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WIPO GENERAL ASSEMBLY

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Geneva, September 22 to October 1, 1997

AUDIOVISUAL PERFORMANCES AND DATABASES

Memorandum prepared by the International Bureau

1. During their thirtieth series of Meetings, held on March 20 and 21, 1997, the Governing Bodies of WIPO and the Unions administered by WIPO decided the convening of a Committee of Experts on a Protocol concerning Audiovisual Performances for September 15, 16 and 19, 1997, and of an Information Meeting on Intellectual Property in Databases for September 17 and 18, 1997 (see document AB/XXX/4, paragraph 20).

2. In conformity with that decision, the two meetings were convened and held on the above-mentioned dates. The reports of both meetings (documents AP/CE/I/4 and DB/IM/6), as adopted on September 19, 1997, are reproduced in Annexes A and B.

3. The WIPO General Assembly is invited to take note of the reports mentioned above and to take any decision it may find appropriate with respect to the issues mentioned in paragraphs 12 to 14 of the report of the Committee of Experts on a Protocol concerning Audiovisual Performances; and in paragraphs 12 and 13 of the report of the Information Meeting on Intellectual Property in Databases.

[Annex A follows]

ANNEX A

REPORT OF THE COMMITTEE OF EXPERTS
ON A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES
(Geneva, September 15, 16 and 19, 1997)
(WIPO document AP/CE/I/4 dated September 19, 1997)

I. INTRODUCTION

1. In pursuance of the decision taken by the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO at the thirtieth Series of Meetings in Geneva, on March 20 and 21, 1997 (see document AB/XXX/4, items 3 and 4), the Director General of WIPO convened a Committee of Experts on a Protocol concerning Audiovisual Performances (hereinafter referred to as "the Committee") at the headquarters of WIPO, in Geneva, on September 15, 16 and 19, 1997.

2. Experts of the following 91 States and one intergovernmental organization, members of the Committee, attended the meeting: Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, Eritrea, Estonia, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kazakstan, Kenya, Kyrgyzstan, Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, and the Commission of the European Communities.

3. Representatives of the following five intergovernmental organizations attended the meeting in observer capacity: International Labour Organization (ILO), International Telecommunication Union (ITU), Agency for Cultural and Technical Cooperation (AGECOP), Organization of African Unity (OAU), and World Trade Organization (WTO).

4. Representatives of the following 38 non-governmental organizations attended the meeting in observer capacity: Agence pour la protection des programmes (APP), American Bar Association (ABA), American Federation of Television and Radio Artists (AFTRA), American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO), Association for the International Collective Management of Audiovisual Works (AGICOA), Caribbean Broadcasting Union (CBU), Comité "Actores, Intérpretes" (CSAI), Conseil francophone de la chanson (CFC), Copyright Research and Information Center (CRIC), European Broadcasting Union (EBU), European Project-Digital Video Broadcasting (DVB), Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE), Ibero-Latin-American Federation of Performers (FILAIIE), Information Industry Association (IIA), Information Technology Association of America (ITAA), Interamerican Copyright Institute (IIDA), International Affiliation of Writers Guilds (IAWG), International Alliance of Orchestra Associations (IAOA), International Association of Broadcasting (IAB), International Bar Association (IBA), International Confederation of Societies of Authors and Composers (CISAC), International Council of Scientific Unions (ICSU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Intellectual Property Alliance (IIPA), International Publishers Association (IPA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Performing Arts Employers Associations League Europe (PEARLE), Union of Industrial and Employers' Confederations of Europe (UNICE), Union of National Radio and Television Organizations of Africa (URTNA) and World Federation of Music Schools (WFMS).

5. The list of participants is attached to this report.*

II. OPENING OF THE MEETING

6. A representative of the International Bureau of WIPO welcomed the participants and opened the meeting.

* The list of participants is not attached to this copy of the report.

III. ELECTION OF OFFICERS

7. Mr. Jukka Liedes (Finland) was unanimously elected Chairman, and Mrs. Hilda Retondo (Argentina) and Mr. Shen Rengan (China) were unanimously elected Vice-Chairmen of the Committee.

IV. EXAMINATION OF QUESTIONS RELATED TO A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES

8. Discussions were based on the memoranda prepared by the International Bureau of WIPO, in accordance with the decision mentioned in paragraph 1, entitled:

- Existing national and regional legislation concerning audiovisual performances (document AP/CE/I/2); and
- Information received from Member States of WIPO and from the European Community concerning audiovisual performances (documents AP/CE/I/3 and 3 Add.).

9. The Secretariat noted the interventions made and recorded on tape. The statements made during the debate are reflected in the annex to this report. **

10. The Chairman summarized the general discussion in the following way: The discussion had been very useful. Many delegations had expressed regret that protection of performers with respect to audiovisual performances was not included in the WIPO Performances and Phonograms Treaty (WPPT). All delegations had reaffirmed that the work on a Protocol addressing this issue should continue in the framework of WIPO. Specific aspects that delegations had mentioned were, in particular: the possible scope of the protection, the specific rights to be granted to performers, the aspect of moral as well as of economic rights, the objective of obtaining protection for performers as much in parallel as possible with the protection of authors, the desire to do away with discrimination of audiovisual performers in respect of their legal protection. On the other hand, it had also been pointed out that the Berne Convention contained specific rules on cinematographic works. The need for a flexible treaty had been underlined, namely that it should be adapted to divergent concepts in national legislations and to the realities, i.e., contractual practices, collective bargaining and collective management of rights. Further elements mentioned had been the principle of national treatment and the issues of transferability of rights and applicable law. A pragmatic approach had been felt suitable. To take the WPPT as a starting point, would simplify the further debate. The Protocol should be of a complementary nature, in relation to the WPPT. The appropriate maxim for the forthcoming negotiations should be: *compromise and commitment*.

11. The Chairman noted that the memoranda prepared by the International Bureau for the current meeting had been useful. As far as amendments or additions to the memoranda

** The annex will be sent separately for written approval and distributed later.

requested by some delegations were concerned, it was agreed that the Secretariat would duly reflect their contents in the annex to this report mentioned in paragraph 9.

V. FUTURE WORK

12. The Committee adopted the following decision:

(i) the second session of the Committee should take place in the period of May-June 1998, but not later than during the week starting June 8, 1998; it is recommended that the Governing Bodies of WIPO take a decision about the dates of the second session during their September-October 1997 series of meetings;

(ii) the International Bureau should invite the Governments of WIPO Member States and the European Community to submit by January 15, 1998, proposals, preferably in treaty language, concerning a protocol to the WIPO Performances and Phonograms Treaty on audiovisual performances;

(iii) the International Bureau should distribute the proposals, together with comparative tables, if appropriate, by the end of February 1998, to those invited to the second session of the Committee who should be the same as those invited to the first session;

(iv) regional consultation meetings should be organized by WIPO in consultation with the representatives of the regional groups in March-April 1998; it is recommended that the Governing Bodies of WIPO take a decision about the financing of the participation of the representatives of the regional groups, during the September-October 1997 series of meetings of the Governing Bodies.

13. The Delegation of Côte d'Ivoire, on behalf of the African Group, the Delegation of Ecuador, on behalf of the Group of Latin American and the Caribbean countries, and the Delegation of Singapore, on behalf of the Asian Group, and supported by the Delegation of China, underlined the need for financial support by WIPO for the participation of representatives of countries from these regional groups in the regional consultation meetings. Those Delegations referred to the way in which participation in the regional consultation meetings, that had been held in the autumn of 1996 in preparation of the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions (December 1996), had been financially supported by WIPO, and indicated that the number of participants financed for each of those regions should be similar.

14. The Delegation of the Russian Federation requested that a consultation meeting be organized by WIPO also for those Member States of WIPO which are members of the Commonwealth of Independent States and that WIPO lend its financial support to participation of representatives of those States, except the Russian Federation.

VI. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

15. The present report was unanimously adopted by the Committee.
16. The Chairman closed the meeting.

[Annex B follows]

ANNEX B

REPORT OF THE INFORMATION MEETING
ON INTELLECTUAL PROPERTY IN DATABASES
(Geneva, September 17 to 19, 1997)
(WIPO document DB/IM/6 dated September 19, 1997)

I. INTRODUCTION

1. In pursuance of the decision taken by the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO at the thirtieth Series of Meetings in Geneva, on March 20 and 21, 1997 (see document AB/XXX/4, items 3 and 4), the Director General of WIPO convened an Information Meeting on intellectual property in databases (hereinafter referred to as “the Information Meeting”) at the headquarters of WIPO, in Geneva, on September 17 to 19, 1997.

2. Experts of the following 93 States and one intergovernmental organization attended the Information Meeting: Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Democratic People’s Republic of Korea, Denmark, Ecuador, Egypt, Eritrea, Estonia, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, and the Commission of the European Communities.

3. Representatives of the following 10 intergovernmental organizations attended the meeting in observer capacity, United Nations Educational, Scientific and Cultural Organization (UNESCO), International Labour Organization (ILO), International Maritime Organization (IMO), International Telecommunication Union (ITU), World Meteorological Organization (WMO), World Health Organization (WHO), Agency for Cultural and Technical Cooperation (AGECOP), Council of Europe (CE), Organization of African Unity (OAU), and World Trade Organization (WTO).

4. Representatives of the following 53 non-governmental organizations attended the meeting in observer capacity: Agence pour la protection des programmes (APP), American Bar Association (ABA), American Federation of Television and Radio Artists (AFTRA), American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO), Association for the International Collective Management of Audiovisual Works (AGICOA), Business Software Alliance (BSA), Caribbean Broadcasting Union (CBU), Comité "Actores, Intérpretes" (CSAI), Conseil francophone de la chanson (CFC), Copyright Research and Information Center (CRIC), European Broadcasting Union (EBU), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Project-Digital Video Broadcasting (DVB), Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE), Ibero-Latin-American Federation of Performers (FILAIE), Information Industry Association (IIA), Information Technology Association of America (ITAA), Interamerican Copyright Institute (IIDA), International Affiliation of Writers Guilds (IAWG), International Alliance of Orchestra Associations (IAOA), International Association of Audio-Visual Writers and Directors (AIDAA), International Association of Broadcasting (IAB), International Association for the Protection of Industrial Property (AIPPI), International Bar Association (IBA), International Chamber of Commerce (ICC), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Council of Scientific Unions (ICSU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of Newspaper Publishers (FIEJ), International Federation of the Periodical Press (FIPP), International Federation of the Phonographic Industry (IFPI), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of Translators (FIT), International Intellectual Property Alliance (IIPA), International Publishers Association (IPA), International Union Against Cancer (UICC), International Union For Conservation of Nature (IUCN), Japan Electronic Industry Development Association (JEIDA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Performing Arts Employers Associations League Europe (PEARLE), Software Information Center (SOFTIC), Union of Industrial and Employers' Confederations of Europe (UNICE), Union of National Radio and Television Organizations of Africa (URTNA) and World Federation of Music Schools (WFMS).

5. The list of participants is attached to this report.*

II. OPENING OF THE MEETING

6. A representative of the International Bureau of WIPO welcomed the participants and opened the Information Meeting.

III. ELECTION OF OFFICERS

7. Mr. Jukka Liedes (Finland) was unanimously elected Chairman and Mr. Nikolay Khlestov (Russian Federation) and Mr. Coenraad Johannes Visser (South Africa) were unanimously elected Vice-Chairmen of the meeting.

IV. EXAMINATION OF QUESTIONS RELATED TO INTELLECTUAL PROPERTY IN DATABASES

8. Discussions were based on the memoranda prepared by the International Bureau of WIPO, in accordance with the decision mentioned in paragraph 1, entitled:

- Existing national and regional legislation concerning intellectual property in databases (document DB/IM/2); and
- Information received from Member States of WIPO and from the European Community and its Member States concerning intellectual property in databases (documents DB/IM/3 and 3 Add.).

9. The Secretariat noted the interventions made and recorded on tape. The statements made during the debate are reflected in the Annex to this report.**

10. The Chairman summarized the discussions as follows: The discussions and the documentation of this information meeting form a rich database of the prevailing opinions and approaches towards a possible system of *sui generis* protection of databases. All delegations who took the floor emphasized their commitment and stressed their willingness to participate in the work on this important matter. Many delegations stated that they needed more time for study and consultations on national, regional and international level, and they stated that they needed further analysis to assess the need for such a system; furthermore these delegations pleaded for caution and slower pace for international deliberations. The European Community and many of its Member States explained the European legislation on the *sui generis*

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protection of databases, reported about their experience and explained their views about the need for this kind of protection. Several delegations expressed that they were not convinced of the need for this kind of protection; many of them, however, said that they would not deny the possible need for some kind of protection for valuable non-original databases. A number of delegations stressed that also the applicability of existing forms of protection should be explored. The importance of free and open access to information was stressed by most delegations, especially in domains of high public interest, such as science, education and national security. The importance of free exchange of scientific data, and especially meteorological data, was also stressed. Many delegations emphasized that if a system of specific protection of databases were established, it should reflect a proper balance between the rights and interests of right owners and the larger public interest, including the science, research and education sectors, and without forgetting the role of libraries.

11. The Chairman further noted that certain questions and aspects or elements of a possible *sui generis* right that needed to be addressed had been mentioned, including *inter alia* the following:

- the need for such a system of protection;
- definitions of necessary concepts, such as “database”;
- the protected subject matter;
- the rights that should be granted;
- the scope of protection;
- determination of the beneficiary or holder of the rights;
- duration of the rights;
- exceptions in favor of e.g. scientific and educational activities;
- principles of operation, such as national treatment or reciprocity; and
- means of enforcement and means for acquiring the proof of infringement.

He emphasized that the list was not exhaustive and the document to be prepared by the International Bureau would be more comprehensive.

V. FUTURE WORK

12. The Information Meeting adopted the following recommendation:

- (i) the International Bureau, when it makes available the detailed summary of the discussions in the Information Meeting, as a draft annex to the report of the meeting, should add a document summing up, in an analytic table, the questions raised during the Information Meeting;
- (ii) the International Bureau in the circular letter by which it will distribute the draft annex and the document mentioned in item (i), above, should invite Member States of WIPO and the European Community, as well as the intergovernmental and non-governmental organizations invited to the Information Meeting, to submit, by the end of April 1998, information concerning the questions included in the above-mentioned

document and on any other related questions they may find relevant;

(iii) the International Bureau should make available such information in a concise form, by the end of June 1998, to the Member States of WIPO and the European Community, so as to facilitate consultations on the issues concerning intellectual property in databases at national and regional level, as well as to the organizations mentioned in item (ii), on the understanding that the information received from intergovernmental and non-governmental organizations will be made available in the languages in which it is submitted;

(iv) the International Bureau should also send, by the end of September 1998, to the Member States of WIPO and the European Community, as well as to the organizations mentioned in item (ii), an analytic document summarizing the information mentioned in item (iii).

13. The Chairman stated the understanding of the Information Meeting that it was up to the competent Governing Bodies of WIPO to take a decision about the convocation of any further WIPO meeting on intellectual property on databases at regional and/or international level, as well as about the preparation and financing of such meetings.

VI. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

14. The present report was unanimously adopted by the Information Meeting.

15. The Chairman closed the meeting.

[End of Annex B and of document]