recommendation regarding geographical indications.

69. The Delegation of Antigua and Barbuda endorsed the statement made by the Delegation of Barbados on behalf of GRULAC and associated itself with the statement of Barbados and South Africa.

70. The Delegation of the Kingdom of Morocco endorsed the findings of the Second Special Session of the SCT on Internet Domain Names, but it did wish to express reservations regarding the list to be used for identifying the names of countries entitled to protection under the domain name system: the names of countries should be identified according to the list in the United Nations Terminology Bulletin, and the Delegation added that any change in the list should be notified to WIPO, and be subject to prior acceptance by the Organization's Member States within the body mandated for the purpose.

71. The Delegation of Egypt expressed explicit support for the SCT recommendation concerning INNs, urged the Secretariat to continue its cooperation with the WHO in this connection and suggested that it prepare a report on the issue in the future. With respect to the identification of country names, the Delegation supported reliance on the UN Bulletin or the ISO Standard, in accordance with what has been agreed upon by the Members of the United Nations.

72. The Delegation of Germany supported all the SCT recommendations, with due regard to the observations made by the Delegation of Denmark on behalf of the European Union and its Member States. With respect to the identification of country names, the Delegation favored reliance on the UN Bulletin, but complemented by names by which countries are commonly known, as notified to the Secretariat.

73. The Delegation of France spoke of the importance that it attached to the establishment of principles for Internet use that placed such a formidable medium of progress at everyone's disposal while at the same time protecting the interests of the owners of rights, whether private or public. The Delegation of France pointed out that WIPO had advanced in its work on Internet domain name disputes. It pointed out moreover that important recommendations had been made regarding the protection of names and acronyms of intergovernmental organizations in the domain name system (DNS) and the compilation of a list of country names to be protected. The Delegation also mentioned that other subjects had been deferred, such as that of the protection of geographical indications and indications of source in the DNS. It noted that the question was still outstanding, which did not alter the fact that it was the most complex and the most important to France in particular, and that it should be monitored carefully. The Delegation said that it supported the recommendations of the Special Sessions of the SCT concerning the names and acronyms of intergovernmental organizations and the protection of country names against registration as domain names. The Delegation concluded by expressing the hope that specific action would be taken in order to implement the recommendations already adopted, and that if necessary WIPO could engage in consultations to that end.

74. The Chair noted the following with respect to the recommendations of the SCT, as reflected in document WO/GA/28/3.

75. The General Assembly adopted the recommendation of the SCT with respect to INNs.

76. The General Assembly adopted the recommendation of the SCT with respect to trade names.

77. The General Assembly adopted the recommendation of the SCT with respect to personal names.

78. The General Assembly adopted the recommendation of the SCT with respect to geographical indications, it being understood that the SCT is to continue the discussions on this topic.

79. The General Assembly adopted the recommendation of the SCT with respect to the names and acronyms of IGOs and instructs the Secretariat to transmit the said recommendation to the Internet Corporation for Assigned Names and Numbers (ICANN). The Delegation of the United States of America dissociated itself from this decision.

80. The General Assembly noted that all Delegations support the recommendations of the SCT with respect to country names, except those of Australia, Canada and the United States of America.

81. The General Assembly further noted that a number of issues with respect to the protection of country names in the DNS warrant further discussion. These issues concern, in particular, the list to be relied upon to identify the names of countries which would benefit from the protection envisaged, (2) the extension of the deadline for the notification to the Secretariat of names by which countries are commonly known, and (3) how to deal with acquired rights. The General Assembly decided that discussions should be continued in the SCT with a view to reaching a final position.

ITEM 14 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE STATUS OF THE ADVISORY COMMITTEE(S) ON ENFORCEMENT

82. Discussions were based on documents WO/GA/28/4 and WO/GA/28/6.

83. Upon introducing the documents, the Secretariat recalled that following the discussions of Member States and observers at the Joint Meeting of the Advisory Committee on Enforcement of Industrial Property Rights and the Advisory Committee on Management and Enforcement of Copyright and Related Rights in Global Information Networks, held in December 2001, it had been decided that a decision would be taken, during the next session of the WIPO Assemblies, on the status that would be granted to the future advisory committee on enforcement. Furthermore, Member States were requested to consider, as to the structure of such a committee, the options contained in paragraph 5 of document WO/GA/28/4, with regard to the structure of the future Advisory Committee(s) on Enforcement, namely:

(a) to establish a single Committee covering both industrial property rights and copyright and related rights;

(b) to establish two separate Committees, one for industrial property rights and one for copyright and related rights, which would meet concurrently with a possible joint session at the end; or

(c) to establish two separate Committees.

The Secretariat also noted that pending the decision by the General Assembly on the above, a decision had to be taken on the applicable rules of procedure and the issue of participation by Member States and observers and the participation of non-governmental organizations without observer status in WIPO.

84. With reference to the Consultation Meeting on Enforcement, held from September 11 to 13, 2002, the Chair invited Mr. Henry Olsson, Chair of the Consultation Meeting on Enforcement, to present the "Conclusions by the Chair," attached to document WO/GA/28/6.

85. Mr. Olsson thanked the Chair and referred, in particular, to paragraph 7 of the adopted "Conclusions by the Chair" of the Consultation Meeting on Enforcement, annexed to document WO/GA/28/6, and informed the General Assembly that, during the Consultation Meeting on Enforcement, strong preference was expressed that an intergovernmental structure for enforcement, to be set up within WIPO, would include one single committee, covering both industrial property rights and copyright and related rights, in charge of global

enforcement issues. The objectives or tasks of the single committee would be to serve as a forum for exchange of information and appropriate coordination of activities in the field of enforcement and cooperation in the fight against counterfeiting and piracy. Some delegations suggested that the committee could consider the elaboration of good or best practices in the field of enforcement. In addition, some delegations suggested that a Model Law on Enforcement should be elaborated. One delegation suggested that the issue of enforcement could also be drawn to the attention of the Policy Advisory Commission (PAC). Mr. Olsson further indicated that, as regards the form of the single committee, different views were expressed. Whereas certain delegations supported the proposed structure presented by the International Bureau, certain other delegations supported the setting up of a permanent committee as proposed by the Delegation of the United States of America. A number of delegations also expressed the view that there should be a focal point in the International Bureau responsible for the coordination of the enforcement activities which would also serve to ensure contact with the committee on enforcement. With regard to the conclusions contained in paragraph 1 to 6 of the "Conclusions by the Chair" Mr. Olsson mentioned that strong appreciation was expressed for the work conducted by the Regional Bureaus and the WIPO Worldwide Academy, but that efforts could be made to improve these activities.

86. The Delegation of Barbados, on behalf of the Group of Latin American and Caribbean Countries (GRULAC), was in favor of the creation of a single consultative committee with two separate and distinct programs on copyright and industrial property, respectively. It stated that this consultative committee would be intended to enhance cooperation and technical assistance in the area of enforcement among WIPO Member States, especially developing countries. It would help to ensure that the needs of developing countries in the specific area of enforcement are met, and address the problems many WIPO Members States face in implementing their enforcement obligations under the WTO (Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Delegation stated that GRULAC felt strongly that an agenda which was too ambitious would only prove detrimental in the long run and it would not support any initiative that would result in the creation of higher levels of enforcement obligations than those which currently exist under the TRIPS Agreement.

87. The Delegation of Denmark stated that enforcement was an extremely important issue and that the legal protection of copyright and industrial property rights could not stand alone and must be accompanied by enforcement measures. The Delegation, therefore, fully supported the efforts of WIPO in the field of enforcement and pointed out that it was indispensable to have a forum where Member States, intergovernmental organizations and non-governmental organizations could discuss these matters in order to strengthen the WIPO enforcement activities and to provide inspiration to enforcement activities on a regional and national level. The delegation further pointed out that although there were many overlapping enforcement issues regarding copyright and industrial property rights and enforcement activities in various areas vary to a large extent, but the issues to be discussed in a committee were very much the same. Against this background, the Delegation supported the establishment of one single committee covering both copyright and industrial property rights to deal with enforcement issues in WIPO. The Delegation also found the International Bureau's proposals regarding the committee's purpose, organization and procedures satisfactory. The Delegation noted that paragraph 12 of document WO/GA/28/4 did not seem to allow the European Community, as such, to become a member of the committee. Although the Delegation did not propose an amendment to the proposal made by the International Bureau, it would like the question concerning membership of the European Community to be taken up as an issue in the forthcoming committee. The Delegation then pointed out that it considered it most appropriate for the committee itself to decide whether to establish working

groups in future. Regarding the proposition to establish a focal point within the International Bureau to deal with coordination of the enforcement activities of WIPO, the delegation was of the view that the internal organization in the International Bureau should be left, to the widest possible extent, to the management of WIPO. It was, in any event, premature to discuss the question at the Assembly. The Delegation suggested that the proposal should be dealt with at the new committee's first meeting.

88. The Delegation of the United States of America reaffirmed its opinion that one single committee should be established in order to have a coherent and integrated approach on training and related activities. However, the Delegation held the view that a standing committee could provide the preferred framework for the enforcement activities as this would ensure a greater sense of continuity to carry out its objectives and specific activities and to render assistance to all Member States of WIPO as no Member State was immune to the problems faced under these activities and that it was a global, international issue. The Delegation agreed that it was not necessary to delineate all the tasks of this committee but the proposals outlined in paragraph 7 of document WO/GA/28/4 should be decided by the Assembly as the general parameters of such a standing committee. Such a single structure would also ensure that maximum use be made of the currently authorized resources dedicated to these activities.

89. The Delegation of Egypt thanked the Secretariat for their excellent presentation and pointed out that intellectual property enforcement was the basis of intellectual property protection and, accordingly, supported the establishment of a single advisory committee on enforcement to promote cooperation among Member States through the exchange of information, data and experience in a positive spirit of cooperation. The committee should place the emphasis on enforcement activities relevant to developing countries in order to assist them in their efforts to protect intellectual property rights. It was also important that WIPO review its enforcement activities, like all other activities. The Delegation agreed with the mandate of the committee as outlined in paragraph 7 of document WO/GA/28/4 on the understanding that it had been agreed to by all countries and not only some countries.

90. The Delegation of Japan thanked Mr. Olsson for his detailed explanation on this issue and mentioned that it regarded the activities of WIPO in the area of enforcement as extremely important and underscored the strengthening of enforcement related activities in the framework of WIPO. The Delegation strongly supported the establishment of a single committee on enforcement having a permanent nature.

91. The Delegation of Algeria warmly thanked Mr. Olsson for his excellent report on this very crucial issue and supported the establishment of such a committee. However, it felt it necessary to emphasize that such a committee should be merely advisory. Careful attention should thus be given to the terms of reference for the committee and its structure. In order to do so, there was a need for further deliberations by the committee.

92. The Delegation of Germany expressed its support for the establishment of a single committee to continue work in this very important area of enforcement with a positive focus. Concerning the internal organization of the International Bureau, the Delegation associated itself with the views expressed by the Danish Delegation and expressed its confidence that the Secretariat would organize itself in the most efficient way to carry out this task.

93. The Delegation of Brazil thanked the Secretariat for the documents and Mr. Olsson for the excellent way in which he conducted the Consultation Meeting on Enforcement. The

Delegation stated that its government attached great importance to the enforcement of intellectual property rights and had established an Inter-ministerial Committee on Combating Piracy, bringing together the main stakeholders dealing with copyright and devising a plan of action to combat piracy. The Delegation pointed out that most developing countries lacked adequate resources to implement international obligations, particularly those under the TRIPS Agreement. WIPO could, therefore, play an important role in the exchange of experiences and information regarding intellectual property enforcement, capacity building and training. For the Delegation of Brazil, the realistic approach to handle this matter in WIPO would be to establish a single advisory committee, dealing with both industrial property rights and copyright and related rights. The Delegation did not support the establishment of a permanent committee dealing with enforcement issues. Concerning the establishment of a focal point in the International Bureau to coordinate with enforcement activities, the Delegation was of the view that it had insufficient information and that there was a lack of agreement between delegations regarding the details of the proposal, and was concerned that it might lead to an overlap in the use of resources in WIPO. Accordingly, it fully supported the intervention by the Delegation of Barbados on behalf of GRULAC.

94. The Director General then observed that the majority of delegations who had spoken so far were in favor of the establishment of one single committee on enforcement, the mandate of which had been very clearly established in paragraph 7 of document WO/GA/28/4. The objectives of the said committee were the coordination with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and the exchange of information on enforcement issues through the establishment of an Electronic Forum. Within the broad mandate of this committee, possible scenarios could include the elaboration of best practices and a Model Law. Once agreement was reached on the objectives of such a committee, the naming thereof was of lesser importance, since the General Assembly always had the power to change the name of the committee in future. The logical way forward was to create a single committee and to facilitate the task of the Secretariat with the limited resources available. The Director General urged the Member States to take a decision on establishing one single committee; to approve the objectives as established in paragraph 7 of document WO/GA/28/4; and to leave the precise naming thereof to the responsibility of the International Bureau which would, prior to the first meeting of the committee, consult with the various Group Coordinators to clarify the precise naming of the said body. The Director General indicated that there would be opportunities in future to review the work of the committee and to make comments and also to change the naming should the General Assembly find the naming of that body to be inappropriate or irrelevant.

95. The Republic of Korea supported the establishment of a single committee due to the overlapping nature of intellectual property rights and took note of the fact that specialized working groups may be established thereunder to consider specific issues to be addressed by the committee, as proposed in document WO/GA/28/4.

96. The Delegation of Sudan also supported the establishment of a single advisory committee. It pointed out that the work of the committee should maintain a balance between all disciplines of intellectual property including legal aspects and protection, and that the focus should not exclusively be limited to legal aspects.

97. The Delegation of France agreed with the summary and proposal made by the Director General. The Delegation mentioned that the establishment of a single committee would

simplify matters, but that WIPO ensures enforcement. As far as the mandate or terms of reference were concerned, the main issue was the results that could be achieved through the committee. Regarding the internal coordination in WIPO, the Delegation reiterated that that was a matter to be decided upon by the Director General.

98. The Delegation of Sri Lanka stated that it was interested in establishing an expeditious and cost effective enforcement environment. Accordingly, it supported the establishment of one single committee. It was of the view that the elaboration of a Model Law could be very useful, particularly for developing countries.

99. The Delegation of Peru agreed entirely with the position of GRULAC, as expressed by the Delegation of Barbados, and supported the establishment of one advisory or consultative committee on the enforcement of intellectual property rights, which should not be a permanent committee. The terms of reference of the committee should be limited to the exchange of information and appropriate coordination of work that remained to be done in this respect. The Committee could also deal with cooperation, which was extremely important for developing countries if they were to combat counterfeiting and piracy effectively. The Delegation stated that it could not support the development of best practices on enforcement and would certainly not like to see a Model Law becoming an issue for the Committee.

100. The Delegation of Morocco thanked Mr. Olsson for the summary of the Consultation Meeting on Enforcement. The enforcement of rights is clearly an effective tool for protection of intellectual property rights. This was a crosscutting issue, which affected all aspects of intellectual property, and therefore the Delegation supported the establishment of a single committee on enforcement, which should ensure the exchange of information and experience on fighting counterfeiting and piracy. Therefore, the Delegation would gladly participate in future discussions defining the mandate and structure of this committee. The Delegation also pointed out that it was flexible and interested in the consultation that would soon be held on this subject in the hope that a mutual acceptable solution may be agreed upon.

101. The Delegation of Uruguay agreed with the mandate of the committee outlined in paragraph 7 of document WO/GA/28/4, with the following suggestion: "In no case should the committee have a standard setting or normative functions and the information it handles should not be used anywhere to enable commercial or trade related measures to be used or taken against any country."

102. The Delegation of Brazil in response to the observations made by the Director General, stated that if it were merely a problem of name, the discussions would have been much easier. Instead, some delegations had expressed concerns regarding the normative or standard setting nature of a committee on enforcement. That being the case, the establishment of an advisory committee would be an effective way of achieving the objectives that had been set out in paragraph 7 of the Secretariat's document. The Delegation, therefore, felt that the suggestion that a committee be created without any reference to its actual characteristics, that is whether it was a standing committee, an advisory committee or a consultative committee, would not be sufficient to overcome certain continuing concerns on the part of some countries. The Delegation was, accordingly, of the view that the establishment of an advisory committee would be a better way to meet the concerns of all members of the Assembly. The Delegation thus regretted to say that the establishment of a committee without providing the necessary adjectives to indicate the nature of the committee would not comply with the instructions that they had received from their capital. Extensive discussions had taken place in their capital

and there was a very clear and serious concern about the mandate of the committee. The Delegation therefore reiterated its preference for an advisory committee as a committee that could meet the concerns of the majority members of the Assembly and fully agreed with the proposals made by the Delegation of Uruguay, with respect to the characteristics of such a committee.

103. The Delegation of the United States of America mentioned that it had listened attentively to the various Delegations and also to the summary made by Mr. Olsson followed by the reassurance by the Director General that the work of this single committee was already shaped by the general terms of reference decided in document WO/GA/28/4. It would concur with, and support, the recommendations made by the Director General, in finding it the most acceptable way to proceed with the important work of this committee.

104. The Delegation of Venezuela also favored the establishment of an advisory committee without a normative activity and with clearly defined criteria and mandate as mentioned by the Delegation of Uruguay. It agreed, entirely, with those Delegations who had made similar comments.

105. The Delegation of Argentina supported the intervention made by Barbados on behalf of GRULAC. It also supported the interventions made by the Delegations of Brazil, Peru and Venezuela.

106. The Chair proposed the following conclusion based on the consensus reached, namely:

(1) That the General Assembly should confirm the establishment of a single committee on enforcement of rights;

(2) That the objectives of that committee would, at this stage, be the same as they are defined and outlined according to the terms of paragraph 7 of document WO/GA/28/4; and

(3) That the Director General of WIPO be requested to convene this single committee on the understanding that all Member States who wished to participate therein could participate. Furthermore, that the committee would report to the next General Assembly, on, firstly, the progress achieved in terms of the setting of objectives for the Committee and, secondly, the Assembly should have a fresh discussion at its next session, to define the scope of the committee, its role and its procedures.

107. The Delegation of Brazil supported the proposed conclusion made by the Chair, as provisional, but to be acceptable, it would like to see the suggestion by the Delegation of Uruguay incorporated into the understanding of the Assembly.

108. The Delegation of Uruguay agreed with the intervention made by the Delegation of Brazil but requested to add expressly to the conclusions that in no case would the committee have standard setting or normative responsibilities, and the information handled by the committee should not be used, in any circumstances, for the adoption of commercial or trade related measures against any country.

109. The Delegation of Peru echoed the statement made by the Delegations of Brazil and Uruguay and stated that it would also have concerns in accepting the conclusions by the Chair unless the scope of the remit of the committee were clearly defined.

110. The Delegation of Cameroon shared the concerns raised by the Delegation of Brazil and wanted to be ensured that the new committee would have no mandate to review the TRIPS Agreement nor have any normative mandate and that the objective of the committee should hinge around the educational and information components.

111. The Delegation of Kazakhstan shared the intervention made by the Delegation of Uruguay and those supporting that intervention. The Delegation further supported the establishment of one single advisory committee.

112. The Delegation of the United States of America was of the view that the Director General had found the appropriate solution in providing the necessary flexibility as outlined in paragraph 7, which could be developed in consultation with Member States and then to come back with a program of action for consideration by the Assembly next year. The Delegation had the impression that the time was ripe to improve the work of WIPO in a positive way and to strengthen the enforcement of intellectual property rights. As set out in the summary made by Mr. Olsson, the Consultation Meeting on Enforcement had underscored the need for improved training and technical assistance. The Delegation stated that the amendments offered by the Delegation of Uruguay did not comport with the language of paragraph 7 of the document under discussion.

113. The Delegation of the Republic of Cuba wished to express its support for the GRULAC declaration and of the declarations of Brazil, Venezuela, Uruguay and Peru. Furthermore the Delegation supported the proposal of the Director General on the establishment of a single Advisory Committee on Enforcement, covering both industrial property and copyright and related rights.

114. The Chair proposed the conclusions for adoption, which were agreed upon after extensive consultation and the following solution was proposed, namely:

The General Assembly took note of the contents of documents WO/GA/28/4 and WO/GA/28/6, prepared by the Secretariat.

(i) The General Assembly decided to establish one single Advisory Committee on Enforcement, in charge of global enforcement issues, covering both industrial property and copyright and related rights.

(ii) The mandate of the Committee in the field of enforcement, which excludes norm setting, was limited to technical assistance and coordination. The Committee should focus on the following objectives: coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum.

(iii) The proposed membership and rules of procedure were those contained in paragraphs 8 to 14 of document WO/GA/28/4.

(iv) The Director General to convene a meeting of the said Committee, as soon as possible in the year 2003, and should report to the next ordinary session of the General Assembly.

115. The Delegation of Barbados, in the interest of transparency and clarity, stated on behalf of GRULAC, that it understood that in no case would the Committee have normative attributions and the information generated by that Committee would not be used in any forum to adopt commercial measures against any country.

116. The Chair stated that the statement made by GRULAC had been noted and would be reflected in the records of the discussion.

117. The Delegation of Algeria, on behalf of the African Group, expressed its desire for a purely advisory committee to be established that would deal with cooperation, exchange of information, expertise and awareness raising which, as the Delegation observed, had all been incorporated in the agreed conclusions to be adopted by the General Assembly.

118. The Delegation of Belarus made a statement on behalf of the Group of Central Asian, Caucasus and Eastern Europe, emphasizing three points to be reflected in the record of the Assembly, namely, that it supported the idea of a single Committee, but it would not like the remit of the Committee to include any kind of normative or standard setting activity.

119. The Chair confirmed that it was a single Committee, which was advisory and it would have no power to set standards.

120. The General Assembly agreed with the conclusions made by the Chair as outlined in paragraph 114 above.

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