

WIPO



IAVP/DC/38

ORIGINAL:French/English/Spanish

DATE:March6,2002

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

DIPLOMATIC CONFERENCE ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

Geneva, December 7 to 20, 2000

SUMMARY MINUTES (MAIN COMMITTEE II)

prepared by the International Bureau

President: Mr. Kambhampati Subramanya SARMA (India)

Secretary: Mr. Francis GURRY (WIPO)

First Meeting

Wednesday, December 13, 2000

Afternoon

1. The PRESIDENT thanked for his election as President of Main Committee II and noted that the Committee was responsible for the administrative and final clauses of the proposed instrument. Work should proceed on an article -by-article basis. He invited the Secretariat to provide an overview of the provisions in the Basic Proposal.

Article 100: Assembly

2. Mr. GURRY (WIPO Secretariat) stated that Article 100 was similar to corresponding provisions in other WIPO treaties, with the exception of subparagraph (1)(a) of Alternative A, which provided for a common assembly for Contracting Parties to the WIPO Performances and Phonograms Treaty (WPPT) and Contracting Parties to the proposed instrument. Alternative B provided for a separate and independent assembly for the proposed instrument. The choice between Alternatives A and B would have a consequence in paragraph (4) which dealt with the possibility of restricting the voting rights of a Contracting Party that was a member of the assembly. That paragraph provided that a Contracting Party may not vote in the assembly on any question relating exclusively to a Treaty for which the assembly is competent and by which the Contracting Party is not bound. The provision would not be necessary if Alternative B were adopted.

3. The PRESIDENT opened the floor for discussion on Article 100.

4. Mr. PHUANGRACH (Thailand) supported Alternative B throughout the Basic Proposal because his Delegation viewed the instrument as a separate Treaty with its own identity.

5. Mr. CRESWELL (Australia) indicated that although his Delegation had indicated in Main Committee I that it preferred the proposed instrument to be characterized as an independent Treaty rather than a protocol, it was also interested in possible linkages between the proposed Treaty and the WPPT such as through the sharing of an assembly. In this context, his Delegation requested the advice of the Secretariat on the effect of Alternative A on the provisions of subparagraphs (1)(a) and (2)(a) of Article 24 of the WPPT, insofar as these provisions seemed to restrict membership of the Assembly under Article 24 of the WPPT to Contracting Parties to that Treaty and the mandate of the assembly to matters concerning that Treaty.

6. Mr. GURRY (WIPO Secretariat) stated that Alternative A would not be inconsistent with subparagraphs (1)(a) and (2)(a) of Article 24 of the WPPT as these provisions were of a general nature. There could be a problem in connection with voting rights and that was why it was necessary to consider paragraph (4) of Article 100 which provided that a Contracting Party might not vote in the assembly on any question relating exclusively to a Treaty for which the assembly is competent and by which the Contracting Party would not be bound.

7. Mrs. BELLODEKEMPER (Dominican Republic), speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said on the subject of Article 100 that the majority of the countries of GRULAC region wanted the instrument to be an independent Treaty, as the same importance was attached to it as to the WPPT. Nevertheless, in spite of it being an independent Treaty, she felt that an Assembly shared with the WPPT could be contemplated. As for Article 102, she said that the majority of the countries of the Group were in favor of Alternative B.
8. Mr. OMOROV (Kyrgyzstan) stated that although his Delegation preferred the proposed instrument to be a separate Treaty, it supported the intervention by the Delegation of Australia on the issue of a shared Assembly.
9. Mr. BOSUM PRAH (Ghana), speaking on behalf of the African Group, stated that this Delegation was of the view that the instruments should be characterized as a protocol to the WPPT. As such, it should share an Assembly, and where possible, the same administrative arrangements as the WPPT.
10. Mr. REINBOTHE (European Community) stated that the instruments should be linked to the WPPT. Its structure and many of its provisions, including the final and administrative clauses, were based on the WPPT. The Diplomatic Conferences should benefit from the consensus achieved in 1996 in structuring the protocol. Moreover, the 1996 Resolution called for a protocol to the WPPT. For these reasons, his Delegation believed that the two instruments should be linked both in terms of content and structure. In this context, he expressed support for Alternative A in Articles 100 and 102. His Delegation preferred Alternative A in Article 105 as it was a reflection of a WIPO tradition and was in favor of Alternative A throughout the Basic Proposal on the final and administrative clauses. Although his Delegation preferred the term protocol, it would not be opposed to a different title as long as the instrument was linked to the WPPT.
11. Mr. GANTCHEV (Bulgaria), speaking on behalf of the Central European and Baltic States, supported Alternative A in Article 100 as the linkage between the instrument and the WPPT was of crucial importance to his Group. The name of the instrument was of less importance as it was the contents that mattered.
12. Mr. SHEN (China) supported Alternative A. The reasons for this had already been stated by his Delegation in Main Committee I and at the meetings of the Standing Committee.
13. Mr. KEPLINGER (United States of America) supported Alternative B, in the interest of efficiency, although joint meetings should be encouraged if this was administratively possible.
14. Mr. HERMANSEN (Norway) recalled that his Delegation had already stated in Main Committee I that they viewed the instrument as unfinished business from 1996. For this reason, the instruments should be viewed as a protocol to the WPPT. His Delegation supported Alternative A in Articles 100 and 102 and favored Alternative A in Articles 105 and 106.
15. Mrs. METTRAUX (Switzerland) supported the position taken by the European Community, and declared herself in favor of Alternative A.

16. Mr. ISHINO (Japan) stated that his Delegation was in favor of a common Assembly as it would streamline the management of the treaties within WIPO and contribute to the development of substantive discussions. The possibility of adopting Alternative A in Article 105 could result in the instrument entering into force before the WPPT and, thus, there could be a need for a provision concerning the timing of the entry into force of the two treaties.

17. Mr. WARR (Malta) supported Alternative A throughout the Basic Proposal as his Delegation favored a link between the instrument and the WPPT. Although his Delegation favored the name protocol, the title was of less importance as long as the link was reflected within the contents of the new instrument.

18. Mr. REDKO (Ukraine) supported Alternative B throughout the Basic Proposal as his Delegation preferred the instrument to be an independent Treaty.

19. Mr. SIMANJUNTAK (Indonesia) supported Alternative B in Articles 100 and 102 because, as previously mentioned, his Delegation viewed the Treaty as being independent from the WPPT.

Articles 101 and 102: International Bureau and Eligibility for Becoming Party to the Treaty

20. The PRESIDENT opened the floor for discussion on Article 101 and Article 102. Some delegations had already commented on these articles in the discussion on Article 100.

21. Mr. GANTCHEV (Bulgaria), speaking on behalf of the Central European and Baltic States, supported Alternative A.

22. Mr. KEPLINGER (United States of America) supported Alternative B as his Delegation preferred a separate and distinct Treaty. If Alternative A were to be adopted, it would still be necessary to attach subparagraphs (2) and (3) of Alternative B to Alternative A as the subject matter of the instrument was not exactly identical to that of the WPPT.

23. Mr. CRESWELL (Australia) noted that Alternative A in Article 102 referred to a party to the WPPT whereas in Article 104, Alternative A referred to a State that has acceded to or ratified the WPPT, and wondered if this was intentional. His Delegation favored Alternative B.

24. Mr. GURRY (WIPO Secretariat) stated that under the Vienna Convention on the Law of Treaties, a party was defined as a party to a Treaty which was in force. Thus, a country that had ratified or acceded to the WPPT could become a party to the proposed instrument.

25. Mrs. BELLODEKEMPER (Dominican Republic), on behalf of the Group of Latin American and Caribbean Countries, repeated what she had said earlier in connection with Article 100, namely that the majority of the countries preferred Alternative B, which they regarded as a means of avoiding any restriction on the possibility of becoming party to the new instrument, inasmuch as it would not be dependent on the WPPT.

26. Mr. COUCHMAN (Canada) supported Alternative B for several reasons, the most important being that this would allow a larger number of countries to join the Treaty.

27. Mr. OMOROV (Kyrgyzstan) supported Alternative B as the Treaty should not be restricted to the members of the WPPT.

28. Ms. SANTIAGO (Philippines) indicated that her Delegation was flexible as far as the title of the instrument was concerned, as what mattered were its contents. Her Delegation favored a common Assembly for the instrument and the WPPT but supported Alternative B in Article 102, as the Treaty should not be restricted to the members of the WPPT.

Articles 103, 104 and 105: Rights and Obligations under the Treaty, Signature of the Treaty and Entry into Force of the Treaty

29. The PRESIDENT opened the floor for discussion on Articles 103, 104 and 105.

30. Mr. GANTCHEV (Bulgaria), speaking on behalf of the Group of Central European and Baltic States, stated that although his Delegation would not like to indicate a clear preference for Alternative A, it would certainly prefer having less than 30 ratifications.

31. Mr. JO (Democratic People's Republic of Korea) stated that his Delegation was flexible as far as the title of the instrument was concerned and emphasized that the number of ratifications required for the Treaty to enter into force should be between five and 30.

32. Mr. KEPLINGER (United States of America) stated, without expressing a numerical preference, that a lower number of ratifications should be required in order to accelerate the entry into force of the Treaty.

33. Mrs. BELLO DEKEMPER (Dominican Republic) suggested in the name of the Group of Latin American and Caribbean Countries that the number of countries necessary for the entry into force of the Treaty could be set at 30. The Group would have difficulty in accepting the number of five countries as a requirement.

34. Mr. BOSUMPRAH (Ghana), speaking on behalf of the African Group, stated that although his Delegation preferred Alternative A, the number of ratifications required for the Treaty to enter into force should be between five and 30.

35. Mr. OMOROV (Kyrgyzstan) stated that although his Delegation could go along with Alternative A, it shared the concern expressed by the Delegation of Japan on the possibility that the Treaty could enter into force before the WPPT. For that reason, a higher figure such as 10 or 15 was perhaps more appropriate, particularly as it had taken four years for 18 countries to ratify the WPPT.

36. Mr. SIMANJUNTA (Indonesia) supported Alternative B, as his Delegation felt that this would avoid a situation whereby the Treaty would only be applied in a certain region. It would also give the Treaty global recognition and a higher degree of credibility.

37. Ms. SANTIAGO (Philippines) associated her Delegation with the intervention of the Delegation of Kyrgyzstan. The number of ratifications required for the Treaty to enter into force should approximate the number of countries which had ratified or acceded to the WPPT. Her Delegation feared that it would be difficult to achieve 30 ratifications based on their experience with the WPPT.

38. Mr. REINBOTHE (European Community), stated that his Delegation had already stated its preference for Alternative A throughout the Basic Proposal, and Article 105 was not an exception. The need for five instruments of ratification for the Treaty to enter into force was appropriate. There was, however, the risk mentioned by some delegations that this might lead to a situation where the instrument would enter into force before the WPPT.

39. Mr. GURRY (WIPO Secretariat) stated that despite the theoretical possibility, previous experience indicated that it was unlikely that there would be any ratifications or accession to the proposed instrument within the next 12 months. So far, 18 States had ratified or acceded to the WPPT, 30 were required and the Secretariat was optimistic that this would be achieved in the course of the next 12 months. This would allow the WPPT to enter into force before the new instrument.

40. Mr. SHEN (China) stated that his Delegation was not in favor of either alternative, and favored 15 to 20 ratifications to bring the Treaty into force.

Articles 106, 107, 108 and 109: Effective Date of Becoming Party to the Treaty, Denunciation of the Treaty, Languages of the Treaty and Depositary

41. The PRESIDENT opened the floor for discussion on Articles 106, 107, 108 and 109. Noting that no delegation had asked for the floor, he set aside the Articles for discussion at a later stage and adjourned the meeting.

*Second meeting
Sunday, December 17, 2000
Morning*

42. The PRESIDENT recalled that during the last session different views had been expressed on three main issues, namely those related to the assembly, the eligibility for becoming party to the instrument and its entry into force, Articles 100, 102 and 105 of the Basic Proposal for Administrative and Final Provisions, respectively. As there was a general agreement on Articles 101, 103, 104, 106, 107, 108 and 109, he submitted Article 100 for consideration by the Committee. He recalled that there had been an understanding to have a common assembly, and suggested to reserve an understanding on Article 100(4) until the question of the nature of the instrument had been decided.

43. Ms. LOURIE (United States of America) expressed support for Alternative B in Article 100. If the instrument would become a separate Treaty, her Delegation preferred to maintain a structure parallel to the one existing in the WIPO Copyright Treaty (WCT) and the WPPT, where each of those treaties had its own Assembly. However, in light of the general movement toward efficiency at WIPO, she proposed that the assemblies could meet at the same time.

44. Mr. CRESWELL (Australia) referred to Article 24 of the WPPT and asked for clarification whether the provisions on page 9 of the Basic Proposal for Administrative and Final Provisions were related to Alternative B or to Alternative A.

45. Mr. GURRY (WIPO Secretariat) answered that if the joint assembly under Alternative A was to be retained, insofar as the Treaty was concerned, the assembly's competence would be defined by paragraph (2). ld
46. Mr. COUCHMAN (Canada) accepted the comments made by the Delegation of the United States of America in terms of having two separate assemblies that would meet together. However, if there would be one assembly, as it had been stated at the previous session of the Committee, there should be restrictions on the voting rights so that Members who belonged only to one Treaty could not deliberate on issues related exclusively to the other Treaty.
47. Mr. REINBOTHE (European Community) favored one joint assembly for the WPPT and the new instrument. That preference was based not only on the question of efficiency, but also on the natural link between the two instruments. Once there was a joint assembly it would be necessary to take into account the issue of exercise of voting rights.
48. Mr. BOSUMPRAH (Ghana), speaking on behalf of the African Group, recalled his preference for Alternative A because both the WPPT and the new instrument were basically protecting the interests and common needs of performers.
49. Mr. SHEN (China) stated that the issue depended on the results achieved by Main Committee I, in other words, whether the instrument was to be a protocol or a separate Treaty. His Delegation was in favor of Alternative A.
50. Mrs. BELLO DEKEMPER (Dominican Republic) reaffirmed the interest of the majority of the members of the Group of Latin American and Caribbean Countries in there being a single Assembly for reasons of administrative economy.
51. Mr. HERMANSEN (Norway) favored the alternative of having one common assembly, that was, Alternative A in the relevant articles.
52. Mr. GOVONI (Switzerland) declared to be strongly in favor of a joint assembly for economic reasons and for reasons of efficiency, more than for reasons of principle.
53. Mr. AFONSODOSSANTOS (Brazil) recalled that Article 11 could have different implications depending on decisions that still had not been taken. He thought that the assembly should be a single assembly, but other aspects also had to be taken into account, namely those relating to eligibility to become party to the Treaty as well as the question of voting.
54. Mr. OLŠOVSKÝ (Slovakia), speaking on behalf of the Group of Central European and Baltic States, favored Alternative A throughout the entire Basic Proposal for Administrative and Final Provisions.
55. Mr. BLIZNETS (Russian Federation), speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries, supported Alternative A for reasons of efficiency and economy.
56. Mr. ISHINO (Japan) was, regardless of the denomination of the new instrument, in favor of a common assembly, for reasons of economy and also because it would contribute to the further development of substantive discussions on the protection of performances.

57. Ms. LOURIE (United States of America) recognized, in the spirit of flexibility, that there was a significant interest in the Committee to maintain a common assembly. If there was to be a linkage with the Assembly of the WPPT, she proposed to create also a linkage with the WC T Assembly, taking into account that the latter Treaty included provisions about cinematographic works.
58. Mr. OMOROV (Kyrgyzstan) favored Alternative A providing for a common assembly due to economic reasons.
59. Mr. REDKO (Ukraine) said that WPPT did not protect performers when performances were fixed on audiovisual fixations. Therefore, he supported Alternative B in order to avoid any collision of voting rights.
60. Mr. IMANOV (Azerbaijan) supported the position expressed by the Russian Federation to have a common assembly as this would be the most pragmatic solution.
61. Mrs. ORNELAS (Mexico) said that when considering the subject one should not lose sight of the fact that efforts had been going on within WIPO for two years with a view to rationalizing the work that the Organization accomplished. The only position that was consistent with what States had decided previously was the adoption of Alternative A, by means of which the work of the Assembly would be streamlined and made more efficient. The proliferation of governing bodies would also be avoided. She therefore stated that she supported the statement made earlier by the Delegation of the Dominican Republic to the effect that there should be a single Assembly for both Treaties.
62. The PRESIDENT suggested not to make any comment about the linkage with WCT, and concluded that the vast majority seemed to be in favor of a common assembly.
63. Mr. COUCHMAN (Canada) said his preference was for two assemblies but if it was decided to have one assembly, his concern would be on voting rights in the sense that members could only vote on matters related to the particular Treaty to which they belonged.
64. The PRESIDENT said that since Article 102 was linked to Article I of the Basic Proposal being dealt with by Main Committee I, and taking into account the positions expressed by the delegates during the last session of Main Committee II, he decided to postpone the discussion on that Article and also on Article 105. He adjourned the meeting.

Third meeting

Tuesday, December 19, 2000

Morning

65. The PRESIDENT invited the Committee to fix understandings on certain issues, in particular on Articles 100, 102 and 105. Some understandings might have been formed through the proceedings of the working group of Main Committee I.
66. Mr. LI EDES (Finland) reported on the work of the working group of Main Committee I, which had reached a set of conditional understandings. These understandings included the designation of the instrument as the WIPO Audiovisual Performances Treaty. The proposed Article 1(3) recognized the link which would be established between the Treaty

and the WPPT. The working group had been aware of the conclusion by Main Committee II that the two instruments should share a joint assembly. The main question was whether membership in the WPPT should be a pre-condition for adherence to the new instrument.

67. Ms. LOURIE (United States of America) stated that her Delegation had maintained its position to support Alternative B of draft Article 100 in the preceding meetings. However, in the spirit of flexibility and compromise, it had decided to support the appearing consensus on Alternative A.

68. The PRESIDENT noted that there was an understanding in the Committee on Alternative A of Article 100, Paragraph (4), however, would be reserved until the issue under Article 102 would be resolved. He requested the President of the working group of Main Committee II to clarify the outcome of the discussions regarding eligibility for membership of the proposed instrument.

69. Mr. LIEDES (Finland) responded that there had been support for providing that membership of the WPPT should be a pre-condition to adhere to the proposed instrument. However, it was understood to be a matter which should be dealt with by Main Committee II, and no conclusion had been reached.

70. Mr. AFONSODOSSANTOS (Brazil) expressed his Delegation's preference for Alternative B which would facilitate participation in the proposed instrument.

71. Mr. COUCHMAN (Canada) supported Alternative B in order for a large number of countries to join the instrument. Some countries which might have difficulty joining the WPPT would probably be able to adhere to the proposed instrument.

72. Mr. RAJAREZA (Malaysia), speaking on behalf of the Asian Group, supported Alternative B to ensure wider participation.

73. Mr. SEE (Singapore) joined the Delegations of Malaysia, Brazil and Canada in supporting Alternative B.

74. Mr. BOSUMPRAH (Ghana), speaking on behalf of the African Group, reiterated the Group's preference for the strongest possible linkage between the new instrument and the WPPT, and therefore opted for Alternative A.

75. Mr. REINBOTHE (European Community) reiterated his Delegation's support for Alternative A throughout the instrument, and with respect to Article 102 as well.

76. Ms. LOURIE (United States of America) reiterated her Delegation's preference for Alternative B.

77. Mr. GANTCHEV (Bulgaria), speaking on behalf of the Central European and Baltic States, reiterated the Group's support for Alternative A.

78. Mr. SØNNELAND (Norway) recapitulated his Delegation's previous position to support Alternative A.

79. Mr.CRESWELL(Australia)supportedAlternativeBtoensurethewidestpossible opportunityformembershipoftheproposedinstrument,inparticularinrespectofcountries whichmightave difficultiesjoiningtheWPPT.
80. Mr.SHAH(Pakistan)supportedtheAsianGroupforAlternativeB.
81. Mr.GOVONI(Switzerland)expressedhissupportforAlternativeA.
82. Mr.MOSCOSO(Chile)agreedwiththosewhohadmentionedthattherewasnoneed forali nkwiththeWPPT,suchathingbeinganunnecessaryrequirementthatwouldonly inhibitratificationoftheTreaty.
83. Mr.JO(DemocraticPeople’sRepublicofKorea)supportedAlternativeB.
84. Mrs.ORNELAS(Mexico)supportedAlternativeBandsaidthatshe knewofno precedentwhereadherencetoonetreatywasarequirementforadherencetoanother, independenttreaty.
85. Mr.ARGUDO(Ecuador)subscribedtotheideaofadoptingAlternativeBforthe Articleinquestion.
86. Mr.ISHINO(Japan)supportedAlternative Binordertoobtainthewidestparticipation possibleintheinstrument.
87. Ms.DALEY(Jamaica)supportedtheLatinAmericanandCaribbeanCountriesinfavor ofAlternativeB.
88. Ms.PERALTA(Philippines)joinedtheAsianGroupinsupportingAlternativeB.
89. ThePRESIDENTwasinclinedtobelievethatthemajorityseemedtooptfor AlternativeB.
90. Mr.REINBOTHE(EuropeanCommunity)remindedtheCommitteethatinspiteofits preferenceforaprotocoltotheWPPT,hisDelegationhadacceptedtodesignatethe instrumentasaTreaty.Asfarasthemembershipconditionwasconcerned,itremainedin favorofAlternativeA.
91. ThePRESIDENTurgedalldelegationstoconsiderconcessionstoreachan understandinginviewofthetimeconstraint.Theissuealsohadabear ingonArticle100(4) andArticle105.
92. Mr.BOSUMPRAH(Ghana)requestedasuspensionofthemeetinginorderforthe AfricanGroupstoconsultonthematter.
93. ThePRESIDENT,notingthatnootherdelegationaskedforthefloor,adjournedthe meeting.