



**Records of the Diplomatic Conference  
on Certain Copyright  
and Neighboring Rights Questions**

**Geneva 1996**

Volume II

WORLD  
INTELLECTUAL  
PROPERTY  
ORGANIZATION



Geneva 1999

**WORLD INTELLECTUAL PROPERTY ORGANIZATION  
(WIPO)**

**RECORDS  
OF THE DIPLOMATIC CONFERENCE  
ON CERTAIN COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS**

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**SUMMARY MINUTES**

**SUMMARY MINUTES OF THE PLENARY OF THE DIPLOMATIC CONFERENCE**

**SUMMARY MINUTES OF MAIN COMMITTEE I OF THE DIPLOMATIC  
CONFERENCE**

**SUMMARY MINUTES OF MAIN COMMITTEE II OF THE DIPLOMATIC  
CONFERENCE**





## SUMMARY MINUTES OF THE PLENARY

*prepared by the International Bureau*

*President:* Mrs. Esther Mshai Tolle (Kenya)

*Secretary:* Mr. Mihály Ficsor (WIPO)

*First Meeting*

*Monday, December 2, 1996*

*Morning*

*Item 1 of the Agenda: Opening of the Conference by the Director General of WIPO*

1. Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, and expressed optimism for its success. He noted that, as agreed upon at the meetings of the Preparatory Committee and the competent WIPO Governing Bodies in May 1996, the first three questions of the draft Agenda, namely, the opening of the Conference, consideration and adoption of the Rules of Procedure, and election of the President of the Conference, would be chaired by the Director General of WIPO, and that the draft Rules of Procedure, included in document CRNR/DC/2, would apply provisionally.

*Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure*

2. Mr. BOGSCH (Director General of WIPO) opened the floor for a rule-by-rule discussion of the Rules of Procedure, beginning with *Rule 1 (Objective and Competence of the Conference)*.

3. Mr. SILVA SOARES (Brazil) requested that the word "treaty" in paragraphs (1) and (2) of Rule 1 be replaced by "treaty or treaties."

4. Mrs. RETONDO (Argentina) supported the proposal made by the Delegation of Brazil that the reference should be to a treaty or treaties.

5. *Rule 1 (Objective and Competence of the Conference) was adopted with the amendment, proposed by the Delegation of Brazil.*

6. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of *Rule 2 (Composition of the Conference)* and announced that three intergovernmental organizations, namely the World Meteorological Organization, the International Telecommunication Union and the International Maritime Organization had requested to be admitted as observer organizations.

7. *The Diplomatic Conference decided to admit the World Meteorological Organization, the International Telecommunication Union and the International Maritime Organization as observer organizations.*
8. Mrs. RODRIGUEZ-TOQUERO (Spain) requested that the international non-governmental organization the Follow-Up Committee, composed of 24 organizations of actors and performers in 12 Latin American countries, be invited to attend the Diplomatic Conference as an observer. The Organization was jointly administered by the Spanish administrative entity for actors and performers AISGE and its objective was to ensure a better balance among owners of rights and among various regions.
9. Mr. BOGSCH (Director General of WIPO) asked whether the name of the organization, in English, would be the Follow-up Committee, and whether it was an international non-governmental organization.
10. Mrs. RODRIGUEZ-TOQUERO (Spain) agreed with the translation proposed by the Director General of WIPO and confirmed that it was a non-governmental organization composed of actors with its own legal status and constitution.
11. Mr. BOGSCH (Director General of WIPO) asked whether any Delegation wished to support that proposal.
12. Mr. PORZIO (Chile) supported the request made by the Delegation of Spain to invite the non-governmental organization the Follow-Up Committee.
13. *The Diplomatic Conference decided to admit the Follow-up Committee as an observer organization.*
14. Mr. LEHMAN (United States of America) proposed the admission of the United States Telephone Association as an observer organization.
15. Mrs. BOUVET (Canada) supported the proposal.
16. *The Diplomatic Conference decided to admit the United States Telephone Association as an observer organization.*
17. Mr. BENJELLOUN-TOUIMI (Morocco) noted that the list of delegations included that of Yugoslavia, and recalled the decision of the General Assembly of the United Nations at its 47th Session that the Republic and Socialist Federation of Yugoslavia no longer existed. He queried to whom the invitation to participate in the Diplomatic Conference had been sent.
18. Mr. BOGSCH (Director General of WIPO) said that the WIPO Governing Bodies had made the decision to invite Yugoslavia, which was consistent with current United Nations practice.
19. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that the European Community did not accept that the Federal Republic of Yugoslavia was the automatic continuation of the Socialist Federative Republic of

Yugoslavia, and that any decisions adopted at this Diplomatic Conference were without prejudice to the legal consequences of the fact that the Socialist Federative Republic of Yugoslavia had ceased to exist.

20. Mr. BENJELLOUN-TOUIMI (Morocco) supported the statement made by the Delegation of Ireland on behalf of the European Community and its Member States, and stated that international organizations should end dealing with non-existent countries.

21. Mr. LEHMAN (United States of America) supported the statement of the Delegation of Ireland on behalf of the European Community and its Member States, and stated that, as there was no single successor to, or continuation of, the former Republic of Yugoslavia, the Federal Republic of Yugoslavia could not continue automatically to receive invitations to meetings of WIPO, nor occupy a seat in international organizations without applying for membership in its own name. He noted that he did not recollect that the question of the status of the former Yugoslavia had been addressed at the Governing Bodies.

22. Mr. BOGSCH (Director General of WIPO) stated that the question had been placed before the meeting of the Preparatory Committee, in document CRNR/PM/4, and that the Committee's endorsement of inviting Yugoslavia was reflected by the Report of the meeting (document CRNR/PM/8).

23. Mr. MARKOTIĆ (Croatia) expressed the support of his Delegation for the previous statements, and expressed its reservations regarding the invitation of Yugoslavia. His Delegation had the position that the invitation extended to Yugoslavia did not constitute a precedent regarding the legal status of the Federal Republic of Yugoslavia in the United Nations system.

24. Mr. M'DOUR (Senegal) strongly supported the statement by the Delegation of Morocco. He said that his country considered that Yugoslavia no longer existed and could not therefore appear in the list of participants at the Diplomatic Conference.

25. Mr. BOGSCH (Director General of WIPO) declared that the previous statements would be reflected in the Records of the Diplomatic Conference.

26. Mr. KHLESTOV (Russian Federation) expressed the opinion that the matter of the legal status of the former Yugoslavia had already been resolved, and urged that the Conference move on to its substantive agenda.

27. Mr. GRČAR (Slovenia) expressed his Delegation's support for the statement of the Delegation of Ireland on behalf of the European Community and its Member States and of the United States of America, and stated that the matter of the legal status of the former Yugoslavia should be reviewed so that it would not be repeated on every occasion.

28. Mr. FADZAN (Bosnia and Herzegovina) stated that the Socialist Federal Republic of Yugoslavia had ceased to exist as an international legal person, and that none of the successor states, including the Federal Republic of Yugoslavia—Serbia and Montenegro—had legal competence to dissolve the former Socialist Federal Republic of Yugoslavia. He recalled the fundamental principle of the equality of rights and duties of successor states in respect of

treaties under international law, and hoped for a definitive resolution of the international legal status of the former Socialist Federal Republic of Yugoslavia.

29. Mr. BOGSCH (Director General of WIPO) repeated that all these statements would be reflected in the Records of the Conference. He asked whether there were any other comments regarding Rule 2.

30. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, wished to place a reservation on final adoption of Rule 2(2), pending the outcome of deliberations on Rule 33.

31. Mr. BOGSCH (Director General of WIPO) asked whether any Delegation wished to support the proposal that the adoption of Rule 2(2) be suspended until Rule 33 had been discussed.

32. Mr. KHLESTOV (Russian Federation) asked for an explanation of the reservation expressed by the Delegation of Ireland.

33. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that Rule 2(2) made a specific reference to Rule 33, which was still under discussion among the various groups of countries, and, therefore, no final position on Rule 2(2) should be reached until a final position on Rule 33 had emerged.

34. Mr. BOGSCH (Director General of WIPO) stated that it was logical that references to other Rules in Rule 2(2) must be considered as subject to the outcome of discussions on such other Rules.

35. Mr. SCHÄFERS (Germany) expressed his Delegation's support for the statement of the Delegation of Ireland on behalf of the European Community and its Member States.

36. Mr. BOGSCH (Director General of WIPO) said that, if there was no objection, the references to Rule 33 in Rule 2(2) would be reconsidered once all Rules had been discussed.

37. Mr. KHLESTOV (Russian Federation) stated that his Delegation reserved the right to return to Rule 2 when it fully understood the reservation made by the Delegation of Ireland.

38. *The Diplomatic Conference decided that Rule 2(2) would not be adopted until decision had been taken on Rules 11(2), 33, 34, 35(2) and 36(2).*

39. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on Rule 3 (*Secretariat of the Conference*) and noted that no Delegation asked for the floor.

40. *The Diplomatic Conference adopted Rule 3 (Secretariat of the Conference).*

41. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on Rule 4 (*Delegations*), and noted that no Delegation asked for the floor.

42. *The Diplomatic Conference adopted Rule 4 (Delegations).*

43. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rules 5 (Observer Organizations), 6 (Credentials and Full Powers), 7 (Letters of Appointment), 8 (Presentation of Credentials), 9 (Examination of Credentials, etc.), and 10 (Provisional Participation)*, and noted that no Delegation asked for the floor.

44. *The Diplomatic Conference adopted Rules 5 (Observer Organizations), 6 (Credentials and Full Powers), 7 (Letters of Appointment), 8 (Presentation of Credentials), 9 (Examination of Credentials, etc.), and 10 (Provisional Participation).*

45. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 11 (Credentials Committee)*, and noted that no Delegation asked for the floor.

46. *The Diplomatic Conference adopted Rule 11 (Credentials Committee).*

47. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 12 (Main Committees and Their Working Groups)*, and noted that no Delegation asked for the floor.

48. *The Diplomatic Conference adopted Rule 12 (Main Committees and Their Working Groups).*

49. Mr. BOGSCH (Director General of WIPO) opened the floor for observations on *Rule 13 (Drafting Committee)*.

50. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, proposed an amendment to Rule 13. He stated that, at present, the Drafting Committee would consist of 10 elected members and two *ex-officio* members. The Asian Group proposed that this number be increased to 21, of which 19 members would be elected.

51. Mr. TIWARI (Singapore) expressed his Delegation's support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group. As an alternative, he proposed that Member Delegations be allowed to attend meetings of the Drafting Committee as observers, for purposes of transparency and to facilitate smooth action on texts returned to the Plenary.

52. Mr. SÉRY (Côte d'Ivoire) considered that the Drafting Committee should have a limited number of members in order to facilitate its functioning. He believed that the number proposed by the Delegation of Sri Lanka was too high. He proposed that the number of members should be 15 so that the African continent, for example, which contained three linguistic groups could be adequately represented.

53. Mr. BOGSCH (Director General of WIPO) stated that the discussions should first be limited to the question regarding the number of elected members of the Drafting Committee.

54. Mr. KUSHAN (United States of America) stated that the purpose of the Drafting Committee was to ensure the linguistic accuracy of the texts of the treaties which were negotiated, and sought clarification from the Delegation of Sri Lanka, on behalf of the Asian Group, as to the need for an increase in the size of the Drafting Committee. Given that the number of languages of the treaty was to be six, he expressed the view that the Committee

should have only enough members to perform the straightforward technical purpose of checking languages.

55. Mr. VERGNE SABOIA (Brazil) expressed support for the proposal, made by the Delegation of Sri Lanka on behalf of the Asian Group. He said that his Delegation believed that, even if the Drafting Committee would mainly be occupied with the linguistic accuracy of the texts, the number proposed by the Delegation of Sri Lanka would not be unreasonable, considering the number of Delegations, represented at the Conference. Issues of form might often be difficult to separate from issues of substance, and the proposed composition might make it easier to solve such problems.

56. Mr. ABBASI (Pakistan) expressed support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group.

57. Mr. SHEN (China) expressed support for the proposal of the Delegation of Sri Lanka on behalf of the Asian Group, but expressed the willingness of his Delegation to discuss a different number.

58. Mr. KIM (Republic of Korea) stated that his Delegation agreed with the statement of the Delegation of the United States of America that the work of the Drafting Committee was a technical process of verifying the accuracy of texts, which could best be accomplished in small groups.

59. Mr. BOGSCH (Director General of WIPO) stated that the proposal by the Delegation of Sri Lanka on behalf of the Asian Group was supported by Brazil, Pakistan and China, but that the Delegation of China would be willing to accept another number. He noted that there was a division of views in that, while the Delegation of the United States of America did not formally oppose the proposal, its question to the Delegation of Sri Lanka indicated that it did not support the proposal, and the Delegations of the Republic of Korea and Côte d'Ivoire had opposed the proposal.

60. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, proposed that no decision on Rule 13 be taken until election of officers under Rule 15 had taken place.

61. Mr. BOGSCH (Director General of WIPO) stated that it was not Rule 15 which was under discussion. The election of officers was to take place under another item. He asked the Delegate of Sri Lanka whether he wished to wait for the election of the officers, or for the adoption on the rule on the election (Rule 15).

62. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, stated that he had intended to refer to the election of the officers. If Rule 13 were to be adopted now, the Asian Group would want to come back to that question later, because, informally, the questions had to be discussed together.

63. Mr. BOGSCH (Director General of WIPO) stated that it would be difficult to hold informal discussions on the posts to be filled without knowing in advance how many posts there were.

64. Mr. SÉRY (Côte d'Ivoire) reiterated his support for the principle of an increase in membership and expressed the view that there should be 15 and not 21 members.
65. Mr. BOGSCH (Director General of WIPO) stated that the Delegation of Senegal had proposed that the Drafting Committee be composed of 15 members, that the proposal had not been seconded, but the statement of the Delegation of China could be interpreted as being in agreement.
66. Mrs. YOUM DIABE SIBY (Senegal) supported the proposal by the Delegation of Côte d'Ivoire.
67. Mrs. BOUVET (Canada) stated that, in view of the technical nature of the Drafting Committee, her Delegation did not oppose an increase in its membership. She proposed that the number of members elected should be 13.
68. Mr. SÉRY (Côte d'Ivoire) agreed with the figure of 13 members, to which should be added the two *ex officio* members, namely the Chairmen of Main Committees I and II, which would bring the total number of members of the Drafting Committee to 15.
69. Mr. KUSHAN (United States of America) asked for clarification on the structure of the Drafting Committee. He pointed out that, since there were six official languages of the Diplomatic Conference, it would seem reasonable to increase the number of elected members to 12, so that there would be two representatives for each official language, plus the two *ex officio* members, for a total of 14. His Delegation thus proposed the number 14 in total.
70. Mr. BOGSCH (Director General of WIPO) noted that, with the above proposal, the Conference was close to a compromise on this question.
71. Mr. VERGNE SABOIA (Brazil) pointed out that the aspect of languages was only one of the factors to be considered for election to the Drafting Committee and that any Delegation could be elected to the Drafting Committee.
72. Mr. BOGSCH (Director General of WIPO) agreed with the preceding intervention, noting that the members of the Drafting Committee would not be limited to countries whose mother tongue was one of the six languages of the Diplomatic Conference.
73. Mr. PHUANGRACH (Thailand) supported the proposal of the Delegation of Sri Lanka to increase the number of elected members to the Drafting Committee to 19, noting that that number was still only a small percentage of the total number of WIPO Member States invited to the Diplomatic Conference.
74. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, drew attention to another Diplomatic Conference in 1994 in which there were 14 members of the Drafting Committee, and noted that several new countries had joined WIPO, and that the international trading environment had changed. His Delegation would agree to change its proposal to 13 elected members and two *ex officio* members, meaning a total of 15 members of the Drafting Committee.



75. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, drew attention to the fact that the increase in the number of elected members of the Drafting Committee was of particular interest to the European Community, and that this item and Rule 14, regarding the Steering Committee, were very much related.

76. Mr. BOGSCH (Director General of WIPO) asked the Conference to consider the proposal by the Delegation of Canada that the Drafting Committee have 13 elected members and two *ex officio* members, for a total of 15.

77. Mr. SHEN (China) expressed his support for the proposal by the Delegation of Canada.

78. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, agreed to compromise on this question, and supported the proposal by the Delegation of Canada.

79. Mr. BOGSCH (Director General of WIPO) thanked the Delegate from Sri Lanka for his spirit of compromise. He consulted the Conference on the proposal by the Delegation of Canada, that the Drafting Committee should have 13 elected members and two *ex officio* members, resulting in a total of 15.

80. *Rule 13 (Drafting Committee) was adopted with the amendment proposed by the Delegation of Canada.*

81. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of *Rule 14 (Steering Committee)*.

82. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, proposed that the regional coordinators also be included as members of the Steering Committee, if they were not elected members of that Committee.

83. Mr. BOGSCH (Director General of WIPO) drew attention to the fact that the office of regional coordinators was an informal office, not contemplated by the Rules of Procedure. Also, it was not clear how coordinators were appointed, exactly which countries they represented, and whether there were countries which had no coordinator. He said that that proposal might be unnecessary, since, in practice, the groups in question would be deciding which of their members should be members of which committees.

84. Mr. TIWARI (Singapore) referred back to the discussions on Rule 13, and noted that, irrespective of the number of members of the Drafting Committee, he had suggested that Delegations from Member States who were not members of the Drafting Committee should be allowed to participate in its meetings as observers. He cited the need for transparency of that Committee's meetings, as well as the fact that it would expedite the work of the Conference as more Delegates would be aware of the various texts, which would facilitate the adoption process.

85. Mr. BOGSCH (Director General of WIPO) indicated that he had not forgotten the above proposal. He pointed out that it had not been supported by any other Delegation, and moreover, had been presented as a secondary possibility. He asked the Conference if any Delegation wished to reopen the discussion on Rule 13.

86. Mr. KIM (Republic of Korea) supported the proposal by the Delegation of Singapore, as well as the reopening of the discussion on Rule 13.

87. Mr. SÉRY (Côte d'Ivoire) indicated that, in the present case, the choice of one alternative implicitly meant the rejection of the other and it was thus useless to reopen the debate.

88. Mr. BOGSCH (Director General of WIPO) shared that view. Nevertheless, he noted that two Delegations had requested reopening of the discussion.

89. Mr. TIWARI (Singapore) clarified that he was not asking for the discussion on Rule 13 to be reopened, but rather seeking an understanding of the Conference that non-members of the Drafting Committee could attend that Committee's sessions as observers.

90. Mr. BOGSCH (Director General of WIPO) expressed his opinion that the Delegation of Singapore was in fact proposing to reopen the discussion on Rule 13, since the Conference had already agreed on the composition of the Drafting Committee. He noted that a Drafting Committee by definition should be small. If all participants were admitted as observers to its meetings, there would be no need for such a Committee, since its work could be done in the Plenary. In any case, the question was a substantive question which could not be resolved through an "understanding."

91. Mr. KAUBAB (Pakistan) indicated that he had supported the proposal by the Delegation of Singapore, and so had the Delegation of the Republic of Korea. He stressed that the proposal by the Delegation of Singapore was based on transparency, an important element which should be maintained in this process.

92. Mr. BOGSCH (Director General of WIPO) stressed that the proposal by the Delegation of Singapore initially was subsidiary. If a vote on the reopening of the discussion were requested, the decision would require a two-thirds majority of those voting.

93. Mr. AUER (Austria) pointed out that the issue should be considered in conjunction with Rule 45, according to which meetings of the Drafting Committee were open only to members of the Committee, and the Secretariat.

94. Mr. BOGSCH (Director General of WIPO) reiterated that the issue at hand was now about reopening the discussion, not about substance; if the discussion were reopened, then it would be on substance.

95. Mr. KHLESTOV (Russian Federation) referred to the above intervention by the Delegation of Côte d'Ivoire, and stated that a decision on this issue had already been taken, and that there was no point in resuming the debate now.

96. Mrs. GHOSE (India) pointed out that that question could be discussed when Rule 45 would be considered.

97. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Singapore if it agreed to take up its question when the Conference discussed Rule 45.

98. Mr. TIWARI (Singapore) agreed with the suggestion of the Director General of WIPO.

99. Mr. BOGSCH (Director General of WIPO) opened the discussion on *Rule 14 (Steering Committee)* noting that there had been an intervention requesting that spokesmen of various groups be added as members of the Steering Committee, and asked if other Delegations wished to speak.

100. Mrs. BOUVET (Canada) requested that the meeting be suspended in view of the importance of Rule 14 of the Rules of Procedure of the Diplomatic Conference.

101. Mr. KUSHAN (United States of America) offered his Delegation's support for the proposal by the Delegation of Canada.

102. Mr. SÉRY (Côte d'Ivoire) sought clarification regarding the request for a suspension of the meeting.

103. Mrs. BOUVET (Canada) replied that consultation would facilitate the emergence of a common position among Member States. Consequently, she requested that the meeting be suspended.

104. Mr. BOGSCH (Director General of WIPO) suspended the meeting.

[*Suspension*]

105. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Rule 14 (Steering Committee)*.

106. Mr. SINHA (India) noted that the just completed suspension was requested for the purpose of private consultations relative to Rule 14, and requested that the Conference be informed as to the outcome, if any, of those private consultations.

107. Mr. BOGSCH (Director General of WIPO) offered the floor to the Delegation of Canada, which had made the request for the suspension, to respond to the above request by the Delegation of India.

108. Mrs. BOUVET (Canada) stated that Group B wished to see the number of Vice-Presidents of the Conference increased. She explained that a total of 14 Vice-Presidents would mean that the Steering Committee as a whole had an uneven number of members. In view of the diversity of interests represented in Group B and the scope of the work to be carried out, the number of members of the Steering Committee should be increased to 19.

109. Mr. BOGSCH (Director General of WIPO) pointed out that the proposal by the Delegation of Canada concerned Rule 15 of the Draft Rules of Procedure of the Diplomatic Conference and had a direct impact on Rule 14. He noted that it was not necessary to amend Rule 14, but asked whether there were any proposals to this effect.

110. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, referred to the proposal by the Delegation of Canada to increase the number of Vice-Presidents of the Conference, from 10 to 15, and suggested that the adoption of Rule 14 would therefore depend on the resolution of the proposal from the Delegation of Canada. He sought to reserve the right to come back to Rule 14 after the consideration of Rule 15 in conjunction with the proposal from the Delegation of Canada..

111. Mr. BOGSCH (Director General of WIPO) pointed out that Rule 14(2) merely referred to the "Vice-Presidents," without specifying their number, so it would not be necessary to come back to that provision, as the Delegation of Sri Lanka had requested.

112. Mr. KAU KAB (Pakistan) recalled that, in regard to Rule 14, the Asian Group had proposed that the regional coordinators should be members of the Steering Committee. He pointed out that there was a connection between the proposal by the Delegation of Canada to increase the number of Vice-Presidents in the Conference from 10 to 15, and the possibility that the regional groups who so wished could use one of those seats for that purpose. He noted that that was the reason why the Delegation of Sri Lanka, as coordinator for the Asian Group, had suggested that Rule 14 and Rule 15 be considered together.

113. Mr. BOGSCH (Director General of WIPO) suggested that Rule 14 be adopted as currently drafted, with the understanding that, if the number of Vice-Presidents of the Conference, in Rule 15, would ultimately be decided to be less than 15 in number, then the Conference could come back to Rule 14 for re-consideration.

114. Mr. KHLESTOV (Russian Federation) thanked the Director General of WIPO for his clarification, and suggested that the Conference could adopt Rule 14, and then consider the number of Vice-Presidents of the Conference in conjunction with the discussion on Rule 15. He felt that the increased number of Vice-Presidents should satisfy the concerns of the Asian Group.

115. Mr. BOGSCH (Director General of WIPO) noted that there was no objection to the proposal by the Delegation of Canada, according to which there would be 14 Vice-Presidents of the Conference, and a President, for a total of 15 officers of the Conference.

116. *The Diplomatic Conference adopted Rule 14 (Steering Committee) with the amendment proposed by the Delegation of Canada.*

117. Mr. BOGSCH (Director General of WIPO) opened the floor for interventions on the entire Rule 15 (*Officers and Their Election; Precedence Among Vice-Presidents and Vice-Chairmen*), paragraphs (2) to (6) inclusive.

118. *The Diplomatic Conference adopted Rule 15 (Officers and Their Election; Precedence Among Vice-Presidents and Vice-Chairmen), as amended.*

119. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration and adoption of Rules 16 (*Acting President; Acting Chairman*), 17 (*Replacement of the President or the Chairman*) and 18 (*Vote by the Presiding Officer*).

120. Mr. KHLESTOV (Russian Federation) asked the Director General of WIPO for clarification of the terms “Acting President” and “Acting Chairman,” as specified in Rule 16.

121. Mr. BOGSCH (Director General of WIPO) clarified that a Vice-President would have a second title, which would be “Acting President,” but only for the period when, for the reasons indicated in Rule 16(1), he was to act instead of the President. He stated that no Delegation wished to take the floor on the three Rules.

122. *The Diplomatic Conference adopted Rules 16 (Acting President; Acting Chairman), 17 (Replacement of the President or the Chairman), and 18 (Vote by the Presiding Officer).*

123. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of Rule 19 (*Quorum*) and stated that no Delegation wished to take the floor.

124. *The Diplomatic Conference adopted Rule 19 (Quorum).*

125. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of Rules 20 (*General Powers of the Presiding Officer*), 21 (*Speeches*), 22 (*Precedence in Receiving the Floor*), 23 (*Points of Order*), 24 (*Limit on Speeches*), 25 (*Closing of List of Speakers*), 26 (*Adjournment or Closure of Debate*), 27 (*Suspension or Adjournment of the Meeting*), 28 (*Order of Procedural Motions; Content of Interventions on Such Motions*), 29 (*Basic Proposal; Proposals for Amendment*), 30 (*Decisions on the Competence of the Conference*), 31 (*Withdrawal of Procedural Motions and Proposals for Amendment*), and 32 (*Reconsideration of Matters Decided*), and stated that no Delegation requested the floor regarding those Rules.

126. *The Diplomatic Conference adopted Rules 20 (General Powers of the Presiding Officer), 21 (Speeches), 22 (Precedence in Receiving the Floor), 23 (Points of Order), 24 (Limit on Speeches), 25 (Closing of List of Speakers), 26 (Adjournment or Closure of Debate), 27 (Suspension or Adjournment of the Meeting), 28 (Order of Procedural Motions; Content of Interventions on Such Motions), 29 (Basic Proposal; Proposals for Amendment), 30 (Decisions on the Competence of the Conference), 31 (Withdrawal of Procedural Motions and Proposals for Amendment), and 32 (Reconsideration of Matters Decided).*

127. Mr. BOGSCH (Director General of WIPO) opened the floor for consideration of Rule 33 (*Right to Vote*).

128. Mrs. BOUVET (Canada) requested that the meeting be adjourned.

129. Mr. BOGSCH (Director General of WIPO) asked if any Delegation supported the proposal.

130. Mr. ROGERS (Chile) supported the proposal made by the Delegation of Canada to suspend the meeting.

131. Mr. SÉRY (Côte d’Ivoire) supported the request and expressed the hope that all the remaining issues would be resolved so that the meeting would not be suspended continually.

132. Mr. SINHA (India) asked the Director General of WIPO for clarification as to the nature and purpose of the proposed adjournment; exactly what issues would be considered during the proposed adjournment. He strongly supported the proposal by the Delegation of Côte d'Ivoire, and noted that there were several issues to be resolved in and among the various regional groups.

133. Mr. BOGSCH (Director General of WIPO) suggested that the adjournment would be for the purpose of discussing and clarifying all issues and questions with respect to the balance of the Rules of Procedure. He also suggested that it might be possible to discuss nominations to posts of the various officers of the Conference, including who might be the President of the Conference.

134. Mr. KAUKAB (Pakistan) supported the proposed adjournment of the session.

135. Mr. NÁRAY (Hungary) supported the proposal by the Delegation of Canada for adjournment of the session.

136. Mr. BOGSCH (Director General of WIPO) adjourned the session.

*Second Meeting*

*Monday, December 2, 1996*

*Afternoon*

*Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure (continuation)*

137. Mr. BOGSCH (Director General of WIPO) opened the meeting.

138. Mrs. BOUVET (Canada) requested that the meeting be suspended until 10.00 the following morning.

139. Mr. SÉRY (Côte d'Ivoire) supported her request.

140. Mr. SHEN (China) stated that his Delegation supported the proposal of the Delegation of Canada to adjourn the meeting until 10.00 the following morning, but it hoped that the coordination among the different groups would be carried out faster to avoid any further suspension, or adjournment.

141. Mr. KHLESTOV (Russian Federation) stated that he had no particular problem with the proposal to adjourn the meeting. He appealed to all coordinators and the regional groups to show flexibility so that agreement could be reached quickly.

142. Mr. BOGSCH (Director General of WIPO) adjourned the session until 10.00 the following morning.

*Third Meeting**Tuesday, December 3, 1996**Morning**Item 2 of the Agenda: Consideration and adoption of the Rules of Procedure (continuation)*

143. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion regarding *Rule 33 (Right to Vote)*, and stated that the Delegation of the United States of America had handed to the Secretariat a written proposal for that Rule, which was being translated and would be ready soon.

144. Mr. KUSHAN (United States of America) stated that his Delegation sought to ensure a transparent and functional voting provision that addressed concerns expressed in previous meetings. He stated that that desire for transparency could be achieved through a fairly straightforward modification of the draft Rules of Procedure. He proposed an amendment to paragraph (1) of Rule 33, namely, deletion of references to Articles 35(2) and 36(2), and offered a replacement text for paragraph (3), which would read as follows:

“The Special Delegation, may under the authority of the European Community, exercise the rights to vote of the Member States of the European Community, which are represented at the Diplomatic Conference provided that:

(i) the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if the Member States exercise their rights to vote and vice versa, and

(ii) the number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference and that are present at and entitled to participate in the vote.”

He also proposed a modification to Rule 2(2) that would make references only to Rules 11(2), 33, and 34.

145. Mr. SÉRY (Côte d’Ivoire) indicated that the African Group would have to seek suspension of the meeting because some of its members would only be able to see the French text once the document had been distributed.

146. Mr. BOGSCH (Director General of WIPO) asked whether any Delegations wished to raise any questions regarding the proposal by the Delegation of the United States of America, which they had had the opportunity to hear interpreted into the languages of the Conference.

147. Mr. TAKAHASHI (Japan) expressed support for the proposal of the Delegation of the United States of America.

148. Mr. TIWARI (Singapore) asked for clarification of the “are present” language in subparagraph (ii) of the proposed Rule.

149. Mr. KUSHAN (United States of America) stated that the requirement for presence was necessary, because the Special Delegation of the European Community was being given authority to cast votes on matters both within and outside the competence of the European Community. He stated that, on matters outside the competence of the European Community, the failure to require the presence of the individual Member State entitled to vote on the topic would permit proxy voting in WIPO, which was unprecedented.

150. Mr. AYYAR (India) stated that the issue had been discussed briefly in the Preparatory Committee Meeting in May, and asked for clarification of the past practice of WIPO concerning the rights of the Special Delegation of the European Community.

151. Mr. BOGSCH (Director General of WIPO) stated that proxy voting was unknown in WIPO. The practice of WIPO was that a delegation had the right to vote in its own name and its own name only.

152. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that the European Community could not accept the principle expressed in the last paragraph of the proposal of the United States of America concerning Rule 33 which would require a Community “presence.” He added that the European Community had not accepted the “presence” condition in a number of other fora, and would not be willing to accept it in this context. He noted the existence of the arrangements in the World Trade Organization and the Energy Charter where there was no “presence” requirement in respect of the European Community when it voted on behalf of its Member States. He proposed an alternative text for Rule 33(3), which would read as follows:

“The number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference.”

153. Mr. BOGSCH (Director General of WIPO) asked whether the word “represented” in the proposal of the Delegation of Ireland on behalf of the European Community and its Member States meant “registered,” in the sense that, once a Delegation of a Member State of the European Community had deposited its credentials to participate in the Conference—at which time it would be considered a “registered” country—the Delegation would not need to be present when a given vote took place, allowing the Special Delegation of the European Community to cast as many votes as there were “registered” Member States of the European Community, that is, States having filed their credentials.

154. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, answered that the Director General’s understanding was correct.

155. Mr. BOGSCH (Director General of WIPO) stated that, in recent Diplomatic Conferences in which a Delegation of the European Community was participating, namely the Diplomatic Conferences, the Patent Law Treaty, the Trademark Law Treaty, the UPOV Treaty and the Integrated Circuits Treaty, the Delegation of the European Community had no right to vote either in its own name or in the name of any of its Member States. He noted that the Diplomatic Conference which adopted the Protocol to the Madrid Agreement conferred a right on the European Community to vote in the Assembly.



156. The Director General of WIPO asked whether any Delegations supported the proposal by the Delegation of Côte d'Ivoire that the meeting should be suspended.

157. Mr. SÉRY (Côte d'Ivoire) pointed out that he had made his statement on behalf of the African Group, which implied that all the Member States of this Group supported it.

158. Mr. PALENFO (Burkina Faso) supported the proposal made by the Delegation of Côte d'Ivoire.

159. Mr. AYYAR (India) asked for further clarification concerning the competence of the European Community to vote for its Member States on issues in respect of which it did not have competence.

160. Mr. SÉRY (Côte d'Ivoire) said that his Delegation agreed to defer its proposal on suspension of the meeting and first hear the reply by the European Community.

161. Mr. STOODLEY (European Communities) stated that the status which the European Community was seeking in this Conference reflected the existing state of authority and the development of binding rules within the European Community concerning the subject matter of this Conference. He stated that that law was in a state of evolution, and that, at the time of earlier Conferences on different subject matter, the circumstances were different. Concerning the question as to the authority of the Community to exercise the Member States' right to vote, he stated that no question of competence arose here, since such competence could only exist under the internal rules of the European Community.

162. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, suggested that the proposal of the Delegation of the United States of America be accepted in respect of Rules 33(1), 33(2), 33(3)(i), but not in respect of Rule 33(3)(ii). He proposed that the text should read "the number of votes cast by the Special Delegation shall in no case exceed the number of Member States of the European Community that are represented at the Diplomatic Conference."

163. Mr. BOGSCH (Director General of WIPO) stated that the difference between the proposal of the Delegation of the United States of America and the proposal made by the Delegation of Ireland on behalf of the European Community and its Member States related to the last 12 words of draft Rule 33(3)(ii).

164. Mr. SCHÄFERS (Germany) expressed the support of his Delegation for the proposal of the Delegation of Ireland on behalf of the European Community and its Member States.

165. Mr. GYERTYÁNFY (Hungary) expressed the support of his Delegation for the proposal of the Delegation of Ireland on behalf of the European Community and its Member States.

166. Mr. PORZIO (Chile) considered that the order of paragraphs (1) and (2) of Rule 33 should be reversed so that the situation of Member States was dealt with first and the case of the Special Delegation considered subsequently.

167. Mr. KHLESTOV (Russian Federation) expressed the support of his Delegation for the proposal of the Delegation of the United States of America, but stated that there were certain valid ideas in the statements of the Delegation of the European Community.

168. Mr. LIM (Republic of Korea) asked for clarification of the proposal of the United States of America as to whether, under the proposal, the European Community could exercise its right to vote when one or some of its Member States were present.

169. Mr. BOGSCH (Director General of WIPO) stated that, in his understanding, the proposal of the United States of America intended that the Special Delegation should not exercise the right to vote of any Member State of the European Community if such a Member State were to exercise its own vote.

170. Mr. KUSHAN (United States of America) stated that the understanding of the Director General of WIPO was correct.

171. Mr. EMERY (Argentina) supported the amendment proposed by the Delegation of Chile.

172. Mr. GOVONI (Switzerland) said that his Delegation supported the amendment proposed by the Delegation of the United States of America, as amended by the proposal made by the Delegation of Ireland on behalf of the European Community. He did not consider that the physical presence of delegates was indispensable in this respect.

173. Mr. BOGSCH (Director General of WIPO) suspended the session.

[*Suspension*]

174. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion of the written proposal by the United States of America under consideration, and the modification to that proposal suggested by the Delegation of Ireland on behalf of the European Community and its Member States, namely that the last 12 words in English should be omitted from the proposal.

175. Mr. KUSHAN (United States of America) asked the Director General of WIPO for clarification as to the scope of the discussions. He stated that his Delegation accepted reversing the order of paragraphs (1) and (2) in Rule 33, as had been suggested by the Delegation of Chile. However, he objected to the proposal by the Delegation of Ireland on behalf of the European Community and its Member States to delete the last 12 words of the proposal. His Delegation could accept the proposal, in respect to the language contained in Rule 33(3)(i), to eliminate the second "the" in line two of that subparagraph, and insert the words "any of" in its place.

176. Mr. SÉRY (Côte d'Ivoire), speaking on behalf of the African Group, asked why the Delegation of the European Community did not agree with the requirement on presence in the meeting room during voting.

177. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, expressed the opinion that the authority of the European Community to exercise the voting rights of its Member States in the Conference was clear from the text of the proposal under consideration. He stressed that it was only necessary for the Delegation which was exercising a voting right to be present, and that no further legal requirements were necessary or appropriate, other than that the Delegation with the due authority was present to exercise the relevant voting rights.

178. Mr. BOGSCH (Director General of WIPO) added that, depending on the outcome of the consideration of Rule 33, it might be necessary to re-examine Rule 34(2), which specified the decisions requiring a majority of two-thirds of the delegations present and voting.

179. Mr. TIWARI (Singapore) asked the Delegation of the United States of America for clarification in its proposal with regard to Rule 33(3)(ii), line 3. He wondered whether the motivation for including this provision was merely caution, or whether it was intended to cover any particular problem area, or perhaps some other objective.

180. Mr. KUSHAN (United States of America) stated that the provision referred to by the Delegation of Singapore applied to a situation where there would be a limited number of participants in a voting situation at the Conference. As an example, he mentioned that, should there be a Working Group, the number of votes to be cast by the European Community would be only the number of Member States of the European Community that were actually in the Working Group, rather than all the 15 Member States of the European Community.

181. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, said that the earlier proposal to insert the word "any" in Rule 33(3)(i) in the written proposal by the United States of America was not acceptable to the European Community and its Member States. The Delegation expressed its belief that the current wording of that subparagraph in the proposal by the Delegation of the United States of America was taken from the UPOV Treaty, which was acceptable, and formed an agreeable precedent. The Delegation proposed to delete the three words "present at and" before the word "entitled" in Rule 33(3)(ii) in the written proposal by the Delegation of the United States of America.

182. Mr. PORZIO (Chile) clarified the statement by the Delegation of Ireland that Chile had made the proposal to add the word "any" and emphasized that the proposal put forward by the Delegation of Chile had been to reverse the order of paragraphs (1) and (2) in the proposal made by the United States of America.

183. Mr. CRESWELL (Australia) expressed the support of his Delegation for the written proposal by the Delegation of the United States of America. He noted with appreciation that the European Community and its Member States and the European Commission had striven to accommodate the concerns of other countries about the conditions of participation by the European Community, drawing attention to the unique status of the European Community reflected in its designation as a Special Delegation. He noted that the EC had pointed out that

the competence of the European Community was still evolving. The conditions upon which any country's vote could be exercised were a matter of special concern, and he noted the Director General's advice that there were no precedents for proxy voting in WIPO conferences to this point. He felt, therefore, that the certainty and clarity of the proposal by the Delegation of the United States of America was to be preferred.

184. Mr. BOGSCH (Director General of WIPO) drew attention to the clear division of opinion which existed on the question under discussion. He indicated that he would come back to the minor proposals concerning the word "any" and the order of paragraphs, after the main question had been decided, if not by compromise, then by vote.

185. Mr. GYERTYÁNFY (Hungary), speaking on behalf of Delegations of Central European countries and the Baltic States, supported the proposal by the United States of America as amended by the proposal by the Delegation of Ireland, explaining that the words "present at and" in subparagraph (ii) would be deleted. He also supported the proposal to reverse the order of paragraphs (1) and (2) in Rule 33.

186. Mr. EKPO (Nigeria) asked the Delegation of the European Community if there was a particular problem about delegates being present.

187. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, stated that that was something that had never been accepted before, and which would form a precedent that the European Community and its Member States would not like to see happen.

188. Mr. SÉRY (Côte d'Ivoire) stated that the African Group did not wish to see the introduction of proxy voting and therefore supported the proposal made by the Delegation of the United States of America.

189. Mr. KIM (Republic of Korea) expressed his Delegation's support for the written proposal made by the Delegation of the United States of America, and asked the Director General of WIPO for clarification as to the proposed change in subparagraph (3)(i) of that proposal.

190. Mr. BOGSCH (Director General of WIPO) indicated his preference to come back to the question posed by the Delegation of the Republic of Korea after the main question had been settled.

191. Mr. KHLESTOV (Russian Federation) stated that it would be better to find a compromise to the question, and preferably without a vote. Regarding the presence of representatives of the Member States of the European Community, he proposed that physical presence might be necessary when the number of places in a given body was limited, and, if there were no such limited number of places, physical presence would not be necessary so that the European Community could vote on behalf of all of the Member States of the European Community.

192. Mr. STOODLEY (European Communities) offered to clarify the question under consideration. He noted that the Conference would be creating certain bodies in which participation was limited or restricted. It was his understanding that, in bodies with limited or

restricted participation, only those who were elected to the bodies concerned would be able to participate or vote therein; in such bodies, the European Community and its Member States would not expect to upset the political balance in relation to membership. He also stated that there would be no question of some Member States voting, and the European Community exercising the rights of the other Member States. Either the Member States would act individually by exercising their own rights to vote, or the European Community would exercise the rights to vote of all of its Member States, as the European Community only represented all of its Member States collectively. In the plenary, the European Community would represent all of its Member States.

193. Mr. BOGSCH (Director General of WIPO) sought clarification on the question under consideration, namely, that voting in the name of the Member States applied only in bodies where all Delegations had the right to participate, namely, the Plenary, and in Main Committee I and Main Committee II. Whereas, in the Drafting Committee, the Credentials Committee, in possible working groups, and in the Steering Committee, voting in the name of Member States would not be possible.

194. Mr. STOODLEY (European Communities) made the clarification that voting in bodies where there was a restricted number of participants would reflect the number of members elected to those bodies; any representation of the European Community in those bodies would not disturb the political balance, reflected on the basis that each member had a vote in that body, and that those who were not members of that body could not have their votes exercised in that body.

195. Mr. BOGSCH (Director General of WIPO) stated the understanding that the European Community would have 15 votes in the Plenary of the Conference, and in the two Main Committees, while, in the other bodies, it would have as many votes as the number of Member States of the European Community elected to those bodies.

196. Mr. KUSHAN (United States of America) expressed appreciation for the earlier intervention by the Delegation of the Russian Federation, which sought to achieve a compromise on this question. His Delegation was not able to reconcile a distinction between bodies with limited participation, on the one hand, and the Plenary or the Main Committees, on the other, and he, therefore, suggested that the question be resolved as the Director General of WIPO had suggested prior to the said intervention by the Delegation of the Russian Federation.

197. Mr. BOGSCH (Director General of WIPO) asked the Conference if there was any objection to taking a vote. Seeing none, he asked those Delegations in favor of the proposal by the Delegation of Ireland on behalf of the European Community and its Member States, that is, to delete the words "present at and" in subparagraph (ii) of the written proposal by the Delegation of the United States of America, to vote *for* this amendment, and those Delegations who wished to maintain the said three words to vote *against* this amendment.

198. *The Diplomatic Conference rejected the proposal by the Delegation of Ireland with 27 votes in favor, 40 votes against, and with 8 abstentions.*

199. *The Diplomatic Conference adopted Rule 33(3)(ii), as proposed by the Delegation of the United States of America (document CRNR/DC/8).*

200. Mr. BOGSCH (Director General of WIPO) suggested that the Conference consider subparagraph (i) of the proposal by the Delegation of the United States of America (document CRNR/DC/8), and asked whether it should read “the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if the Member States exercise the rights to vote and vice versa,” or, “the Special Delegation shall not exercise the rights to vote of the Member States of the European Community if any Member State exercises its right to vote and vice versa.” He asked the Delegation of the European Communities for clarification on the question whether, if one of the Member States exercised the vote, the European Community would have the right to vote in the name of the others.

201. Mr. STOODLEY (European Communities) confirmed that, if any one Member State exercised the right to vote, the European Community would not have the right to vote for the remaining Member States.

202. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the European Communities if it could accept the language in subparagraph (i) of the written proposal by the Delegation of the United States of America, with the insertion of the word “any” before the words “Member States” in line two.

203. Mr. STOODLEY (European Communities) indicated that the suggested change was not acceptable, and that he wished to maintain the proposal as initially presented by the Delegation of the United States of America, without further amendment.

204. Mr. BOGSCH (Director General of WIPO) asked what was the wish of the Delegation of the United States of America with respect to the proposed amendment to subparagraph (i) of its written proposal.

205. Mr. KUSHAN (United States of America) supported the amendment to the written proposal of his Delegation, to insert the word “any” in subparagraph (i), as described by the Director General of WIPO.

206. Mr. BOGSCH (Director General of WIPO) asked the Conference if it wished to vote on this question.

207. Mr. SCHÄFERS (Germany) drew attention to the importance of the feeling of “togetherness” shared by the Member States of the European Community, in that they would like to be looked upon as a real community. He also noted that the representation of the European Community was of the totality of the Member States, and that that spirit was reflected in the current text of the written proposal by the Delegation of the the United States of America.

208. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Members States, supported the intervention by the Delegation of Germany. He emphasized that the current language of this proposal was the same as was included in the UPOV Treaty, and that the new language would be an unacceptable precedent.

209. Mr. LEHMAN (United States of America) declared that—for the sake of moving the proceedings along, and in view of the assurances given by the European Community that it

would under no circumstances exercise the remaining votes of the Member States if any Member State cast its own vote—the Delegation of the United States of America would accept the original language of its written proposal without amendment.

210. Mr. BOGSCH (Director General of WIPO) thanked the Delegation of the United States of America.

211. *The Diplomatic Conference adopted Rule 33(3)(i), as proposed by the Delegation of the United States of America (document CRNR/DC/8).*

212. Mr. BOGSCH (Director General of WIPO) suggested consideration of the proposal by the Delegation of Chile that paragraphs (1) and (2) of Rule 33 in the written proposal by the Delegation of the United States of America (document CRNR/DC/8) be reversed in their order, so that the new paragraph (1) would start with the words “Each Member Delegation,” and the new paragraph (2) would start with the words “The Special Delegation.” He noted that, with this change, the Rule would start with the general rule on Member Delegations, and then bring together the two provisions which dealt with the Special Delegation. He saw no objection.

213. *The Diplomatic Conference adopted the remainder of Rule 33 (Right to Vote), as proposed by the Delegation of the United States of America (document CRNR/DC/8) and as amended by the Delegation of Chile.*

214. Mr. STOODLEY (European Communities) thanked the other Delegations now that the European Community had been given the right to vote in the Conference. He expressed regret at the inclusion of the physical presence requirement, noting that it was based on a wrong perception of the development and nature of the European Community and its functioning. He hoped that this would not be a precedent for the consideration of the draft Final and Administrative Clauses of the treaty or treaties which his Delegation was aiming to conclude at this Conference. He hoped to use the time for deliberations on substantive issues.

215. Mr. BOGSCH (Director General of WIPO) introduced *Rules 34 (Required Majorities), 35 (Requirement of Seconding), 36 (Conduct During Voting), 37 (Division of Proposals), 38 (Voting on Proposals for Amendment), 39 (Voting on Proposals for Amendment on the Same Question), 40 (Equally Divided Votes), 41 (Languages of Oral Interventions), 42 (Summary Minutes), and 43 (Languages of Documents and Summary Minutes)*, and stated that no Delegation wished to ask for the floor.

216. *The Diplomatic Conference adopted Rules 34 (Required Majorities), 35 (Requirement of Seconding), 36 (Conduct During Voting), 37 (Division of Proposals), 38 (Voting on Proposals for Amendment), 39 (Voting on Proposals for Amendment on the Same Question), 40 (Equally Divided Votes), 41 (Languages of Oral Interventions), 42 (Summary Minutes), and 43 (Languages of Documents and Summary Minutes).*

217. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rules 44 (Meetings of the Conference and of the Main Committees) and 45 (Meetings of Other Committees and of Working Groups)*.

218. Mr. TIWARI (Singapore) proposed that the sessions of the Drafting Committee be open to non-members from the various Delegations who should be able to be present as observers. He referred to expressed concerns that, if the Drafting Committee were too large, its work would be impeded. In his experience from other conferences, that would not be the case. He explained that allowing interested Delegations to be present during such deliberations, and to listen, would provide transparency, which was an important requirement of the Conference, and would also expedite the work of the Conference. He noted that it had been said that the purpose of the Drafting Committee was merely to harmonize languages, but he felt that sometimes such activities would affect substantive matters.

219. Mr. BOGSCH (Director General of WIPO) explained that observers had the right to speak under the present Rules. He stated his understanding that the proposal was that Rule 45 would be modified to reflect that, in the Drafting Committee, non-members from Member Delegations could participate, but that Observer Delegations and Observer Organizations could not participate.

220. Mr. AYYAR (India), on behalf of the Asian Group, stated that the Asian Group supported the proposal by the Delegation of Singapore, and the proposal that Member Delegations be allowed to be present, but not to speak, as observers in the meetings of the Drafting Committee.

221. Mr. SÉRY (Côte d'Ivoire) wondered whether it was advisable to expand the Drafting Committee to include observers that did not have the right to speak. In his view, the need for transparency was covered because delegates belonging to the Drafting Committee would represent their groups. On behalf of the African Group, he expressed reservations concerning the participation of observers in the Drafting Committee.

222. Mr. SCHÄFERS (Germany) supported the statement of the Delegation of Côte d'Ivoire, but stated that his Delegation did not favor the right of others than the members of the Drafting Committee to intervene during the meetings of the Committee, because such interventions would negatively affect the concentrated climate of discussion among Committee members. He added that his Delegation hesitated to accept the presence of observers, but that, in the interest of transparency, it could agree, provided the observers had no right to speak.

223. Mr. ROGERS (Chile), speaking of behalf of the Group of Latin American and Caribbean countries, said that substantive discussions and negotiations would take place in the two Main Committees and in any Working Groups. In view of the technical nature of the Drafting Committee, Latin American and Caribbean countries would prefer to retain the current wording of Rule 45.

224. Mr. AYYAR (India) noted that one purpose of the Drafting Committee was to ensure the accuracy of the presentation of the text adopted at the Main Committees' debates into the six official languages of the Conference, and that an advantage of allowing Member Delegations to attend meetings of the Drafting Committee as non-speaking observers would be that observers from the various regional groups could approve the translated texts informally through the member or members of the Drafting Committee representing their group, thus avoiding the need to suspend Drafting Committee meetings to seek approval of such texts from the regional groups.



225. Mr. BOGSCII (Director General of WIPO) stated that there was a difference between the spokesman, or so-called representative or coordinator, of a regional group, on the one hand, and, on the other hand, a member of the Drafting Committee from a particular region. The former could act on behalf of a group of countries, whereas the latter could only act for himself.

226. Mr. TIWARI (Singapore) supported the clarification of the Delegation of India, and stated that the difference between substance and language could impose limitations in certain circumstances, and pointed out that the presence of non-speaking observers in the meetings of the Drafting Committee would be good for the Conference as a whole.

227. Mr. KUSHAN (United States of America) asked for clarification concerning the specific language of the proposal.

228. Mr. BOGSCH (Director General of WIPO) stated that the proposal was whether to state, in Rule 45, that in addition to the members of the Drafting Committee also any Member Delegation could be present in the meetings of the Committee without the right to speak.

229. Mr. AYYAR (India) requested suspension of the session in order that the Asian Group might consult.

230. Mr. BOGSCH (Director General of WIPO) said that he saw signs of support for the proposal and suspended the meeting.

[*Suspension*]

231. Mr. AYYAR (India) requested a further suspension until after the lunch break, since the Asian Group needed more time to discuss the matter.

232. Mr. TIWARI (Singapore) supported the request of the Delegation of India on behalf of the Asian Group, with two clarifications, namely, that the proposal to admit non-speaking observers to meetings of the Drafting Committee did not include Observer Delegations and Observer Organizations, and that the proposal was not intended to impede the work of the Committee.

233. Mr. SHEN (China) stated that his Delegation did not oppose a suspension, and that it could accept the proposal to admit Member Delegations as non-speaking observers in meetings of the Drafting Committee.

234. Mr. BOGSCH (Director General of WIPO) stated that an improved version of the proposal would be read.

235. Mr. GURRY (Secretariat) read out the proposal as follows:

“The existing text of Rule 45 would become paragraph 1. From that text, the words “the Drafting Committee” would be removed. A new paragraph 2 would be added, which would read as follows:

“ ‘The meetings of the Drafting Committee shall be open to Member Delegations that are not members of the Drafting Committee provided that any such Member Delegation may not make oral or written statements’ .”

236. Mr. BOGSCH (Director General of WIPO) stated that the proposal was not made by the Secretariat, but by the Delegations of the Asian Group. He suspended the meeting.

[*Suspension*]

237. Mr. BOGSCH (Director General of WIPO) declared the meeting reopened.

238. Mr. TIWARI (Singapore) stated that there was a suggestion to add language to the end of Rule 45 clarifying that the presence of observers should not impede the work of the Drafting Committee. He read out the proposed text as a whole, as follows:

“The meetings of the Drafting Committee shall be open to Member Delegations that are not members of the Drafting Committee provided that any such Member Delegation may not make oral or written statements, and their presence or lack thereof in the proceedings of the Drafting Committee, shall in no way prevent the parallel operation of the Drafting Committee with any other Committee or Working Group.”

He stated that this addition had been requested by a major country present in the room, and that, in the interest of compromise, his Delegation could accept it.

239. Mr. AYYAR (India) expressed his Delegation’s support for the proposal by the Delegation of Singapore.

240. Mr. SÉRY (Côte d’Ivoire) indicated that he had not yet consulted the African Group and that he wished clarification regarding the fact that the presence or absence of observers might impede the Committee’s work.

241. Mr. BOGSCH (Director General of WIPO) pointed out that the parallel operation of Working Groups or Committees was taken for granted.

242. Mr. TIWARI (Singapore) stated that his Delegation agreed that the schedules of the work of each Committee should be established by the Committee itself, and noted that the proposed text stated the obvious, that the presence or absence of observers should not hold up the work of the Committee.

243. Mr. BOGSCH (Director General of WIPO) stated that the text must be interpreted as a proposal of the Delegation of Singapore, because the unnamed “major country” did not make a proposal.

244. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, considered that the Drafting Committee was a body that was sufficiently representative both as regards languages and regional groups and the presence of observers, even if they did not have the right to speak, might affect its efficiency. Consequently, the Group was in favor of retaining the original wording of Rule 45.

245. Mr. BOGSCH (Director General of WIPO) stated that there was a proposal to amend Rule 45 and an objection to the proposal. He asked whether there were objections to a vote on the proposal. Seeing none, he put the proposal of the Delegation of Singapore to a vote.

*246. The Diplomatic Conference rejected the proposal of the Delegation of Singapore with 14 votes in favor, 27 votes against and with 42 abstentions.*

*247. The Diplomatic Conference adopted Rules 44 (Meetings of the Conference and of the Main Committees) and 45 (Meetings of Other Committees and of Working Groups), as proposed in document CRNR/DC/2.*

248. Mr. TIWARI (Singapore) expressed thanks to all Delegations which had supported his Delegation’s proposal and also other Delegations which had given the proposal careful consideration.

249. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 46 (Status of Observers)*, and stated that there was no Delegation to ask for the floor.

*250. The Diplomatic Conference adopted Rule 46 (Status of Observers).*

251. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 47 (Possibility of Amending the Rules of Procedure)*, and stated that there was no observation.

*252. The Diplomatic Conference adopted Rule 47 (Possibility of Amending the Rules of Procedure).*

253. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Rule 48 (Signing the Final Act)*, and stated that there was no intervention.

*254. The Diplomatic Conference adopted Rule 48 (Signing the Final Act).*

255. Mr. BOGSCH (Director General of WIPO) reopened the discussion on *Rule 2(2) (Composition of the Conference)*, where references in parentheses were reserved. He stated his view that it followed from the adoption of the proposal of the Delegation of the United States of America in the morning session, that Rule 2(2), as proposed by that Delegation in document CRNR/DC/8, should read as follows:

“References in these Rules of Procedure to Member Delegations shall be considered, except as otherwise provided (see Rules 11(2), 33 and 34) as references also to the Special Delegation.”

He stated that the change was consequential, and that there was no request for the floor.

256. *The Diplomatic Conference adopted Rule 2(2) (Composition of the Conference), with the amendment suggested by the Director General of WIPO.*

257. Mr. BOGSCH (Director General of WIPO) asked whether any further Delegation wished to take the floor on the Agenda item concerning the Rules of Procedure, and stated that there was none.

258. *The Diplomatic Conference adopted the Rules of Procedure, as amended.*

*Item 3 of the Agenda: Election of the President of the Conference.*

259. Mr. BOGSCH (Director General of WIPO) opened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.

260. Mr. SÉRY (Côte d’Ivoire), speaking on behalf of the African Group, requested that the meeting be suspended to allow consultations.

261. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, seconded the proposal of the Delegation of Côte d’Ivoire.

262. Mr. BOGSCH (Director General of WIPO) asked if there were any objections to the proposal. Seeing none, he adjourned the meeting.

*Third Meeting*

*Tuesday, December 3, 1996*

*Afternoon*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

263. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.

264. Mr. SÉRY (Côte d’Ivoire) requested that the meeting be suspended to allow the coordinators of groups to consult regarding the Presidency and the Bureaux.

265. Mr. BOGSCH (Director General of WIPO) asked the Conference if there was any opposition to the motion by the Delegation of Côte d’Ivoire to suspend the meeting.

266. Mrs. BOUVET (Canada) supported the request by the Delegation of Côte d'Ivoire.
267. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Côte d'Ivoire whether an adjournment, until 10.00 a.m., the next morning, would be acceptable.
268. Mr. SÉRY (Côte d'Ivoire) endorsed the suggestion made by the Director General of WIPO.
269. Mr. BOGSCH (Director General of WIPO) asked again if there was any objection to adjourning the meeting. Since there was no such objection, he adjourned the meeting until Wednesday, December 4, 1996, at 10.00 a.m.

*Fourth Meeting*

*Wednesday, December 4, 1996*

*Morning*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

270. Mr. BOGSCH (Director General of WIPO) reopened the floor for discussion on *Item 3 of the Agenda (Election of the President of the Conference)*.
271. Mr. ROGERS (Chile) asked that the meeting be suspended to allow informal consultations.
272. Mrs. BOUVET (Canada) supported the proposal made by the Delegation of Chile.
273. Mr. SÉRY (Côte d'Ivoire) also expressed support for the proposal by the Delegation of Chile.
274. Mr. BOGSCH (Director General of WIPO) suspended the meeting.

*[Suspension]*

275. Mr. BOGSCH (Director General of WIPO) reopened the meeting.
276. Mr. KUSHAN (United States of America) announced that the private consultations had not yet reached a conclusion with regard to the question of the officers of the Conference. He asked that the meeting be adjourned for further consultations on this question.
277. Mr. SÉRY (Côte d'Ivoire) supported the proposal made by the Delegation of the United States of America.

278. Mr. BOGSCH (Director General of WIPO) adjourned the meeting.

*Fifth Meeting*

*Wednesday, December 4, 1996*

*Afternoon*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

279. Mr. BOGSCH (Director General of WIPO) opened the meeting, and asked if any Delegation wished to take the floor. Seeing none, he suggested to the Conference that it elect the President of the Conference, so that the substantive work could start, and the Conference could come back later to the question of the election of the other officers. Seeing no objection, and seeing no Delegation asking for the floor on this suggestion, he adjourned the meeting until Thursday, December 5, 1996, at 10.00 a.m.

*Sixth Meeting*

*Thursday, December 5, 1996*

*Morning*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

280. Mr. BOGSCH (Director General of WIPO) opened the meeting, and restated his proposal of the previous day, namely, that the election of the President take place; then the general declarations could begin simultaneously with negotiations concerning the election of the other officers of the Conference.

281. Mrs. BOUVET (Canada), on behalf of Group B, wished to put forward a global proposal so as to allow all Delegations to express their views on the various offices in the Bureaux and Committees.

282. Mr. BOGSCH (Director General of WIPO) stated that, according to the Rules of Procedure, he was in the Chair only until the President of the Conference was elected, but that there was not objection to hearing the proposal for the information of the Conference.

283. Mr. SÉRY (Côte d'Ivoire) expressed his agreement with this approach provided that it would allow groups to meet to consider the proposal.

284. Mr. BOGSCH (Director General of WIPO) invited the Delegation of Canada to put forward its proposal made on behalf of Group B.

285. Mrs. BOUVET (Canada), speaking on behalf of Group B, proposed that the Conference should be presided over by an African country, namely Kenya. She also proposed that the number of Vice-Presidents should be increased from 14 to 18, which would require an amendment to Rule 15(1) of the Rules of Procedure of the Diplomatic Conference. The offices of Vice-President would be divided as follows: two Vice-Presidents for the African Group; three for the Asian Group; three for the Group of Latin American and Caribbean countries; one for the Russian Federation; one for the Group of Eastern and Central European Countries and the Baltic States; one for China. With regard to Group B, she added that the Vice-Presidents could be from France, Ireland, Denmark, the United States of America, Japan, Switzerland and Canada. The Chairmanship of the Credentials Committee could be given to a representative of Africa, and the Group of Eastern and Central European Countries and the Baltic States, GRULAC, Group B, the Asian Group, the Group of CIS countries and China would each have a seat. The chairmanship of Main Committee I could be conferred on Mr. Jukka Liedes of Finland and the three Vice-Chairmen could be representatives of the Asian Group, the African Group and the Group of Eastern and Central European Countries and the Baltic States. The chairmanship of Main Committee II could be conferred on a representative of Brazil, and the three Vice-Chairmen could be representatives of the Group of Eastern and Central European Countries and the Baltic States, Group B, and the African or Asian Group. As far as the Drafting Committee was concerned, she indicated that Rule 13(2) of the Rules of Procedure of the Diplomatic Conference would have to be amended in order to increase the number of the Committee's members to 15. On that basis, the chairmanship would be given to a representative of the Asian Group and the other members would come from the African and Asian Groups with one member each, two members from GRULAC, one from China, one from the Eastern and Central European Countries and the Baltic States and Group B would be represented by Australia, Belgium, Spain, the United States of America, and the United Kingdom. She indicated that the African Group could request another seat on the Drafting Committee.

286. Mr. KUSHAN (United States of America) expressed the support of his Delegation for the views of the representative of Group B, and stated that the "package" represented a balanced and appropriate representation.

287. Mr. ROGERS (Chile) supported the proposal made by the Delegation of Canada on the apportionment of offices and nominated the Latin American and Caribbean countries that would occupy these offices. The three Vice-Presidents of the Conference would be Mexico, Uruguay and Chile; Trinidad and Tobago would represent the region on the Credentials Committee; Brazil would be Chairman of Main Committee II and, lastly, Argentina and Colombia would represent the region on the Drafting Committee.

288. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, stated that the Asian Group had difficulties with the proposal of the Delegation of Canada, which it found unbalanced and unreasonable, particularly in respect of the composition of the Drafting Committee. There would be five representatives of Group B among the Vice-Presidents, while the other groups would not have such a large representation. He sought clarification from the Delegation of Canada as to the basis of the Canadian proposal made on behalf of Group B.

289. Mr. KHLESTOV (Russian Federation) stated that his Delegation preferred to elect the President and settle other matters later. He stated that, overall, his Delegation could accept the proposal of the Delegation of Canada, in that it represented a fragile consensus.

290. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the group of Eastern and Central European Countries and the Baltic States, supported the statement of the Delegation of the Russian Federation that the election of the President of the Conference should take place as soon as possible. He stated that the proposal of the Delegation of Canada was acceptable to his group in respect of the distribution of posts. He stated that the representatives of the group would be as follows: Hungary would have the post of a Vice-President of the Conference; Croatia would be a member of the Credentials Committee; Slovenia would have a Vice-Chairman of Main Committee I; Romania a Vice-Chairman of Main Committee II; and Bulgaria a member of the Drafting Committee.

291. Mrs. BOUVET (Canada) proposed that the meeting be adjourned in order to allow the coordinators of groups to meet and expressed the hope that the Director General of WIPO would attend this meeting.

292. Mr. BOGSCH (Director General of WIPO) said that he was at the disposal of groups in order to try to find a universally acceptable solution.

293. Mr. SÉRY (Côte d'Ivoire) supported the proposal to adjourn the meeting and agreed that the meeting of the group coordinators should be chaired by the Director General of WIPO. As he had just received certain information, however, he would like to consult the African Group before the coordinators met.

294. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, stated that the Asian Group was prepared to accept the proposal of the Delegation of Canada, on the understanding that a half-hour would be allowed for group meetings prior to consultations among the group coordinators.

295. Mr. ROGERS (Chile) supported the proposal made by the Delegations of Côte d'Ivoire and Canada to adjourn the meeting.

296. Mr. SÉRY (Côte d'Ivoire) indicated that, if the meeting of coordinators was not successful, he was in favor of electing the President of the Conference alone because he wished to see the substantive work begin.

297. Mr. BOGSCH (Director General of WIPO) stated that, if there was no agreement by noon, the election of the President of the Conference would be held, but not the elections of any other officers. He then declared the meeting suspended.

[*Suspension*]



*Amendment to the Rules of Procedure*

298. Mr. BOGSCH (Director General of WIPO) reopened the meeting, and announced that the spokesmen or coordinators had reached agreement on the questions outstanding to that point. He stated that this agreement would require two small changes to the Rules of Procedure, namely, that in Rule 15, paragraph (1), instead of 14 Vice-Presidents, the new Rule would state 18 Vice-Presidents; and in Rule 13, paragraph (2), instead of 13 elected members, the new Rule would state 18 elected members. He saw no objection to this.

299. *The Diplomatic Conference amended the Rules of Procedure, with the amendments announced by the Director General of WIPO.*

*Item 3 of the Agenda: Election of the President of the Conference (continuation)*

300. Mr. BOGSCH (Director General of WIPO) suggested that the next item to be considered would be the Election of the President of the Conference, and after that, the meeting could review the agreement concerning the officers of the Conference and its bodies. He asked if any Delegation wished to take the floor on the Election of the President of the Conference.

301. Mr. SÉRY (Côte d'Ivoire) proposed that the President of the Conference should be Ambassador Esther Mshai Tolle, Permanent Representative, Permanent Mission of Kenya to the United Nations in Geneva. He stated that Mrs. Tolle was one of four African women Ambassadors in Geneva, who embodied the honor and dignity of Africa. He described the brilliant career, experience and competence of the Ambassador in many fields. In 1975, she had been Deputy Secretary at the Kenyan Ministry of Foreign Affairs; from 1981 to 1986 she had been Third and then First Secretary at the Kenyan Embassy in Paris and Rome respectively; from 1987 to 1990, she had been Deputy Secretary General at the Ministry of Foreign Affairs and International Cooperation responsible for the Americas and Asia as well as international organizations; from 1991 to 1994, she had been the Director of International Organization and Conferences at the Kenyan Ministry of Foreign Affairs; from 1994 to 1995, she had been Director for the Americas at the Ministry. In 1995, she had been appointed Ambassador, Permanent Representative of Kenya to the United Nations Office in Geneva and international organizations in Switzerland and in Vienna. In June 1996, she had chaired the seventeenth session of the WIPO Program for Industrial Property Development Cooperation. She had also represented Kenya at many meetings and her spirit of conciliation, her experience, efficiency and measured approach were highly appreciated assets in bringing together divergent views. In putting forward this candidature, he underscored his desire to pay tribute to all the women present at the Diplomatic Conference. He concluded by calling on Delegations to support this proposal.

302. Mrs. BOUVET (Canada), speaking on behalf of Group B, supported the proposal made by the Delegation of Côte d'Ivoire on behalf of the African Group.

303. Mr. ABEYSEKERA (Sri Lanka), speaking on behalf of the Asian Group, expressed his pleasure to endorse the nomination of the Ambassador of Kenya for the position of President of the Conference.

304. Mr. ROGERS (Chile), on behalf of the Group of Latin American and Caribbean countries supported the candidature of Kenya as President of the Conference.

305. Mr. SHEN (China) supported the candidate of Kenya for the post of President of the Diplomatic Conference.

306. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the group of the Central and Eastern European Countries and the Baltic States, supported the candidature of the Ambassador of Kenya to the post of President of the Conference.

307. *The Diplomatic Conference elected, unanimously and by acclamation, the Head of the Delegation of Kenya, Mrs. Ester Mshai Tolle, as its President.*

308. Mr. BOGSCH (Director General of WIPO) invited the President to occupy the chair of the Chairman.

309. The PRESIDENT thanked the Delegates for the honor accorded to Africa, and to her country, Kenya, by electing her President of the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions. She said that the confidence placed in her was a privilege which she humbly accepted.

310. She took the opportunity to thank the Director General of WIPO, and the staff of the International Bureau, for the excellent arrangements made for this Conference. She also thanked the Chairman of the Committees of Experts for the preparatory work of the Diplomatic Conference, whom she said had ably produced clear and rigorous texts of the substantive provisions of the basic proposals of the draft treaties to be considered by the Conference.

311. The President noted that the Diplomatic Conference was an event of pre-eminent importance. It was taking place at a time when information technology was undergoing profound development which was transforming the means of communicating in general, and of communicating literary and artistic works in particular. Each of the various stages in the existence of literary and artistic works, their creation, their diffusion, their performance, their reproduction and their exploitation, were affected by this transformation. She emphasized that there was an apparent and urgent need to adjust the protection for literary and artistic works that was developed in response to earlier technologies, to the new means of exploitation that resulted from digital technology and global information networks.

312. She drew attention to the fact that a feature of the new technologies was the internationalization of exploitation of literary and artistic works that they have brought about. That internationalization required that the adjustment of the protection necessitated by the new technologies, if it were to be effective, take place on an international level. The new technologies knew no national boundaries. Appropriate protection for works, the content that they carried, had accordingly to be internationally based.

313. The President stated that it would only be fitting that the work of achieving international agreement on the adjustment of the protection of literary and artistic works to digital networks should take place under the auspices of WIPO. As guardian of the Berne Convention, which had throughout the 20th century provided the framework for past adjustments to new means of

exploitation of literary and artistic works, WIPO, with its widespread basis of 161 Member States, was perfectly placed to oversee the secure entrance of such works into the 21st century.

314. She pointed out that much work lay ahead of the Delegates, and it had only just begun. The Conference's ability to progress and to achieve the ambitious task that lay before it would depend on sheer determination to succeed, and on the cooperation among Delegations, and that would be essential to such success. She thanked the Delegates for their confidence, and looked forward to working with them to achieve the successful conclusion of the Diplomatic Conference.

*Item 5 of the Agenda: Election of the Vice-Presidents of the Conference; Item 6 of the Agenda: Election of the members of the Credentials Committee; Item 7 of the Agenda: Election of the members of the Drafting Committee; Item 8 of the Agenda: Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee*

315. The PRESIDENT invited the Delegations to turn to the next item of the Agenda, namely the election of the office bearers. She invited the Secretariat to provide the necessary information.

316. Mr. FICSOR (Assistant Director General of WIPO) reviewed the agreement reached by the regional coordinators concerning the posts of Vice-Presidents of the Plenary of the Conference. Certain countries had not been identified yet, but it had been agreed upon how many Vice-President posts the various groups of countries would have. Africa would have two Vice-President posts. Asia would have three Vice-President posts. The GRULAC would have three Vice-President posts, and they had been identified as far as the countries were concerned, namely Chile, Mexico and Uruguay. From the CIS countries, the Russian Federation would have a Vice-President post. From the group of Central and Eastern European Countries and the Baltic States, Hungary would have a Vice-President post. China would have one Vice-President post. From Group B, the following countries would each have a Vice-President post: Canada, Denmark, France, Ireland, Japan, Switzerland and the United States of America.

317. Regarding the Credentials Committee, it had been agreed upon that the Chairman of this Committee would be from Africa, but the country had not yet been identified. There would be a member from Asia, but the country had not yet been identified. From the GRULAC, there would be a member, namely from Trinidad and Tobago. From the Central and Eastern European Countries and the Baltic States, Croatia would give a member. From the CIS countries, there would be a member from Azerbaijan. From Group B, there would be a member from Italy.

318. It had been decided that the Chairman of Main Committee I would be Mr. Jukka Liedes from Finland, and that as far as the Vice-Chairmen of Main Committee I were concerned, there would be one from Africa, and the country had been identified, namely Algeria; there would be one from Asia, but the country had not yet been identified; and there would be one from the Central and Eastern European countries, namely from Slovenia.

319. Regarding Main Committee II, a representative of Brazil, Mr. Guido Suarez would be the Chairman; the three Vice-Chairmen of Main Committee II would be a representative from each of Romania, Portugal, and from a country of Asia still to be identified.

320. Regarding the Drafting Committee, the Chairman would be from India. The name of the Chairman had not yet been identified. There would be four representatives from Africa, one of which would be a Vice-Chairman, namely a representative of South Africa. There would be two representatives from Asia in addition to the Chairman, but the countries had not yet been identified. There would be three representatives from the GRULAC, two of them having been already identified as Argentina and Colombia. From the Eastern and Central European countries and the Baltic States, there would be a representative from Bulgaria. From the CIS countries, there would be a representative from Armenia. There would be one representative from China. Furthermore, there would be one representative from each of the following five countries: the United States of America, Australia, Belgium, Spain and the United Kingdom.

321. The PRESIDENT thanked the Secretariat for the foregoing information, which, she indicated, she believed to be accurate. She encouraged all Delegations to provide the Secretariat with the names of the office holders as soon as possible so that the Conference could move into the substantive work expeditiously.

322. Mr. SÉRY (Côte d'Ivoire), speaking on behalf of the African Group, thanked all the delegations that had supported the election of the Ambassador of Kenya. He informed the meeting that the two Vice-Presidents for the African Group would be the representatives of Ghana and Malawi, and the Credentials Committee would be chaired by a representative of Senegal.

323. Mr. BOGSCH (Director General of WIPO) suggested that all necessary data on the office holders should be given to the International Bureau directly, so that an official document containing all of the information could be prepared and distributed without delay.

324. The PRESIDENT asked the Conference if there was any objection to the suggestion made by the Director General of WIPO, and, seeing no such objection, declared that it was so decided. [The full list of the officers is included in document CRNR/DC/INF. 5.]

*Item 4 of the Agenda: Consideration and adoption of the Agenda*

325. The PRESIDENT opened the floor for comments on *the Agenda of the Conference (CRNR/DC/1)*.

326. Mr. SOARES (Brazil) suggested that the wording of item 13 of the Agenda be "Adoption of the Treaty or the Treaties."

327. The PRESIDENT asked the Delegations if there were any comments on the proposal made by the Delegation of Brazil.

328. *The Diplomatic Conference adopted the amendment proposed by the Delegation of Brazil.*

329. The PRESIDENT asked the Delegations if there were any other comments on the Agenda, and stated that there was none.

330. *The Diplomatic Conference adopted the Agenda, as amended.*

*Item 10 of the Agenda: Opening declarations by Delegations and by representatives of Observer Organizations*

331. The PRESIDENT opened the floor for opening declarations.

332. Mr. LEHMAN (United States of America) congratulated the President on her election, and said that his Delegation looked forward to her leadership in guiding the Conference to a successful conclusion.

333. He noted that the efforts of the President would be greatly facilitated by the draft texts prepared by the Chairman of the Committees of Experts, Mr. Jukka Liedes of Finland, which the Delegation believed, would form an excellent basis for discussions in the Conference. Mr. Liedes had succeeded in the overwhelming task of incorporating proposals and comments made by numerous delegations into well-integrated and unified documents. He felt that the issues involved in the treaties being considered were of vital importance as countries moved into the 21st century.

334. He stated that the Delegation of the United States of America looked forward to working together over the coming weeks to further the common understanding of these issues, with the goal of forging agreements that would ensure meaningful and balanced protection for copyright and neighboring rights in the global information society.

335. Mr. PORZIO (Chile) congratulated the President on her election. He fully supported the proposals made by the Chairman of the Committees of Experts, which constituted a good basis for effective protection of copyright and neighboring rights, adding that this position was consistent with the common position adopted by the Group of Latin American and Caribbean countries following several meetings. He hoped that priority would be given to studying the proposals on copyright and neighboring rights.

336. He expressed his views on a number of the issues under consideration, first referring to the basic proposal for a Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works. He supported the inclusion of protected computer programs as literary works and the protection of original databases. He was also in favor of the abolition of non-voluntary licenses for sound recordings of musical works and primary broadcasting, as was currently the case in Chilean legislation. He also supported extending the right of reproduction to both direct and indirect, permanent or temporary reproduction, which would eliminate any doubts concerning digital reproduction, and was also in favor of distribution rights related to tangible copies, unlimited rights of rental and the right of public communication covering interactive digital transmission. He also expressed support for extending the term of protection of photographic works, the inclusion of obligations on technological means of protecting rights, and obligations on electronic information for administering rights.

337. Regarding the basic proposal on the protection of the rights of performers and producers of phonograms, he supported the adoption of a new instrument for their protection, the inclusion of a safeguard clause for copyright in the terms of Article 1 of the Rome Convention, and a provision on national treatment in the terms of the basic proposal. He also supported recognition of the moral rights of performers, exclusive rights to the fixing, broadcasting and communication to the public of their unfixed performances, exclusive reproduction rights to their fixed performances, the exclusive right to modify and rent without limitation, the exclusive right to make fixed performances available, in other words interactive digital transmission, as well as the right to remuneration for the broadcasting and communication to the public of their performances fixed on phonograms. With regard to producers of phonograms, he considered that they should be given exclusive rights to reproduce, modify, distribute, rent and make available their phonograms according to the terms in the basic proposal, as well as the right to remuneration for their broadcasting and communication to the public. Lastly, he spoke in favor of including obligations regarding technological measures and devices and expressed the hope that a satisfactory solution would be found for the protection of artists in the audiovisual sector.

338. He expressed concern, however, regarding certain issues. In his view, the Treaties under consideration must remain closely related to the Berne Convention in the sense that membership of the Berne Union should be a requirement for their ratification, and he proposed that Article 1 of the draft Treaty on copyright be amended to this effect. He also proposed that the scope of Article 12 of this draft Treaty be reviewed to prevent the inclusion of limitations or exceptions to the rights of authors other than those in the Berne Convention.

339. He concluded by expressing his country's interest in making progress in the *sui generis* protection of databases, although he considered that this subject needed further study.

340. Mr. OKAMOTO (Japan) conveyed his Delegation's congratulations to the President on her election. Since 1991, Japan had made a positive contribution to the work leading to the new draft international Treaties on the protection of copyright and neighboring rights. This Diplomatic Conference was the outcome of efforts made by many countries and marked a historic step 25 years after the Paris Act (1971) of the Berne Convention. Since then, there had been many changes in the economic, cultural and above all technical sectors and it was right that new Treaties on copyright and neighboring rights should take into account these new technological developments. He said that Japan attached particular importance to certain articles in the three draft Treaties to be examined Article by Article, namely those relating to interactive demand systems using digital networks such as Internet. In his view, these technological developments would accelerate over the next five years and they constituted one of the most important issues in the area of copyright protection. He added that the role and validity of international copyright protection systems in an era of digital technology and communication networks in the twenty-first century would depend upon the outcome of the present Diplomatic Conference. He was certain that the results would be positive.

341. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, congratulated the President and all the other officers of the Diplomatic Conference. He expressed the hope that, under the President's expert guidance, the Conference would agree on the texts of new international instruments by December 20, 1996. He noted that, since the outset of the intensive and fruitful work on the matters before the

Diplomatic Conference, which had been initiated by the distinguished Director General of WIPO to whom he expressed their heartfelt thanks, the European Community and its Member States had participated actively towards the adoption of these new treaties by putting forward positive suggestions and by proposing constructive texts.

342. It was the opinion of the European Community and its Member States that the proposed treaties were absolutely necessary in order to complement the existing international norms or to establish new norms where, under the present text of international conventions, doubts might exist as to the extent to which those conventions applied with regard to the development of the information society. He stressed that the Conference should ensure that the rights of authors, performers in all media, and producers of phonograms and databases be fully protected, and that the right balance be maintained between the various categories of rightsholders as well as between those rightsholders and users.

343. He drew attention to the fact that the European Community itself had adopted Directives harmonizing the laws of its Member States on a number of issues covered by the proposed treaties, such as the term of protection, computer programs, databases and the rights of performers and phonogram producers. With regard to performers, those Directives provided a high level of protection in respect of both audio and audiovisual performances, and the European Community and its Member States strongly believed that that high level of protection should be reflected in the texts which would emerge from the Conference.

344. The European Community and its Member States firmly believed that the Basic Proposals presented by the Chairman of the Committees of Experts formed an excellent basis for the negotiations and for the successful completion of the work of the Conference. He said that the basic proposals were modest but essential improvements to existing international conventions, and should enable Member States of the World Intellectual Property Organization, which the European Community and its Member States believed was the proper forum, to become party to the new treaties.

345. He stated that Mr. Lieder, in his wisdom, had provided balanced texts which took into account the interests of authors, performers and other affected parties. He stated that the rights were qualified by the ability of Member States to provide for reasonable exceptions, and in that respect, the European Community and its Member States felt that the texts formed a good point of departure for reaching an agreement which would enjoy widespread support amongst all concerned. He pointed out that there was no doubt that the digital age was upon us. He emphasized the importance of traditional aspects of copyright and neighboring rights, but said that the Delegations could not afford to delay an international response to the issues that were raised by the new technologies.

346. The European Community and its Member States believed that the Conference had to be successful in the coming weeks as there might not be a second opportunity to tackle the questions under consideration for many years. He assured the President that the European Community and its Member States would do all in their power to assist her in achieving that goal.

347. As a first step in that process, the European Community and its Member States were of the view that general opening statements should be kept to a minimum to enable rapid advancement towards the substantive items for negotiation before the Conference, and to this

end had decided that this would be the only general statement made on behalf of the European Community and its 15 Member States. He stressed that the adoption of the treaties had to be the central focus of the work and that they had to be completed as quickly as possible.

348. If the Conference was to facilitate the orderly development of the worldwide information society and bring copyright and neighboring rights into the new millennium, thus promoting creativity and the dissemination of the resulting works, whilst respecting cultural diversity. The European Community and its Member States were aware of the need for the work to continue in Main Committee I and Main Committee II as a matter of urgency, and therefore chose not to address in their general statement specific items concerning the texts. He reaffirmed the support of the European Community and its Member States for the successful completion of the work on hand, and their willingness to undertake, at the President's direction, whatever tasks were necessary to achieve that goal.

349. Mr. GYERTYÁNFY (Hungary) congratulated the President and wished her success. He stated that his Delegation was pleased that the long-lasting preparations had resulted in the convening of the Diplomatic Conference. He said that the basic proposal on copyright issues was generally acceptable to his Delegation, because it would facilitate the creation and dissemination of works in a new technical and changing economic environment with the same effectiveness as the Berne Convention. His Delegation also supported the proposals concerning so-called digital uses, but stated that exceptions to the right of reproduction might need further study, while the provision on the communication to the public seemed a successful approach to meeting the digital challenge.

350. He stressed that the existing structure of exclusive rights in the Berne Convention and the difference between material and immaterial distribution, respectively, should not be disrupted. His Delegation also supported an increase in the level of protection represented by abolition of certain non-voluntary licences, but urged that the existing balance of interests between the different right owners to the detriment of consumers' interests should not be upset. Accordingly, he expressed reservations concerning the suggested changes in Article 13 of the Berne Convention. As regards the right of distribution, the Delegation of Hungary favored the firm maintenance of the territorial nature of copyright, and accordingly supported the principle of national or regional exhaustion of distribution rights.

351. He stated that his Delegation also welcomed the Chairman's proposals on the rights of performers and producers of phonograms, and stressed that new rights granted should not prejudice the rights of authors and successors in title. He stated that the treaty dealing with the rights of performers and producers of phonograms could not meet the urgent needs of present cultural markets, that is, to increase levels of protection and answer the digital challenge, if the rights of performers in respect of audiovisual works, in general, and actors in particular, were left out. He said that an exclusive right of making fixed performances available to the public was a well-founded innovation, but that it should be restricted to on-demand services.

352. Finally, he stressed that, while the Basic Proposal on the intellectual property protection of non-original databases had not been ripened enough in WIPO-level debates, it had the advantage of being based on valid regional and international norms. His Delegation would like to see further discussions concerning the nature of the rights concerned, that is, the possibilities of a copyright-type and an unfair competition-type protection.



353. Mr. EKPO (Nigeria) congratulated the President on her election, which bestowed honor on the African continent, to which the issues to be discussed during the Conference were of great importance. He stated that the Delegation of Nigeria hoped to contribute conscientiously to the work of the Conference. He said that the draft treaties in which Mr. Jukka Liedes, Chairman of the Committees of Experts, had summed up the results of the preparatory work provided an excellent basis for discussion. He expressed confidence concerning a successful conclusion of the copyright and neighboring rights treaties, and hoped that a timetable could be set for further discussions concerning the proposed treaty on the *sui generis* protection of databases. He also expressed the hope that the proposed international forum on folklore in Thailand next year would provide good basis for discussion on the international protection of folklore.

354. Mr. ABEYSEKERA (Sri Lanka), on behalf of the Asian Group, congratulated the President on her election. He noted that the collective work which had led to the convening of the Diplomatic Conference provided a firm foundation for the work ahead, and in that respect congratulated Mr. Jukka Liedes who had presented the results of that work. He expressed the view of the Asian Group that flexibility and a spirit of compromise could lead to a successful outcome, and cautioned against narrow, inward-looking approaches which could jeopardize the process.

355. He stated that the Asian Group would entertain all proposals seriously, regardless of the group which would make them, and would be guided by what it perceived as good for the entire international community, and in particular for developing countries. He said that, in the interest of time, he had requested that the Secretariat circulate the Asian Group's common position on the proposed treaties, which had emerged from the WIPO Regional Consultation Meeting, held in Chiang Mai, Thailand.

356. He expressed the gratitude of the Asian Group to Dr. Arpad Bogsch, Director General of WIPO, and to his staff, for their efficiency and courtesy to all Delegations. He also thanked WIPO for its financial assistance extended to developing country members of the Asian Group enabling them to participate in the Regional Consultation Meeting, which was an example to other United Nations organizations.

357. In closing, he noted that a few Member Delegations from the Asian Group would make individual opening statements.

358. Mr. KHLESTOV (Russian Federation) congratulated the President on her election. He stated that, in the stage of the creation of a Global Information Infrastructure on the eve of the 21st Century, the Diplomatic Conference was not merely of the purpose of agreeing to additions to the Berne Convention, but rather a qualitative development of copyright and neighbouring rights and international cooperation. As such, he said, the new treaties were to be the basis for future development of international law in the field, and would have great significance for future legal management of the free circulation of information for the benefit of education and culture, and for the progress of science under new conditions of fundamental technological developments.

359. He stressed that the international community expected effective, real, meaningful measures from the Diplomatic Conference, without undue delay, and urged having parallel meetings of commissions and committees in order to proceed as quickly as possible.

360. Mr. GOVONI (Switzerland) congratulated the President of the Diplomatic Conference on her election. He expressed his gratitude to Mr. Jukka Liedes for his work in drafting the various proposed Treaties, which constituted an excellent basis for discussion. He said that, with the emergence of the information era, his Delegation was convinced of the need to improve and harmonize the protection of intellectual property. It was prepared to commit itself to a high level of protection and participate actively in the drafting of international rules to meet the challenge of the new technology.

361. Although the basic documents took into account the proposals made by Delegations during the meetings of Committees of Experts concerning a possible protocol to the Berne Convention and a possible new instrument for the protection of performers and producers of phonograms, he stressed that improvements could be made and his Delegation intended to make constructive proposals during the discussions and the finalization of certain articles.

362. He noted that the Conference's program was ambitious and heavy and should lead to the adoption of several treaties. He considered that the proposed option of three different treaties was relevant and should be maintained and that all three should be considered in order to strive to meet the objectives set. It would then be possible to deal with other issues in future years, for example, the protection of folklore or broadcasters, and he congratulated WIPO for taking these up.

363. The PRESIDENT adjourned the meeting.

#### *Seventh Meeting*

*Thursday, December 5, 1996*

*Afternoon*

#### *Item 10 of the Agenda: Opening declarations by Delegations and by representatives of Observer Organizations (continuation)*

364. The PRESIDENT reopened the floor for continuation of opening declarations under Agenda Item 10.

365. Mr. CRESWELL (Australia) congratulated the President on her election. He stated that the Delegation of Australia was committed to a successful outcome of the Diplomatic Conference, noting that Australia had actively participated in the negotiations preceding the preparation of the texts in the Basic Proposal on copyright and on neighboring rights. He stressed that effective rights for authors and producers of sound recordings in transmissions via the new communication networks were an important part of the Basic Proposal, adding that, in the negotiations preceding the Conference, the Delegation of Australia had identified

the need to extend the right of communication to the public in the Berne Convention, which was now widely regarded as one of the key elements of the Basic Proposal.

366. He stated that the Basic Proposal contained other important advances in copyright protection, including clarification of the right of reproduction and sanctions to support technological measures against unauthorized use of copyright materials. There were important additions to traditional protection of copyright and neighbouring rights, including a distribution right, a rental right and strengthening of existing rights by reduction of non-voluntary licenses. He said that, because of its responsibility for education, broadcasting and other public access to information, the Australian Government sought an outcome that addressed not only the legitimate desire of authors, performers and producers of sound recordings for effective protection, but also the reasonable need for access to works and sound recordings by the public and user interests. He stated that his Delegation believed that regard must be had to the balancing of protection and access in the consideration of any extension of existing rights and new rights. This was particularly so in considering any proposal for reduction of existing access to protected materials or any proposal that might restrict access to public domain materials.

367. He stated that, in light of the magnitude and importance of some of the proposals in the draft treaties, big issues remained on which agreement would have to be reached. His Delegation was grateful to Mr. Jukka Liedes of Finland for the preparation of the Basic Proposal. The Australian Delegation was not only committed to a successful outcome of the Conference, but also believed that it was attainable.

368. Mr. VERGNE SABOIA (Brazil) congratulated the President on her election, and expressed thanks for the support given to Brazil to chair Main Committee II. He noted that Brazil was party to the Berne Convention and the Rome Convention, and stressed that the Delegation of Brazil favored a balanced legal regime for the protection of the rights of authors, performers and producers of phonograms, as well as broadcasting organizations. He expressed support for the WIPO symposium on broadcasting to be held in Manila early the following year, and hoped that the establishment of a Committee of Experts to deal with the rights of broadcasting organizations would be formed thereafter.

369. He congratulated Mr. Jukka Liedes of Finland on the preparatory work which had taken place under his chairmanship. He stated that the Delegation of Brazil supported the positions of the Latin American Group during the Closed Consultation Meeting held the previous week in Geneva, particular in respect of the draft Treaty on the Rights of Performers and Producers of Phonograms, adding that his Delegation would submit concrete proposals on certain points, considering the need for a balance of rights and obligations under the treaties to be negotiated. His Delegation took the view that the treaty concerning copyright should be independent of the treaty concerning neighboring rights, and that both should be independent of existing international conventions that deal with the subject matter. He stated that this position reflected his Government's support for conclusion, in 1998, of a Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property.

370. Mr. KANDIL (Morocco) congratulated the President on her election to the Chair of the Diplomatic Conference, and also the other members appointed to the committees. He emphasized that the Diplomatic Conference constituted a very important step in the history of the promotion and protection of intellectual property rights. The development of new

information and communication technology made it necessary to seek appropriate and balanced solutions and, if required, to establish new rules to protect the rights of authors of literary and artistic works, performers, and producers of phonograms. The harmonization sought must not only relate to the traditional exploitation of works, but also to new uses resulting from the information society. The interests of developing countries must be taken into account. Improving the balance between the interests of the owners of copyright and free public access to works constituted the basis of any harmonization in this area.

371. He stated that African countries, meeting in Casablanca on November 7-9, 1996, had considered the basic proposals concerning the substantive provisions of the draft Treaties on certain questions concerning the protection of literary and artistic works and the protection of the rights of performers and producers of phonograms, and had highlighted the need to study certain issues in depth in order to improve the protection of copyright and neighboring rights, including the relationship between the new Treaty envisaged and the Berne Convention, the abolition of certain non-voluntary licenses, definitions, for example, and rental. The countries meeting in Casablanca did not consider it necessary for the new instrument on the rights of performers and producers of phonograms to be as closely linked to the Rome Convention as the treaty on certain questions concerning the protection of literary and artistic works was linked to the Berne Convention.

372. With regard to the treaty on databases, he said that his Delegation did not oppose it because it would promote investment and ensure widespread use of databases. He hoped nevertheless that the protection would allow each country to choose its protection regime and also that exceptions would be made for education, scientific research and other areas. He questioned the concept of "substantial investment" in Article 2 of the draft Treaty on databases, the limits on the rights of owners and the content of databases, and referred to the expressions of folklore in these bases. He wished to see these questions studied in detail before joining any consensus in this respect.

373. The PRESIDENT stated that she intended the opening statements to end by the end of the day, to enable the Committees to begin their substantive work. She requested that Observer Organizations, particularly those representing non-governmental organizations, do not take the floor, but rather make available written statements.

374. Mr. SHEN (China) congratulated the President on her election, and expressed great appreciation to the Director General of WIPO and his staff, as well as Mr. Jukka Liedes, the Chairman of the Committees of Experts, for the preparation of the Diplomatic Conference.

375. He noted that the Chinese texts of the three draft treaties had been widely distributed to interested government and private sector circles in China, including the judiciary, in order to solicit a wide range of views. He stated that the copyright management bodies in the provinces, municipalities and autonomous regions throughout China, except Taiwan, had been asked to organize consultation meetings, while the National Copyright Administration of China had held seminars in the capital to debate the issues. These consultations and discussions had contributed to the better understanding of the impact of new technologies on copyright for the authors and other people concerned as well as to the revision of copyright law in China.

376. He stated that his Delegation felt that the establishment of new international treaties to deal with copyright problems arising out of new technology was a very important, a very difficult and a complex task, which required friendly consultations in the spirit and principle of mutual respect, equality and a wish for common development. He said that developed, as well as developing, countries should take into consideration one another's different levels of economic, cultural and technological development.

377. He noted that, in 1948, the UN General Assembly adopted the International Declaration of Human Rights, Article 27 of which stipulated that: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic productions of which he is the author." He stated that the Delegation of China took the view that this was a basic principle for domestic as well as international law in the matter of copyright, which should not be forgotten in the present context, especially for people living in developing countries where underdevelopment still existed.

378. Mrs. AGGREY-ORLEANS (Ghana) congratulated the President on her election, and stated that her Delegation commended the two Committees of Experts for the excellent work done in elaborating the substantive provisions of the draft treaties, as well as the International Bureau of WIPO for its support, including by facilitating Ghana's active participation in the work of the Committees, and in the regional consultations which were held as part of the preparations for this Diplomatic Conference.

379. She stated that the importance of adapting the international legal protection of copyright and neighboring rights to the realities of our time could not be overemphasized, because technological and commercial developments had profoundly affected the way in which artistic and literary works are created, used and disseminated. She stated that there had been, in recent years, a growing awareness of the importance of copyright protection in the new global trading system. While acknowledging that the TRIPS Agreement provided for the inclusion of computer programs and the compilation of data in the list of works protected under the Berne Convention, she said that there was still a need to update and modernize the international copyright and neighbouring rights protection provided under the Berne and Rome Conventions, in order to respond fully to technological advancement and, in particular, to the convergence of computer and communications technologies as well as the effects of the digital revolution.

380. She stated that the Delegation of Ghana wished to commend WIPO for the initiative it had taken in this area, which was a measure of the Organization's diligence and commitment to norm-setting activities and to serving the needs of its member States. Her Delegation also welcomed the basic proposals for the Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works and the Treaty on the Rights of Performers and Producers of Phonograms. She expressed the hope that certain provisions of the draft treaties, which merited further discussion and refinement, would be duly amended in the course of the Conference to reflect the concerns and special circumstances of countries with budding intellectual property systems.

381. She noted that the question of a *sui generis* protection system for databases had been raised during the past meetings of the Committees of Experts, and said that her Delegation

took the view that the basic proposals for that treaty required further discussion in order to clarify and resolve major problems with the substantive provisions.

382. She concluded by stating that her Delegation was committed to ensuring effective copyright protection for all artistic and literary works, which would be an important prerequisite for the enjoyment of culture and entertainment, the exchange of information and technology transfer, as the 21st Century drew near. In adhering to international treaties on copyright and neighboring rights, she hoped to lay the appropriate foundation in this field, in order to attract foreign investment in other vital sectors of the economy of her country.

383. Mr. ZAHRAN (Egypt) congratulated the President on her election, and thanked the Director General of WIPO for the preparation of the Conference. He also congratulated Mr. Jukka Liedes of Finland, who had chaired the Committees of Experts preparing the draft treaties.

384. He said that his Government had taken steps to raise the level of intellectual property protection, including by amending the 1954 copyright legislation of his country to protect computer programs and databases. He said that his Delegation looked forward to discussions of the proposed treaty on certain copyright questions and the treaty for protection of performers and producers of phonograms, and stressed the need for a balance between the owners of rights and users, taking into account the interests of developing countries and their need for access to new technologies.

385. Mr. HERMANSEN (Norway) congratulated the President on her election, and thanked Mr. Jukka Liedes of Finland for his role in the preparatory work. He stated that his Delegation regarded the proposal as a totality, and that copyright legislation was about striking balances between various interests, including authors, holders of neighboring rights, users, and society at large. He said that the successful development of the information society depended on finding international solutions to solve critical questions, striking the appropriate balance, while at the same time giving the national legislator both sufficient leeway and sufficient guidance concerning, in particular, limitations on exclusive rights in areas such as education, scientific research and library uses.

386. He stressed that there should be a way for a user to access documents on the Internet without infringing copyright, and that incidental electronic copying resulting from necessary technical operations should fall outside the scope of protection. He said that an outcome in which some performers received protection while others did not, was not acceptable, especially not within a framework of national treatment.

387. Mr. OPHIR (Israel) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, the Chairman of the Committees of Experts, for their preparatory work. His Delegation attached importance to updating and clarification of international norms in order to take account of new cultural and technological developments with maximum uniformity. He said that the Basic Proposals offered a good foundation for the discussions to follow.

388. He emphasized the need to strike an appropriate balance between high levels of protection for owners of rights, on the one hand, and the public need for access to information and technology, fair use, and the social values of education and research, on the other. He

stated that his Delegation would make other remarks at the appropriate time, but highlighted the following areas of concern: the notion and place of publication; the right of reproduction; the question of reservations to the proposed treaties; and the right of distribution. Concerning the proposals regarding technological measures, he said that the language in the Basic Proposals was overly broad, and suggested consideration of a separate treaty dealing solely with the question of technological measures of protection. Finally, while his Delegation supported the development of three separate treaties, he suggested that provisions common to two or more of the Basic Proposals be discussed together.

389. Mr. KESOWO (Indonesia) congratulated the President on her election, and thanked the Director General of WIPO and his staff and Mr. Jukka Liedes for their preparatory work. He stated that technological developments were changing the way of life and creating unexpected problems, and that his Delegation realized that more time must be spent addressing them. He said that his Delegation supported agreed international solutions to, in particular, the problems posed by information technologies, in order to strike an appropriate balance between the needs of developed and developing countries, which existed in different socio-economic conditions. He stressed the need for flexibility and fairness in addressing common problems.

390. In regard to the draft copyright treaty, he indicated the following concerns: the notion of reproduction should include temporary reproductions which have a wide impact, and should take into account the concept of fair use; the relationship between the right of distribution and the exhaustion of such right should not affect the ability of countries to import freely without risk of infringement; the question of elimination of non-voluntary licenses should be studied further, as should the proposal concerning technological measures for protection; the provision of rental rights should mirror the TRIPS Agreement; and there should be provision for a transition period for implementation.

391. In regard to the draft treaty on the rights of performers and producers of phonograms, the right of adaptation should be studied further; inclusion of the rights of broadcasters should be given attention; and the scope of limitations and exceptions should be consistent with the Rome Convention.

392. In regard to the proposed treaty on databases, his Delegation saw no need to create a *sui generis* form of protection, since databases were already protected under the aegis of the Berne Convention.

393. Mr. MICHIE (South Africa) congratulated the President on her election. He stated that his Government had carefully studied the basic proposals prepared by the Chairman of the Committees of Experts, and had consulted with a wide range of interested parties. His Government welcomed the proposals and looked forward to studying and discussing them at the Conference.

394. He said that, in formulating its position, his Government had been guided by two principles. First, copyright owners and holders of neighboring rights should be given sufficient and effective protection to reward them for their enriching contribution to the cultural and scientific well-being of society. Second, certain stakeholders in society had an interest in access to information, and in the free flow of information. He pointed out that initially, those two principles seemed to be in opposition, but upon closer analysis, they were in fact complimentary. A vibrant society needs constant intellectual stimulation and new

information. At the same time, new works and information would be forthcoming only if the financial reward made the physical and intellectual effort worthwhile. He expressed the hope that the confluence of interests would guide the deliberations of the Conference.

395. He felt that some of the proposals under consideration by the Conference were little more than a restatement of his country's current legal position, but that other proposals represented an opportunity for South Africa to make amendments to its laws and to deal with the issues on the digital agenda. He felt that those issues should be dealt with as soon as possible, given the increasing number of South Africans who were users of global networks such as the Internet, both as consumers and producers of material. He also noted that those networks presented exciting and needed opportunities for users in the developing countries, who were often deprived of academic and scientific resources and materials.

396. He said that it was crucial to realize that the exercise of the right of reproduction, as an example, might often involve a transaction which took place across national frontiers, and that, therefore, the legal solution could not lie in national legislation, often backed up by obscure principles of conflict of laws, but rather in a uniform solution from which countries might not deviate.

397. He noted that during his Government's consultations with the interested parties, there had been general enthusiasm for the proposals under consideration by the Conference. However, the performers groups insisted that audiovisual fixations be included within the scope of the proposed "New Instrument." He also said that the database proposal met with almost unanimous opposition from a wide range of interested parties, and that that fact reinforced his Delegation's view that the adoption of the proposal at the given stage might be premature, and that further study and consultation were required.

398. Ms. DALEY (Jamaica) congratulated the President on her election. She expressed her appreciation for the work of WIPO and its International Bureau for bringing the discussions on questions of copyright and neighboring rights to the present advanced stage. She also expressed appreciation to Mr. Jukka Liedes, Chairman of the Committees of Experts, for his contribution to the development of the comprehensive basic drafts to guide the discussions at the Conference.

399. She noted her Delegation's continued interest and support for the work on copyright and neighboring rights questions before the Conference, as indicated in the framework of the group of countries from the Latin American and Caribbean region. She felt that the issue of the *sui generis* protection of databases required further study, in terms of what impact the implementation of such a regime would have on the developing countries, and expressed her hope that WIPO would facilitate such further study. She also expressed her Delegation's commitment to the recognition of well founded rights in the subjects of the expression of folklore and the rights of broadcasting organizations.

400. Mr. WIERZBICKI (New Zealand) congratulated the President on her election. He commended the Chairman of the Committees of Experts, Mr. Jukka Liedes, for the significant work done by him in amalgamating the participants' proposals from the Committees of Experts into the draft treaties. He noted that the draft treaties raised important issues concerning the extent of copyright in the era of digital technology. They were important both



internationally and for New Zealand, where new technology issues had already been addressed.

401. He said that his Delegation was aware that the draft treaties did not completely address the interests of all participants, and mentioned as examples the protection of folklore and broadcasters' rights. He particularly supported the forthcoming UNESCO-WIPO World Forum on the Protection of Folklore planned for April 1997, and asked that that meeting consider three themes: (i) there should be an exploration of views on traditional knowledge/folklore and indigenous intellectual property rights, and the nature of current intellectual property regimes, noting as an example that there were overlaps between the proposed moral rights for performers and issues in relation to indigenous performers' performances; (ii) ways should be found in which WIPO could promote consistency in discussions of indigenous intellectual property rights in international fora by, for example, promoting consistent definitions which could aid discussion among States on this issue; and (iii) countries should be encouraged to provide information on developments which addressed indigenous intellectual property rights issues.

402. Mr. TIWARI (Singapore) congratulated the President on her election, and wished her the best in her endeavors to lead the Conference to accomplish the demanding tasks set forth in the Agenda. He stated that the Diplomatic Conference was an important event, meeting to consider a variety of issues of copyright and neighboring rights. Some of those issues involved the updating of the Berne and Rome Conventions, while others arose out of the need to adapt the international regime of copyright to the Information Age, the latter having been referred to as the "digital agenda."

403. He said that his Delegation supported the need to make changes to international legal norms in the intellectual property area, if such changes were felt to be necessary by the international community to take account of changed circumstances, such as technological developments. He pointed out that any such changes, however, should not lose sight of the original aims of copyright, which were to promote the progress of science and the arts. He highlighted that one could not ignore the growing trend towards copyright protection for purely economic reasons, and pointed out that at the same time it would be a serious mistake to ignore the fact that an unrestricted flow of information was vital for education, trade, industry and culture. He emphasized that it was absolutely necessary to ensure that users had access to information and knowledge, that it was critical that the balance between the protection of right owners and the public interest not be upset, and that it was crucial that the rights of fair use and private use were not eroded or undermined in any way.

404. Regarding Article 7 (Scope of the Right of Reproduction) of the draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works, he stated that the inclusion of temporary reproduction in the reproduction right had far reaching consequences, in that fair use rights in the areas of researchers, libraries and private use were in danger of being curtailed. He gave the example that browsing on the Internet, which was an important activity, would be affected by that. He felt that the digital environment did not require such a broad extension of the right. He felt that it should be made clear that temporary reproduction of works should be permissible when the reproduction merely made perceptible works which would otherwise be imperceptible, when it was of a transient or incidental nature, or when it facilitated transmission of a work and had no economic value independent from facilitating transmission.

405. Regarding Article 8 (Right of Distribution and Right of Importation) of that draft Treaty, he said that the right of importation clearly affected free trade, in that it would result in rightholders dividing the world into different market segments and practicing price discrimination. He noted that this was an issue which had been debated at great length in the negotiations in the Uruguay Round which led to the TRIPS Agreement, and, after exhaustive consideration, the world community agreed to leave it to national legislation to deal with the issue of parallel imports. He stressed that his Delegation strongly opposed any change in respect of that issue, and supported Alternative B of Article 8, noting that in the interest of free trade, parallel imports should be allowed.

406. Concerning Article 9 (Right of Rental) of that draft Treaty, he drew attention to the fact that that Article extended the rental right to all categories of works, and thus went beyond the TRIPS Agreement. He said that the question was whether it was too early to expand that right across the board without having seen how it would work under the TRIPS Agreement. He felt that any rental right should be clearly confined to commercial rental, and should not affect public lending by libraries and similar non-profit lending.

407. Referring to Article 10 (Right of Communication) of the same draft Treaty, he said that his Delegation looked forward to discussing this Article with other Delegations who were concerned about it. He felt that it needed to be reviewed to ensure that the interests of all concerned parties were accommodated. As regards Article 12 (Limitations and Exceptions), he noted that this Article had an impact on the other provisions of the draft Treaty, and that the language of the provision should be consistent with the Berne Convention and the TRIPS Agreement. He suggested that the word "only" in paragraph (1) of that Article be deleted to avoid any unintended consequences, and, regarding paragraph (2), he said that his Delegation looked forward to studying it with other Delegations who had expressed similar concerns.

408. He agreed with the principle behind Article 13 (Obligations concerning Technological Measures). However, he felt that the provision, as drafted, could prohibit a protection defeating device for *bona fide* use, and referred to the terminology used in the EC Software Directive and in case law of the United States of America as being more in line with the needs of industry. He stated that Article 14 (Obligations concerning Rights Management Information) was too broad and required further work during the Conference. He noted the differing views expressed in relation to Article 16 (Special Provisions on Enforcement of Rights), and felt that the provision required further consideration during the Conference.

409. He drew attention to the draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms, and stated that the views of his Delegation on those parts of the draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works, which were similar to the provisions of that Treaty, applied *mutatis mutandis*. He suggested that there was no need to extend moral rights to performers as proposed in Article 5 (Moral Rights of Performers), and said that, in respect of Articles 6 (Economic Rights of Performers in their Unfixed Performances) and 11 (Right of Making Available of Fixed Performances), his Delegation believed that those rights should be restricted to authorization of musical performances and to fixations of musical performances in phonograms.

410. Regarding Articles 8 (Right of Modification) and 15 (Right of Modification), he expressed his Delegation's opinion that there was no justification for those provisions. As

regards the other provisions in this draft Treaty, he stated that his Delegation would work together with other Delegations to find mutually acceptable solutions.

411. Turning lastly to the draft Treaty on Intellectual Property in Respect of Databases, he said that further work was required, and how and when such further work would take place would have to be considered during the Conference. He concluded by stating that his Delegation would participate actively in the deliberations of the Conference to ensure a generally acceptable outcome.

412. Mrs. BOUVET (Canada) congratulated the President on her election and offered her support for a successful conference. She also joined previous speakers in congratulating Mr. Jukka Liedes for his work in drafting the basic proposals before the Diplomatic Conference. She said that Canada, on the basis of its recent experience in revising its copyright legislation, would participate actively in elaborating new international rules. She considered that the adoption of new international commitments would lead to greater legal security not only for owners of copyright but also for users. This was a particularly important factor for the development of the global economy and, more especially, for traditional industries and industries utilizing the new media. A degree of flexibility should be shown in order to respond to the challenges of technological change. She drew attention to the interest shown by Canada in culture, the arts, the performing arts, and information, and said that as far as software and telecommunications were concerned the dynamism of Canada's industrial sectors was recognized at the global level. She emphasized that, for all the reasons cited, her Delegation wished to see the present Diplomatic Conference succeed.

413. Mr. HENNEBERG (Croatia) congratulated the President on her election and Mr. Jukka Liedes for his work which had led to the proposed Treaties before the Conference. He indicated that, because of the hierarchy of regulations in Croatia, where international provisions took precedence over domestic law, the outcome of the Conference was of great importance for Croatia. He added that the products of cultural industries had a twofold legal character, being subject not only to the rules of civil law but also to those on intellectual property, therefore, international protection was essential to deal with the new technological developments.

414. Mr. YAMBAO (Philippines) congratulated the President on her election. He also expressed his Delegation's appreciation to the Director General of WIPO and to his staff for the preparations for the Conference, and for the assistance given to the Philippines to ensure the participation of its experts in the process culminating with this Diplomatic Conference. He noted that the Conference had generated a great deal of interest, as it touched two critical aspects of the world, namely intellectual property and the new technologies. His Delegation renewed its commitment to the protection of intellectual property rights, a task essential to stimulating creativity and productivity in every society. New technologies represented great leaps in human progress, and had facilitated access to, and flow of, information, which had always been crucial to the development of individuals and society. He suggested that the stimulation of creativity and the encouragement of the flow of information were the ultimate values that should prevail in the Conference.

415. He observed that the process of revising intellectual property rights had been greatly brought about by the apprehension that the new technologies made infringement of those rights easy, and one approach had been to enlarge the control of the rightholder over

copyrighted material. He said that his Delegation considered the basic draft treaties as an excellent basis for starting the work. It was concerned, however, that certain provisions could make service and conduit providers of information liable for carrying infringing material. It felt that the efforts at safeguarding intellectual property rights should be more focused on the initiator of the infringement, and should not unnecessarily impede the flow of information and inconvenience and hold liable service providers and legitimate users.

416. He stressed that new technologies had been a principal factor for the development known as globalization of human society to the extent that individuals and countries could afford the machines bearing them. He valued the work of schools, public libraries and broadcasters, as they were the means on which a great many people depended for learning and information. He urged that the Conference not lose sight of the situation of developing countries, and that its efforts not result in hampering and discouraging the flow of learning and information, and not contribute to the marginalization of people from progress and its benefits. He associated his Delegation with the position of the Asian Group.

417. He referred to the draft Treaty on Intellectual Property in Respect of Databases, and said that databases were already protected under the Berne Convention and the TRIPS Agreement, and stated that his Delegation was not convinced of the need to extend protection of databases. It believed that what was sought to be protected was financial investment, which it felt was already covered under contract law. It also felt that protection for databases could be perpetual, with a higher level of protection than databases were given under the Berne Convention and the TRIPS Agreement.

418. He urged that the next step in the modernization of intellectual property rights should be the examination of the rights of broadcasters *vis-à-vis* the new communications technologies, and drew attention to the proposed WIPO Symposium on Broadcasting, New Communications Technologies and Intellectual Property, to be held in the Philippines in April 1997. He invited the countries and Observer Organizations at the Conference to send representatives to the Symposium.

419. Mr. AKRAM (Pakistan) congratulated the President on her election, and the Chairmen, Vice Chairmen and Members of the Committees of the Conference. He assured the Conference of the fullest cooperation from Pakistan. He thanked the Director General of WIPO and his staff for the arrangements for the Conference, including the WIPO Regional Consultation Meetings. He stated that his Delegation recognized the need for new treaties in the area of copyright and neighboring rights. Arrangements between Member States should keep pace with developments in information and communication technologies. He referred to the existing instruments in the area, the Berne Convention and the Rome Convention, and thought that they would remain valid even in the digital age. However, he felt that the evolution which had taken place necessitated new norms, and stated that Pakistan would participate actively and constructively in the deliberations.

420. In order to facilitate the task of the Conference, he asked the Delegates to bear in mind that: (i) the developing countries were far behind the developed countries; the level of understanding and general awareness in the developing countries was limited and, in some cases, barely at the threshold of the digital revolution; it would be desirable to help the developing countries bridge the gap; (ii) transfer of technology and access to the "information superhighway" was crucial for the development of the developing countries; as such, the

norms which were to be set at the Conference should not deprive the developing countries of their right to transfer of technology and access to information; and (iii) the Berne Convention and the Rome Convention maintained a delicate balance between the rights of the rightholders and the interest of users, a balance which was important and should be maintained in the new treaties.

421. He endorsed the position of the Asian Group and urged that no new rights should be created unless it was absolutely essential and the interests of all parties were taken into consideration. The specific problems relating to the obligations concerning technological measures and rights management information should be addressed in a clear and balanced manner, so that no unintended consequences would result. Limitations and exceptions should follow the practices of the Berne and Rome Conventions. Special provisions on enforcement of rights should not have any link to the TRIPS Agreement. There should be a substantial number of ratifications from both developed and developing countries for the treaty or treaties to come into force, and the developing countries should be allowed reservations and transitional periods for the application of certain provisions.

422. Regarding the draft Treaty on Intellectual Property in Respect of Databases, he noted that that was a new area, and that not enough work had been carried out on it in the Committee of Experts, and that, therefore, his Delegation was not in a position to negotiate such a new Treaty during this Conference. He urged all Delegates to participate with an open mind and to take into account the differences in the circumstances of various countries, especially the developing countries.

[*Suspension*]

423. Mr. CHRISTOV (Bulgaria) congratulated the President on her election, and stated that the Diplomatic Conference represented a major event in the history and the development of WIPO. A positive outcome of the forthcoming deliberations would establish valuable new norms in the field of copyright and neighboring rights protection, particularly in the context of the global information society. He pointed out that the work of the Director General of WIPO, of the International Bureau, in particular of Mr. Mihály Ficsor, of Mr. Jukka Liedes of Finland, and of the preparatory bodies of the Conference, had made that task attainable. He stated that the Basic Proposals were an excellent basis for the work ahead, and that his Delegation was determined to contribute to the successful conclusion of the Conference and it would present its proposals and remarks at appropriate times and in the appropriate Committees.

424. Mr. KIM (Republic of Korea) congratulated the President on her election. He stated that the existing treaties in the field of copyright and neighboring rights, such as the Berne Convention and the Rome Convention, would have to evolve in order to keep pace with technological change, in the particular context of the global information society, which was effecting radical change in the business and personal spheres. He expressed appreciation to WIPO for convening Committees of Experts since 1991 to develop means to protect the legal interests of authors and beneficiaries of neighboring rights in the new digital universe.

425. He said that, in the view of his Delegation, the new treaties should respect the following principles: the delicate balance between copyright and neighboring rights should be maintained, particularly in respect of the balance between exclusive rights and public-interest limitations placed upon them; universal access to information and cultural products should not be inhibited by the new treaties; the right of reproduction should not prejudice the interests of users and on-line service providers; technological measures such as copy-protection devices could be useful, but should not be over-employed to prohibit manufacture, importation or distribution of protection-defeating devices used within the permitted range of limitations on rights or in respect of non-copyrightable or public-domain materials; the rights of holders of neighboring rights should not be expanded beyond present levels, and limitations on such rights should be kept at the level provided in the Rome Convention.

426. In addition, he pointed out that his Delegation found that the new treaties should enter into force with the maximum possible number of required ratifications; the scope of a right of importation should be left to national law, including whether to adopt the principle of national or international exhaustion; Article 18 of the Berne Convention should apply to the rights of performers and producers of phonograms; development of a treaty of the *sui generis* protection of databases was at a premature stage, and the implications of such protection on the free flow of information should be examined.

427. He stated that his Delegation supported the general direction of the two treaties, but felt that substantial work had yet to be done in order to bridge the gaps between countries.

428. Mr. KATEB (Algeria) congratulated the President on her election. His Delegation noted with satisfaction the consensus that had prevailed in the Diplomatic Conference in giving such an honor to the African continent, through the election of the President, and he congratulated all the members of the Bureaux, who enjoyed the confidence of the meeting.

429. He considered that the Conference was being held at a very important stage in the history of intellectual property. Developments that involved new technology had grown so rapidly that regulations at the international level had become necessary. The various users of works of the mind and other services must be given international instruments to regulate rights and provide a harmonious balance between the owners of the rights on the one hand and users on the other. He particularly welcomed the holding of the Conference because the enormous work carried out in the various Committees of Experts had seen the *rapprochement* of points of view that had been far apart at the outset. As a result of the significant efforts made by the former Chairman of the Committees of Experts, who had once again by consensus received the confidence of the meeting, the task of Main Committee I to complete the work on regulations would be facilitated and would have a positive outcome.

430. He informed Delegations that his country's legislative authorities were considering a text amending copyright and neighboring rights and taking into account a number of the concerns that were the focus of at least two of the international Treaties before the meeting. He said that his Delegation would work constructively to ensure the success of the Conference and intended to put forward some written proposals on certain aspects. He stressed that there could be no doubt that the spectacular progress made in the area of communication had had a major impact on the development of literary and artistic property law. It was therefore

appropriate to focus on the benefits of the codification to be undertaken during the Conference.

431. He emphasized that it was necessary to find an international legal basis for the protection of electronic transmissions and the digital protection of data transmitted by electronic means. It was also necessary to consider looking anew at strengthening the exclusive rights of authors and other owners of rights and to see computer programs and databases given the protection they logically should receive.

432. In his view, the marked trend towards internationalization would undoubtedly lead to efforts to harmonize concepts at the international level. It was necessary to be aware of the gap that might exist between the texts of the draft treaties under discussion and the true situation and needs of many developing countries. It was not clear that the abolition of non-voluntary licenses envisaged in the substantive provisions of one of the treaties could be compatible with the strengthening of the exclusive right of the author. It was not self-evident either that the codification of new rights such as the right of rental, which did not include any precise definition of this concept, would always be easy for the national legislative authorities to interpret.

433. The new instruments, in which the exclusive rights of authors, producers of phonograms and performers competed, raised the question of how collective copyright administration societies could take valid decisions on the disputes that would undoubtedly arise. In his view, the third treaty before the meeting required further consideration.

434. He hoped that developing countries would take advantage of the Conference to explain better their situation as far as intellectual property was concerned. Measures had to be taken urgently at the regional level to draw up a concrete strategy in this area, particularly as regards the sectors essential for promoting education in this area and strengthening culture, which should be considered the common heritage of all States and, over and above States, of mankind as a whole.

435. Mr. AYYAR (India) congratulated the President on her election, and thanked the other Delegations for entrusting the Delegation of India with the chairmanship of the Drafting Committee. He stated that an open mind and an appreciation of the diversity of interests represented at the Conference would facilitate successful conclusion of the copyright and neighboring rights treaties. His Delegation entertained no hope for conclusion of the proposed treaty on the protection of databases, which required further study, particularly of the notion that "investment" gave rise to an intellectual property right.

436. He set out guiding principles for successful conclusion of the Diplomatic Conference. Where obligations under the TRIPS Agreement were proposed to be incorporated in the treaties under consideration, verbatim language of the TRIPS Agreement should be employed. Such obligations should stand alone and should not be cross-referenced to the corresponding provisions of the TRIPS Agreement. In no case should rights guaranteed in the TRIPS Agreement, such as rental, be expanded. The international regime of protection could not be too far ahead of national laws, in light of the wide diversity of market structures and technological dissemination around the world. A gradualist approach should be taken to the creation of rights in respect of digital technologies, the long-term impact of which on human life could only be guessed at for the time being, and a careful balance should be maintained

between the interests of content providers, on-line service providers, electronic hardware manufacturers, the academic community and the general public.

437. He stated that balance was the ethos of intellectual property rights, such as the rights of reproduction and communication to the public, and that fair use should not be allowed to be whittled away by the new treaties, diluting the applicability of all the limitations and exceptions contemplated by the Berne Convention. The proposed measures on technological protections were driven by techno-pessimism, in light of ever-shortening technology and business cycles. The new treaties should not impede the flow of international trade, and the proposal for a right of importation was such an impediment.

438. He concluded by stating the understanding of his Delegation that the treaties were to be stand-alone instruments and would be implemented as such.

439. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, congratulated the President on her election and expressed his willingness to collaborate to ensure the success of the Conference. He said that the Group had arrived at agreement concerning two basic principles, following a number of meetings in which the preparatory documents prepared by the International Bureau had been studied carefully, together with the proposals submitted by various Delegations and the draft treaties elaborated by the Chairman of the Committees of Experts.

440. Firstly, the objectives of the Treaties met the need to improve protection of owners of copyright and neighboring rights, providing a legal framework that took into account the effects of technological progress. Secondly, the text of the Treaties should maintain a balance between the interests of those involved in the creation, dissemination and consumption of cultural goods, taking into account the general interest in promoting creativity, education and culture. On the basis of these two general principles, the Group of Latin American and Caribbean countries had already reached a satisfactory consensus on a large number of basic aspects and remained optimistic regarding the full success of the Conference.

441. Mr. OMONDI-MBAGO (Kenya) congratulated the President on her election, as an African and as a woman. He stated that the Diplomatic Conference came at a pivotal moment in world history, given the need to create a new international framework for protection of the rights of authors, performers and producers of phonograms in the new digital environment. He thanked Mr. Jukka Liedes, Chairman of the Committees of Experts, for his contributions to the preparatory work. He stated that, consistent with the common position of the African Group taken at the WIPO Regional Consultation meeting in Casablanca, his Delegation felt that further discussions were necessary in respect of the proposed treaty on the protection of databases.

442. Mr. ETRANNY (Côte d'Ivoire) joined other speakers in congratulating the President on her election. Since 1978, Côte d'Ivoire had had a law to protect works of the mind and it had subsequently been adapted to new developments. An updated text taking into account neighboring rights had led to the recent adoption of a new law by Parliament. With regard to the basic proposals, he reserved the right to comment on them during the work in committee. Most of his comments were in any event contained in a document distributed by the African Group. A French philosopher once said that causes which died were causes for which no one knew how to die. The interest shown in the issues before the meeting since 1991 incited one



to believe that the protection of authors and creators had real cause for survival despite the inevitable, but not insurmountable, differences.

443. Miss METOHU (Albania) congratulated the President on her election. The concept of a work as an expression of the author's personality and the concept of the author as owner of his work were not recent, but in Albania they had started to emerge on the eve of the creation of a new society for the third millennium. The bases underlying the old concept of copyright had undergone an upheaval over the past two decades as a result of the incredible progress of technology. The development of dissemination and reproduction techniques was a reason for both satisfaction and concern. Satisfaction because creators had never enjoyed such opportunities to make their works known at the national, European and even global levels so rapidly.

444. At the same time, concern because new technology made it difficult, if not impossible, to control the exploitation or use of the works. Intellectual and artistic creativity was a precious asset and constituted a vital source of economic wealth and influence in the world. It should be protected, but needed to be revalued and encouraged. She was grateful to the drafters of the basic proposals for the three Treaties and said that her Delegation reserved the right to intervene and comment on certain articles of these Treaties.

445. Mr. MTETEWAUNGA (Tanzania) congratulated the President on her election, which was an honor to the African continent, and the Director General and the International Bureau of WIPO for the preparatory work. He noted that Tanzania had become a member of the Berne Union and had ratified the Treaty Establishing the World Trade Organization within the past three years. He stated that modernization of copyright legislation was being undertaken in his country, as well as legislation on fair trade practices. He hoped that at least two of the treaties could be concluded by the end of the Diplomatic Conference.

446. Mr. HONGTHONG (Thailand) congratulated the President on her election. He stated that his Delegation was aware of the need to introduce new international rules in the field of copyright and neighboring rights in light of technological change, and that the proper question was not whether, but how, to do so. He stated that it was the duty of governments to provide adequate and effective intellectual property protection, and that his Government had undertaken a program of legislative reform and strengthening of intellectual property administration, including the establishment of a special intellectual property court.

447. He added that government was also responsible for ensuring that such protection did not hamper national development. Striking a proper balance between the interests of right holders and of the public was the major task of this Conference, and should be kept in mind when addressing substantive issues such as the right of reproduction, the rights of rental, distribution and importation.

448. Mr. MBEWE (Malawi) congratulated the President on her election, and expressed the gratitude of his Delegation to the Director General and staff of WIPO for the preparatory work for the Diplomatic Conference. He stated that his Delegation was aware of the need to resolve ambiguities in the interpretation of the Berne and Rome Conventions particularly now with the proliferation of new technologies. He hoped that the final provisions of the new treaties would also take into account the great socio-economic diversity among Member States of WIPO.

449. Mr. MIRCEA (Romania) congratulated the President on her election to the chair of the Diplomatic Conference and also other members of the Conference's bureau. He referred to the statement made by the Delegation of Ireland on behalf of member countries of the European Union and said that, as his country was associated with this important organization, it shared the considerations of principle expressed. Romania had recently adopted a modern law on copyright and neighboring rights, based essentially on the legislation and practices of other European countries. The Diplomatic Conference represented an opportunity to substantiate the basic options adopted by Romania in this area and to make good any lacunae.

450. In his view, the results of the preparatory work for the Conference were encouraging for the adoption of important international instruments and he thanked those who had contributed to it. He emphasized that his country's participation in the preparatory work and the Conference itself continued to be underpinned by the desire to make a constructive contribution to the gradual development of the international rules on the protection of copyright. He sincerely hoped that the instruments to be adopted by the Conference would reflect the positive practices in various parts of the world and would contribute towards greater harmonization of national legislation and practice.

451. Mr. MIKDADI (Jordan) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, Chairman of the Committees of Experts, for the preparatory work. He noted that the convening of the Diplomatic Conference coincided with the submission of intellectual property revision legislation to the Parliament of his country, one of the objectives of which was to harmonize the 1992 Copyright Law on a number of issues covered by the proposed treaties, such as databases and the rights of performers and phonogram producers and broadcasting organizations. He emphasized that Jordan supported, in principle, the draft treaties under consideration, due to the fact that there was an apparent need to update and modernize the international copyright and neighboring rights norms in order to respond fully to the technological developments. He stressed the need for a balance between the rightholders and the users, taking into account the interests of the developing countries and their need to access to new technologies, and expressed the hope that the new treaties would find solutions to accommodate technological progress into the intellectual property framework. He stated that his Delegation supported the statement of the Delegation of Sri Lanka on behalf of the Asian Group.

452. Mrs. M'KADDEM (Tunisia) congratulated the President on her election to the chair of the Diplomatic Conference. The Treaties under consideration, for which she wished to thank the drafters, constituted an expression of the level of protection which WIPO and its Member States sought to guarantee to authors and other owners of rights, taking into account the development of the international information society. Global rules were necessary to ensure the protection of works in the new digital environment, but the capacities and needs of developing countries must always be taken into account. She emphasized that Tunisia, a founder member of the Berne Convention, had for several years undertaken to adopt the measures required to ensure better protection of authors and other owners of rights through the adoption of new copyright legislation and, with the support of WIPO, by setting up a Tunisian collective copyright administration body. She added that Tunisia had also participated in various regional consultation meetings on certain copyright and neighboring rights questions, including the meeting held at Casablanca from November 7 to 9, 1996, and it would contribute towards ensuring the success of the present Conference.

453. Mr. SHINAVENE (Namibia) congratulated the President on her election, and stated that his Delegation believed in the protection of creativity of intellectual property. He welcomed the efforts by WIPO in protecting the creators of the works of the mind in the context of the new information technology environment. He expressed support for the holding of the UNESCO-WIPO World Forum on the protection of folklore and the WIPO World Symposium on the rights of broadcasting organizations, in 1997. His Delegation took the view that the question of legal protection of databases required further study.

454. Mrs. YOUM DIABE SIBY (Senegal) congratulated the President on her election to the chair of the Diplomatic Conference. Faced with a gap in legislation, WIPO, to which she paid a warm tribute, felt that it was vitally necessary to elaborate appropriate legal regulations to guarantee the most suitable protection to the categories of owners of rights protected by both Berne Convention and the Rome Convention, with the exception however of broadcasting organizations. She wished to thank all Delegations, more particularly those belonging to the African Group, for having appointed her Chairperson of the Credentials Committee and undertook, as in the past, to make her modest contribution towards the full success of the Conference. She reserved the right to comment on the three Treaties under consideration at an appropriate time.

455. Mrs. DROZDOWSKA (Poland) congratulated the President on her election, and thanked the International Bureau of WIPO and Mr. Jukka Liedes, the Chairman of the Committees of Experts, for the preparatory work. She stated that harmonization of international intellectual property laws was vital to accommodate the protection of works in digital form and enable an unrestricted flow of information. She added that it was important to consider the solution to the problems digital technology might cause to copyright owners.

456. She expressed the view of her Delegation that a strong link should be established between the proposed Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works and the Berne Convention. Generally, her Delegation expressed reservations concerning the definition of publication in Article 3, and to the abolition of certain non-voluntary licences in Article 6 of the proposed copyright treaty. She stated that there was a need to maintain the general possibility of non-voluntary licensing under Article 11*bis*(2) of the Berne Convention, which entitled national legislators to determine the conditions under which the broadcasting and cable distribution rights of authors might be exercised.

457. She stated that it had always been understood that non-voluntary licensing would only be introduced if necessary and only in exceptional cases, and that the author's right to obtain equitable remuneration in such cases was expressly guaranteed. As regards the proposal for *sui generis* rights for databases, her Delegation was of the view that further study was required, as there were differences in the proposal and the already-adopted Directive of the European Community.

458. Mr. MBON MEKOMPOMB (Cameroon) congratulated the President on her election to the chair of such an important Diplomatic Conference, which constituted an honor for Africa as a whole. He also congratulated the other members appointed to the various committees. He expressed his appreciation of the impressive work carried out by the International Bureau of WIPO and by the Committees of Experts chaired by Mr. Jukka Liedes, which had led to the elaboration of the basic proposals before the Conference.

459. He conveyed the concern of the artistic community of his country belonging to the National Copyright Society (SOCINIDA) regarding the need to take audiovisual productions into account at the meeting. He expressed the hopes placed by performers in Cameroon in the future consultations on the protection of expressions of folklore, with emphasis on the need to harmonize treatment and approaches so as to avoid unfortunate compartmentalization which, in the long term, could be prejudicial to performers, particularly with the development of digital technology. He shared the concern expressed by certain Delegations regarding the need to adopt a treaty on *sui generis* protection of databases and to review this matter in depth beforehand, as already mentioned.

460. Mr. ESPINOZA PAO (Nicaragua) congratulated the President on her election, drawing a parallel with his country which had a woman as Head of Government. With regard to databases, he proposed that a joint committee of developed and developing countries be set up to study this subject in greater detail and achieve a balance between the interests of the owners of rights and users of databases. He also laid emphasis on the need to adopt separate treaties.

461. Mr. ABADA (UNESCO) conveyed his Organization's congratulations to the President on her election to the chair of the Diplomatic Conference. He noted that the purpose of the basic proposals was to adapt the protection of the rights of authors, performers and producers of phonograms to the new conditions of exploitation of works and performances in the context of multimedia digital communication. They also provided for new special protection of the investment made in collecting and presenting computer data in the form of databases on analog or digital media.

462. The proposals on copyright improved the protection of rights justifiably demanded by authors and other owners of rights worldwide as a result of a development of technical means of creation and public exploitation of works in the context of social life today. He wondered, however, whether, in the endeavor to incorporate protection of these rights better in the social framework, all the proposals made were consistent with the requirements of social communication of works in the environment of digital transmission networks. In some cases, he wondered whether the proposals would in the long term lead to the expected improvement or could even be applied easily by all countries concerned by the international consensus on copyright protection.

463. He said that the exclusive right of communication to the public, provided in Article 10 of the draft Treaty on Certain Questions concerning the Protection of Literary and Artistic Works, could be combined with giving domestic legislation, in particular in the least developed countries, the possibility of providing a right to equitable remuneration when works were communicated through digital networks for the purposes of distance learning, carried out on a non-profit-making basis by public services, or when such communication concerned exchanges among public libraries. The provision in Article 6 of the draft on the abolition of the system of compulsory licenses for recording musical works provided for in Article 13 of the Berne Convention was satisfactory from the point of view of legal orthodoxy. But would it necessarily in practice lead to an improvement in copyright ownership of these works? Those involved in administering rights were well aware of cases in which such an abolition could have the opposite effect on the protection of the legitimate rights of authors. If there was no collective administration of rights, the abolition of compulsory licenses in connection with broadcasting rights, might also lead to practical difficulties in exercising recognized rights.

464. Regarding the proposals concerning performers and producers of phonograms, they constituted a justifiable improvement in the protection of producers of phonograms, who composed the cultural industry necessary for the production and dissemination of musical works. Nevertheless, the proposals included provisions that appeared to be a retrograde step as far as the protection of the legitimate rights of performers was concerned. Alternative C in Article 25 of the draft Treaty would virtually nullify the exclusive rights recognized therein. As far as the protection of neighboring rights was concerned, equity implied a better balance as regards the protection of performers. The right of importation provided under copyright and neighboring rights presented more disadvantages for freedom of lawful trade in cultural products than improvements in the protection of rights. The alternatives providing for its abolition in Article 8, alternative B, of the basic proposal on copyright, and Article 9, alternative F, and Article 16, alternative B, of the proposal on the rights of performers and producers of phonograms seemed to be more appropriate. The protection of performers should also cover the protection of their audiovisual performances.

465. He added that the purpose of the proposal on databases was to establish a new status for the processing of computer data, which until now had been free of any obligation as far as intellectual property rights were concerned. The text proposed made the processing of any computer data, usually free to be used, the subject of a very broad exclusive discretionary right if it was incorporated in an overall database that required substantial investment. The rights granted to producers of databases for the collection and presentation of computer data were extremely broad. The right of extraction and the right of use were defined in such a way as to cover all situations involving the right of reproduction and the right of communication to the public in an analog or digital context. The limitations and exceptions to these rights were strictly confined to the special conditions laid down in Article 9(2) of the Berne Convention, whereas authors' rights in original creations had always been accompanied by limitations justified by social requirements. The term of protection was formally limited to 15 to 20 years, but the flexibility allowed in Article 8(3) of the draft meant that it could easily result in indefinite protection. He said that the prospect of this development in the international status of computer data caused concern to all those who utilized databases in their activities, especially the scientific community in contact with UNESCO. He hoped that the current debate on this issue of importance for the future of the information society would only be a first step in a process leading to a broader consensus. The scientific community should be given the opportunity to explain its concerns and legitimate needs and the international community should duly take these into account. It would be on the basis of such a consensus that the instrument that would govern international relations in the area of exploitation of databases could best protect the legitimate interests at stake and constitute a significant step forward in the process of building the global information structure. He said that UNESCO hoped that the representatives of States would move in that direction and it was prepared to make its contribution to this end.

466. Mrs. HERBERT (International Labour Organization) congratulated the President on her election. She noted that her Organization had followed the debates in regard to the proposed neighboring rights treaty with great interest over the past three years, and that the need for increased protection was growing due to the impact of digitalization. She stated that 45 years ago, an ILO report on Rights of Performers in Broadcasting, Television and the Mechanical Reproduction of Sound had concluded that performers should be granted certain rights, some of which were provided by the Rome Convention adopted in 1961. Even so, she said, the

Rome Convention contained certain gaps, such as the unbalanced treatment of audiovisual performers as a result of Article 19.

467. She stated that the draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms provided a positive response to long-expressed needs, including moral rights for performers, and provision of exclusive rights of performers in parallel with certain exclusive rights of producers of phonograms. She stated, however, that the exclusion of audiovisual fixations from the coverage of the Treaty was anachronistic in the digital age, and for all of the reasons expressed in the draft Preamble to the proposed Treaty. Accordingly, she expressed support for a comprehensive instrument which would include audiovisual performances.

468. The PRESIDENT noted that no Delegations or Observer Organizations asked for the floor, and adjourned the meeting.

*Eighth Meeting*

*Wednesday, December 11, 1996*

*Afternoon*

*Item 9 of the Agenda: Consideration of the first report of the Credentials Committee*

469. The PRESIDENT opened the meeting and gave the floor to the Chairman of the Credentials Committee.

470. Mrs. YOUM DIABE SIBY (Senegal), speaking on behalf of the members of the Credentials Committee, thanked all delegates for the confidence they had shown in the Committee and read out its report as contained in document CRNR/DC/17.

471. The PRESIDENT thanked the Chairman of the Credentials Committee for her report and invited Delegations to put questions.

472. Mr. CRESWELL (Australia) said that his Delegation queried the classification of the credentials attributed to it as being without full powers and announced that it would take up the matter with the Committee.

473. Mr. GLANTSCHNIG (Austria) said that his Delegation had already transmitted its document giving full powers and he would contact the Secretariat in that regard.

474. Mr. STOODLEY (European Communities) said that his Delegation, not having yet seen the written version of the report, assumed that the report did recognize the credentials and full powers of the European Community as agreed in the procedural rules of this Conference and, therefore, recognized the authority of the European Community to act according to the status granted to it at the Conference.

475. The PRESIDENT noted that the report of the Credentials Committee had been circulated the day before. She proposed that the Conference adopt the report with the comments that had been made.

476. *The Conference adopted by consensus the report of the Credentials Committee, as contained in document CRNR/DC/17.*

#### *Work program*

477. The PRESIDENT then informed the meeting that the Steering Committee, in its first meeting on the same day, had decided that the Chairman of Main Committee I would produce consolidated texts of the substantive provisions of the two treaties, reflecting points of convergence and divergence. Those texts would be available in the six languages the afternoon of the next day. In a meeting of Main Committee I immediately following, the Chairman of that Committee would present those consolidated texts, give explanations and answer questions about them. Meanwhile, informal consultations would be held on the subject matters of Main Committee II, pending a decision on a convocation of that Committee and in order to prepare the ground for a formal meeting. She asked the Conference whether it accepted to proceed alike.

478. *The Conference agreed to that procedure.*

479. The PRESIDENT adjourned the meeting.

#### *Ninth Meeting*

*Friday, December 20, 1996*

*Evening*

#### *Item 12 of the Agenda: Consideration of the second report of the Credentials Committee*

480. The PRESIDENT opened the meeting. She noted that the Conference was now coming to the last phase of its work, the adoption of the documents that had come from the Committee. She proposed the reports of the Credentials Committee for adoption.

481. *The Diplomatic Conference adopted by consensus the three reports of the Credentials Committee, as contained in documents CRNR/DC/17, CRNR/DC/80 and CRNR/DC/86.*

#### *Item 13 of the Agenda: Adoption of the Treaty or Treaties*

##### *Adoption of the WIPO Copyright Treaty*

482. The PRESIDENT invited the Conference to adopt the draft WIPO Copyright Treaty.

483. *The Diplomatic Conference adopted by consensus the WIPO Copyright Treaty, as contained in document CRNR/DC/89.*

*Adoption of the WIPO Performances and Phonograms Treaty*

484. The PRESIDENT proposed the draft WIPO Performances and Phonograms Treaty for adoption.

485. *The Diplomatic Conference adopted by consensus the WIPO Performances and Phonograms Treaty, as contained in document CRNR/DC/90.*

*Item 14 of the Agenda: Adoption of any recommendation, resolution, statement or final act*

*Adoption of the Final Act of the Diplomatic Conference*

486. The PRESIDENT drew the attention of the Conference to the draft Final Act, and proposed its adoption.

487. *The Diplomatic Conference adopted by consensus the Final Act, as contained in document CRNR/DC/91.*

*Adoption of agreed statements concerning the WIPO Copyright Treaty*

488. The PRESIDENT gave the floor to the Secretariat on document CRNR/DC/92, containing the draft agreed statements concerning Treaty No. 1.

489. Mr. BOGSCH (Director General of WIPO) proposed the consideration of document CRNR/DC/92 as containing also the additional statement (concerning the reproduction right) that had just been approved by Main Committee I and, consequently, to have only one vote on all statements concerning Treaty No. 1.

490. Mr. SILVA SOARES (Brazil) proposed a separate vote on the above-mentioned statement.

491. Mr. KIM (Republic of Korea) supported the proposal.

492. The PRESIDENT, taking account of the lack of agreement on a joint vote, proposed document CRNR/DC/92, as not containing the additional statement just approved by Main Committee I, for adoption.

493. *The Diplomatic Conference adopted by consensus the agreed statements concerning the WIPO Copyright Treaty, as contained in document CRNR/DC/92.*

494. The PRESIDENT then put the above-mentioned additional statement to vote.



495. Mr. YAMBAO (Philippines), taking the floor on a point of order, said that his Delegation did not object to the additional statement being a statement of the Conference, but would like to place on record that nevertheless that statement could not be dealt with as an agreement of all the parties in accordance with Article 31(2)(a) of the Vienna Convention on the Law of Treaties.

496. The PRESIDENT said that the statement made by the Delegation of the Philippines had been noted, and she proceeded to the vote.

497. *The Diplomatic Conference adopted, with 51 votes in favor, 5 votes against, and with 30 abstentions, the additional statement on the reproduction right in the WIPO Copyright Treaty, as approved by Main Committee I.*

498. The PRESIDENT invited those Delegations which wanted to give an explanation of their votes to take the floor.

499. Mr. SILVA SOARES (Brazil) declared that his Delegation had voted against the adoption of the proposed statement because no consensus had been reached in the Conference on the definition of storage. His Delegation understood that neither the access to make a work perceptible by browsing nor the transmission of a work through a computer network in the occurrence of a temporary or non-temporary storage resulting from a technical procedure infringed the exclusive right of reproduction within the meaning of the Berne Convention. He also referred to the statements made by his Delegation at the meeting of Main Committee I which indicated the reasons for its negative vote in respect of the second sentence of the statement.

500. Mr. AYYAR (India) referred to his intervention made in Main Committee I and stated that that intervention reflected the position of his Delegation.

501. Mr. KIM (Republic of Korea) explained the opposition of his Delegation to the adopted statement. In its view, reproductions which were not relevant in economic terms should not be considered as reproductions all the time. The acts of browsing or providing telecommunication facilities had an economic value in a number of cases. It was, however, difficult to distinguish acts which had an economic significance from those which had not. In that context his Delegation believed that acts of browsing should not be covered by the exclusive right of reproduction without exceptions.

502. Mr. SHEN (China) said that his Delegation wished to make a statement on the statement under discussion as well as on the two treaties. Referring to Articles 6 and 11 of the WIPO Copyright Treaty and Articles 8, 10, 12, 14 and 18 of the WIPO Performances and Phonograms Treaty, as well as to the statement just adopted, his Delegation wished to register its reservation. Taking into account the domestic legislation, as well as the cultural, educational, scientific and technological development level, his Government needed further study of those matters.

503. Mr. AYYAR (India) requested, for the purpose of clarifying the records, that a reference be included in the records to the observations made by the Secretariat and the Chairman of Main Committee I before the statement under consideration had been put to vote in that Committee. He added that his Delegation supported those observations.

*Adoption of agreed statements concerning the WIPO Performances and Phonograms Treaty*

504. The PRESIDENT said that all interventions had been duly noted and the Secretariat would do the necessary. She then proposed the draft agreed statements concerning Treaty No. 2 for adoption.

505. *The Diplomatic Conference adopted by consensus the agreed statements concerning the WIPO Performances and Phonograms Treaty, as contained in document CRNR/DC/93.*

506. Mr. DEBRULLE (Belgium) recalled that at the meeting of Main Commission I an agreed statement had been left aside: that submitted by his Delegation on the question of fixation. After consultation with the Delegation of the United Kingdom and with the circles concerned, an agreement had been reached. The agreed statement would be the following: "Article 3: for the application of Article 3(2), it is understood that fixation means the finalization of the master tape ('bande mère')." "

507. Mr. FICSOR (Assistant Director General of WIPO) explained that the proposal had been already put forward orally in the informal consultation group as well as in Main Committee I.

508. Mr. SERFATY (France) supported the request by the Delegation of Belgium. The statement had been discussed and submitted informally.

509. Mr. STARTUP (United Kingdom) asked the Delegation of Belgium to read the proposed statement again slowly. He added that his Delegation might be in a position to lift the reservation which it had expressed in Main Committee I.

510. Mr. DEBRULLE (Belgium) pointed out that the text had been read at the meeting of the Main Committee. He read it out again.

511. The PRESIDENT noted that there was no objection to the proposal made by the Delegation of Belgium.

512. *The Diplomatic Conference adopted by consensus the agreed statement proposed by the Delegation of Belgium.*

513. The PRESIDENT then put to vote the additional draft agreed statement concerning the reproduction right in the WIPO Performances and Phonograms Treaty, explaining that that statement paralleled the corresponding additional agreed statement concerning the WIPO Copyright Treaty that had just been approved by the Conference.

514. *The Diplomatic Conference adopted, with 47 votes in favor, 4 votes against, and with 31 abstentions, the agreed statement on the reproduction right in the WIPO Performances and Phonograms Treaty, as approved by Main Committee I.*

515. Mr. SILVA SOARES (Brazil), explaining the opposition of his Delegation, referred to his explanation of vote made earlier in respect of the corresponding statement regarding the WIPO Copyright Treaty.

515. Mr. SILVA SOARES (Brazil), explaining the opposition of his Delegation, referred to his explanation of vote made earlier in respect of the corresponding statement regarding the WIPO Copyright Treaty.

*Adoption of a resolution and a recommendation*

516. The PRESIDENT submitted the draft Resolution concerning audiovisual performances contained in document CRNR/DC/87 and the draft Recommendation concerning databases contained in document CRNR/DC/88 as proposed by her.

517. *The Diplomatic Conference adopted by consensus both the Resolution and the Recommendation, one after the other.*

518. Mr. STOODLEY (European Communities) said that, on behalf of the European Community, he wished, in connection with the Articles in both treaties dealing with the Contracting Party status of the European Community, to make the statement for the records of the Conference that the European Community was competent in respect of, and had its own legislation binding on all of its Member States, on matters covered by the treaties. Moreover, the European Community had the capacity to become party to the treaties.

*Item 15 of the Agenda: Closing declarations by Delegations and by representatives of Observer Organizations*

519. The PRESIDENT, noting that the Conference had concluded its work, invited those Delegations which wished to make any concluding remarks to be extremely brief.

520. Mr. TIWARI (Singapore) noted that the Conference had achieved many of the objectives with which it had started. He had instructions from his Government to make a statement on the distribution right in the two Treaties. Any action which impeded trade or restricted it was an important issue for Singapore. It was for that reason that Singapore was against any right of importation as it would affect free trade. Singapore's policy had been to allow parallel imports in the interests of free trade. His Delegation could go along with the provisions relating to the right of distribution in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty on the basis that they did not affect Singapore's parallel import regime in any way, as it would continue to allow for parallel imports. The provisions in the two Treaties made it clear that Contracting Parties had the freedom to decide how the notion of the right of distribution applied after the first sale or transfer of ownership of the original or a copy of the work without authorization of the author. The provisions were consistent with the maintenance of a regime of international exhaustion. In concluding his intervention, he wished to express his gratitude to all those who had worked hard to finalize the two Treaties.

521. Mr. EKPO (Nigeria) said that his Delegation was happy to have been involved from the beginning in the work of the Committees of Experts that led to the conclusion of the two Treaties. His only regret had been that the second treaty had not taken off properly. His Delegation was consoled, however, in the fact that concrete steps would be taken shortly to ensure that parts of that Treaty would come aboard. He also wished to thank everybody

that had contributed towards making the Conference successful. He hoped that the spirit of compromise would continue in WIPO. The time had come when all the countries had to work towards the recognition of all nations on an equal basis.

522. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, joined on this occasion by the *ad hoc* group of Central and Eastern European Countries and the Baltic States, namely Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Latvia, Lithuania, The former Yugoslav Republic of Macedonia, Poland, Romania, Slovakia and Slovenia, wished to take the opportunity to congratulate the officers of the Conference and all Delegations on the completion of the Conference, as well as to thank the Director General of WIPO and the Secretariat for the excellent support. The European Community and its Member States joined by the *ad hoc* group appreciated the outcome of the difficult deliberations. However, they knew that the work done did not complete the exercise initiated seven years before; it had to continue and the momentum generated by the Conference should not be lost. They would expect an early adoption and initiation of a concrete and comprehensive program which would facilitate the completion of the work on neighboring rights and on the *sui generis* protection of databases. The European Community and its Member States and the countries of the *ad hoc* group adhered fully to the terms of the resolutions adopted on the future work, and looked forward to participating in this process in a constructive and positive manner.

523. Mr. SERRANO MIGALLÓN (Mexico) expressed his gratitude and his appreciation of the wisdom and sensitivity with which the President of the Conference had directed the difficult and delicate work of the Diplomatic Conference. He reaffirmed his country's determination to support and protect copyright and neighboring rights, which had been embodied in the new Federal Law on Copyright approved one week previously by Congress. The Law extended the rights and protection of Mexican creators, incorporating measures and procedures for exercising the rights, and contained innovative elements such as the protection of popular culture or non-original databases, and gave national treatment to foreign authors based on the Agreement in the law. The challenges were of a different dimension in the international arena, however, due to the impact of globalization and were encountered in the growing market in cultural goods and services and activities that required greater protection. He underscored the importance of the Diplomatic Conference in the effort to update the regulations governing protection of copyright and neighboring rights so as to conserve and broaden the protection of creators faced with the effects of technological progress. He regretted that the rights of performers in the audiovisual sector had been excluded from the second Treaty, but emphasized the importance of continuing to focus on the harmonization process.

524. Mr. LEHMAN (United States of America) praised the leadership that the President had given to the Conference. He noted that this was the time of WIPO coming of age. After many discussions on intellectual property around the world in the past few years, that sometimes had been associated with acrimony and even with threats of retaliation, the success of the Conference was a historic event in which participants had been able to come together without any kind of revenge or threat and with the common objectives that mattered to serve the interests of the world's creative community. He wished to thank not only the President, but also every single colleague of the other Delegations.

525. Mr. SILVA SOARES (Brazil) stated that his Delegation regretted the outcome of recognition of moral rights of performers, but welcomed the convocation of the WIPO Governing Bodies for the first quarter of 1997 for a Possible Protocol to the WIPO Performances and Phonograms Treaty and finally considered the question of discussing a treaty on databases and intellectual property.

526. Mr. ROGERS (Chile) expressed his satisfaction at the consensus that had made it possible to approve the WIPO Treaties on copyright and performances and phonograms. Nevertheless, he regretted that, although the texts adopted constituted a step forward, they did not meet all the expectations which Delegations had when the Conference began after five years of hard work. Nevertheless, bearing in mind the concessions made and the conciliation efforts of many Delegations, the Delegation of Chile remained confident that the Treaties would be signed and ratified rapidly so that their prompt entry into force would allow the effective exercise of the rights they provided. On behalf of the Group of Latin American and Caribbean countries, he congratulated the President on the work accomplished and extended special gratitude to Mr. Jukka Liedes and Mr. Mihály Ficsor, the main protagonists of the Treaties adopted. Lastly, he expressed the gratitude of the Group of Latin American and Caribbean countries to the International Bureau for the excellent organization of the Diplomatic Conference, to the members of the Secretariat and to the interpreters who had made a substantial contribution to the success achieved.

527. Mr. ABEYSEKERA (Sri Lanka), speaking also on behalf of the Asian Group of countries, thanked the President for her excellent leadership stressing that her diplomatic skill and experience had immensely contributed to the success of the Diplomatic Conference. He extended his profound gratitude to the Director General of WIPO for his excellent support and hospitality. The efficiency and conscientiousness of his staff were deeply appreciated. He also thanked all others who, behind the scene, had made their contribution to the success of the Conference.

528. Mr. SHIMOTORI (Japan) congratulated the President on the adoption of the two Treaties which was a historical event for all those who were engaged in or related to copyright which meant virtually all human beings. He especially wished to express his deepest appreciation to Mr. Liedes who had been the Chairman of the Committees of Experts always taking initiative and leadership for this difficult task and who, during the Diplomatic Conference, had played a major role in managing effective and efficient discussion as the Chairman of the Main Committee I. He also expressed his gratitude for the remarkable work carried out by the Secretariat. The two Treaties, especially the new rights of communication to the public and of making available to the public, were a most important achievement. They made the international copyright framework capable to cope with the advent of the information society. However, an agreement on some extremely important issues had not been reached. That seemed to be due to the rather tight time frame for the preparation of the Conference. He suggested that schedules for the future work be set with sufficient time for the preparation.

529. Mrs. KALLINIKOU (Greece) considered that moral rights constituted an essential element in the protection of performers and, in view of the need to reconcile the differences among existing legal regimes, in a spirit of consensus accepted the recognition given in the

Treaty to each artist's right to require respect for his sound performance, whether live or fixed on a phonogram, as well as for its authorship, and expressed the hope that the moral rights of performers would be further strengthened at the international level, especially in the digital age.

530. Mr. SÉRY (Côte d'Ivoire) underlined the pride of the African Group at seeing the Conference conclude with two Treaties. Selfish pride perhaps, but due to the fact that the President came from Africa and her intelligence and experience had helped in reaching the positive outcome that would allow WIPO and the international community to enlarge its compendium of regulations. He also warmly thanked the Director General of WIPO for assisting the African Group and emphasized that for a long time the name of the Director General had been associated with the development of the protection and promotion of intellectual property rights in Africa. His Delegation also thanked the staff of the International Bureau of WIPO for the support given and the quality of the work done, the members of the Conference Bureau, the translators and interpreters. On behalf of the African Group, he wished to congratulate the Chairpersons of the Committees, especially Mr. Jukka Liedes, for his work and availability during the regional consultation meetings that had preceded the Diplomatic Conference, which had allowed each group of countries concerned to study the question in more detail and to reach compromise solutions. Despite the adoption of two Treaties, the African Group was somewhat disappointed because it would have liked to see broader rights in certain cases and he hoped that the commitments made by different speakers to discuss the question of audiovisual performances and folklore, which were of special concern to developing countries and Africa in particular, would be respected. Finally, he expressed the hope that the impact of the Conference, and above all that of the President, would incite political authorities in Africa to recognize the importance of intellectual property so that the continent, which accounted for almost two per cent of global trade, could in the "post-TRIPS" era occupy its rightful place in the family of nations.

531. Mr. SHEN (China) extended his congratulations, thanks and best wishes to the President of the Conference, the two Chairmen of the Main Committees, the Director General of WIPO and his staff as well as the interpreters.

532. Mr. ZAPATA LÓPEZ (Colombia) associated himself with the gratitude expressed by other Delegations, in particular by the Delegation of Chile on behalf of the Group of Latin American and Caribbean countries. Only time would tell whether the task had been completed successfully, namely to clarify the provisions of the Berne Convention which raised doubts and to create new provisions to respond to the challenges raised by new technological developments. In the meantime, the Delegation of Colombia believed it important to specify the tasks that remained in order to fulfill the commitment that had brought Delegations together in this forum for such a long time. The first basic foundation was respect for rights. The second aspect was training concerning rights, an extremely important activity among the many activities undertaken by WIPO, starting with the spheres concerned, the owners of rights themselves, users, judges and other authorities responsible for enforcing the rules. Finally, he underlined the vital need for professional and technical strengthening of collective administration, without which there was a danger that the new rules adopted would not contribute towards recognition of the rights of authors and other owners of rights. In the digital context, collective administration alone would make these rights a reality.

533. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, made the following statement to be recorded in the minutes of the Conference: "The European Community and its Member States hereby indicate their intention, when acceding, to deposit their instruments of ratification or accession simultaneously."

534. Ms. DALEY (Jamaica), endorsing the congratulations and thanks put forward by the Delegation of Chile on behalf of the group of countries of Latin America and the Caribbean, added that her Delegation hoped that rights in the audiovisual area would be addressed in a manner that balance of rights and interests in intellectual property would be achieved.

535. Mr. BOGSCH (Director General of WIPO) made the following concluding remarks:

"The International Bureau of the World Intellectual Property Organization is proud that its member States chose WIPO for preparing and serving this Diplomatic Conference.

"The two Treaties adopted by the Conference will have an immense impact on the future development of copyright and neighboring rights.

"The success is due to you, Madam President. At all difficult moments, your advice and leadership were indispensable and successful.

"The success is due also to the Chairmen of the Committees, Madam Youm, Mr. Lieder, Mr. Silva Soares and Mr. Ayyar. Mr. Lieder was also the sole author of the Basic Proposal of the substantive clauses and, therefore, his role was important on two accounts.

"The International Bureau is grateful to these five officers and all the delegates and other participants for their patience and work through which they enriched in a most important way the treaty system of WIPO.

"This Diplomatic Conference did not solve all the questions that await international norm making in the field of intellectual property. But the Conference itself adopted recommendations on the work to be undertaken by WIPO for the protection of audiovisual performances and of databases. WIPO is expected to deal in the near future also with the protection of expressions of folklore and of broadcasters' rights and with the specific copyright and trademark problems of global information systems, like the Internet.

"The International Bureau of WIPO will do its best that those questions be studied and possible answers to them be found in the foreseeable future.

"In the meetings that will deal with those questions, the non-governmental organizations will have their important role, as usual in WIPO committees of experts and other WIPO meetings.

"Madam President, allow me please to end this statement by expressing my thanks first of all to Assistant Director General Mihály Ficsor, Secretary of the Diplomatic

Conference. His deep knowledge and his perfect diplomacy were once again and particularly brilliantly demonstrated.

“My thanks go also to my colleague Francis Gurry, the Secretary of Main Committee II and of the Credentials Committee, for his outstanding work. And my appreciation goes also to my colleague Carlos Claa and all my other colleagues—dozens of them—who served this Conference with utmost efficiency in various capacities, all indispensable for the Conference.

“They certainly deserve warm applause.”

536. The PRESIDENT considered that this had not been an easy diplomatic conference. The Delegations, confronted with a range of complex issues and a great diversity of interests, had had to find a balance, not which satisfied all interests which would have been rather impossible but which accommodated as many interests as possible in their fairest way, ensuring that creators and producers would be encouraged to continue to add to the world's cultural stock, that performers and artists would be rewarded for enriching life, that business would be encouraged to make the investments necessary to make these creations and performances available to the widest public possible. They had had to find this difficult balance in the context of rapidly changing technology and in a way that did not act as a break on the development of the technology. She believed that the Delegations had succeeded in this almost superhuman task, and she thanked all those who had worked indefatigably, patiently and tolerantly over the past three weeks at finding this balance, in a spirit of cooperation and with a willingness to find compromises on the most difficult points. She also expressed her appreciation and gratitude to the officers of the Conference and of its Committees, in particular, the Chairmen of the Committees for their skillful stewardship throughout the whole of the Conference. This Conference had been a WIPO Conference and the two treaties it had adopted were WIPO treaties. Therefore, she turned to the Director General of WIPO and his staff to express, as President of the Conference and on behalf of all participants, the gratitude of the Conference for his sure guidance and for giving participants the benefit of his wisdom and experience. The enormous workload of the Conference could not have been carried without the magnificent efforts of the interpreters, the translators, the printing and document services. It had been an honor to her to have had the privilege of being the President of the Conference, and she thanked all participants for the trust that they had placed in her. She extended to everyone present her good wish for a safe journey back home, a happy holiday season and a fruitful 1997.

*Item 16 of the Agenda: Closing of the Conference by the President*

537. The PRESIDENT declared the Conference closed.





## SUMMARY MINUTES OF MAIN COMMITTEE I

*prepared by the International Bureau*

*Chairman:* Mr. Jukka Liedes (Finland)

*Secretary:* Mr. Mihály Ficsor (WIPO)

*First Meeting*

*Friday, December 6, 1996*

*Morning*

### *Work program*

1. The CHAIRMAN opened the meeting and expressed thanks for his election as the Chairman of Main Committee I of the Diplomatic Conference.
2. He noted that Main Committee I would deal with substantive provisions of the treaties to be considered by the Diplomatic Conference.
3. The Chairman pointed at the shortness of time available and the large number of Delegations and Observer Organizations participating in the work. He recalled that, during the WIPO consultation meetings before the Diplomatic Conference, there had been broad understanding that exceptional procedures might be necessary, such as limiting the time allowed for speakers, in order to tackle all the substantive issues. He further recalled that, in the work of the Committees of Experts, debates on any substantive issue always had taken several hours. He said that, following consultations with the Secretariat, provision had been made for Main Committee I to extend its working hours beyond the normal hours to include evening sessions the following week.
4. Taking into consideration the factors impacting on the work, he said that it had not been possible to draft a detailed work plan for the work of the Committee, but that certain general principles would be proposed, along with an outline of a work program, which would be a basis to begin the work. Noting that the Basic Proposal consisted of three texts, he suggested that the copyright treaty and the so-called "New Instrument" be opened for discussion first. Time might then be reserved for the third treaty after having discussed the two first treaties.
5. The Chairman identified the different types of clauses in the draft texts, namely, substantive clauses, which were operative clauses on rights and aspects of rights; so-called framework clauses, which established or defined the links between the proposed treaties and existing treaties, and those concerning the application, eligibility for protection, application in time; and preambles and titles of the treaties. He suggested that the work begin by dealing with substantive clauses, followed by framework clauses, and finally preambles and titles of the treaties.

6. He noted that, during the WIPO consultation meetings, especially the so-called “15 plus 15” meeting held the previous week, there had been a proposal to deal with certain issues concerning several treaties simultaneously, which had been called the “cluster approach.” He said that he favored such an approach, where, if certain issues in the two treaties were sufficiently similar, they would be discussed simultaneously. He suggested the following seven issues, which he thought to be common to the first two treaties, for simultaneous examination: the question of “publication,” “published” works, “published” phonograms and the place of publication; the right of reproduction; the right of distribution, including the right of importation; the right of rental; the right of communication, limited to its interactive aspects; technological protection measures and rights management information; and, finally, enforcement of rights.

7. He suggested, however, that the work begin in the order of the treaties, and on non-common issues; thus, work would begin on the copyright treaty concerning the following issues: computer programs (Article 4); databases (Article 5); abolition of certain non-voluntary licenses (Article 6); and duration of protection of photographic works (Article 11). He stated that he still had hesitations concerning how to proceed on limitations and exceptions, that is, whether that should be considered an eighth “common issue” or whether limitations and exceptions should be discussed treaty by treaty.

8. He stated that he would not yet propose separate, non-common issues concerning the “New Instrument,” since the work plan could be modified at any time. He accordingly proposed opening the discussion on the above-mentioned issues specific to the copyright treaty, and leaving it to informal consultations whether to continue by discussing limitations or exceptions, or, rather, whether to discuss other issues concerning rights first and then take up the issue of limitations the following week.

9. Mr. AYYAR (India) asked whether the discussion would begin with the subject of computer programs.

10. The CHAIRMAN stated that the work would begin with the four articles in the copyright treaty, namely, Articles 4, 5, 6, and 11, that were not linked to the second treaty. Thereafter, and in an order to be decided upon later, the common issues and the separate issues in the second treaty would be addressed.

11. He stated that it would be useful for Delegations to make clear when they would submit written proposals. It would be necessary to know which Delegations were considering written proposals, and of course it would be very useful to hear from the Delegations what the proposals were going to be. The principle set out in the Rules of Procedure, that is, that proposals should be written, should be followed, but in exceptional cases oral proposals might also be considered.

12. Mr. VERGNE SABOIA (Brazil) congratulated the Chairman on his election, and asked for clarification concerning the procedure for submitting written proposals.

13. The CHAIRMAN stated that, while there was no express time limit, written proposals should be submitted as early as possible in order to be translated and distributed in due time in advance of their discussion in the Committee.

14. Mr. BOGSCH (Director General of WIPO) asked those Delegations which had already prepared amendments on any of the three treaties to file their amendments in writing with the Secretariat as soon as possible. He added that if, during the debate, an oral proposal was made about which other Delegations felt that it could not be discussed intelligently without having it in writing, the Chairman should invite the Delegation making the proposal to file it in writing and, perhaps, come back to it once the written proposal was distributed.
15. Mr. SÉRY (Côte d'Ivoire), speaking on behalf of the African Group, congratulated the Chairman on his election. He asked what procedure would be followed for circulating the document containing the conclusions of the meeting of the African Group in Casablanca.
16. The CHAIRMAN stated that the reports of the WIPO regional consultation meetings had been made available, so that the positions of the various groups could be taken into account when discussing each issue.
17. Mr. KHLESTOV (Russian Federation) congratulated the Chairman on his election, and asked for clarification as to whether written proposals could be put forward on any topic at any time, or whether subject-specific time limits would apply.
18. The CHAIRMAN asked the Director General of WIPO to respond.
19. Mr. BOGSCH (Director General of WIPO) replied that the only workable practical rule was that written proposals should be submitted as soon as possible.
20. Mr. KHLESTOV (Russian Federation) noted that practice in other international organizations recognized a time limit on written proposals concerning particular subjects under discussion, in order to avoid reopening debates once a particular subject had been closed for discussion.
21. Mr. BOGSCH (Director General of WIPO) referred to Rule 29(3) of the Rules of Procedure, and stated that the general rule was that written proposals should be at the disposal of Delegations three hours before they were discussed. That meant that they should be filed at least five hours before they were to be discussed, because two hours were needed to translate and reproduce them. He noted that this rule was subject to modification by the Chairman.
22. Mr. AYYAR (India) asked for clarification concerning how the proceedings of Main Committee I would be recorded, and whether the Delegations would be able to review the report of proceedings. This was relevant, he said, because the "legislative history" was important for the interpretation of any final text to be approved.
23. The CHAIRMAN said that the Rules of Procedure contained appropriate provisions for that.
24. Mr. BOGSCH (Director General of WIPO) pointed out that any legislative history of the provisions to be adopted would be reflected in the summary minutes, and agreed with the statement of the Delegation of India concerning the importance of such history in interpreting the treaty language.

*Article 4 (Computer Programs) of the WCT\**

25. The Chairman opened the floor for discussion on *Article 4 (Computer Programs) of the Draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works*.

26. Mr. AYYAR (India) proposed that, as this provision sought to incorporate the provisions of the TRIPS Agreement on computer programs, the same language should be used. He said that the use of identical language was particularly important because the TRIPS Agreement was subject to dispute-resolution mechanisms, and the use of different language in a different international treaty could give rise to problems of interpretation.

27. Mr. ZAPATA LÓPEZ (Colombia) informed the Committee that Latin American and Caribbean countries had established a Working Group to harmonize their positions on various issues contained in the draft Treaties under discussion. Speaking on behalf of the Group of Latin American and Caribbean countries, he suggested that the word “are” be replaced by the word “shall be” in Article 4 on computer programs in Draft Treaty No. 1 in order to adapt this provision to the relevant part of Article 1 of the TRIPS Agreement and so avoid any interpretation difficulties.

28. Mrs. AZANCOT (Israel) shared the view expressed by the Delegation of India. She considered that the provisions of Article 10 of the TRIPS Agreement were clearer than the wording used in Article 4 of Document CRNR/DC/4. In her view, the words “in any form” were too broad in scope. She therefore proposed that the provisions of Article 4 should be replaced by those of Article 10 of the TRIPS Agreement.

29. Mr. TIWARI (Singapore) expressed support for the statement of the Delegation of India, particularly that the TRIPS Agreement language should be strictly followed. He added that, if a broad interpretation were given to this Article, its meaning could be stretched to include non-literal aspects of a computer program, that is, the structure and organizational aspects. He took the view that such elements should not be included, as they were functional aspects of a computer program.

30. Mr. ABBASI (Pakistan) expressed the agreement of his Delegation with the statements of the Delegations of Singapore and India.

31. Mr. SILVA SOARES (Brazil) supported the proposal put forward by the Delegation of Colombia on behalf of the Group of Latin American and Caribbean countries.

32. Mr. SHEN (China) congratulated the Chairman on his election, and agreed to his proposal to discuss the copyright and neighboring rights treaties first. He noted that some countries were not yet members of the World Trade Organization, and therefore preferred the

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\* In the subtitles identifying the provisions under discussion, reference is made to the Articles of the WIPO Copyright Treaty (WCT) and of the WIPO Performances and Phonograms Treaty (WPPT) as adopted, and, where the numbering of the Articles has changed or where a draft provision has not been eventually adopted, also to the Articles of the draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works (“Draft Treaty No. 1”) and of the draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms (“Draft Treaty No. 2”), respectively.

present wording of draft Article 4, not linked to the provision of the TRIPS Agreement dealing with the protection of computer programs.

33. Mr. KUSHAN (United States of America) expressed the support of his Delegation for the text of Article 4 as worded in the Basic Proposal. He stated that the protection of computer programs as literary works was made clear in the provision, and saw no problem in respect of compatibility with a similar provision in the TRIPS Agreement.

34. Mr. GYERTYÁNFY (Hungary) congratulated the Chairman on his election. He favored the wording of Article 4 in the Basic Proposal. He expressed the fear that use of the words "shall be" might lead to an *a contrario* interpretation to the detriment of existing protection of computer programs in countries party to the Berne Convention, and thought that the phrase "in any form" in the present text corresponded more fully to Article 2 of the Berne Convention.

35. Mr. REINBOTHE (European Communities) congratulated the Chairman on his election. He stated that the international copyright community had made clear that the Berne Convention protected computer programs, and expressed the view that the text of Article 4 as drafted in the Basic Proposal was preferable.

36. Mr. AYYAR (India) stated that Article 4 as included in the Basic Proposal could only be accepted if it could be interpreted as to have the same coverage as the corresponding article of the TRIPS Agreement.

37. Mr. HONGTHONG (Thailand) stated that there were two elements in the TRIPS Agreement missing from the current text of Article 4, namely, first, Article 10(1) and, second, Article 9(2) of the TRIPS Agreement concerning the non-protectability of ideas and mathematical concepts. He declared that his Delegation supported a strict adherence to the language of the TRIPS Agreement.

38. Mr. KANDIL (Morocco) congratulated the Chairman on his election. He shared the view expressed by previous speakers that Article 4 of document CRNR/DC/4 should repeat the criteria outlined in Article 10 of the TRIPS Agreement.

39. Mr. EKPO (Nigeria) congratulated the Chairman on his election, and stated that there might be a way to unite the present text of Article 4 with the text of the corresponding provision in the TRIPS Agreement in a satisfactory way.

40. Mrs. YOUM DIABE SIBY (Senegal) was in favor of the tenor of Article 4 subject to its wording, which should be based to a larger extent on the provisions of Article 10 of the TRIPS Agreement.

41. Mr. SØNNELAND (Norway) congratulated the Chairman on his election, and expressed support for the text of Article 4 as drafted in the Basic Proposal.

42. Mr. BAVYKIN (Russian Federation) congratulated the Chairman on his election. He stated that the Russian Federation planned to become a member of the World Trade Organization, but that it was not presently bound by the TRIPS Agreement. He said that his Delegation considered that Article 4 in its present form was acceptable.

43. Mr. RAGONESI (Italy) congratulated the Chairman on his election. He said that his Delegation was in favor of the text of Article 4 as it appeared in the basic proposal for the reasons explained by the Delegation of the European Communities.

44. Mr. YAMBAO (Philippines) congratulated the Chairman on his election and stated that his Delegation preferred Article 10 of the TRIPS Agreement to the present text of Article 4.

45. Mr. ANTEQUERA PARILLI (Venezuela) noted that there were three main positions on this question: the Group of Latin American and Caribbean countries wished to replace the word "are" by "shall be"; other Delegations supported the current wording of the basic proposal; and some Delegations wished to see computer programs protected according to the provisions of Article 10 of the TRIPS Agreement. Irrespective of the solution adopted, he hoped that the minutes of the Conference would state specifically that the protection of computer programs was not restricted to programs to be created in the future but also covered computer programs already protected as literary works under Article 2 of the Berne Convention.

46. Mr. MEDRANO VIDAL (Bolivia) congratulated the Chairman and the Vice-Chairmen on their election. He expressed concern at the current wording of the Article on computer programs because its interpretation could cause difficulties for the legislative authorities of his country and undoubtedly for those in other developing countries. Consequently, he considered that protection should be in accordance with Article 10 of the TRIPS Agreement.

[*Suspension*]

47. The CHAIRMAN summarized the decisions on Article 4 in stating that a proposal had been made to replace the word "are" by "shall." He said that a proposal had been made to adopt the text of Article 10.1. of the TRIPS Agreement, and also the opinion had been expressed that these two texts could be somehow merged. He opened the floor for discussions on *Article 5 (Collections of Data (Databases))*.

*Article 5 (Collections of Data (Databases)) of the WCT*

48. Mrs. YOUM DIABE SIBY (Senegal) said that her Delegation approved the text of Article 5 as it appeared in document CRNR/DC/4.

49. Mr. AYYAR (India) stated that, as in the case of Article 4, his Delegation supported adoption of the corresponding text from the TRIPS Agreement. His Delegation viewed the language "in any form" as giving rise to possible ambiguity, and felt that it should be more specific. He asked for an interpretative statement that Articles 4 and 5 of the draft text were intended to establish the same levels of protection for computer programs and databases, no more and no less, than the TRIPS Agreement.

50. Mr. EKPO (Nigeria) stated that Article 5 as drafted in the Basic Proposal was acceptable to his Delegation.

51. Mr. ABBASI (Pakistan) supported adoption of the language of the TRIPS Agreement dealing with protection of databases, or, that the Chairman should give a clear and unequivocal statement as requested by the Delegation of India. He noted that the TRIPS Agreement used the term "compilations" while the present text used the term "collections," which could have different meanings.

52. Mr. SILVA SOARES (Brazil) expressed support for the statement of the Delegation of India.

53. Mr. KUSHAN (United States of America) supported the statement of the Delegation of Senegal which had been in favor of the maintenance of Article 5 as drafted in the Basic Proposal. He added that, in the view of his Delegation, Article 5 was consistent with the TRIPS Agreement.

54. Mr. REINBOTHE (European Communities) expressed support for Article 5 as drafted in the Basic Proposal, which corresponded to the text of Article 10.2. of the TRIPS Agreement. He stated that his Delegation favored use of the word "right" in the present text, as opposed to the word "copyright" used in the TRIPS Agreement, as the former was more consistent with the approach of the European Community directive on the protection of databases, under which rights other than copyright might apply to a collection of data.

55. Mr. KANDIL (Morocco) said that he faced the same problem of wording as in the case of Article 4. He would like to see the provisions of Article 5 in Document CRNR/DC/4 aligned with those of Article 10.2 of the TRIPS Agreement, using the present rather than the future tense.

56. Mr. TIWARI (Singapore) congratulated the Chairman on his election, and expressed the support of his Delegation for the wording of Article 5 in the Basic Proposal, subject to the understanding that it was intended to have the same coverage as Article 10.2. of the TRIPS Agreement. His Delegation saw no difference between the terms "compilation" and "collection" in respect of the legal protection of databases.

57. Mr. MEDRANO VIDAL (Bolivia) stated his concern regarding the future interpretation of various Articles of the proposed Treaty and in this connection proposed that the wording in the draft Treaties be maintained with the addition at the end of each Article of a cross-reference to the corresponding Articles in the Berne Convention or the TRIPS Agreement.

58. Mr. OPHIR (Israel) supported Article 5 as included in the Basic Proposal and the statement of the Delegation of the European Communities concerning the possible applicability of rights other than copyright to databases.

59. Mr. BAVYKIN (Russian Federation) expressed support for the proposed text of Article 5, and saw no difference between the word "compilation" and the word "collection."

60. Mr. HONGTHONG (Thailand) took the view that the language of the TRIPS Agreement should be followed strictly, and that the word "rights" should be replaced by



“copyright,” which was consistent with the protection of copyright under the Berne Convention.

61. Mr. YAMBAO (Philippines) supported the statement of the Delegation of Thailand.

62. Mrs. PARVU (Romania) said that her Delegation preferred the wording of Article 5 in document CRNR/DC/4 and shared the views expressed by the Delegation of the European Communities.

63. Mr. GOVONI (Switzerland) expressed his Delegation’s full support for the text of Article 5 as it appeared in document CRNR/DC/4. The wording used differed from that in Article 10.2 of the TRIPS Agreement and was closer to that used in the Berne Convention. He added that it did not give rise to different interpretations.

64. Mr. ANTEQUERA PARILLI (Venezuela) indicated that the reference to databases in the draft Treaty was fully consistent with a community decision that was binding on the five countries of the Andean Pact, including the fact that the protection of data collections was already covered in the Berne Convention. It was also consistent with this legislation to the extent that protection should not only be without prejudice to copyright but also to other rights subsisting in the material contained in the collection relating to unfair competition or confidential information for example.

65. Mr. GYERTYÁNFY (Hungary) expressed his Delegation’s support for Article 5 in its present wording. He referred to the prior intervention by the Delegation of Switzerland.

66. Mr. TEYSERA ROUCO (Uruguay) congratulated the Chairman on his election. He fully supported the current wording of Article 5 on databases.

67. Mrs. M’KADDEM (Tunisia) said that her Delegation approved the wording of Article 5 as it appeared in Document CRNR/DC/4 and shared the view of the Delegation of the European Communities regarding the word “right.”

68. Mrs. RETONDO (Argentina) associated herself with the position of the Delegations of Venezuela and Uruguay in favor of the proposal on databases as worded in the draft Treaty.

69. Mr. ROGERS (Chile) reaffirmed his Delegation’s position in support of the current wording of Article 5.

70. Mr. KESOWO (Indonesia) congratulated the Chairman on his election. Regarding Article 5, he supported the intervention by the Delegation of Singapore. He also stated that, in respect to the words “in any form” in this Article, the Treaty should not extend beyond the standard established in the TRIPS Agreement.

71. Mr. MBON MEKOMPOMB (Cameroon) congratulated the Chairman on his election. He said that his Delegation preferred the text of Article 5 as it appeared in Document CRNR/DC/4, which appeared to be clearer than the corresponding text in the TRIPS Agreement.

72. Mr. MTETEWAUNGA (Tanzania) observed that most of the countries in the Conference had spent many years negotiating the TRIPS Agreement, and, in that regard, referred to Article 10 of the TRIPS Agreement on computer programs and compilations of data. He felt that any attempts to extend rights were not in harmony with the mandate of the Diplomatic Conference.

73. Mrs. DROZDOWSKA (Poland) stated that her Delegation supported the proposal in the draft Treaty. However, she proposed to delete the words "any rights" in the second sentence of Article 5, and substitute the words "the used works rights" in their place

74. Mr. TRAORE (Mali) said that his Delegation essentially approved the wording of Article 5 but wished to see the nature of rights specified, namely the authors' rights. He added that he had not received any instructions to accept the inclusion of other rights in this Article.

75. Mr. KANDIL (Morocco) sought clarification of the scope of the words "any rights," because there was already a draft treaty to be considered concerning *sui generis* rights in databases.

76. The CHAIRMAN referred to the prior intervention by the Delegation of the European Communities. He said that the words "any rights" referred to rights which might be found in legislation in addition to copyright, including any *sui generis* right, or any right in the database or in the contents of the database, that is, the data or the material itself. He suggested that the clause was a "non-interference clause," in that the right in a literary or artistic work, and any other rights which might subsist in the materials in the database, were not interfering with each other; they existed independently of each other.

77. Mr. REINBOTHE (European Communities) referred to the words "without prejudice to any other rights" in Article 5, and stated that this notion did not extend the protection envisaged under Article 5.

78. Mr. AYYAR (India) asked the Chairman for clarification on the expression "any rights" in Article 5. He mentioned the Chairman's reference to the earlier intervention by the Delegation of the European Communities as well as his reference to the *sui generis* protection of databases, and, in that context, his Delegation wondered if the current treaty under consideration would extend protection to only copyright, or also to neighboring rights. He also asked whether the Conference would be creating minimum rights, common to all countries, or maximal protection. As an example, he referred to the *sui generis* protection of databases, and wondered if the Conference should work on the basis of a Directive which applied only in a specific region of the world.

79. The CHAIRMAN said that the difference between the expressions "*sui generis* protection" and "neighboring rights" was more of a question of semantics. He stated that any rights should be covered by the expression "any other rights." In response to the second question, he indicated that the Conference was negotiating on the basis of the tradition in the field of copyright and rights neighboring to copyright, negotiating a harmonization by having as the main tool certain clauses on minimum rights, and only in a very few cases would the approach be a maximalist approach. There might already be certain clauses in the Berne Convention which did not represent in principle maximum protection, but if development leads to new things, it should be analyzed to determine whether it was covered by the clauses

in the Convention or not. He said that he was referring to the well-known concept of reproduction, and perhaps to some other concepts.

80. He noted that, in the interventions which had just been made, reference had been made to the TRIPS Agreement. A number of Delegations had expressed their opinion in favor of the Article in the Basic Proposal, and different opinions as to the language of the Article had been expressed by some Delegations, notably regarding the words "any rights" and "are." He asked the Committee to consider whether it should proceed to another article, and then tackle the question of language as to a series of articles, or rather work on an article and then work on the language of that article in an article-by-article approach. He then adjourned the meeting.

*Second Meeting*

*Friday, December 6, 1996*

*Afternoon*

*Articles 4 (Computer Programs) and 5 (Collections of Data (Databases)) of the WCT*

81. The CHAIRMAN summarized the substantive discussions during the morning session on Articles 4 and 5. No conclusions had been reached, and he decided not to offer his conclusions yet; some questions regarding those two Articles were still unsettled. Concerning Article 4 (on computer programs), there had been a proposal to replace the word "are" by "shall." There had been a proposal to replace the language of the proposed Article 4 with the language of Article 10 of the TRIPS Agreement, and there had been another proposal to combine those two provisions. In his opinion, this latter proposal would require the taking of the element referring to "source or object code" and inserting it into the Treaty proposal, perhaps at the end. Regarding Article 5 (on databases) he observed that there had been broad support for the Article as it had been drafted. He noted that there had been a proposal to replace it with the language used in the TRIPS Agreement, and another according to which the reference to "copyright" subsisting in the data should replace a reference to "any rights." In both Articles 4 and 5, there was the expression "in any form." He said that that language was an attempt to get nearer to normal copyright language.

82. He referred to the question by the Delegation of India, and said that it had not been the intention to differ in the substance from the corresponding provisions in the TRIPS Agreement, but rather to modernize the language in line with traditional copyright language. Both Articles 4 and 5 were intended to be declaratory, and what they stated was already the fair interpretation of the relevant clauses in the Berne Convention. He said that it was too early to make a decision on the language of both Articles, but suggested that the Delegations should consult with each other, and, on the basis of their consultations, the language could be established later.

83. Mr. AYYAR (India) said that it should be clarified that the intention of Articles 4 and 5 was not to add to nor subtract from obligations under Article 10 of the TRIPS Agreement; Articles 4 and 5 were to be interpreted in the same manner as Article 10, and no extra

obligations were understood to be imposed. If there was understanding about that, the language question could and should be solved accordingly. He noted that what was important here was the political question, rather than the language.

*Article 6 (Abolition of Certain Non-Voluntary Licenses) of Draft Treaty No. 1*

84. The CHAIRMAN opened the floor for discussion on *Article 6 (Abolition of Certain Non-Voluntary Licenses)*.

85. Mr. OPHIR (Israel) read out a proposal from his Delegation (document CRNR/DC/11). He said that his Delegation was looking for a reservation opting out of Article 6, and in doing so, it was necessary to make an amendment to Article 104 of the Administrative and Final Clauses as contained in document CRNR/DC/3 in order to allow for reservations to this Treaty. He said that the current provisions in the Berne Convention on non-voluntary licenses were preferable and fair, and all the more so if Article 7(2) were to be adopted in full.

86. The CHAIRMAN commented that the proposal by the Delegation of Israel would allow a reservation, and would imply that there would be no absolute obligation to abolish the non-voluntary licenses.

87. Mr. FICSOR (Assistant Director General of WIPO) announced that the Secretariat had received the proposal from the Delegation of Israel, and was in the process of preparing it as a formal document. On behalf of the Secretariat, he proposed a uniform and simplified system in referring to the draft treaties under discussion, which would be to refer to the Draft Treaty on Certain Questions Concerning the Protection of Literary and Artistic Works as Draft Treaty No. 1, and to the Draft Treaty for the Protection of the Rights of Performers and Producers of Phonograms as Draft Treaty No. 2. Thus, for example, the title of the proposal by the Delegation of Israel would read as follows: "Amendment to Article 6 of Draft Treaty No. 1."

88. The CHAIRMAN asked the Committee if there were any objections to the proposed simplified format of labeling proposals for amendments.

89. Mr. SILVA SOARES (Brazil) supported the proposed format.

90. Mr. FICSOR (Assistant Director General of WIPO) added that, before any proposed document was sent for translation and reproduction, the Secretariat would obtain the clearance of the Delegation which had proposed it.

91. The CHAIRMAN noted that there was no objection to the simplified format for labeling documents, and it was therefore adopted.

92. Mr. CRESWELL (Australia) congratulated the Chairman on his election. His Delegation supported the proposal in Article 6(1), insofar as it intended to promote exclusivity of rights with regard to general or mainstream broadcasting. He saw this as an important adjunct to the proposed new right of communication in Article 10. At the same time, he reserved the possibility of maintaining non-voluntary licenses for special broadcasting operations, in particular, broadcasting specifically directed to persons with a disability. He

noted that Australian legislation provided for such a license, which served an important public interest. His Delegation also wished to preserve the possibility of legislation that would subject the exercise of the broadcasting right through collective administration to control regarding anti-competitive conduct. He stated that his Delegation understood that such a possibility already existed under the Berne Convention.

93. He acknowledged the suggestion in the notes to Article 6 in the Basic Proposal that special licenses could be dealt with under the so-called minor reservations discussed in the context of Article 12 in the copyright treaty. He said that his Delegation wished to reserve the possibility of proposing an amendment to Article 6(1) to allow the continuation of special licenses, depending on the outcome of the Committee's consideration of Article 12. The Delegation of Australia opposed Article 6(2) of the proposed text, on the grounds that it was not sought by any of the relevant copyright interests.

94. Mr. REINBOTHE (European Communities) stated that his Delegation considered Article 6 a useful provision, which corresponded to a proposal of the European Community and its Member States during the sessions of the Committees of Experts. He asked for further explanation of the doubts which had been expressed by some Delegations concurring the usefulness of this provision.

95. Mrs. YOUM DIABE SIBY (Senegal) underlined her country's attachment to the exclusive rights granted to an author to authorize any use of his work, as well as to the freedom given to an author to negotiate fair remuneration in return for his authorization. On that basis, her Delegation was in favor of abolishing non-voluntary licenses for broadcasting. On the other hand, she was strongly opposed to the abolition of non-voluntary licenses for phonographic recording because of the imbalance that might ensue to the benefit of producers of phonograms and the detriment of authors.

96. Mr. GYERTYÁNFY (Hungary) expressed support for Article 6(1) as it appeared in the Basic Proposal, but opposition to Article 6(2). In the view of his Delegation, there was a basic difference in the economic position of the broadcasters as users, on the one hand, and of producers of sound recordings, on the other. In the second case, the abolition of the non-voluntary licenses now allowed under Article 13 of the Berne Convention could upset the existing market balance. Specifically, the failure of licensing negotiations, in the sound recording market, could lead to the restriction of the dissemination of musical works.

97. Mr. KANDIL (Morocco) said that in principle his Delegation supported the abolition of non-voluntary licenses for broadcasting. He noted that there was no mention of compulsory licenses for retransmission by cable as provided in Article 11*bis*(2) of the Berne Convention. He added that, at their meeting in Casablanca, Delegations belonging to the African Group had supported the abolition of non-voluntary licenses within a period of five years.

98. Mr. KUSHAN (United States of America) expressed the support of his Delegation for the statement of the Delegation of Australia concerning the relationship between Article 6 and Article 12. His Delegation supported Article 6(1) in its current form, favoring the three-year phase-out for non-voluntary licenses under Article 11*bis*(2) of the Berne Convention. By contrast, he proposed deletion of Article 6(2), since a non-voluntary license for mechanical reproduction of sound recordings had existed in his country since 1909. He noted that, in the United States of America, neither sound recording producers, nor authors, nor the music

publishing industry, supported elimination of the mechanical license, which was to apply with respect to certain digitally delivered sound recordings as a key feature of recently enacted law of the United States of America regarding performing rights in sound recordings.

99. Mrs. DROZDOWSKA (Poland) expressed opposition to Article 6(1) and (2), citing the need to maintain non-voluntary licenses under Articles 11*bis* and 13 of the Berne Convention.

100. Mr. KIM (Republic of Korea) stated that any proposal for amendment to Article 6 was for the purpose of striking a balance between the countries with developed systems of collective management and the countries which had some problems with the collective management system. He supported a longer phasing-out period than that proposed in Article 6, since many countries needed time to adjust existing legal relations between right owners and users, and, further, because, in the view of his Delegation, non-voluntary licenses were not uniformly detrimental to the interests of right holders. While it was true that, under non-voluntary licensing schemes, authors did not have complete authority to control the utilization of works, it should also be taken into account that authors had a fair chance of acceptable remuneration which would not be possible without collecting societies, even with exclusive rights. He stated that non-voluntary licenses were not the best solution, but that they should be regarded as second best for the time being.

101. Mrs. TRAJKOVSKA (The former Yugoslav Republic of Macedonia) congratulated the Chairman on his election, and expressed support for the proposal made by the Delegation of Poland.

102. Mr. TIWARI (Singapore) referred to the earlier submission, by his Delegation, of a proposed amendment. He proposed that Article 6 be deleted, on the ground that abolition of compulsory licenses would be inconsistent with Article 1(2) of the Basic Proposal, which provided for the obligation of non-Berne members which would be Contracting Parties to the copyright treaty, to comply with, *inter alia*, Article 13 of the Berne Convention, which permitted compulsory licenses. In the event that the first proposal to delete Article 6 were not accepted, he made an alternative proposal according to which a grace period of seven years to phase out non-voluntary licenses should be allowed, rather than three years as in the Basic Proposal.

103. Mrs. METOHU (Albania) spoke in support of the abolition of non-voluntary licenses for broadcasting as provided in Article 6 of Draft Treaty No. 1 and regretted that communication to the public by wire and retransmission within the meaning of Article 11*bis*(1) of the Berne Convention were not covered by this obligation on abolition. On the other hand, her Delegation opposed the abolition of non-voluntary licenses for phonographic recordings. She was deeply attached to recognition of the exclusive right of authors to authorize use of their works and considered that the maintenance of such licenses was the only way for authors to obtain equitable remuneration if negotiations with producers of phonograms were unsuccessful.

104. Mr. SHEN (China) opposed the abolition of non-voluntary licenses, on the ground that the system of collective administration had not been yet perfected in his country, and that without such a system, it would be difficult to abolish non-voluntary licenses.

105. Mr. ABBASI (Pakistan) expressed opposition to Article 6, agreeing with the reasoning expressed by the Delegation of China.

106. Mr. AYYAR (India) supported deletion of Article 6.

107. Ms. DALEY (Jamaica) congratulated the President on his election. She stated that, while in favor of a broad grant of exclusive rights, her Delegation nonetheless favored maintenance of non-voluntary licenses, or at least, that a phase-out period longer than three years should be provided.

108. Mr. TRAORE (Mali) said that his Delegation subscribed to the spirit of Article 6 of document CRNR/DC/4 and in principle supported the abolition of non-voluntary licenses. He nevertheless expressed his concern at the length of the phase-out period, which he believed should be increased from three to five years.

109. Mr. ZAPATA LÓPEZ (Colombia), referring to the proposal to abolish certain non-voluntary licenses, expressed agreement with paragraph (1) of Article 6 of the proposal but wished to see paragraph (2) deleted.

110. Mrs. RETONDO (Argentina) said that, despite the fact that non-voluntary licenses had never been utilized in Argentina, she wished to see the phase-out period increased or the deletion of paragraph (2) of Article 6, so as to reach a consensus on this issue.

111. Mr. ROGERS (Chile) expressed support for both paragraphs (1) and (2) of Article 6, which were consistent with Chilean legislation.

112. Mr. SØNNELAND (Norway) supported abolition of non-voluntary licenses, but stated that his Delegation could accept a longer phase-out period.

113. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) doubted that the Article was an amendment to the Berne Convention, but could accept it as the only limitations contained in Mexican legislation were based on Articles 9(2) and 10 of the Berne Convention and not on Articles 11*bis*(2) and 13 thereof.

114. Mr. EL NASHAR (Egypt) congratulated the Chairman on his election, expressed support for the abolition of non-voluntary licenses, subject to a phase-out period of five years, and favored deletion of Article 6(2).

115. The CHAIRMAN stated that there seemed to be broad support for deletion of paragraph (2) of Article 6, but there was also some support for deletion of paragraph (1). He stated that Article 6 related to a bedrock principle of copyright, the principle that copyright is a bunch of exclusive rights. He favored leaving the Article aside for a later decision of the Committee, to permit informal negotiations among Delegations in an effort to find consensus. He stated that, on the basis of current information, there would be written proposals, and that a decision could be based on the text of such proposals without a new round of debate on them.

*Article 9 (Duration of Protection of Photographic Works) of the WCT  
(Article 11 of Draft Treaty No. 1)*

116. The CHAIRMAN opened the floor for discussion on *Article 11 (Duration of the Protection of Photographic Works)* of Draft Treaty No. 1. He noted that there had been at least two rounds of discussion on this question in the preparatory stages on this Article, during which a clear opinion emerged that the protection of the photographic works should be of the same duration as the duration for literary and artistic works in general.

117. Mr. GYERTYÁNFY (Hungary) expressed support for the proposal, on behalf of a group of Central European countries, namely, Albania, Bulgaria, Croatia, the Czech Republic, Poland, Slovenia, The former Yugoslav Republic of Macedonia, and his own country.

118. Mr. SILVA SOARES (Brazil), referring to the duration of protection of photographic works, considered that the provision should not contain references to the Berne Convention and proposed different wording to that contained in the proposed Treaty: "In respect of photographic works, the term of protection granted under this Treaty shall be, at least, the life of the author, and 50 years after his death."

119. Mr. REINBOTHE (European Communities) expressed support for Article 11.

120. Mr. KUSHAN (United States of America) supported Article 11 as drafted.

121. Mr. MTETEWAUNGA (Tanzania) supported the normalization of the term of protection for photographic works, but expressed a preference for a free-standing provision applying the life-plus-50-years formula.

122. Mr. EKPO (Nigeria) expressed support for Article 11 as drafted.

123. Mr. SØNNELAND (Norway) expressed support for Article 11 as drafted.

124. Mr. WIERZBICKI (New Zealand) congratulated the Chairman on his election, and expressed support for Article 11 as drafted.

125. Mr. HONGTHONG (Thailand) expressed support for Article 11 as drafted.

126. Mr. OMONDI-MBAGO (Kenya) congratulated the Chairman on his election, and expressed support for Article 11 as drafted.

127. Mr. YAMBAO (Philippines) expressed support for Article 11 as drafted.

128. The CHAIRMAN noted that there seemed to be agreement regarding the substance of Article 11, but that at least two Delegations favored another method to achieve the same result. He stated that the exact language could be agreed later.

[Suspension]



129. The CHAIRMAN announced the conclusion of the discussion on Article 11, and introduced the first group of joint issues, namely the cluster of issues concerning certain rights which were distribution-oriented.

*Article 6 (Right of Distribution) of the WCT (Article 8 of Draft Treaty No. 1); Articles 8 (Right of Distribution) and 12 (Right of Distribution) of the WPPT (Articles 9 and 16 of Draft Treaty No. 2)*

130. The CHAIRMAN opened discussion on *Article 8 (Right of Distribution and Right of Importation)* of Draft Treaty No. 1, and *Articles 9 (Right of Distribution and Right of Importation) and 16 (Right of Distribution and Right of Importation)* of Draft Treaty No. 2. He noted that those issues were part of traditional questions, involving distribution of physical copies, and importation of physical copies, of works, fixed performances and phonograms. He asked the Delegations to refrain from discussing the extent of protection of performers, that is, whether it should cover audiovisual fixations, an issue which would be discussed at a later stage. He drew attention to the two alternatives concerning the right of distribution, mentioning that Alternatives A and E were based on a high-level distribution right, the exhaustion of which would be regionally or nationally limited, and Alternatives B and F, in which the main principle would be that lawfully distributed copies could be distributed in the territory of all the Contracting Parties. He pointed out that Alternatives A and E had been presented in such a way that, along with the right of distribution with limited exhaustion, there was a proposal that a right of importation should also be recognized.

131. Mr. OKAMOTO (Japan) congratulated the Chairman on his election. He stated that his Delegation fully supported the recognition of a right of distribution in respect of both copyright and the rights of performers and producers of phonograms. Regarding the Alternatives, the Delegation supported Alternative B in Article 8, Alternative F in Article 9, and Alternative B in Article 16, that is, it supported the so-called distribution right with international exhaustion.

132. Mr. REINBOTHE (European Communities) stressed the importance of a distribution right. He referred to the fact that that right was not contained in the Berne Convention or the Rome Convention, and added that that gap should be eliminated. He mentioned that the European Community and its Member States had made proposals in the Committees of Experts preparing the draft treaties. He stated that those proposals continued to reflect the views of his Delegation.

133. Mr. CRESWELL (Australia) supported the adoption of a right of distribution for works and sound recordings, as reflected in Alternative B in Article 8 and Alternative B in Article 16. He said that his Delegation was opposed to Alternative A in those Articles because it believed that Contracting Parties should be able to choose the circumstances in which the right of distribution would be exhausted. He added that his Government could not accept the obligation included in Alternative A to introduce a right of importation.

134. Mr. AYYAR (India) stressed that his Government would find it very difficult to become party to a Treaty which contained an obligation to grant a right of importation. He underscored the lack of consistency between creating a right of importation, on the one hand,

and free trade and the introduction of non-tariff barriers to trade, on the other. He said that he was not able to see the basic idea underlying the right of importation.

135. Mr. KIM (Republic of Korea) expressed his Delegation's support for Alternative B in Article 8, and Alternative B in Article 16.

136. Mr. ABBASI (Pakistan) also supported Alternative B in Article 8 and Alternative B in Article 16.

137. Mr. WIERZBICKI (New Zealand) supported the recognition of a distribution right. He noted that, even though New Zealand provided an importation right in its copyright legislation, that was a particularly sensitive issue for that country. Accordingly, his Delegation felt that the right of importation should continue to be a matter for national legislation, and that the Treaties should not provide such a right. He supported Alternative B in Article 8, Alternative F in Article 9 and Alternative B in Article 16.

138. Mrs. YOUM DIABE SIBY (Senegal) said that her Delegation supported Alternative A in Article 8 of Draft Treaty No. 1 and Alternative E in Article 9 of Draft Treaty No. 2.

139. Mr. YAMBAO (Philippines) stated that his Delegation believed that the right of importation was trade-restrictive, and that the issues could be appropriately handled by contract law, and therefore such a right was unnecessary in the Treaties. He supported Alternative B in Article 8, Alternative F in Article 9 and Alternative B in Article 16.

140. Mr. ETRANNY (Côte d'Ivoire) congratulated the Chairman on his election and said that his Delegation preferred Alternatives A in Article 8 of Draft Treaty No. 1 and Article 9 of Draft Treaty No. 2. He indicated that the right of importation could be an obstacle to free trade.

141. Mr. SØNNELAND (Norway) supported Alternative B in Article 8; in respect to neighboring rights, however, he favored the opposite alternative. He drew attention to the notes contained in paragraph 8.10, mentioning that the right of importation would not apply unless copies were marketed within a certain period of time. He said that his Delegation reserved its right to present a proposal for language at a later stage.

142. The CHAIRMAN asked for clarification from the Delegation of Norway, as to the understanding of its intervention, to the effect that the essence of the notes in paragraph 8.10 of Draft Treaty No. 1 were likewise applicable to the neighboring rights issues, and noted that the Delegation confirmed his understanding.

143. Mrs. DE MONTLUC (France) congratulated the Chairman on his election. She said that her Delegation endorsed the comments made by the Delegation of the European Communities. She proposed that in Articles 8 and 9(1) of Draft Treaty No. 1 and Article 16(1)(i) of Draft Treaty No. 2 the reference to "original" should be deleted and only the word "copies" should be used because the concept was the same.

144. Mrs. BOUVET (Canada) joined other speakers in congratulating the Chairman. She said that her Delegation was in favor of Alternative B in Article 8 of Draft Treaty No. 1, Alternative F in Article 9, and Alternative B in Article 16 of Draft Treaty No. 2.

145. Mr. SHEN (China) said that his Delegation supported Alternative B in Article 8, Alternative F in Article 9 and Alternative B in Article 16.

146. Mr. TIWARI (Singapore) stated that his Delegation was against a right of importation, which clearly effected free trade, and that, in the interests of free trade, parallel imports should be permitted. Therefore, he supported Alternative B in Article 8, Alternative F in Article 9 and Alternative B in Article 16.

147. Mrs. RETONDO (Argentina), referring to the right of distribution, reaffirmed her Delegation's support for Alternative A in Article 8 of Draft Treaty No. 1, and Alternatives E in Article 9 and A in Article 16 of Draft Treaty No. 2.

148. Mr. KUSHAN (United States of America) expressed his Delegation's support for both a right of distribution and a right of importation. The Delegation supported Alternative A in Article 8, Alternative E in Article 9 and Alternative A in Article 16. He emphasized the importance his Delegation attached to preserving the territorial nature of copyright and neighboring rights by permitting only national or regional exhaustion. He referred to the principle that Contracting Parties might limit the importation right with regard to importation by a person, solely for his personal or non-commercial use as part of his or her luggage.

149. He stated that his Delegation did not share the view that an importation right impaired free trade, but rather believed that it provided the opposite effect, and simply could not be called a barrier to trade. He stressed that the importation right was in reality a trade-facilitating or trade-promoting device, as it would permit territorial licensing which would allow a party to modify and target the deployment and distribution of copies of protected works. He stressed that, while his Delegation was willing to work to achieve a satisfactory solution on the issue, only anything based on Alternative A would, in the view of his Delegation, offer such a solution.

150. Mr. KANDIL (Morocco) said that his Delegation preferred Alternative B in Article 8 of Draft Treaty No. 1 and Alternative E in Article 9 of Draft Treaty No. 2, as well as Alternative B of Article 16 in the latter document.

151. Mr. TRAORE (Mali) congratulated the Chairman on his election and associated himself with the position of the Delegate of Morocco.

152. Mr. SILVA SOARES (Brazil) expressed support for Alternative B in Article 8 of Draft Treaty No. 1, and Alternatives F in Article 9 and B in Article 16 of Draft Treaty No. 2.

153. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) referring to Article 8 of Draft Treaty No. 1, expressed her concern regarding Alternative A, which appeared to apply more to traditional methods of distributing works than to the new technological possibilities. Moreover, its application would become difficult in cases in which works were made available to the public through electronic media at the same time all over the world. She also had doubts concerning the restriction on the importation of lawful copies, which would result in restrictive practices contrary to rules on free trade and consumer protection, and could even restrict the exploitation of the work to the author's prejudice. Consequently, the Delegation of Mexico preferred Alternative B in Article 8 as it was better adapted to the logic of globalization. For

the same reasons, it preferred the solutions contained in Alternatives F in Article 9 and B in Article 16 of Draft Treaty No. 2.

154. Mrs. TRAJKOVSKA (The former Republic of Macedonia) supported Alternative A in Article 8, Alternative E in Article 9 and Alternative B in Article 15.

155. Mr. ZAPATA LÓPEZ (Colombia) expressed support for Alternative B in Article 8 of Draft Treaty No. 1 and Alternatives F in Article 9 and B in Article 16 of Draft Treaty No. 2.

156. Mr. MTETEWAUNGA (Tanzania) stated that his Delegation supported the recognition of a right of distribution subject to international exhaustion, which meant that his Delegation supported Alternative B in Article 8, Alternative F in Article 9 and Alternative B in Article 16.

157. Mr. OMONDI-MBAGO (Kenya) indicated that his Delegation supported Alternative A in Article 8, Alternative E in Article 9 and Alternative B in Article 16.

158. Mr. TEYSERA ROUCO (Uruguay) stated the position of his Delegation regarding the right of distribution. In Article 8 of Draft Treaty No. 1, it supported Alternative A, and in Draft Treaty No. 2 it was in favor of Alternative E in Article 9 and Alternative A in Article 16.

159. Mr. MBON MEKOMPOMB (Cameroon) supported Alternative A in Article 8 of Draft Treaty No. 1, Alternative F in Article 9 and Alternative B in Article 16 of Draft Treaty No. 2.

160. Mr. TOUIL (Tunisia) said that his Delegation endorsed Alternative A in Article 8 of Draft Treaty No. 1, and Alternative F in Article 9 and Alternative B in Article 16 of Draft Treaty No. 2.

161. Mr. HONGTHONG (Thailand) expressed his Delegation's support for Alternative B of Article 8, Alternative F in Article 9 and Alternative B in Article 16.

162. Mr. ANTEQUERA PARILLI (Venezuela) spoke in favor of Alternative A in Article 8 of Draft Treaty No. 1 and Alternatives E in Article 9 and A in Article 16 of Draft Treaty No. 2.

163. The CHAIRMAN asked the Committee if there were any other Delegations that wished to take the floor on this question, and seeing none, he adjourned the meeting.

*Third Meeting**Monday, December 9, 1996**Morning**Work program*

164. The CHAIRMAN summarized the discussions that had taken place on Friday, namely, an initial discussion on certain provisions in the copyright treaty: computer programs; collections of data (databases); abolition of certain non-voluntary licenses; and duration of the protection of photographic works, as well as an initial discussion on a group of articles in the copyright and neighboring rights treaties dealing with the rights of distribution and importation.

165. He recalled his proposal for the work program, and said that the priority should be on the substantive provisions proper. The last item in the work program would be the preambles and titles of the treaties. He recalled his proposal to examine provisions of the first two treaties which could be discussed simultaneously, such as the provisions on the notion and place of publication, the rights of reproduction, distribution, rental, communication to the public (at least the interactive part of it), the provisions on obligations concerning technological measures and rights management information, and provisions on enforcement.

166. He indicated that, based on informal consultations which had taken place since he made his proposals, the right of distribution would be discussed first, then the right of rental, including the definition of rental in the neighboring rights treaty. After that, initial discussion would take place on the rights of performers in their unfixed performances and the provisions on the right of modification, followed by a discussion on the term of protection. Then, a fourth "package" would consist of the following matters, grouped into three clusters: right of reproduction; right of communication and right of making available to the public, relating to both treaties, and then the notion and place of publication.

167. He stated that, as the work proceeded, he would offer further details including continuation of discussion on various substantive articles of the neighboring rights treaty, and then three more clusters: limitations and exceptions; technological measures and rights management information; and enforcement.

168. This program should be completed by Tuesday evening or at least by Wednesday, depending on how long time the different "packages" would take. Later, a seventh "package" would be discussed, namely, framework provisions of the two treaties, then the last small "package" would be the preambles and titles of the treaties. Finally, there would be a decision sought concerning how to discuss the draft treaty on intellectual property protection in respect of databases.

169. He noted that the Main Committee would have three sessions each day during the week, from 10 a.m. to 1 p.m., from 3 p.m. to about 6.15 p.m. and then an evening session from 8 p.m. to 10 p.m.. Such a schedule would make it possible to have regional group meetings in the mornings between 8 or 9 a.m. to 10 a.m., and, perhaps, during the lunch break, which would ensure that group meetings could take place systematically without causing any delay in the work of the Main Committee.

170. He suggested that initial discussions continue on different items in the order presented, that then conclusions be reached on different items in the order in which they were discussed, and that the text to be submitted to the Plenary be established by Wednesday morning.

171. He noted that the discussion on the rights of distribution and importation had been concluded, and, at an appropriate later time, decisions could be taken on the text concerning the said rights.

*Article 7 (Right of Rental) of the WCT (Article 9 of Draft Treaty No. 1);  
Articles 9 (Right of Rental) and 13 (Right of Rental) of the WPPT (Articles 10 and 17 of  
Draft Treaty No. 2)*

172. The CHAIRMAN opened discussion on *Article 9 (Right of Rental)* of Draft Treaty No. 1, and on *Articles 10 (Right of Rental) and 17 (Right of Rental)* of Draft Treaty No. 2.

173. He said that the notion and level of international recognition of the right of rental were well identified, and that there was no need to make extended remarks introducing the topic. He then declared the floor open on the question of the right of rental.

174. Mr. GYERTYÁNFY (Hungary), on behalf of a group of countries consisting of Albania, the Czech Republic, Romania, Slovenia, The former Yugoslav Republic of Macedonia, and his own country, stated that an exclusive right of rental was useful and desirable in Draft Treaty No. 1. As to the scope of the right, he said that the group opposed general restrictions other than those expressed in Article 9(3). As to the exceptions, he stated that the general provision in Article 12 was sufficient.

175. In respect of Draft Treaty No. 2, he again indicated the group's preference for Alternative B in Article 10, that is, a general rental right without the restriction applicable to audio performers. It also meant that, if such a right was to be accorded to the right owners, as he hoped, that again would be an argument concerning Article 9 of Draft Treaty No. 1, that is, to accord no less limited protection there. He stated that the group did not understand the justification for the discrimination in Alternative A against non-musical audio performers. Finally, he noted that, even though the respective national legislation of the countries in the group did not have a system such as that foreseen in Article 10(2), the group could accept such a provision in the Treaty. As to the definition of rental, the group opposed the proposed definition in Treaty No. 1, as practice and usage of market conditions could change soon. Nevertheless, the group supported in general a wider notion of rental under both Draft Treaty No. 1 and Draft Treaty No. 2.

176. Mrs. BOUVET (Canada) said that her Delegation supported the proposal to include a compulsory right of rental for computer programs and musical works embodied in phonograms only. The words "collections of data or other material in machine-readable form" should therefore be deleted from Article 9(2). In her view, the rental right should only apply if such large quantities had been made that they impaired the exclusive right of reproduction. She added that her Delegation supported Alternative A in Article 10 of Draft Treaty No. 2, namely a right that only applied to musical performances fixed in phonograms.

177. Mr. OKAMOTO (Japan) expressed support for the right of rental proposed in Article 9 of Draft Treaty No. 1 and Articles 10 and 17 of Draft Treaty No. 2. As to Article 9 of Draft Treaty No. 1, he said that his Delegation could be flexible in terms of the categories of works which should be covered. However, as to the rental rights in Draft Treaty No. 2, he expressed

concern that there was a difference between the TRIPS Agreement and the proposed text, that is, the three-year limitation on maintenance of a system of equitable remuneration for the right of rental, which did not exist in the TRIPS Agreement. He stated that that would cause serious problems to the existing balance between neighboring rights owners and rental businesses. He stated that his Delegation would submit to the Secretariat an amendment to delete the relevant phrase from the Articles 10 and 17 of Draft Treaty No. 2.

178. Mr. AYYAR (India) accepted the Chairman's proposals as far as procedure was concerned, although he felt that it was overly optimistic. He suggested that, from Wednesday onwards, a timetable be established so that Delegations would know when a matter was to be concluded.

179. As far as the rental right was concerned, he noted that there was no definition of rental in Draft Treaty No. 1, while Draft Treaty No. 2 provided a definition. He suggested that the word "rental" be qualified throughout by the word "commercial" so as to ensure consistency with the TRIPS Agreement. He also suggested that it be clarified that commercial rental excluded public lending, and that the limitations provided for in the European Community directive concerning lending rights be included. He expressed the view that access to information should not be curtailed by the treaties, and in particular that distance education and life-long learning not be impaired.

180. On the subject of computer programs, he suggested that the language of the TRIPS Agreement be borrowed, or alternatively, that there should be some sort of agreement that the coverage of the provisions in the Treaty was the same.

181. He also questioned whether the TRIPS provisions on the right of rental should be exceeded, and stated the view of the Asian Group that they should not. He pointed out that the TRIPS Agreement provided for a review in the year 2000, and that it was too early to know how the right of rental would be functioning under the TRIPS Agreement. Thus, it would not be appropriate to establish a broader right under another treaty. He said that the "impairment test" had not yet been subject to adjudication.

182. He stated that the work of the WIPO Committee of Experts on the Settlement of Intellectual Property Disputes between States was inconclusive, and that some countries felt it would not be expedient to have two mechanisms for dispute settlement, one in WIPO and one in WTO. That was a further argument not to go beyond the TRIPS Agreement.

183. Mr. KIM (Republic of Korea) stated that it was difficult to categorize works protected by copyright at the present time, citing multimedia productions as an example, and that the provisions of the TRIPS Agreement concerning the right of rental should be adopted as a basis.

184. Mr. REINBOTHE (European Communities) stated that there was no rental right in the Berne Convention or in the Rome Convention, but that the right had been internationally recognized in the TRIPS Agreement. The European Community supported Article 9(1) of Draft Treaty No. 1 and Articles 10(1) and 17(1) of Draft Treaty No. 2, as well as Alternative B in Article 17(1). He stated that Draft Treaty No. 1 did not contain any definition for what constitutes rental, but Draft Treaty No. 2 did contain a definition. He suggested that, instead

of a definition, the word “commercial” should be added before the word “rental” in both treaties, which would be consistent with the TRIPS Agreement.

185. He expressed support for the statement of the Delegation of Hungary, that is, that Article 9(2) of Draft Treaty No. 1 was unnecessary, and that the rental right should apply to all works without discrimination. He stated that the “impairment test” in Article 9(2) would not be appropriate, if it were desired to increase the protection of authors.

186. He made two points concerning details, first, that the formulation “collection of data or other material in machine-readable form” in Article 9(2) made reference to databases protected as works under Article 5, and, second, that the term “musical works embodied in phonograms” was too narrow, and that “works embodied in phonograms” should be preferred.

187. Mr. KUSHAN (United States of America) expressed his Delegation’s support for the inclusion of a rental right, as proposed in the two Draft Treaties. With respect to Article 9 in Draft Treaty No. 1, he believed that the text was intended to apply to databases under Article 5 of the same Draft Treaty. He said that his Delegation did not believe that the rental right there should apply to a work consisting of a motion picture preview clip or advertisement combined with a feature film and made available in a machine-readable form. In that regard, he felt that some clarifications in the scope of coverage of the Article might be needed.

188. He noted that it had also been suggested by other Delegations that the scope of the right be extended to non-musical works embodied in phonograms, and added that his Delegation could not support such an expansion of the scope of the rental right. He observed that musical works represented the content in the vast majority of phonograms, and that phonograms as such should remain the objects of the rental right. He also noted that Article 10 in Draft Treaty No. 2 raised the general question of the scope of protection for performers, namely whether or not it should be extended to audiovisual fixations. He was of the view that that Article, along with all other provisions related to the question of the scope of protection, should be addressed together, rather than separately.

189. He reiterated his support for Alternative A, as drafted, which included the limitation of coverage to musical performances and sound recordings. Finally, he supported Article 17 in Draft Treaty No. 2 as drafted.

190. Mrs. YOUM DIABE SIBY (Senegal) regretted that the concept of rental was not defined in Draft Treaty No. 1, underlining the need to recognize the right of rental to authors, performers or producers of phonograms. She wished to see more restrictive conditions laid down in paragraph 2 of Article 9 *in fine* in Draft Treaty No. 2. She added that her Delegation supported the adoption of Alternative B in Article 10 of Draft Treaty No. 2.

191. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, in general supported an exclusive right of rental for owners in both Treaties. Nevertheless, he proposed that a new paragraph be added between paragraphs (2) and (3) of Article 9 of Draft Treaty No. 1 as follows: “The provisions of paragraph (1) of this Article do not apply when a computer program itself is not the essential object of the rental.”

192. Mr. SHEN (China) felt that the right of rental was an important right, upon which there had been extensive discussions in China. He stated that his Delegation could support a rental



right for authors of some categories of works. He proposed that the word “commercial” be added before the word “rental,” because the rental right should not be applied in respect of public libraries, schools, and scientific and research institutes. He felt that rental rights for authors required further study, but he considered them acceptable concerning computer software and multimedia products. However, as to performers and producers of phonograms, his Delegation was not in favor of granting a right of rental.

193. Mr. ETRANNY (Côte d’Ivoire) said that his Delegation supported the principle of introducing a right of rental in Draft Treaty No. 1, but wished to see the concept of rental defined in Article 9. He expressed reservations concerning the exceptions provided in Article 9(2) and added that his Delegation supported Alternative B in Article 10, and Article 17 of Draft Treaty No. 2.

194. Mr. CRESWELL (Australia) stated that his Delegation supported Article 9 in Draft Treaty No. 1, insofar as it proposed a mandatory rental right coextensive with that provided for in the TRIPS Agreement. His Delegation was also able to support the “TRIPS plus” element of a mandatory right for musical works embodied in phonograms and would go further by proposing extension of the right to literary works so embodied. He noted that no definition of the term “rental” was proposed in Draft Treaty No. 1, although a definition was proposed in Draft Treaty No. 2. He said that, on the understanding that, in keeping with the Berne Convention, Draft Treaty No. 1 would seek to avoid definitions, Australia would not insist on inclusion of a definition in that Treaty. However, he urged that, as in the TRIPS Agreement, the word “commercial” be inserted in front of the word “rental,” to avoid any possibility that public lending or cost-recovery fees charged by public libraries might attract the operation of the proposed rental right.

195. He said that, in paragraph (2) of Article 9, his Delegation was opposed to the inclusion of the words “collections of data or other material in machine-readable form.” He observed that the Chairman’s notes justified the inclusion of those words by reference to alignment with the database treaty, which presupposed agreement on rights that had yet to be agreed on, and that, therefore, it was premature to extend the mandatory rental right to such a category of materials. He believed that the final sentence in Article 11 of the TRIPS Agreement should be included in Article 9 of Draft Treaty No. 1, which would exempt from the mandatory rental right computer programs that were incorporated in other things, such as a car. Regarding Draft Treaty No. 2, he supported the terms of Article 17(1) and reserved his Delegation’s position with regard to Article 17(2).

196. Mr. PALENFO (Burkina Faso) indicated that his Delegation supported recognition of a general right of rental to authors, performers and producers of phonograms. He added that in Burkina Faso the legislation gave authors a right of rental. His Delegation opposed the exceptions provided in Article 9(2) of Draft Treaty No. 1 and wished to see the inclusion of a definition of the concept of rental that took into account the objective of direct or indirect economic or commercial benefit. He therefore supported the position of the Delegation of the European Communities in this respect. Turning to Draft Treaty No. 2, he said that his Delegation was in favor of Alternative B in Article 10 and Article 17.

197. Mr. SØNNELAND (Norway) presented his Delegation’s full support for what had been said by the representative of the Delegation of the European Communities. He supported paragraph 9(1) in Draft Treaty No. 1, and Articles 10(1) and 17(1) of Draft Treaty No. 2. He

strongly supported Alternative B, granting rental rights for performances fixed in any medium. He also supported the word "commercial" being inserted in the definition of rental for the same reasons as presented by the Delegation of Australia. He was of the opinion that Article 9(2) was not needed; if, however, Article 9(2) were retained, he favored the views put forward by the Delegation of Australia, concerning rental of computer programs.

198. Mr. WIERZBICKI (New Zealand) stated that his Delegation agreed with the comments made by the Delegation of the European Communities concerning the definition of "rental" being in one treaty and not the other. It also agreed with the suggestion made by the Delegation of the European Communities that "commercial" should be added before "rental" in respect to Article 9(1) of Draft Treaty No. 1. He also said his Delegation agreed with the comment expressed in the intervention by the Delegation of the United States of America regarding Article 10 of Draft Treaty No. 2, in that there might be conflict between the rights given to copyright owners and the rights given to producers of phonograms, and that, therefore, there needed to be compatibility. He strongly favored the impairment test in that area, and considered that Article 9(2) should be equivalent to Article 11 of the TRIPS Agreement. Regarding Articles 10 and 17 of Draft Treaty No. 2, he supported Alternative A.

199. Mr. EKPO (Nigeria) expressed his Delegation's support for the inclusion of rental rights in both Draft Treaty No. 1 and Draft Treaty No. 2, although that was a "TRIPS plus element." He shared the position expressed by the Delegation of Burkina Faso, which requested that the concept of rental be defined. He supported Alternative B in Articles 10 and 17 of Draft Treaty No. 2.

200. Mr. TIWARI (Singapore) stated that Singapore was concerned with the extension of the right of rental beyond what had already been agreed under the TRIPS Agreement. He pointed out that the TRIPS Agreement had been concluded only two years ago, and developing countries had a transitional period of five years until January 1, 2000, to implement the obligations under that Agreement. It was too early to extend those rights without seeing how they actually would work under the TRIPS Agreement. He observed that the proposed provisions were aimed at conferring rental rights for all categories of works and not just computer programs, films and sound recordings, and that that would go beyond Articles 11 and 14 of the TRIPS Agreement. He also noted that the Basic Proposal did not provide for an exemption in respect of computer programs, where the essential object of the rental was not the program, although there was such an exception in Article 11 of the TRIPS Agreement. He supported the suggestions to include such an exemption. There was no definition of rental in Draft Treaty No. 1. Any such definition should be confined to commercial rental, and it should be made clear that the right of rental should not effect public lending by libraries and similar non-profit lending. He noted that a definition of rental was provided in Article 2(f) of Draft Treaty No. 2, and in Articles 10 and 17 in Draft Treaty No. 2, he said that, in Article 10, "TRIPS and Rome plus" protection was proposed.

201. In respect of paragraph (2) of Articles 10 and 17, he was concerned with the attempt to deviate from what was in Article 14.4. of the TRIPS Agreement concerning a phasing-out period. He believed that a three year phasing-out period was not justifiable and each Contracting Party should be left to decide on its own whether and when to do away with any system of equitable remuneration. The abolition of any such system would, as in Article 6 on the abolition of non-voluntary licenses, require the existence of an effective collective administration system which was not yet fully implemented in many developing countries.

202. Mr. PROAÑO MAYA (Ecuador) noted that the right of rental in respect of copyright was a new concept both in national legislation and in international positive legislation. He believed it necessary to add the word “commercial” so as to safeguard the rights of culture and public education.

203. Mr. GOVONI (Switzerland) said that his Delegation supported recognition of an exclusive right of rental in both Treaties. He shared the views of the Delegation of the European Communities that paragraph 2 of Article 9 in Draft Treaty No. 1 should be reconsidered. In his view, the concept of rental did not need to be defined, but he wished to see the adjective “commercial” added before the word “rental.” Lastly, his Delegation was in favor of Alternative B in Article 10 of Draft Treaty No. 2.

204. Mr. TRAORE (Mali) said that his Delegation supported the recognition of a right of rental to authors, performers and producers of phonograms. He said that he shared the view of the Delegation of Côte d’Ivoire regarding the need to define the concept of rental in Article 9 of Draft Treaty No. 1. He supported Alternative B in Article 10 of Draft Treaty No. 2 and Article 17 as drafted.

205. Mr. HONGTHONG (Thailand) referred to Article 9 of Draft Treaty No. 1, and said that his country was still in the “honeymoon period” with the TRIPS Agreement, and, as such, was not eager to search for any other rights. He stressed that rental rights should be limited to commercial rentals. Regarding Draft Treaty No. 2, he preferred Alternative A in Article 10, and accepted Article 17 as currently drafted.

206. Mr. KANDIL (Morocco) said that his Delegation supported the inclusion of an exclusive right of rental in both Treaties. He shared the views of those Delegations that had referred to the lack of a definition of rental and the need to provide such a definition in Draft Treaty No. 1. In Draft Treaty No. 2, his Delegation preferred Alternative B in Article 10 and approved Article 17 as a whole.

207. Mr. OPHIR (Israel) said that his Delegation generally supported the recognition of rental rights. He preferred that a definition of rental rights be included in both treaties. It should make clear that the rental right did not include lending rights, as that term was contemplated in Note 2.21 of document CRNR/DC/5. With regard to Article 10(1), he supported Alternative B.

208. Mr. EL NASHAR (Egypt) indicated that Egypt was in agreement with the general principle of the rental right, but would rather see a clear definition of the word “rental” in both Draft Treaties. He also suggested that the word “commercial” be added so that there would not be any confusion between what was meant by rental, and other forms of lending. He preferred Alternative B in Draft Treaty No. 2.

209. Mr. HENNEBERG (Croatia) said that his Delegation preferred Alternative B in Article 10 of Draft Treaty No. 2.

210. Mr. YAMBAO (Philippines) expressed his Delegation’s support for the grant of rental rights, which should be limited to commercial rentals. He stressed that his Delegation was not ready to adopt rules or create obligations beyond those existing in the TRIPS Agreement.

211. The CHAIRMAN noted that there had been some support that, in Draft Treaty No. 1, the right of rental should cover all categories of works. There were, however, differing opinions on the scope of the right of rental. He noted one Delegation's opinion that the rental right should not go beyond the TRIPS Agreement, another's that the categories comprised should include not only musical works on phonograms but also other works on phonograms, and still another's that the right of rental should extend to literary works. There was support for a definition of rental in both Draft Treaties. He pointed out, however, that there was no tradition of having a series of definitions in the copyright conventions. He noted the suggestion that the word "commercial" be used with rental, and wondered if that would satisfy those Delegations which sought a definition of rental.

212. He said that there had been clear support for including the language of the TRIPS Agreement, which excluded computer programs when they were not an essential object of the act of rental. He noted that there had been some discussion concerning paragraphs (2) of Articles 10 and 17 of Draft Treaty No. 2 concerning the question of the phasing-out period of the system of the right of remuneration, but he added that it was too difficult, for the time being, to formulate a set of proposals on that item. He urged the Delegations to conduct private consultations concerning the right of rental.

*Article 6 (Economic Rights of Performers in their Unfixed Performances) of the WPPT*

213. The CHAIRMAN introduced the "third cluster" of items to be discussed by the Committee, consisting of the following items in Draft Treaty No. 2: Article 6 (Economic Rights of Performers in their Unfixed Performances); Article 8 (Right of Modification); Article 15 (Right of Modification); and Article 21 (Term of Protection). He opened the floor for discussion on *Article 6 (Economic Rights of Performers in their Unfixed Performances)*.

214. Mr. GOVONI (Switzerland) said that his Delegation supported Alternative B in Article 6 of Draft Treaty No. 2. Regarding the scope of the rights set out in this Article, he noted that the proposed rights of performers in their unfixed performances did not include rebroadcasting and retransmission by wire of a broadcast, although the second part of subparagraph (i) appeared to clarify this. He considered that these rights should be extended to those specifically excluded from this Article because authors already possessed such rights for which collective administration systems existed. An identical system should be established for performers. The rights provided in Article 6 should therefore be extended.

215. The CHAIRMAN stated that the wish of the Delegation of Switzerland could be achieved by deleting from paragraph (i) the text beginning with the word "except" and up to the word "performance." Accordingly, the "except" clause would be deleted.

216. He reminded the Delegations that there was no need to comment on Alternatives A and B concerning audio-visual fixations, which would be discussed later.

217. Mrs. BOUVET (Canada) proposed that Article 16 include a provision allowing performers to receive compensation for the public showing, broadcasting or communication of the unauthorized fixation of their live performances.

218. Mr. CRESWELL (Australia) expressed opposition to the proposal of the Delegation of Switzerland to delete the words "except where the performance is already a broadcast performance."

219. Mr. SØNNELAND (Norway) expressed support for the proposal of the Delegation of Switzerland, but added that his Delegation could also accept the Article as drafted.

220. The CHAIRMAN stated that there were proposals from the Delegations of Canada and Switzerland, which would be taken into account when drafting Article 6. He then opened the floor for discussion on *Article 8 (Right of Modification)* and *Article 15 (Right of Modification)*. Under the Basic Proposal, both performers and producers of phonograms would be granted an exclusive right to authorize or prohibit any modification of the result of their performances and phonograms, respectively.

*Articles 8 (Right of Modification) and 15 (Right of Modification) of Draft Treaty No. 2*

221. Mrs. YOUM DIABE SIBY (Senegal) wondered whether recognition of a right of modification to performers would not simply duplicate the right of reproduction. She also drew attention to the relationship between Articles 5 and 15 of Draft Treaty No. 2 and expressed the view that the right of modification given to producers of phonograms under Article 15 could result in a limitation of the effects of the moral rights of performers set out in Article 5.

222. The CHAIRMAN stated that the right of modification was a part of the economic rights for performers and producers of phonograms, and that the right of reproduction in some cases and the moral rights in the case of performers might have the same function. He pointed out that there might also be, however, cases where the right of modification could and should be considered separately, for example, where a live performance was modified without fixation while still being performed, since the right of reproduction would not apply in such a case. He added that, in cases where the performance was already fixed and then modified, it was probably impossible to modify the performance without also reproducing it.

223. As far as moral rights were concerned, he said that modification would imply any change or alteration and said that moral rights would apply only in cases where altering is detrimental or prejudicial to the honor and reputation of the performer. He added that although such modifications are "modifications" in the sense of the right of modification, also moral rights were applicable in respect of them.

224. Mr. KIM (Republic of Korea) expressed doubts as to whether adequate justification had been presented for the creation of a new right of modification, which was different from the rights of translation and adaptation. He said that the right of reproduction was probably a better vehicle to protect the rights of performers and producers of phonograms against modifications.

225. Mr. TIWARI (Singapore) opposed Articles 8 and 15, which were unnecessary in the light of the availability of rights of reproduction, distribution and communication to the public, and because adaptations and alterations were already protected as original works under the Berne Convention.

226. Mrs. DE MONTLUC (France) shared the views expressed by the Chairman and stated that, in view of the developments in digital technology, it was necessary to provide a right of modification for performers because the situations mentioned were not covered by the right of reproduction.

227. Mr. RAGONESI (Italy) supported inclusion of the right of modification as it appeared in Article 8 of Draft Treaty No. 2.

228. Mr. STARTUP (United Kingdom) stated that his Delegation was not convinced that a right of modification was justified, in the light of its uncertain scope and the unclear relationship with the right of reproduction. He said that, to the extent that the new right would go beyond the scope of the reproduction right, it would extend rights into areas covering very much less substantial parts of works than were usually considered to be covered by existing rights. He added that the new right would also seem to have implications for the field of copyright and would risk creating an imbalance between the two areas.

229. Mr. KEMPER (Germany) expressed doubts concerning the need for a right of modification, and said that the phenomena intended to be covered could be addressed through proper application of the right of reproduction.

230. Mr. DEBRULLE (Belgium) said that his Delegation supported a right of modification for performers. Using digital technology, it was possible for example to recreate a whole performance utilizing the performer's characteristics on the basis of a single image. It was not certain that the right of reproduction applied to such exploitation of performances because reproduction implied that a significant part of the performance was reproduced. He therefore considered it opportune to give performers a right of modification, to define the concept of modification, and to prevent this right from affecting elements within the public domain.

231. Mr. SØNNELAND (Norway) expressed support for the recognition of a right of modification, and favored Alternative B of Articles 8 and 15.

232. Mr. CRESWELL (Australia) expressed hesitation concerning the right of modification, particularly in the light of the words in Article 14 "in any manner or form" in respect of the right of reproduction. He expressed concern regarding the possible implications for the principle of substantiality in determining whether there had been room for the exercise of the reproduction right; there would be difficulties, if use of a sound recording which was insubstantial, and, therefore, not covered by the reproduction right, was nevertheless covered by the proposed modification right. He said that the principle of substantiality might also apply to this new right, but it seemed also open to the argument that the reproduction right was so comprehensive that the only application left for the modification right was to alterations of insubstantial amounts of sound recordings.

233. Mr. OLSSON (Sweden) supported the right of modification, because his Delegation was not convinced that the right of reproduction, or moral rights of performers, would cover modifications in a context of digital use. He asked for clarification concerning the relationship between modifications and adaptations, arrangements, compression techniques and so on.

234. Mr. VÁZQUEZ (Spain) was in favor of recognition of an exclusive right of modification to performers, expressing a preference for Alternative B. He considered that the word “musical” in Alternative A should be deleted. He joined other Delegations in requesting a clearer definition of the word “modification.”

235. Mr. KUSHAN (United States of America) stated that his Delegation could accept deletion of the proposed right of modification provided it were clearly understood that an active sampling or modifying of a portion of a sound recording would constitute an act that fell within the scope of the reproduction right.

236. Mr. ABBASI (Pakistan) expressed support for the statement of the Delegation of Singapore, that is, that there was inadequate justification for the establishment of a new right of modification. He expressed his Delegation’s view that no modification could take place without a corresponding fixation, thus the right of reproduction inevitably extended to all modifications of performances and sound recordings.

237. The CHAIRMAN stated that there were two positions, namely, support and opposition, for the proposed right of modification. Among the supporters, there was sentiment for a need for clarification as to the definition of modification.

238. Mr. HENNESSY (Ireland) stated that the proposed right of modification could not be separated from the right of reproduction, and thus favored further study of the proposed right.

239. Mr. AUER (Austria) opposed the proposals concerning the right of modification for the reasons stated by the Delegations of the United Kingdom and Germany, and because, in the view of his Delegation, the proposed right would not extend to unfixed performances, which were dealt with in Article 6.

240. Mr. GYERTYÁNFY (Hungary) expressed opposition to the recognition of a right of modification, since the acts involved were connected to the right of reproduction, and because the possible implications for such phenomena as parody were not at all clear.

241. Mr. OKAMOTO (Japan) expressed opposition to the proposed right.

242. Mr. HONGTHONG (Thailand) expressed the opposition of his Delegation to the proposed right of modification.

243. Mrs. PARVU (Romania) spoke in favor of giving performers a right of modification, as provided in Alternative B of Article 8 of Draft Treaty No. 2. She shared the views expressed by the Delegations of France and Belgium in this respect.

244. Miss DALEIDEN (Luxembourg) supported the inclusion of a right of modification for performers and was in favor of Alternative B in Article 8 of Draft Treaty No. 2.

245. The CHAIRMAN adjourned the meeting.

*Fourth Meeting*  
*Monday, December 9, 1996*  
*Afternoon*

*Work program*

246. The CHAIRMAN suggested a modification to the work program. He proposed to begin discussion of a “package” of provisions common to Draft Treaty No. 1 and Draft Treaty No. 2, namely, the right of reproduction, the right of communication, the right of making available to the public, and the notion and place of publication. He hoped that discussion on those items could take place during the afternoon and evening sessions, so that treaty language for those items could be prepared.

*Article 7 (Scope of the Right of Reproduction) of Draft Treaty No. 1; Articles 7 (Right of Reproduction) and 11 (Right of Reproduction) of the WPPT (Articles 7 and 14 of Draft Treaty No. 2)*

247. Seeing no objection, the CHAIRMAN introduced the discussion concerning the right of reproduction in the two treaties: *Article 7 (Scope of the Right of Reproduction)* of Draft Treaty No. 1 and *Articles 7 and 14 (Right of Reproduction)* of Draft Treaty No. 2. In Article 7 of Draft Treaty No. 1, and in the corresponding Articles of Draft Treaty No. 2, it was proposed that the Contracting Parties agree that the right of reproduction included direct and indirect reproduction, whether permanent or temporary and in any manner or form. He pointed out that the expression “in any manner or form” included the storage of a work in any electronic medium, as well as such acts as uploading and downloading a work to or from the memory of a computer. He said that digitalization, that is, the transfer of a work embodied in an analog medium to a digital one, always constituted an act of reproduction.

248. He pointed out that the first element in Draft Treaty No. 1 was the explicit inclusion of direct and indirect reproduction, including the element of distance, that is, that the distance between the original and the copy in respect of an act of reproduction was irrelevant. He said that the second element in the proposal was intended to clarify the widely held understanding that both permanent and temporary reproduction constituted reproduction within the meaning of Article 9(1) of the Berne Convention. He stated that the objective of the proposal to include provisions on the right of reproduction in the draft treaties was to ensure that the right would be interpreted fairly and in reasonable uniformity in all important aspects, as dictated by the need for legal certainty and predictability in the application of laws.

249. The Chairman continued to explain that the second paragraphs of the Articles concerning the right of reproduction contained certain permissible exceptions or limitations to the right of reproduction, the purpose of which was to make it possible to exclude from the scope of the right of reproduction acts of reproduction which were not relevant in economic terms, that is, cases of reproduction that had no independent function as an exploitation of the work. He emphasized that Article 7(2) of Draft Treaty No. 1 and the corresponding Articles of Draft Treaty No. 2 were not intended to limit in any sense the application of the general



provisions on limitations and exceptions found in Article 12 of Draft Treaty No. 1, the corresponding Articles of Draft Treaty No. 2, and Article 9(2) of the Berne Convention. He said that Article 7(2) of Draft Treaty No. 1 and the corresponding provisions of Draft Treaty No. 2 had been drafted as a guideline for national legislators, which meant that all existing exceptions and limitations in national copyright laws which were based on Article 9(2) of the Berne Convention might continue to exist. This was also true in respect of systems based on the concept of "fair use" or "fair dealing" and of systems based on sectorial limitations of rights.

250. He stated that he might make further declarations on the interpretation and contents of the proposed Articles, if necessary, following the discussions.

251. Mr. CHEW (Singapore) stated that his Delegation did not oppose Article 7(1), including its extension of the right of reproduction to include temporary reproduction subject to appropriate limitations. He stressed that, for certain legitimate activities, fair use should be allowed, including browsing the Internet, and activities of a facilitative nature which had no economic value apart from facilitating transmission of a work. He stated that, for that purpose, his Delegation had submitted a proposal amending Article 7(2) so that to make such activities lawful (document CRNR/DC/12, page 2). In his view, the present Article 7(2) did not make clear that such activities were allowed. He added that no new right should unduly interfere with the existing rights of fair use and other legitimate activities.

252. The CHAIRMAN said that there was no need to discuss fair use or any other existing limitation on rights based on Article 9(2) of the Berne Convention, because the proposal in Article 7(2) did not exclude any such limitations.

253. Mr. REINBOTHE (European Communities) pointed out that paragraph (1) of Article 7 was a clarification only, and said that this fact might be better reflected by modifying the last part of paragraph (1) to read, instead of "shall include direct and indirect reproduction," rather, "includes direct and indirect reproduction." That change, and corresponding changes in the related provisions of Draft Treaty No. 2, would make clear that the right of reproduction did not prevent activities without any economic significance. He stated that appropriate exceptions and limitations would remain possible, and that the framework, structure and scope of Article 9 of the Berne Convention was to be maintained and respected. He said that his Delegation had no final views on Article 7(2), but that it took the view that clarity was needed on that paragraph with respect to its nature, scope and added value.

254. Mr. ABBASI (Pakistan) withdrew his previous statement, following clarification that existing fair use provisions under Article 9(2) of the Berne Convention would not be brought into question by the proposed right of reproduction.

255. The CHAIRMAN repeated that there was no intention to preclude existing limitations in national laws based on Article 9(2) of the Berne Convention.

256. Mr. NØRUP-NIELSEN (Denmark) congratulated the Chairman on his election, and stated that his Delegation supported the proposed Article 7(1), which was in line with the domestic law of his country and with the directives of the European Community.

257. He expressed, however, doubts concerning Article 7(2). He saw no reason why the transient and incidental acts mentioned in that provision should be made dependent on the application of exceptions. He proposed deletion of paragraph (2) of Article 7 and an addition to Article 7(1) stating that temporary reproduction made for the sole purpose of making a work perceptible, or reproduction of a purely transient or incidental character, as part of a technical process, did not constitute reproduction within the meaning of Article 9(1) of the Berne Convention. He stated that that change could be made to the existing text of Article 7(1) or as an agreed statement of the Conference. He said that protection should be strengthened in the new digital situation, but at the same time it should not go too far.

258. Mrs. BOUVET (Canada) said that her Delegation could not accept Article 7 of Draft Treaty No. 1. As currently worded, this provision did not give the necessary flexibility to national legislative authorities and the courts to determine the scope of the right of reproduction in the age of digital technology. In view of the importance and effects of this right for creators, intermediaries and users, she believed that it would be premature to include such a provision in another treaty, particularly since the Berne Convention provided the necessary flexibility to cover the reproduction of works in any manner or form. Regarding Draft Treaty No. 2, she wished to see the wording of the provisions on the rights of producers of phonograms and performers correspond to the wording used in Articles 10 and 11 respectively of the Rome Convention.

259. Mr. BOUWES (Netherlands) expressed support for the clarification to the right of reproduction offered by Article 7(1), which left intact the right of reproduction in Article 9(1) of the Berne Convention, covering only reproductions with economic significance, whether temporary or not. The reproduction right should not extend beyond its natural borders, and a balance should be sought between all interests involved.

260. Mr. KUSHAN (United States of America) said that the Chairman's explanation concerning Article 7 had confirmed that the treaties as presently drafted were structured in a manner which authorized exemptions permitting certain temporary reproductions made while browsing the Internet and transmitting copyrighted works from point to point. He stated that his Delegation believed it appropriate to allow Contracting Parties to exempt from the reproduction right temporary copies made in the normal course of operation of devices, such as CD players, computers and equipment used to communicate information and other material in the course of an authorized use. He noted that domestic law of his country incorporated a similar concept in the context of computer programs copied as an essential step in the use of the program in a computer.

261. Turning to the specific language of the Article, he expressed support for paragraph (1) of Article 7 as drafted, stating that it was a useful clarification of the scope of the reproduction right under Article 9(1) of the Berne Convention. With regard to paragraph (2) of Article 7, his Delegation supported clarifications to the text to resolve some ambiguities pointed out by other Delegations. One ambiguity was the meaning of the word "transient," and he said that it might be preferable to make the entire paragraph relate to exceptions for "temporary" reproductions. He also questioned the meaning of the words "incidental nature," and sought clarification that the reference was intended to refer to the steps that occurred automatically when a work was made available to the public through a digital network.

262. With respect to the proposal from the Delegation of Singapore, he said that his Delegation appreciated the intent of the proposal, but he did not believe that the proposed text would help, and he expressed a preference for the text of the Basic Proposal.

263. Mr. OLSSON (Sweden) expressed support for Article 7(1) of Draft Treaty No. 1 and the corresponding provisions of Draft Treaty No. 2, but said that his Delegation had difficulties with Article 7(2) which would require recognition that a reproduction took place in the cases mentioned therein. He gave three reasons, first, that the acts mentioned there had no economic significance; second, that those acts were not really reproductions, and, third, that there were sensitive political considerations related to future acceptance of the Treaties. Consequently, his Delegation preferred to delete Article 7(2).

264. Mr. KIM (Republic of Korea) commented on Article 7(2) of Draft Treaty No. 1 and the corresponding provisions of Draft Treaty No. 2 by stating that, unless the normal exploitation of works and all the legitimate interests of the authors were affected or prejudiced, rightholders would not insist on the exclusive right of reproduction as far as economic rights were concerned. He called attention to paragraph 7.07 of the Chairman's notes, which stated that the purpose of Article 7(2) was to make it possible to exclude from the scope of the right of reproduction such acts of reproduction that were not relevant in economic terms. From that note, he said, it was evident that there was every reason to confine the exclusive right of reproduction to situations involving economic importance. He understood that the act of browsing or providing telecommunications facilities had economic value in a number of cases; however, no distinction could realistically be made between one having economic significance and another having none. He said that rightholders could identify economic damage only after the act had taken place, and that, in those circumstances, his Delegation did not believe that the act of browsing or providing telecommunications facilities should be covered by the exclusive right of the reproduction with no exceptions.

265. Mr. STARTUP (United Kingdom) supported the position of the Delegation of the European Communities on Article 7(1), clarifying that temporary reproductions were covered by the right of reproduction in Article 9(1) of the Berne Convention, a position which was reflected in the domestic law of his country. He added that the right should not have the effect of inhibiting activities incidental to otherwise authorized uses of works, and which were in themselves of no economic significance. He said that the three-step test in Article 12(1) seemed relevant for that purpose, and that, while some clarification was needed, Article 7(2) appeared to do no more than elaborate how the test could be applied in this particular area; it did not limit the application of the test in Article 12(1).

266. Mr. RAGONESI (Italy) supported Article 7 of Draft Treaty No. 2 and adopted the same position as the Delegation of the European Communities with regard to paragraph (1) of this Article.

267. Mr. VISSER (South Africa) stated that Article 7(1) of Draft Treaty No. 1 was declarative of the domestic law of his country, but that his Delegation had difficulties with Article 7(2), which seemed to create many practical problems. He said that the nature of the Internet was such that transactions often took place across national borders. If one country had enacted the limitation in Article 7(2) and another had not, the problem of conflict of laws would arise. He proposed that the limitations covered by Article 7(2) should not be optional

but rather mandatory. For that reason, he expressed interest in the proposal put forward by the Delegation of Singapore.

268. Mrs. DE MONTLUC (France) said that her Delegation shared the views expressed by the Delegation of the European Communities regarding paragraph (1) of Article 7 of Draft Treaty No. 1. She emphasized that her remarks applied *mutatis mutandis* to Draft Treaty No. 2. She added that it would nevertheless be useful to clarify that reproduction could be effected in any manner or form, whether permanently or temporarily. Regarding paragraph (2) of Article 7, she believed that it was perfectly apt because it gave the national legislative authorities sufficient flexibility to deal with situations in which temporary reproduction effected in the course of identical utilization could be subject to a regime of exceptions, or situations in which the sole purpose of temporary reproduction was to allow communication to the public of works or objects that were protected by copyright or neighboring rights respectively.

269. Mr. CRESWELL (Australia) said that much ink and paper had been outlaid on the question whether Article 7(1) clarified Article 9(1) of the Berne Convention or enlarged it. While note 7.06 said that the two limbs of Article 7 were within a fair interpretation of Article 9 of the Berne Convention, he said that in note 7.14 it was stated that "today the countries of the Berne Union may interpret the right of reproduction in different ways."

270. He said that there was no necessary inconsistency in the statements in the notes, just that Article 7 might constitute an enlargement or extension of Article 9(1) in the eyes of some countries, but not of some others. He said that the question was whether it was desirable to mark out the territory covered by Article 9(1) of the Berne Convention with greater precision than its existing terms. He saw two elements in Article 7(1) which were not expressly contained in Article 9(1) of the Berne Convention, namely, that the reproduction right applied alike to direct and to indirect copying and to copies regardless of whether they were permanent or temporary. Bearing in mind the discussion of Articles 4 and 5, the use in the draft of "shall" in front of "include" suggested that the Chairman took the view that the Article expanded the existing reproduction right. If, at least, some Member States of the Berne Union took that view, it would leave little alternative but to treat it as such. While the first element did not raise problems for his Delegation, it felt that the articulation of the exceptions to the right of reproduction needed more attention. The proposed wording of Article 7(2) would give neither right owners nor users the necessary reassurance. Recalling that limitations on the right of reproduction should not be more extensive than Article 9(2) of the Berne Convention, his Delegation proposed that Article 7(2) of Draft Treaty No. 1 should expand on the existing right of reproduction by qualifying, in whatever way seemed fit, any new right or expansion of an existing right, conferred by Article 7(1).

271. Mr. FICSOR (Assistant Director General of WIPO) pointed out that, if a provision used present tense—such as "is" or "are"—instead of "shall" language—such as "shall be"—it indicated more clearly that what was involved was the declaration of an already existing legal situation. He added that, however, the use of "shall" language did not necessarily mean that the contrary was the case, that is, that the legal situation reflected by the provision did not exist yet and that it was just introduced by the provision. The "shall" language is simply the generally applied language of legal provisions, irrespective of whether they are constitutive, declarative or interpretative.

272. He said that Article 9(1) of the Berne Convention was the best example for what he had referred to. It had only been included into the text of the Berne Convention at the 1967 Stockholm revision conference. It was absolutely clear for all the Member States of the Berne Union that the obligation included in it—to grant an exclusive right of authorization for reproduction—was not a new one, and was not to be introduced by Article 9(1), it had always existed since the adoption of the Convention in 1886. Article 9(1) only stated explicitly what had already been included in the Convention implicitly but beyond any doubt; and still “shall” language was used in it.

273. He stressed that Article 7(1) of Draft Treaty No. 1 was similar, in its nature, to Article 9(1) of the Berne Convention. It simply clarified, in certain respects, what had already been provided for in Article 9(1) of the Berne Convention in general, namely, that reproduction “in any manner or form” was covered by the right of reproduction; it clarified that, within the full coverage of that right indicated by the expression “in any manner or form,” also both direct and indirect reproductions and both permanent and temporary reproductions were covered. Article 7(2) as included in the Basic Proposal was also nothing more than the identification of some special cases of exceptions, which could actually already be applied under the general provisions of Article 9(2) of the Berne Convention. Providing for such specific exceptions seemed appropriate; on the contrary, any provision which would provide that certain reproductions were not recognized as reproductions would be in obvious conflict with Article 9(1) of the Berne Convention.

274. Mr. SØNNELAND (Norway) stated that Article 9(1) of the Berne Convention included both permanent and temporary reproduction, and that his Delegation supported Article 7(1) of Draft Treaty No. 1 and Article 14(1) of Draft Treaty No. 2, with the modification proposed by the Delegation of the European Communities. He proposed deletion of Articles 7(2) and 14(2) to be replaced with a text making clear that temporary reproduction made for the sole purpose of making a work perceptible, or of a purely transient or incidental character as a part of a technical process, did not as such constitute a reproduction within the meaning of Article 9(1) of the Berne Convention.

275. Mr. SHEN (China) stated that the coverage of Article 7 should be studied further, particularly whether it covered temporary or transient reproduction.

276. Mr. HENNEBERG (Croatia) considered that Article 7 of Draft Treaty No. 1 constituted an interpretation of Article 9 of the Berne Convention. He proposed that the word “exclusive” be added to qualify the right of reproduction.

277. Mr. EKPO (Nigeria) supported Article 7(1), but stated that the proposal of the Delegation of Singapore concerning Article 7(2) should be the basis for a solution.

278. Mr. SILVA SOARES (Brazil) supported Article 7(1), but stated that Article 7(2) should be studied further.

279. Mr. DEBRULLE (Belgium) said that his Delegation supported paragraph (1) of Article 7 of Draft Treaty No. 1 and the corresponding provisions in Draft Treaty No. 2, which were consistent with Belgian legislation. He supported the proposal made by the Delegation of the European Communities concerning technical amendment of these provisions.

280. Regarding paragraph (2) of Article 7 of Draft Treaty No. 1, in his view the criterion “that such reproduction takes place in the course of use of the work that is authorized by the author or permitted by law,” combined with the idea of economic prejudice, made it possible to differentiate reproduction that had an economic impact on the normal exploitation of works and reproduction of an exclusively technical nature. Subject to certain amendments, he supported this paragraph and the corresponding paragraph in Draft Treaty No. 2.

281. Mr. GOVONI (Switzerland) underscored the importance of clarifying the scope of the right of reproduction in the Berne Convention, as in Article 7(1) of Draft Treaty No. 1, and of specifying that this right also covered direct and indirect reproduction and its temporary nature. He added that he shared the concerns expressed by the Delegations of Denmark, Sweden and Norway. He found it difficult to see how a temporary reproduction that made a work perceptible could not have economic value. He supported the deletion of Article 7(2) proposed in Draft Treaty No. 1.

282. The CHAIRMAN stated that deletion of Article 7(2) would not affect the existing legal situation under Article 9(2) of the Berne Convention, and that everything in Article 7(2) of Draft Treaty No. 1 was considered to be covered by Article 12 of the same Draft Treaty.

283. Mr. AYYAR (India) stated that Article 7(2) could not be deleted unless Article 7(1) were also deleted, because, once Article 9(1) of the Berne Convention were clarified through Article 7(1), it would also be necessary to clarify the scope of limitations under Article 7(2). He added that national legislators should have flexibility to craft limitations and exceptions to rights once the marketplace effects of digital technologies emerged.

284. Mr. KANDIL (Morocco) said that his Delegation supported Article 7 as it appeared in Draft Treaty No. 1. Nevertheless, he had certain doubts concerning paragraph 2 of the Article, which left national legislative authorities free to fix the limits, particularly since it concerned digital networks which ignored frontiers. As the Delegation of South Africa had emphasized, this might lead to a conflict of laws. He also considered that the “transient or incidental nature” did not constitute sufficient justification for impairing the right of authors to authorize the reproduction of their works.

285. Mr. OKAMOTO (Japan) said that the matters covered in Article 7 should be left to national legislation.

286. Mr. WIERZBICKI (New Zealand) expressed support for the statement of the Delegation of South Africa concerning the transnational nature of digital technology and the doubt whether Article 7(2) adequately took that into account.

287. Mr. ZAPATA LÓPEZ (Colombia) was in favor of the exclusive right of reproduction provided in the two draft Treaties and expressed particular support for paragraph (2) of Article 7.

288. Miss DALEIDEN (Luxembourg) said that her Delegation supported the position adopted by the Delegation of the European Communities regarding Article 7(1) of Draft Treaty No. 1. As far as paragraph (2) of the Article was concerned, she shared the views expressed by the Delegation of Belgium, namely that the national legislative authorities should be given a degree of flexibility and that there should be a balance among the various

interests involved. She agreed with the inclusion of certain amendments in the text for the sole purpose of making it clearer.

289. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) shared the views expressed by the Delegations of South Africa, Brazil and Mexico that the limits laid down in Article 7(2) should not be left to domestic legislation but should be clearly specified in the Treaty. This would be the only way of ensuring genuine harmonization and avoiding disparate interpretations of the right of reproduction, which was of fundamental importance in the Treaties under consideration. She disagreed with the proposal to delete paragraph (2) of Article 7, because this would lead to an excessively broad interpretation of the right of reproduction and would destroy the balance with other Articles such as Article 3 on publication and Article 10 on the right of communication.

290. The CHAIRMAN stated that he had not suggested deletion of Article 7(2).

291. Mr. YAMBAO (Philippines) supported the right of reproduction as proposed, and sought clarification on the relationship between the rights of reproduction and modification.

292. Mr. TEYSERA ROUCO (Uruguay) was in favor of the provisions on the scope of the right of reproduction in the two draft Treaties, although he had certain reservations concerning paragraph (2) of Article 7 because, pursuant to Article 20 of the Berne Convention, it was a question of broadening or interpreting the scope of the right of reproduction granted in Article 9(1) of the Convention.

293. Mr. OPHIR (Israel) supported Article 7(1), and stated that an amended Article 7(2) should be moved to Article 12.

294. Mr. PROAÑO MAYA (Ecuador) said that he supported Article 7 of Draft Treaty No. 1, but wished to see the wording of paragraph (2) on temporary reproduction clarified because the current wording was ambiguous.

295. Mr. HONGTHONG (Thailand) stated that Article 7 in its current form was not acceptable.

296. Mr. MTETEWAUNGA (Tanzania) stated that the right of reproduction was of paramount importance, and should not be left to national legislation.

297. The CHAIRMAN noted that Article 7(1) of Draft Treaty No. 1 and 14(1) of Draft Treaty No. 2 were endorsed by an overwhelming majority of Delegations, but there had been some references to need for drafting improvement. Concerning paragraph (2) of Article 7 and the corresponding provisions of Draft Treaty No. 2, it seemed that there were two main groups of opinions: first, that the language in paragraph (2) should be improved, particularly that, in cases which clearly were without any economic significance for the right holder's interests, there should be flexibility not to apply the principle of paragraph (1); second, there was also a suggestion that paragraph (2) should be made mandatory so that it would be an obligation for Contracting Parties to introduce legislation according to which certain operations were not relevant, or were outside the scope of application of the provisions on the right of reproduction. There was still another position, according to which the entire paragraph (2) and the corresponding paragraphs of Draft Treaty No. 2 could be deleted. In that case, there

should be an agreed statement on the functioning of the right of reproduction in certain cases, indicating that certain acts were not relevant for the application of the right of reproduction.

298. Since it seemed that the objectives of the Delegations were identical or very similar to each other, he proposed that informal consultations take place to resolve the differences in approach, and that the Committee return to the right of reproduction when written proposals had been submitted.

*Article 8 (Right of Communication to the Public) of the WCT (Article 10 of Draft Treaty No. 1); Articles 10 (Right of Making Available of Fixed Performances) and 14 (Right of Making Available of Phonograms) of the WPPT (Articles 11 and 18 of Draft Treaty No. 2)*

299. The CHAIRMAN opened the floor for discussions on *Article 10 (Right of Communication) of Draft Treaty No. 1 and Articles 11 (Right of Making Available of Fixed Performances) and 18 (Right of Making Available of Phonograms) of Draft Treaty No. 2*. He pointed out that the first part of Article 10 extended the right of communication to the public to those categories of works that presently were outside the scope of the right of communication in the Berne Convention, and that the second part of that Article covered the making available of works by providing access to them in interactive systems. He emphasized that that might as well fall within a possible interpretation of the present provisions on the right of communication to the public in the Berne Convention, and that the purpose of the proposed provision was to remove any uncertainty in that respect. Several comments, made at the Diplomatic Conference and in other fora, indicated that that was probably one of the most important Articles in the Treaties, because it governed situations which were every day phenomena in the world of communication networks. The relevant act in relation to the second half of the Article was the act of making available, that is, the decision to make a given work available, not the mere provision of server space, communication connections or facilities for the carriage and routing of signals. It was also irrelevant whether copies were made available to the user or whether the protected subject matter would simply be made perceptible to the users. As regards the provisions in Articles 11 and 18 of Draft Treaty No. 2, he pointed out that they covered only the right of communication in interactive networks, and that the right of communication to the public was broader in Draft Treaty No. 1, in which respect he referred to the analysis in the Notes of the Basic Proposals.

300. Mr. OKAMOTO (Japan) supported Article 10 of Draft Treaty No. 1 and Articles 11 and 18 of Draft Treaty No. 2 which was, in the view of his Delegation, the most important set of proposals in all three treaties, in respect of the digital age.

301. Mr. KUSHAN (United States of America) expressed support for Article 10 of Draft Treaty No. 1 and Articles 11 and 18 of Draft Treaty No. 2, concerning the rights of communication to the public and making available to the public, which were key to the ability of owners of rights to protect themselves in the digital environment. He stressed the understanding—which had never been questioned during the preparatory work and would certainly not be questioned by any Delegation participating in the Diplomatic Conference—that those rights might be implemented in national legislation through application of any particular exclusive right, also other than the right of communication to the public or the right of making available to the public, or combination of exclusive rights, as long as the acts described in those Articles were covered by such rights.



302. As to Articles 11 and 18 of Draft Treaty No. 2, he said that his Delegation strongly supported the granting of exclusive rights to performers and producers, but stated that the exclusive rights should be tailored carefully to address particular problems of digital communications that threatened existing markets for exploitation of sound recordings. That would include not only on-demand services but also subscription services structured so as to interfere with a normal exploitation, as dealt with in recently enacted legislation in his country concerning performing rights. He stated that record companies should be able to prevent transmissions that had the same effect as distribution of copies of sound recordings by virtue of their content and scope. He, therefore, suggested that the right be modified to some extent while giving Contracting Parties flexibility in defining its scope. He added that his comments on that point also applied to the provisions of Draft Treaty No. 2 concerning broadcasting, and that his Delegation would make specific proposals when those provisions were discussed. Finally, he expressed support for Alternative A in Article 11, which confined that Article to musical performances fixed in phonograms.

303. Mr. GYERTYÁNFY (Hungary) expressed support for both parts of Article 10, namely the extension of the coverage of the right of communication to all categories of works, as well as the interpretation of that notion to include providing access to works from different places and at different times. He stated that, because of the immense number of parallel communications, “the public” had to be widely interpreted. Thus, he proposed that the words “members of” should be included before the words “the public.”

304. He also supported Articles 11 and 18 of Draft Treaty No. 2. He referred to the explanation of the second part of Article 10 of Draft Treaty No. 1, according to which the provision did not cover broadcasting, but only situations where the element of the individual choice was decisive. He said that that interpretation should also apply to Articles 11 and 18 of Draft Treaty No. 2. In that Treaty, the different uses should be limited clearly, namely the cases under Articles 11 and 18 and the cases under Articles 12 and 19. He stated that pay-TV and pay-radio programs did not entail individual choice of a work or a performance, and therefore should not be included in the scope of the right of making available to the public.

305. Mr. KIM (Republic of Korea) expressed support for Article 10 of Draft Treaty No. 1 and Articles 11 and 18 of Draft Treaty No. 2, but stressed that what counted was the initial act of the making available of a work, not the mere provision of server space, communication connections or facilities for the carriage and routing of signals.

306. Mr. CRESWELL (Australia) expressed support for the proposals under discussion, the main field of application of which was the transmission of text and images. He noted that, whether intentionally or fortuitously, the new right could also resolve any doubt that broadcasting to the public by satellite was subject to copyright control. In that regard, he noted that the definition of broadcasting in Article 2(g) of Draft Treaty No. 2 expressly affirmed that satellite broadcasting was covered, and he recalled that the question of the application of Article 11*bis* of the Berne Convention to satellite broadcasting had been on the agenda of the Committee of Experts.

307. He referred to minor technical changes to the references in Article 10 of Draft Treaty No. 1 that his Delegation had already raised in earlier consultations. He also proposed deletion of the words “the rights provided for in” immediately preceding the references to

Articles of the Berne Convention, to ensure that the possibility of statutory licenses for retransmission of broadcasts was not prejudiced by the new right. He noted that Article 10 proposed a right in respect of two disparate activities, i.e., making a work available and communicating it, and his Delegation supported extension of copyright control in both cases, and was inclined to think that the separation of the treatment of the two activities, as was done in the existing neighboring rights treaties, might facilitate the understanding and assessment of the obligations proposed. Thus, he suggested relocating the words after “including” to a separate paragraph and, perhaps, rewording the title of the Article to include a reference to “making available.” His Delegation would also propose insertion into Article 10 of the words “by wire or wireless means” after the words “communication to the public,” in order to negate any possibility that the Article might introduce a display right. He noted that such a right had been considered early in the discussions leading to the Conference and had been rejected for lack of support. He stated that Article 12 of Draft Treaty No. 1 on exceptions and limitations had a bearing on Article 10, and that his Delegation reserved its position on exceptions to Article 10 pending discussion of Article 12.

308. Mr. CHEW (Singapore) expressed concern that the creation of an expanded communication right conferring a digital transmission right would create uncertainty for both copyright owners and users. It was, he said, not entirely clear whether the activities were strictly limited to interactive on-demand type of access to works through computer networks, and that certain non-interactive activities, including broadcasting and cable transmission, were excluded. He said that his Delegation was especially concerned that a broad right of communication would, as in the case of Article 7 on the right of reproduction, expose innocent carriers of information over such networks to liability for the transmission of such information. To accommodate the needs of such on-line and other service providers, he noted that his Delegation had proposed an amendment to Article 10 to include a new paragraph, which read “the mere provision of facilities for enabling or making any such communication shall not constitute an infringement.” Finally, he stated that it was not clear how Article 10 related to the other Articles, such as Articles 3, 7 and 8 of Draft Treaty No. 1, which seemed to deal with similar activities, and, thus, there appeared to be an overlap of such rights.

309. Mr. REINBOTHE (European Communities) stated that Article 10 of Draft Treaty No. 1 and Articles 11 and 18 of Draft Treaty No. 2 were cornerstones of the so-called “digital agenda.” He noted that Article 10 was based on the present structure of the Berne Convention, and that there was a clear distinction in Article 10 between the traditional right of communication to the public and the interactive parts of the right, in the second part of that Article. He pointed out that the right of making available only covered truly interactive services, but the Notes in 11.06 and 11.08 concerning Draft Treaty No. 2 seemed to suggest something different, that is, that near-to-interactive services were also covered by the right of making available. He stated that his Delegation believed that near-to-interactive services were not covered by the right of making available, because services provided on a subscription basis were not nearer to being interactive only because of the subscription aspect. Finally, he stated that the three Articles should be brought closer into line, and therefore he suggested to add the words “to the public” after the words “making available” in Articles 11 and 18 of Draft Treaty No. 2, because Article 10 of Draft Treaty No. 1 correctly used the expression “making available to the public.”

310. Miss MESSAOUI (Albania) supported Article 10 of Draft Treaty No. 1 as it usefully complemented the right of communication provided in Article 11 and other Articles of the

Berne Convention, extending it to all categories of works and specifically taking into account on-demand transmission. She considered that on-line transmission of a work, including on-demand transmission, came under the right of communication to the public, combined with the right of reproduction, when a work was reproduced in the original database and a copy was made by the recipient. She drew attention to the fact that the habitual distinction between public and private communication became blurred because of the vast number of on-line communications between two persons, therefore, it was necessary to define clearly the area of transmission which would not be subject to this right because it was not of a public nature.

311. Turning to Article 11 of Draft Treaty No. 2, she spoke in favor of giving performers an exclusive right to authorize the making available of their performances fixed by wire or wireless means in the context of on-demand broadcasting. She also supported the granting of such a right to producers of phonograms. She added that this right should be strictly limited to on-demand broadcasting; she excluded other types of broadcasting, including multi-channel services for which a broadcaster determined the composition of the programs broadcast. She indicated that, in this case, the service did not allow persons to choose a particular work but broadcast to them services that were as varied as possible.

312. Mrs. YOUM DIABE SIBY (Senegal) was in favor of Article 10 of Draft Treaty No. 1, which she believed was essential in order to complete existing provisions on the right of communication, and to cover new forms of communication such as on-line or on-demand broadcasting. She also said that her Delegation preferred Alternative B in Article 11, and Article 18 in Draft Treaty No. 2.

313. Mr. SØNNELAND (Norway) supported Article 10 of Draft Treaty No. 1. In respect of Articles 11 and 18 of Draft Treaty No. 2, he supported the exclusive rights of permitting truly interactive on-demand services for producers of phonograms and performers, and supported Alternative B of Article 11. He added, however, that, for cultural policy reasons, his Delegation reserved its position concerning the scope of exclusive rights in Draft Treaty No. 2. In cases where phonograms were included in radio and television productions, later offered on-demand by public broadcasters, and where the use of phonograms played a minor role, his Delegation preferred to see exceptions to the exclusive right providing for payment of an equitable remuneration.

314. Mr. YAMBAO (Philippines) supported the recognition of a general right of communication. He also supported the statement of the Delegation of Singapore with respect to interactive service providers. He noted that, subject to possible modification of treaty language and taking into account some specific requirements under national law of its country, his Delegation generally supported Article 10 of Draft Treaty No. 1, as well as Article 11, Alternative B, and Article 18 of Draft Treaty No. 2.

315. Mr. SHEN (China) supported the recognition of a general right of communication to the public, subject to limitations in national law.

316. Mr. PALENFO (Burkina Faso) said that his Delegation supported the principle of giving authors an exclusive right of communication of their works to the public, irrespective of the category and, especially, for on-demand transmission. He agreed with the wording of Article 18 as it appeared in Draft Treaty No. 2 and preferred Alternative B in Article 11 of the text.

317. Mrs. RETONDO (Argentina) drew attention to the determining element in the right of communication provided in Article 10 of Draft Treaty No. 1, namely the making available of the work, which was not clear from the current wording of this Article. She therefore proposed that the text should be amended to give authors "the exclusive right of authorizing the making available of their work for communication to the public by wire or wireless means."

318. Mr. PROAÑO MAYA (Ecuador) considered that the right of communication, together with the right of reproduction, were the two most important provisions in the Treaty so their scope should be embodied in an international agreement and not left to the discretion of national legislation.

319. Mr. TOUIL (Tunisia) was in favor of Article 10 of Draft Treaty No. 1, as well as Alternative B in Article 11 of Draft Treaty No. 2. With regard to the wording of Articles 11 and 18 of Draft Treaty No. 2, he expressed the hope that the amendment proposed by the Delegation of the European Communities would be taken into account.

320. Mr. ANTEQUERA PARILLI (Venezuela) indicated that there was an Andean decision that was binding on countries of the Cartagena Agreement. It provided an exclusive right of public communication covering any form of communication to the public using any means or procedure known or to be known, which was fully consistent with the proposal in Article 10 of Draft Treaty No. 1. Articles 11 and 18 of Draft Treaty No. 2 granted an exclusive right restricted to cases in which the performance or phonogram was made available by request or on demand, making other cases subject to the principle of the right to remuneration.

321. The CHAIRMAN stated that it seemed that the right of communication in Draft Treaty No. 1 and the right of making available in Draft Treaty No. 2 had gained broad support, subject to certain drafting proposals. It seemed that there was a general opinion that the notion of public should be widely interpreted.

322. He noted that there had been references in several interventions to the right of broadcasting, and that there should be further clarification concerning the distinction between the right of communication and the right of making available of phonograms and fixed performances to the public. He stated that Draft Treaty No. 1 would have no effect on the specific provisions in the Berne Convention concerning broadcasting, and that this should be made clear in the drafting process.

323. As far as Draft Treaty No. 2 was concerned, there would be specific, separate provisions on broadcasting, on the one hand, and on the right of making available to the public, on the other. A clear distinction should be maintained between those acts. He referred to a suggestion that the Article on the right of communication in Draft Treaty No. 1 should be renamed, which should be considered when consultations on the possible contents of the provisions took place.

324. The Chairman then adjourned the meeting.

*Fifth Meeting**Monday, December 9, 1996**Evening**Article 3 (Notion and Place of Publication) of Draft Treaty No. 1; Article 2(e) (Definition of Publication) of the WPPT*

325. The CHAIRMAN introduced the discussion on *Article 3 of Draft Treaty No. 1 (Notion and Place of Publication)*, and on *the definition of "publication" in Article 2(e) of Draft Treaty No. 2*, saying that the intended purpose of Article 3, like the purpose of Article 3(3) of the Berne Convention, was solely to effect the functioning of the international system of protection under the Convention. Article 3 was not intended to govern the general question of applicable law, nor in any way to determine the person responsible for any act that constituted publication. The sole purpose, was, rather, to serve as an element in the structure of clauses and provisions which governed the application of the Berne Convention. The notion of publication, as proposed to be completed in Draft Treaty No. 1, determined criteria of eligibility for protection, and the notion of publication had a function when determining the country of origin under the rules of the Berne Convention; thus, the notion of country of origin had some important technical functions.

326. He stated that the notion of publication in Draft Treaty No. 2 was necessary also to determine the criteria of eligibility for protection. In addition, the notion of publication had a function when the Article on the term of protection was applied, where one of the facts which established the starting moment of the calculation of the term of protection was the act of publishing or publication.

327. Mr. HENNESSY (Ireland) stated that the European Community and its Member States were not convinced of the need for Article 3 of Draft Treaty No. 1 or the definition in Draft Treaty No. 2, and preferred not to expend valuable time on a discussion of those questions.

328. Mr. KUSHAN (United States of America) supported Article 3 as a helpful clarification of the meaning, in the digital context, of the concept of publication as used in the Berne Convention. He said that his Delegation believed it important to make clear that both paragraphs in Article 3 related solely to the question of whether a work had been published for purposes of determining the country of origin of the work. Nothing in the Article would limit the flexibility of Contracting Parties in defining publication for purposes of their own domestic laws. He added that his Delegation also thought that it should be made clear that a work was to be considered to be published only if its copies had been made available with the author's consent, and he proposed stating this explicitly in the text just as it was stated in Article 3(3) of the Berne Convention.

329. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) expressed her concern at Articles 3 and 10 of Draft Treaty No. 1, which did not differentiate between the acts of publication and communication. She could agree with the wording of Article 10 provided that Article 3 on publication included the concept of storage and the word "access" was replaced by "obtain tangible copies of" so as to avoid any confusion with the concept of communication.

330. Mr. CRESWELL (Australia) supported the proposal in Article 3 of Draft Treaty No. 1, in principle, since it seemed to recognize the realities of on-line publication. He added, that, however, given the last sentence of Article 3(3) of the Berne Convention, namely that communication by wire of a work was not to be treated as a publication, Article 3 of the Treaty must make it clearer that it was confined to a process in which copies could be obtained. As an alternative to the proposal of the Delegation of Mexico, he drew attention to the wording of Article 2(e) of Draft Treaty No. 2, which suggested a possibility in that it required copies to be offered to the public, rather than made available. He suggested that that might be a way of reinforcing the idea that not merely copies for viewing, but also copies for obtaining, taking away or downloading, were aimed at. He said that there was no reference, in Article 2(e) of Draft Treaty No. 2, to fixing the place of publication, and asked for a clarification of the reasons for the omission.

331. Mr. GOVONI (Switzerland) said that his Delegation shared the views expressed by the Delegation of Ireland.

332. Mr. GYERTYÁNFY (Hungary) stated that the main problem was the use of the same wording in Article 3 of Draft Treaty No. 1 for a notion of publication, and for the kind of immaterial dissemination treated in Article 10. He said that it was a contradiction to speak about publishing in non-tangible form, which would contradict the second part of Article 3(3) of the Berne Convention. Concerning the proposal of the Delegation of Mexico to include certain references to the necessity of storage and of access to, or the possibility to obtain, copies, he doubted that that would solve the problem of a possible incoherence or contradiction with the present text of the Berne Convention. Concerning the suggestion of the Delegation of Australia to insist on the mentioning of copies in the text as an important part of the formula, the problem was that copies were practically always available in on-line dissemination of works. If, as the Chairman said, the purpose of Article 3 of Draft Treaty No. 1 and Article 2(e) of Draft Treaty No. 2 was only to establish the point of attachment and eligibility criteria, that is, to help establish which was the country of origin in case of works and productions protected by the two treaties, then, he asked, why not to say so explicitly. Accordingly, he expressed support for the proposal made by the Delegation of the United States of America, to restrict the scope of the two paragraphs to the purposes just mentioned.

333. Mr. EKPO (Nigeria) supported the proposal of the Delegation of the United States of America.

334. Mr. OKAMOTO (Japan) said that Article 3 of Draft Treaty No. 1 and Article 2(e) of Draft Treaty No. 2 were acceptable to his Delegation. Since the question of the availability of copies, as an aspect of the definition of publication, was related to the definition of reproduction, he suggested discussing the two definitions together.

335. The CHAIRMAN stated that there was a division of opinion concerning the Articles under consideration, and that there was no need for further discussion until clear options were identified.

*Article 17 (Term of Protection) of the WPPT (Article 21 of Draft Treaty No. 2)*

336. The CHAIRMAN suggested to begin the discussion of *Article 21 of Treaty No. 2 (Term of Protection)*. He stated that it was suggested that the international protection of performers and producers of phonograms should be 50 years, and that publication should be the act from which the term of protection of a phonogram or performance was counted.

337. Mr. KUSHAN (United States of America) supported Alternative A of Article 21, and said that his Delegation would propose a technical amendment to follow more closely the style of the Berne Convention regarding the term of protection of cinematographic works.

338. Mr. YAMBAO (Philippines) stated that his Delegation favored Alternative B of Article 21.

339. Mr. CRESWELL (Australia) supported the 50-year term of protection with one qualification, namely, that, insofar as Article 21 proposed that the commencement of the term of protection of published phonograms be the year of publication, it appeared to exceed the requirements of the TRIPS Agreement. He was of the view that the commencing of the term from the year in which the performance was given, or the phonogram was made, was the appropriate method.

340. Mr. SÉRY (Côte d'Ivoire) said that his Delegation supported Alternative B in Article 21 of Draft Treaty No. 2.

341. Mr. EKPO (Nigeria) supported Alternative B of Article 21 with the modification proposed by the Delegation of Australia.

342. Mrs. RETONDO (Argentina), referring to Article 21 of Draft Treaty No. 2, spoke in support of retaining the text of the proposal, which was a step forward in comparison with existing provisions.

343. Mr. PALENFO (Burkina Faso) was in favor of a term of protection of 15 years, which would be a step forward in comparison with the 20 years provided in the Rome Convention, therefore, he supported Alternative B of Article 21 of Draft Treaty No. 2.

344. Mr. PROAÑO MAYA (Ecuador) expressed support for the text of the proposal on the term of protection, which was consistent with the provision in Decision 351 of the Cartagena Agreement, and spoke in favor of Alternative B.

345. Mr. TRAORE (Mali) said that his Delegation shared the views of the Delegation of Burkina Faso and also preferred Alternative B of Article 21 of Draft Treaty No. 2.

346. Mr. MANYONGA (Zimbabwe) expressed support for Alternative B of Article 21.

347. Mr. MBON MEKOMPOMB (Cameroon) said that his Delegation held the same view as the Delegations of Burkina Faso and Mali.

348. Mr. REINBOTHE (European Communities) stated that the European Community was in favor of Alternative B in Article 21. With respect to the starting date of the term of protection, he suggested adding to the notions contained in the draft Article also the notion of communication to the public, so that another alternative starting point could be possible. In addition, it should be added "whichever of these dates is earlier." Specifically, he suggested to introduce in paragraph (1), after the first word "was," the word "lawfully," to read "was lawfully published," and, after the word "published," to introduce the following words: "or lawfully communicated to the public, whichever is the earlier." The rest of the text of paragraph (1) would stand as it was. He suggested introducing a similar change in paragraph (2) of Article 21; after the third word "was," "lawfully" would be inserted, and, after the next word "published," the words "or lawfully communicated to the public, whichever is the earlier" would be added.

349. Mr. OPHIR (Israel) supported Alternative B of Article 21, as well as the proposal of the Delegation of the European Communities.

350. Mr. SØNNELAND (Norway) supported Alternative B of Article 21 and the proposal of the Delegation of the European Communities.

351. Mr. GOVONI (Switzerland) said that his Delegation preferred Alternative B of Article 21. With regard to the date from which the term of protection of 50 years should be computed, it supported the proposal made by the Delegation of Australia that the date should be that of the fixing of the performance and not of the publication of the performance fixed.

352. Mr. SHEN (China) supported a period of protection of 50 years for performers and producers of phonograms, and expressed support for Alternative B of Article 21. He agreed with the proposal, made by the Delegation of the European Communities, that the protection should be calculated from the authorized publication or the first lawful communication to the public, whichever was the earlier.

353. Mr. UGARTECHE VILLACORTA (Peru) indicated that the law recently adopted in Peru provided for a term of protection of 70 years after death, therefore he supported the proposal contained in Article 21 of Draft Treaty No. 2, in particular Alternative B.

354. Mr. ABBASI (Pakistan) supported the proposal for a 50-year term of protection, and supported Alternative B of Article 21.

355. Mr. YAMBAO (Philippines) asked for clarification from the Delegation of the European Communities concerning the insertion of the word "lawfully."

356. Mr. REINBOTHE (European Communities) stated that the insertion of the word "lawfully" was intended to make the date of publication an alternative to trigger out the commencement of protection. For that reason, he said, it was important that the act of publication be done lawfully, in other words, with the consent of the right holder. Otherwise, the term of protection could begin without the consent of the right holder, which was not desirable.

357. The CHAIRMAN stated that the discussion had revealed that the 50-year term of protection was acceptable, and the discussion would now concentrate on the starting point of



the calculation of the term of protection. There was a proposal to follow the TRIPS Agreement and the Rome Convention for fixing a starting point, there would be a technical amendment to the provision to introduce criteria closer to Article 7(2) of the Berne Convention, and there was a proposal according to which the word “lawfully” and the criterion of communication to the public should be inserted with the element indicating that the calculation would start from whichever event was earlier.

358. He then adjourned the meeting.

*Sixth Meeting*

*Tuesday, December 10, 1996*

*Morning*

*Article 2 (Definitions) of the WPPT, Article 15 (Right to Remuneration for Broadcasting and Communication to the Public) of the WPPT (Articles 12 and 19 of Draft Treaty No. 2)*

359. The CHAIRMAN opened the floor for discussion on *Articles 2 (Definitions), 12 (Right to Remuneration for Broadcasting and Communication to the Public) and 19 (Right to Remuneration for Broadcasting and Communication to the Public) of Draft Treaty No. 2.*

360. He said that the definitions aimed at taking into account the present structure of the rights at the international level, specifically the structure of the Rome Convention, but they had been modernized and completed with new elements, especially a definition of broadcasting, and a definition of communication to the public. In Articles 12 and 19, there were provisions on the right of remuneration of performers and producers of phonograms for the direct or indirect use of phonograms published for commercial purposes for broadcasting and for any communication to the public, which was broader than the corresponding provision in Article 12 in the Rome Convention. In paragraph (3) of each of those Articles, reservations were allowed taking into account the different levels of development of such rights on national level, but the possibility had not been designed exactly in the same way as in the corresponding clauses in the Rome Convention. In paragraph (4) of each of those Articles, there was a clause which exempted from the possibility of reservations cases where the broadcasts or communications might only be received on the basis of subscription and against payment of a fee. In addition, he referred to Article 25, where the technical aspects of reservations had been regulated.

361. Mr. GYERTYÁNFY (Hungary), speaking on behalf of Slovenia, Romania, The former Yugoslav Republic of Macedonia, Croatia and his own country, supported Articles 12 and 19 in the Basic Proposal of Draft Treaty No. 1, and especially paragraph (1) of each of those Articles. He said that he could also accept the extension of the rights granted in those provisions to the indirect use of certain phonograms, but he suggested to delete paragraphs (3) and (4) of the said Articles, since the Delegations for whom he spoke did not consider any reservations necessary. As to the definitions, he stated that he did not have any comment at that stage of the debate.

362. Mr. REINBOTHE (European Communities) supported the draft with respect to the definitions contained in Article 2(g) and (h), but he added that it should be made clearer in Article 2(g) that that definition also included terrestrial encrypted broadcasting signals. He, therefore, suggested to modify the text, after the first part of the sentence, so that it would read as from the word "transmission," "as described in the previous sentence." That would entail deletion of the two words "by satellite."

363. He expressed support to Articles 12 and 19, but believed that they should be merged. Both Articles spoke about a single equitable remuneration, but that would only make sense if the two Articles were merged, like in the Rome Convention. That would be without prejudice to performing artists that owned independent rights. With respect to paragraph (2) of Articles 12 and 19, he felt that the sense of the last sentence of that paragraph should be reconsidered and that it might have to be deleted. He agreed with the view that no reservation should be allowed. In that case, it would be only consequent to delete not only paragraph (3), but also paragraph (4). He also felt that it would be clearer if, after the first sentence, instead of saying "in availing itself of this possibility..." and so on, one would say "if a Contracting Party avails itself of this possibility, any other Contracting Party may apply..." and so on. Also with respect to paragraph (4), if that paragraph were to be maintained, he had doubts as to its scope of application. He believed that the reference to subscription would not be appropriate, as it could not be used as an appropriate standard. At the very least, one should insert the word "direct" in the first line after the word "any," so that it would read "broadcasting or any direct communication..." He repeated, however, that his Delegation was in favor of deleting paragraphs (3) and (4).

364. Mr. EKPO (Nigeria) said that his Delegation had no problem in accepting the definition of "broadcasting" in Article 2(g). With regard to Article 2(h), it would accept the intended definition at the given stage of the debate, because it believed it would be an improvement. With regard to Articles 12 and 19, he asked for an explanation of the phrase "single equitable remuneration." It should be clarified whether it referred to a one-off payment or to one payment to be divided between performers and producers of phonograms. He drew attention to the silence on the issue of broadcasting of recordings of performances of folklore, and questioned whether such broadcasting should not be mentioned in the Treaty. Concerning Article 2(h), he stated that his Delegation supported Alternative B and reserved its position to continue discussions on the proposals regarding reservations in Articles 12 and 19.

365. Mr. KUSHAN (United States of America) expressed general support for the provisions of paragraphs (1) to (3) of Article 12 and 19 of Draft Treaty No. 2. He stated that, for his country, if rights of broadcasting and public performance were to be included in that treaty, the provisions of paragraph (3) would be essential. Paragraph (4), with respect to subscription services, created significant concerns on the part of his country, in that it was over-inclusive as it did not permit sufficient flexibility for countries to provide appropriate exemptions to the right of remuneration with respect to certain types of subscription services, and in that it was, at the same time, under-inclusive because it failed to give adequate protection for those types of subscription services which, by nature of their programming structure, warranted exclusive rights. He said that his Delegation would propose some changes to those provisions after it had had a chance to fully consider the comments that had been made during the discussions. He added that the question of definitions should be addressed after the substantive work had been finished, and that his Delegation would give its possible comments at that point.

366. Mr. WIERZBICKI (New Zealand) stated that his Delegation agreed with the thrust of the comment made by the Delegation of the European Communities in respect of satellite broadcasting, and that it would propose that the words "by satellite," as the Delegation of the European Communities had suggested, be deleted. In terms of the suggested re-wording proposed by that Delegation, he said that his Delegation reserved its position, as it would be comfortable with simply deleting those words. In respect to Article 2(h), he asked whether, instead of reading "of a performance, or the sounds," it would not be better to read "of a performance or the sounds of a performance or the representation of sounds."

367. Mrs. YOUM DIABE SIBY (Senegal) proposed that Article 2(a) of Draft Treaty No. 2 include a reference to "circus and variety performers," because they should be covered by the text. In Article 2(b) of the same draft, she proposed that the words "or the sound part of either" be deleted so as not to imply that the definition of a phonogram did not cover the soundtrack of a film exploited separately. She said that her Delegation was in favor of Alternative B of Article 2(c).

368. Regarding Article 2(d), she proposed that the words "producer of a phonogram" should be defined as the person who assumed the legal responsibility for the fixation, which would have the advantage of differentiating between the production and manufacturing functions. She emphasized that her Delegation was in favor of recognition of a right to remuneration for broadcasting and communication to the public and supported Articles 12 and 19 of Draft Treaty No. 2.

369. The CHAIRMAN declared that he would take note of those positions and comments concerning the definitions in Article 2 (a), (b), (c) and (d), which would be discussed in detail later.

370. Mr. CRESWELL (Australia) stated that his Delegation supported the general thrust of Articles 12 and 19, but it also supported the Delegation of the United States of America in insisting on the inclusion of the possibility of reservation in paragraph (3) of each of those Articles. Regarding drafting, he supported the proposal by the Delegation of the European Communities that there be a merger of Articles 12 and 19 to make the provisions more cohesive and understandable. That would also clarify the meaning of the words "single equitable remuneration." He questioned the need for the reference to "reproductions of such phonograms" which seemed to have been carried over from Article 12 of the Rome Convention, and which did not seem to be appropriate any longer, as well as the need for the preceding words "published for commercial purposes." It would be sufficient to refer to the use of phonograms without further qualifying words. Regarding the definitions, he said that his Delegation wished to record its agreement with what it understood to be the proposal by the Delegation of the European Communities with regard to Article 2(g); his Delegation did not think that the reference to encrypted broadcasts should be confined to satellite broadcasts, because some encrypted transmissions were undertaken by means of microwave.

371. Mr. ETRANNY (Côte d'Ivoire) endorsed the wording of Article 2(g) of Draft Treaty No. 2, commenting that the definition proposed in this Article extended and updated the definition of broadcasting in the Rome Convention. He was in favor of Alternative B in Article 2(h), but shared the concerns of the Delegation of Nigeria concerning Articles 12 and 19 of Draft Treaty No. 2.

372. Mr. OKAMOTO (Japan) stated that his Delegation, in principle, supported Articles 12 and 19 of Draft Treaty No. 2, but wished to put on record the clarification that transmission to the public of an interactive nature was not to be covered by the remuneration rights for communication to the public in Articles 12 or 19, but was to be covered by the exclusive rights of making available to the public under Articles 11 and 18.

373. Mr. SØNNELAND (Norway) said that his Delegation supported the amendments proposed by the Delegation of the European Communities concerning the definitions in Article 2(g) and (h). Regarding Articles 12 and 19, he stated that his Delegation supported the proposal put forward by the same Delegation for the merger of Articles 12 and 19 and the deletion of paragraph (3) and consequently also paragraph (4).

374. Mr. MTETEWAUNGA (Tanzania) expressed support for the stand and explanation given by the Delegation of Nigeria regarding Article 2(g) and (h), and Articles 12 and 19. Regarding Article 2(h), he said that his Delegation supported Alternative B.

375. Mr. SHEN (China) supported the definitions in Article 2(g) and (h), and, regarding communication to the public, Alternative B. As for Articles 12 and 19, his Delegation supported the provisions in the Basic Proposal, and it did not agree to the deletion of paragraphs (3) and (4).

376. Mr. TRAORE (Mali) endorsed the comments made by the Delegations of Nigeria and Côte d'Ivoire as a whole. He supported Article 2(g) as it appeared in Draft Treaty No. 2, together with Alternative B in Article 2(h) and Article 19. He considered that Article 12, on the other hand, did not appear to take into account performances not fixed on phonograms published for commercial purposes and therefore reserved his position on this subject.

377. Mr. PALENFO (Burkina Faso) considered that the definition of broadcasting proposed in Article 2(g) of Draft Treaty No. 2 had the advantage of completing that in Article 3(f) in the Rome Convention by taking into account digital developments in images and sounds and his Delegation was in favor of it. As far as communication to the public was concerned, he preferred Alternative B of Article 2(h), which took into account audiovisual performances. He regretted, however, that there were no other definitions in this Article, for example, definitions of reproduction, audiovisual fixation or modification.

378. Concerning remuneration for broadcasting and communication to the public of commercial phonograms, he said that his Delegation was in favor of the text in Articles 12 and 19, which both extended the right to remuneration to cover indirect use. Nevertheless, he was concerned at the possibility given to make reservations and proposed that it be deleted because, as was the case for the Rome Convention, it appeared to be a weakness in the proposed system.

379. Mr. GOVONI (Switzerland) said that his Delegation approved recognition of a right to remuneration for broadcasting and communication to the public for performers and producers of phonograms. He regretted that this right had not been taken into account for videograms published for commercial purposes.

380. Regarding Articles 12 and 19 of Draft Treaty No. 2, he shared and endorsed the views of the Delegation of the European Communities. He considered that the weak point of these

provisions continued to be the reservations they allowed and he believed that they should be deleted. Referring to the justifications given in paragraph 12.08 of Document CRNR/DC/5 for their non-application to subscription-based services, he considered that these reasons were valid for other uses as well.

381. Mrs. BOUVET (Canada) expressed support for paragraphs (1), (2) and (3) of Articles 12 and 19 of Draft Treaty No. 2, and wished to retain the right to make reservations. She would like to see paragraph (4) of Articles 12 and 19 deleted.

382. Mr. MBON MEKOMPOMB (Cameroon) fully supported the definitions proposed in paragraphs (a), (g) and (h) of Article 2 of Draft Treaty No. 2, as well as Alternative B in paragraphs (c) and (h) of the same Article giving various definitions. Regarding paragraphs (3) in Articles 12 and 19, he shared the views expressed by the Delegations of Nigeria and Côte d'Ivoire regarding persons benefiting from the right to remuneration envisaged. He regretted, however, that such a right had not been provided for private copying. He reserved his comments on Article 25 of Draft Treaty No. 2 for the time being.

383. Mr. OPHIR (Israel) declared that his Delegation supported the definition in Article 2(g), as well as the definition in Article 2(h) where it opted for Alternative B. It also fully supported Articles 12(1) and (2), and 19(1) and (2), but it felt that paragraph (3) should be reconsidered in both Articles.

384. The CHAIRMAN recalled that the question of reservations had been touched by several Delegations and there seemed to be two positions; the first being that the possibility for reservations should be deleted, and the second being that it should be maintained. Paragraph (4) on a right of remuneration without the possibility for reservations seemed also to be subject to opposition. There had been only limited support for the provision as it had been proposed. Concerning the definitions, it seemed that the definition of broadcasting should be amended to include terrestrial broadcasting in the middle part of the definition. There was a drafting proposal to merge Articles 12 and 19, and there had been some comments on the language in paragraph (2) of Articles 12 and 19. There had been a remark, made by one Delegation and supported by another, concerning the condition referring to phonograms published for commercial purposes. The Conference should consider whether or not that prerequisite should be kept.

385. As to the question of what a "single equitable remuneration" meant, he stated that those words really would not make sense if the Articles concerned were separate and that they should not by any means indicate that the remuneration should be a one-off payment. In response to the question posed by the Delegation of Nigeria regarding the silence of Article 12 concerning performances of expressions of folklore, he declared that, if the definition of "performers" in Article 2(a) were approved by the Conference, it would be clear that performances of folklore would fall under the right of remuneration.

386. Mr. PROAÑO MAYA (Ecuador), referring to Article 2 of Draft Treaty No. 2, proposed that the words "sounds or images" be replaced by "sounds and/or images" in the definitions of fixation. He proposed that the definition of a producer of a phonogram should be worded as follows: "the natural person or legal entity on whose responsibility or initiative the sounds of a performance are fixed for the first time ..".

387. Mr. VÁZQUEZ (Spain) endorsed the statement by the Delegation of Ecuador and proposed that the concept of “finished or finalized” be added to the definition of fixation in Article 2(c) before “embodiment.”

388. Mrs. RETONDO (Argentina) referring to the definition of “phonogram,” supported the first part of the definition. Regarding the second part, she agreed that audiovisual fixation could be excluded, except in cases where it was based on a published phonogram. She shared the views of the Delegation of Spain concerning the definition of “fixation” with regard to adding the concept of finished or definitive embodiment of sounds. Lastly, she supported the proposals made by the Delegations of Ecuador and Spain that the producer of phonograms should be defined as “the natural person or legal entity on whose responsibility and initiative ... are first fixed”.

389. Ms. DALEY (Jamaica) proposed that, in the definition of “performers” in Article 2(a), the word “interpret” be deleted at least in the English text, as this might lead to a broad application in English speaking countries. She believed that the words “otherwise perform” would be sufficient as a catch-all phrase.

390. Mr. WIERZBICKI (New Zealand) reserved his position regarding audiovisual fixations and raised the question whether, in Article 2(a), it was intended that the definition should include news readers in radio or television, which might follow from the use of the word “declaim.” He also asked for clarification of the fact that, in Article 2(b), the last phrase seemed to negate part of Article 2(c). In regard to Article 2(c), he asked for the exact parameters of the word “perceived.” Concerning the definition of “producer of phonogram” in Article 2(d), he questioned whether that was the person that first fixed the sound, for example, the technician, or the person who made the necessary arrangements for fixing the sound, who were to be considered the producer. Finally, he asked whether it was envisaged that substantial modifications by way of remastering or digitizing existing phonograms, for example, from vinyl to CD, would be eligible as “first fixation.”

391. The CHAIRMAN responded that the term “declaim” was found in the corresponding definition in the Rome Convention and it had been used in Draft Treaty No. 2 in order to ensure that every category of performers which were covered by the Rome Convention would also be covered by Draft Treaty No. 2, but a modernization could be considered if the Conference so wished. Concerning the definition of “producer of a phonogram” he was of the opinion that the expression “who first fixes” contained a reference to the person who took the initiative and who had the responsibility of the fixation being made, rather than the technician who made the fixation, but it might be considered whether language should be found which would make that more clear.

392. Mr. CRESWELL (Australia) suggested that, in the definition of “fixation,” the word “appropriate” in front of the word “device” be replaced by the word “any,” in order to avoid any judgment as to what was suitable rather than what was technically necessary to accomplish perception, reproduction or communication. In paragraph (f) of Article 2 containing the definition of “rental,” he suggested that the word “consideration” be replaced by some other word importing the idea of profitable remuneration, in order to avoid that cost-recovery fees which were not imposed for the purpose of earning any profit would trigger the application of the rental right. He pointed out that the definition was confined to phonograms, and added that, although his Delegation reserved its position concerning Article 10 of the

Draft Treaty, the outcome of the discussions of the Conference on that Article might have implications on the definition.

393. Mr. GYERTYÁNFY (Hungary) believed that it should be made clear that, if the sound part of an audiovisual fixation was published for commercial purposes, it should fall under the definition of a “phonogram.” He supported the proposal made by the Delegation of Ecuador regarding a more explicit definition of “producer of phonogram” and stated that he also would welcome any explanation or view on a possible protection of remastering or remixing of phonograms.

394. Mr. UGARTECHE VILLACORTA (Peru) proposed the following definition of a performer: “a person who performs, sings, reads, recites, interprets, or otherwise executes a literary or artistic work or an expression of folklore, or a variety or circus performer.” He also proposed that a phonogram should be defined as “the sounds of a performance or other sounds or digital representations thereof, fixed for the first time in an exclusively sound medium: phonographic, magnetic tape and digital recordings are copies of phonograms.” He proposed that a fixation should be defined as “the embodiment of signs, sounds, images or digital representations thereof, in a physical medium that allows them to be read, perceived, reproduced, communicated or used.” Lastly, he proposed the following definition for a producer of phonograms: “A natural person or legal entity on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds, or digital representations thereof, are fixed for the first time.”

[*Suspension*]

395. Mr. CHEW (Singapore) suggested that, in the definition of “broadcasting” in Article 2(g), the words “public reception” be replaced by the words “reception by the public,” because, although the words “public reception” appeared in the equivalent definition in the Rome Convention, that word might be misinterpreted to be an act of public exhibition. Regarding Articles 12 and 19, he said that his Delegation associated itself with the views expressed by the Delegation of Australia, and that it was strongly in favor of retaining the possibility of reservations in Articles 12(3) and 19(3) and deleting Articles 12(4) and 19(4).

396. Mr. ALVAREZ (Costa Rica) wished to see the inclusion of announcers in the definition of performers in Article 2(a). He supported the proposal made by the Delegation of Ecuador regarding the definition of “fixation,” and suggested that fixation should consist of “the embodiment of sounds, images or sounds and images.”

397. Mr. DEBRULLE (Belgium), referring to Article 2(b) of Draft Treaty No. 2, expressed his agreement with the reasons given for using the words “representation of sounds” in the Article. He expressed his concern regarding their impact on the scope of the Rome Convention, where it could be stated on the contrary that the definition of phonogram given in this Convention did not cover fixation of representation of sounds. Regarding Article 2(c), he proposed that the words “of a finalized sequence” be added after the word “embodiment” so as to provide a more objective identification of the stage of fixation.

398. Mr. OLSSON (Sweden) referred to the question regarding the exclusion of audiovisual fixations from the concept of “phonogram,” and expressed a preference for excluding the last part of Article 2(b), namely from the words “an audiovisual fixation” to the end.

399. Mrs. DE MONTLUC (France) said that her Delegation subscribed to the comments made by the Delegations of Sweden, Ecuador, Spain and Belgium.

400. Mr. STARTUP (United Kingdom) agreed that there might be need of some clarification of the scope of the definition of “phonogram,” as it needed to be clear, for instance, that the sound tracks of films, when detached from the film, that is, when issued as a sound recording, should qualify as phonograms. However, he considered it very important to maintain the clear distinction between phonograms, on the one hand, and audiovisual works, on the other.

401. Mr. SØNNELAND (Norway) supported the intervention by the Delegation of Sweden.

402. The CHAIRMAN stated that he would not point out all the opinions put forward and supported by different Delegations, but that he would only mention a couple of suggestions. It had been stated that the definition of “performers” should be made broader, to cover variety and circus artists. Concerning the definition of “phonogram,” the second half of that definition was subject to doubts, and it seemed that there was reason to consider whether the sound part of an audiovisual fixation, when published separately, should be treated as a phonogram. It was suggested to delete the whole of the second half of the definition, but there were also other ideas put forward. Due note had been taken of the proposals offered concerning the expressions and language to reflect “representation of sounds.” There were also some suggestions concerning the definition of “fixation.” One was to replace the word “appropriate” by a more suitable expression. Concerning the definition of “producer of phonogram” in Article 2(d), there had been several suggestions to improve the definition by making it include criteria referring to the responsibility, initiative and, perhaps, coordination of the recording. Certain proposals had been made in writing and more would come, and, when they would be available, the Committee would be able to produce the final versions of the definitions.

#### *Article 5 (Moral Rights of Performers) of the WPPT*

403. The CHAIRMAN opened the floor for discussion on *Article 5 of Draft Treaty No. 2 (Moral Rights of Performers)* by stating that the Article had been designed according to the structure and language of the clause on moral rights of authors in Article 6*bis* of the Berne Convention.

404. Mr. KEMPER (Germany) supported the wording of Article 5 of Draft Treaty No. 2, especially paragraph (3), which gave contracting States sufficient flexibility to regulate the means of safeguarding the rights recognized in the Article in their domestic legislation, for example, by providing for the possibility of contractual arrangements on modification of a performance agreed by the parties.

405. Mr. OLSSON (Sweden) stated that his Delegation supported the proposal on moral rights in Article 5 in the Basic Proposal, and that it associated itself with the remarks made by



the Delegation of Germany. He said that he considered that right indispensable in view of the digital use of performances. He pointed out that that right had existed for 35 years in the national law of his country where it had proved itself useful without creating any problems. He added that his Delegation associated itself with the remarks in point 5.07 of the notes in the Basic Proposal regarding the possibility of transferring moral rights.

406. Mr. TARKELA (Finland) noted that his Delegation was in favor of Article 5. He referred to the intervention by the Delegation of Sweden which had noted that the provisions on moral rights in the national law of that country had not caused any difficulties, and he stated that the situation in Finland was similar to that in Sweden.

407. Mrs. DE MONTLUC (France) said that her Delegation strongly supported the principle of recognizing the moral rights of performers. She preferred Alternative B in Article 5(1) of Draft Treaty No. 2, drawing attention to the increasing problem of distinguishing between sound and audiovisual performances as a result of the new technology used. She commented that paragraph (3) of Article 5, which allowed a performer to renounce his honor or reputation, would be difficult to implement without denying the principle of moral rights itself.

408. Mr. KUSHAN (United States of America) confirmed his Delegation's position on the question of moral rights, that the economic rights granted in the Treaty satisfactorily addressed the interests of performers, and that moral rights should not be included in the Treaty.

409. Mr. STARTUP (United Kingdom) stated that, while his Delegation was in favor of performers achieving appropriate recognition for their work, it felt that that could better be guaranteed through the exercise of economic rights, and through contractual arrangements, and, therefore, it felt that moral rights were unnecessary for that purpose and should not be included in the Treaty. He was of the opinion that the right as currently set forth was very wide in its scope and that its implementation would be impractical. He mentioned that, even in those countries where moral rights were granted to performers, their application was often limited by practical considerations, noting as an example the impossibility of identifying a large number of performers in an orchestra whose performance was included in a broadcast. He pointed out that, in the countries where moral rights were not granted, such as the United Kingdom, there was appropriate recognition of performers. He expressed his Delegation's belief that the Treaty should not include a right which could not in practice be strictly applied.

410. Mr. UGARTECHE VILLACORTA (Peru) said that, given the nature of the moral right of authorship, it should not be subject to exhaustion, even after the exhaustion of economic rights.

411. Mr. RAGONESI (Italy) referred to the reasons embodied in the interventions by the Delegations of France and Sweden, and supported the provision as contained in the Basic Proposal. He added that his Delegation also agreed that the means of safeguarding moral rights be governed by national legislation.

412. Mr. NØRUP-NIELSEN (Denmark) supported the inclusion of Article 5 in Draft Treaty No. 2. He stated that such a provision was necessary; it created a climate of respect for the work of performers, which was even more necessary in the digital environment. He

drew attention to the fact that his country had had such protection for performers in its laws for many years, and it had caused no problems.

413. Mr. WIERZBICKI (New Zealand) explained that the issue of moral rights was important for his country, because it had recently introduced explicit protection for the moral rights of authors and directors. It had, therefore, not had a lengthy period of experience to know how well the new provisions were functioning there. He declared that, when the discussions got to Article 25, he would suggest that a reservation be possible for the entirety of Article 5. He added that, in the future, when New Zealand had more experience with moral rights, it could possibly give more favorable consideration to Article 5.

414. Mr. SHEN (China) stated that his Delegation supported the proposed moral rights for performers and, more particularly, Alternative B.

415. Mr. EMERY (Argentina) supported the inclusion of moral rights in Draft Treaty No. 2 and stated that his Delegation's position, which was the subject of a consensus among the Group of Latin American and Caribbean countries, was broadly similar to the text submitted by the International Bureau to the Committee of Experts. Nevertheless, in order to reach an understanding among those who opposed or were in favor of moral rights, he made a proposal based on four principles. Firstly, the right of a performer to demand that his name be mentioned should be reaffirmed and this right would exist even after the death of the performer. Secondly, this indication could be omitted where omission was dictated by the manner of use of the performance. Thirdly, in the case of orchestras, choirs or groups with a collective designation, the collective name could be given, but in this particular case or if the names of the performers were omitted, identification for the purposes of collective administration or collective bargains should be made by other means. Lastly, artists should be given the right to oppose any type of unauthorized distortion, mutilation or other modification, thus opening up a possible area of negotiation.

416. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the group of countries consisting of Albania, Bulgaria, the Czech Republic, Croatia, The former Yugoslav Republic of Macedonia, Latvia, Slovenia, Romania, and his own country, referred to the views expressed by the Delegation of France concerning the moral rights of performers. He strongly supported the inclusion of Article 5 in what he described as its "Berne-like formulation." He was also of the view that moral rights should be non-transferable, as they were closely attached to the personality of the performer, and he was in favor of the extension of those rights to audiovisual performers as well.

417. Mr. HONGTHONG (Thailand) strongly opposed the inclusion of a provision on moral rights.

418. Mr. ROGERS (Chile) supported the affirmation of the moral rights of performers, and preferred Alternative B in Article 5 of Draft Treaty No. 2. He indicated that his Delegation was reviewing the proposal submitted by the Delegation of Argentina with a view to supporting it.

419. Mr. CHEW (Singapore) opposed the inclusion of an Article on moral rights. He pointed out that the proposed Article was modeled on Article *6bis* of the Berne Convention, which, he noted, was not part of the required obligations under the TRIPS Agreement. He also noted

that performers did not enjoy any moral rights under the Rome Convention. He said that his Delegation shared the views expressed in the interventions by the Delegations of the United States of America and the United Kingdom, in that, at the moment, there was no necessity to protect moral rights of performers.

420. Mr. SØNNELAND (Norway) strongly supported the inclusion of Article 5 as drafted, to be applicable to all performers. He stated that the legislation of his country had provided such rights for 35 years, which had not raised any problems.

421. Mr. GOVONI (Switzerland) agreed with those Delegations that had spoken in favor of the moral rights of performers. He supported Article 5 of Draft Treaty No. 2 and preferred Alternative B in paragraph (1) of the Article. The fact that the problem of the inalienability and transfer of rights was not resolved in this provision was significant. Flexibility allowed all the interests at stake to be taken into account.

422. Mr. BOUWES (Netherlands) supported the protection of moral rights. He stated that moral rights protection was part of the legislation of his country. He stressed that moral rights protection should exist, however, only under the condition that the exercise of those rights should not be unreasonable, and that such conditions would be a matter for national legislation.

423. Mr. VÁZQUEZ (Spain) was in favor of including the moral rights of performers in Alternative B of Article 5 of Draft Treaty No. 2.

424. Mr. EKPO (Nigeria) fully supported the Article as drafted, and noted that the legislation of his country contained such rights. He pointed out that paragraph (3) of the Article gave national legislatures the power to safeguard the rights under the Article. He supported Alternative B.

425. Mr. YAMBAO (Philippines) supported Article 5 as drafted, and Alternative B. He drew attention to the fact that the Philippines had long recognized moral rights of performers.

426. Mr. MEDRANO VIDAL (Bolivia) supported the inclusion of moral rights in the draft Treaty, as well as the proposal made by the Delegation of Argentina. He added that the rights should last for the author's lifetime and after his death.

427. Mr. ETRANNY (Côte d'Ivoire) pointed out that, in the artistic community, there were still many performers who attached much greater importance to their honor and reputation than to purely material considerations. He welcomed the inclusion of moral rights of performers in Draft Treaty No. 2 and said that he preferred Alternative B in Article 5(1).

428. Ms. PHILLIPS (Ireland) supported the principle of moral rights for performers, but noted that the points made by the Delegation of the United Kingdom, in respect to the practical application of those rights, were interesting.

429. Mr. EL NASHAR (Egypt) stated that his Delegation supported the inclusion of Article 5 in Draft Treaty No. 2, and it favored Alternative B.

*Seventh Meeting  
Tuesday, December 10, 1996  
Afternoon*

*Article 5 (Moral Rights of Performers) of the WPPT (continuation)*

430. The CHAIRMAN opened the floor to continue the discussion on Article 5 (Moral Rights of Performers) of Draft Treaty No. 2.

431. Mr. DEBRULLE (Belgium) approved the recognition of moral rights for performers at the international level. He noted that the implementation of these moral rights was left to the Contracting Parties, as provided in Article 5(3) of Draft Treaty No. 2. He believed that it would be useless for the Committee to examine the possibility of renouncing any particular right covered by moral rights.

432. Mrs. YOUM DIABE SIBY (Senegal) supported the recognition of moral rights for performers and Alternative B in Article 5(1) of Draft Treaty No. 2. She also endorsed paragraph (3) of this Article.

433. Mr. ZAPATA LÓPEZ (Colombia) pointed out that Colombian legislation gave performers the same moral rights as those recognized to authors. They had the rights of authorship, integrity, modification, including the right of withdrawal, provided that the performance was spoiled in such a way as to be prejudicial to the performer's honor or reputation or to the merits of the performance. He did not share the concern expressed by other Delegations regarding the problems of the form and possibilities for recognition of moral rights in cases in which a performance was by several artists taking part in a choir or orchestra, because in such cases domestic legislation required that a single person be responsible for exercising the moral right as a representative of the group. The Delegation of Colombia therefore fully supported recognition of this right in Alternative B. It associated itself with a proposal made by the Delegation of Argentina to the extent that it was a basic proposal to which other criteria could be added.

434. Mr. CRESWELL (Australia) expressed the doubts of his Delegation about the justification for moral rights for performers, and referred to the reasons given in the intervention by the Delegation of the United Kingdom.

435. Mr. ALVAREZ (Costa Rica) supported the proposal made by the Delegation of Argentina on the moral rights of performers because it contained legal aspects that corresponded to the relevant provisions in the domestic legislation of his country.

436. Mr. ANTEQUERA PARILLI (Venezuela) said that a common decision made it mandatory for the five countries of the Cartagena Agreement to give performers moral rights consistent with Alternative B of Article 5 of Draft Treaty No. 2, which was also in accord with the provisions of Venezuelan legislation. Nevertheless, he considered that the proposal made by the Delegation of Argentina represented a good basis for reaching an understanding

bringing together contrary positions, even though the laws in many countries exceeded the levels of protection provided in the proposal.

437. Mr. TRAORE (Mali) said that his Delegation was in favor of recognizing the moral rights of performers and therefore endorsed Alternative B in Article 5(1) of Draft Treaty No. 2.

438. Ms. KADIR (Trinidad and Tobago) explained that moral rights for authors were part of the legislation of her country, and that it had proven useful. She supported the inclusion of a provision on moral rights for performers, but stated that her Delegation was considering the proposed amendments put forward by Argentina and Mexico concerning Article 5.

439. Mr. MTETEWAUNGA (Tanzania) stated that his country was in the process of enacting a new copyright law, which would deal with copyright, neighboring rights and folklore, and that the draft law contained a provision on moral rights for performers. He, therefore, supported the inclusion of Article 5 and Alternative B.

440. Mr. AUER (Austria) supported Article 5 as drafted, but with the understanding, as indicated in the intervention by the Delegation of the Netherlands and by others, that it would be a matter of national legislation to determine the conditions of reasonable exercise of those rights. He noted that his country had introduced in its legislation protection of moral rights of performers in 1936.

441. Mr. OMONDI-MBAGO (Kenya) expressed his Delegation's support for the protection of moral rights of performers, and indicated its preference for Alternative B.

442. Ms. DALEY (Jamaica) stated that the question of moral rights for performers was important, and that her Delegation was considering the amendments to Article 5 proposed by Argentina and Mexico.

443. Mr. OPHIR (Israel) stated that Draft Treaty No. 2 was concerned with certain minimum rights, in which the overriding issues concerned the economic rights of performers. He said that his Delegation felt that the introduction of moral rights into Draft Treaty No. 2 might cloud or even confuse the dominant issue of performers' economic rights. He emphasized that a clear distinction should be maintained between authors' rights in the area of copyright, to which moral rights might properly pertain, and of neighboring rights, such as performers' rights, where it was felt that such rights were not relevant. He pointed out that to treat moral rights as one of the minimum requirements of Draft Treaty No. 2 was a mistake. He proposed to remove Article 5 in its entirety from Draft Treaty No. 2, and supported the intervention by the Delegation of the United Kingdom.

444. Mr. ESPINOZA PAO (Nicaragua) underlined the need to endorse the moral rights of performers at the current Conference because they were already embodied in certain domestic legislation. In this connection, he considered the proposal made by the Delegation of Argentina to be a compromise text that should be examined carefully by other Delegations.

445. Miss DALEIDEN (Luxembourg) noted that any specificity in a regulation represented an exception. On that basis, her Delegation supported Alternative B of Article 5(1), whose purpose was to give the broadest possible protection to moral rights.

446. Mrs. ROMERO ROJAS (Honduras) congratulated the Chairman on his election. She spoke in favor of recognizing the moral rights of performers as set out in Alternative B of Article 5 of Draft Treaty No. 2 and said that she would examine the proposal made by the Delegation of Argentina with a view to supporting it at the appropriate time.

447. Mr. UGARTECHE VILLACORTA (Peru) supported the inclusion of moral rights for performers as set out in Alternative B of Article 5 and said that he would consider the proposal made by the Delegation of Argentina.

448. Mr. TEYSERA ROUCO (Uruguay) wished to see the moral right of authorship given to performers and was ready to accept the proposal made by the Delegation of Argentina subject to use of the Spanish expression "*graves*" rather than the expression used in the English text of the paragraph on the right to respect.

449. Mr. SHINAVENE (Namibia) supported inclusion of the Article on moral rights for performers, and expressed preference for Alternative B.

450. Mrs. MOULD-IDDRISU (Ghana) said that Ghana was in the process of amending its copyright law. She supported the African position, which was to include moral rights for performers, since folklore was an integral part of African culture. She also expressed her support for Alternative B.

451. The CHAIRMAN noted that there had been broad support for the inclusion of Article 5 in Draft Treaty No. 2. He pointed to the amendment proposed by the Delegation of Argentina, and said that there had been support for that from many Delegations. He also noted that there had been opinions opposed to moral rights for performers. There had been one opinion that moral rights for performers could be secured through economic rights, and another opinion expressing the possibility of logging a reservation concerning the entire Article on moral rights, although the latter was not supported by any other Delegation. The transferability of moral rights had been discussed, with some provisions on the possibility of the right holder not to exercise his or her moral rights. He said that it would be necessary to study further the proposed amendment from the Delegation of Argentina, and it was possible that there might be other proposals.

#### *Work program*

452. The CHAIRMAN asked the Committee for comments on how the Committee should proceed in establishing texts of the Treaties. He suggested that one way to proceed was to go article by article, wherein each article would be prepared after the discussions by the Committee, with alternatives, perhaps in square brackets, and taking into consideration the various amendments proposed relative to that article. An alternative way to proceed would be for the Chairman to create new texts of the Treaties after the first round of discussion. He indicated that such new versions of the texts could be completed by him during Thursday evening.

453. Mr. AYYAR (India) stated that it had been interesting to hear all of the various opinions of the Delegations on the articles discussed thus far. He pointed out that similar opportunities

had been presented to the Delegations in October and November. He asked the Chairman for clarification as to his proposed time frame, pinpointing whether it was really realistic for the Chairman to create new, consolidated texts during Thursday evening. Otherwise, if those new texts were not available until Monday of next week, the Committee would have insufficient time to consider them. He proposed that the article-by-article approach might be more efficient.

454. The CHAIRMAN assured the Committee that he could produce the new texts during Thursday evening, so that they could be available on Friday. In that way, the Committee could start its discussion on Friday, private consultations and group activities could continue on Saturday, and a plenary session of the Committee could be held on Sunday.

455. Mr. FICSOR (Assistant Director General of WIPO) confirmed that, if the new texts were received by the Secretariat by 2 a.m. on Friday morning, it would distribute the new texts, in six languages, on Friday.

456. Mr. CRESWELL (Australia) asked the Chairman for clarification as to whether the new texts to be prepared by the Chairman would become the basis for further discussions, and thus displace the existing texts, and whether the new texts would incorporate the proposed amendments thus far submitted, thus superseding them, and incorporate as well the Chairman's understanding of the discussions.

457. The CHAIRMAN stated that all proposed amendments would stay on the table. Elements from those amendments would be incorporated into the new texts, consistent with an assessment of what would be possible and realistic, based on the discussions of the Committee. He noted that some amendments had only been presented orally, but those orally proposed amendments which had been supported by other Delegations would be taken into consideration in the new texts. He stressed that written proposals for amendments would more efficiently facilitate the work of creating the new texts.

458. Mr. SÉRY (Côte d'Ivoire) expressed his concern regarding the timetable proposed and asked the Chairman to clarify his intentions regarding future discussions. He drew attention to the importance of leaving time for the meetings of various groups and consultations among them.

459. Mrs. YOUM DIABE SIBY (Senegal) shared the concerns expressed by the Delegation of Côte d'Ivoire and questioned whether the proposed timetable would leave sufficient time to consider the various amendments proposed.

460. The CHAIRMAN inquired of the Chairman of Main Committee II as to whether that Committee was prepared to commence its deliberations.

461. Mr. SILVA SOARES (Brazil) responded that Main Committee II was ready to commence its work immediately.

462. The CHAIRMAN noted that the Drafting Committee could not meet yet until there was a text to review. He was of the opinion that the schedule for Main Committee I was clear, and said that he would make a statement at the beginning of each session as to what the schedule of the Committee would be.

463. Mr. ENTCHEV (Bulgaria) supported the schedule of work proposed by the Chairman, and thanked the other Delegations for their flexibility. Regarding the issue of audiovisual fixations, where there was an expected division, he suggested that the Delegations could merely indicate whether they were for or against, rather than go to length to explain their position. He also suggested that, where there was a proposal which had substantial support, such as the proposed amendment by the Delegation of Argentina on Article 5 of Draft Treaty No. 2, it might be more efficient to establish a working group, which could propose a text, and thereby speed up the process.

*Performers' rights in audiovisual recordings*

464. The CHAIRMAN opened the floor for discussion on *performers' rights in audiovisual recordings* which he referred to as a horizontal question, as well as one of the most crucial issues in Draft Treaty No. 2. He mentioned that Alternatives A and B were found in many Articles in Draft Treaty No. 2, confining protection to only musical performances, or extending protection to any fixations of performances. He noted that the issue had been presented in paragraphs 2.11 to 2.18 in the notes to the Basic Proposal for Draft Treaty No. 2. He said that many Delegations had thus far expressed their preferences for either Alternative A or Alternative B, but that every Delegation had not been systematically invited to express its opinion. He proposed that the Committee deal with the whole audiovisual question, as an entity or horizontal issue, and after the whole matter had been thoroughly discussed, the Committee should decide upon a form and method to deal with the question.

465. Mr. KUSHAN (United States of America) stated that his country had worked closely with many other countries over the past few years to develop Draft Treaty No. 2 to protect audio performers and producers of phonograms, and that the Treaty was of crucial importance. The protection it would offer the sound recording industries was absolutely essential for those industries to prosper in the new digital age. A number of countries had pressed to expand the Treaty to cover performers of audiovisual works, rather than keeping the Treaty limited to sound recordings. He stressed that his country had consistently opposed extension of the Treaty in such a manner, and that it would continue to do so, unless serious problems that existed in making such extension were addressed. He saw two possibilities in that regard. Either the scope of the Treaty should be limited to exclude audiovisual performers, or an alternative approach should be developed that would permit the existing different systems to coexist.

466. He said that his Delegation had developed a proposal that would accomplish that latter objective. The proposal had four interrelated and essential elements. First, the proposal would grant foreign performers statutory protection in the United States of America for their core economic rights. Those core economic rights were the rights of fixation, reproduction, distribution and making available to the public. The rights of modification and moral rights should be omitted. Second, each country should have flexibility under the Treaty as to how rights were to be implemented. With respect to its domestic performers, a country could implement the treaty obligations in a manner that would be consistent with its own existing system. He mentioned as an example that performers in the United States of America would realize their rights through the system of that country, which was based on collective bargaining agreements. Foreign performers, on the other hand, would receive specific



statutory rights. The third element of his Delegation's proposal was that the Treaty should contain provisions on transfers of rights. It should permit performers to freely transfer their economic rights. It would provide protection to performers beyond that provided by the Rome Convention, by allowing rights to continue to exist even after the performer consented to the fixation of his performance. Under the proposal, a presumption would apply that those rights were transferred to the producer once the performer agreed to participate in a film. The performer and producer would, however, be free to agree otherwise. The fourth element of the proposal would require each country to treat performers from other countries at least as well as it treated its own performers. The Delegate indicated that his country would accept material reciprocity with regard only to the broadcasting right.

467. He felt that that proposal offered a workable solution. If accepted as part of the Treaty, it would ensure meaningful protection for audiovisual performers around the world and would avoid extreme differences in the levels of protection from country to country. He emphasized that the proposal would also significantly increase the likelihood that the United States of America would be able to join the Treaty, and to extend benefits to both audio and audiovisual performers from foreign countries. He added that a failure to obtain such a compromise solution or an alternative that would simply allow the United States of America to take reservations on the question of protection for audiovisual performers could make it difficult, if not impossible, for the United States of America to accept and ratify the Treaty.

468. He said that his Delegation's willingness to put forward a proposal along those lines represented a major shift in the position of his country. He underscored that it was for the first time that the United States of America had been prepared to provide specific statutory rights to performers from other countries, and he strongly urged the Committee to give the proposal serious and favorable consideration.

469. Mr. REINBOTHE (European Communities) took the position that the coverage of the rights of performing artists in audiovisual performances was extremely important, and had even gained a political dimension. He noted that the proposal made by the European Community and its Member States was well known. It was contained in Alternative B throughout the Basic Proposal for Draft Treaty No. 2. He said that his Delegation believed that no distinction and no discrimination should be made between performers' rights with respect to sound performances and audiovisual performances. He indicated that, at the same time, his Delegation was ready to accommodate other parties' needs, and that there was a readiness to arrive at a compromise which was appropriate to as many Contracting States as possible.

470. He pointed out that, in the Basic Proposal, there were three alternatives for the treatment of that question, and one was already a compromise and was contained in Article 25 of Draft Treaty No. 2. He felt that the ideas which the Delegation of the United States of America had just offered in that respect were very interesting. Some of those ideas had already surfaced in a slightly different context in the negotiations leading to the TRIPS Agreement. He felt that all those ideas deserved discussion. He indicated that the ideas in the proposal by the Delegation of the United States of America had two things in common: they had never been introduced in the discussions in the Committees of Experts which prepared the Conference; and they were not contained or reflected in the Basic Proposal which formed the basis of the discussions at the Diplomatic Conference. He stated that the European Community considered it somewhat difficult, at this late stage, to introduce new elements into the

discussions. He reserved the right to ask detailed questions to the Delegation of the United States of America once his Delegation had better understood the proposal, and he expressed the hope that it would be spelled out in a written proposal.

471. He observed that the possibility to apply a reservation, which was contained in Article 25, as Alternative C, might indicate the right direction. He stated that his Delegation was not in favor of reservations in treaties. On the other hand, he pointed out that there was already one reservation contained in the Basic Proposal. He said that informal consultations on Article 25, Alternative C, confirmed that that might be the most pragmatic, the least complicated and the most flexible way out of the problem, and that his Delegation had been thinking about turning Article 25, Alternative C, into an *à la carte* reservation, which meant that the approach taken by that Alternative would be more flexible. He indicated his Delegation's understanding that Article 25, Alternative C, as drafted, provided Contracting States with a possibility to make a reservation with respect to audiovisual performances on all the Articles listed there, or on none of those Articles. He believed that that provision could be made more flexible by leaving it up to Contracting States to decide as to which Articles the reservation would apply. Thus, Contracting States would be free to decide whether they would apply a reservation to Articles 7, 8, 9, 10, 11 and Article 21(1), and possibly also to Article 5.

472. He added that, in that context, it should be made clear that a Contracting State that would apply such a reservation should not be entitled to national treatment for those rights upon which it had invoked the reservation. He underscored that such a flexible reservation possibility could be used by each Contracting State in a different way, in a way to accommodate its own needs in harmony with its own stage of protection for performing artists in the audiovisual field.

473. Mr. AYYAR (India) noted the diversity of views expressed in the Diplomatic Conference as well as in the preparatory work of the Committees of Experts, on the issue of audiovisual rights for performers. He pointed out that, when one talked of cinema, there was no single cinema, but rather there were in fact many different types of cinema. Thus, there was commercial cinema, real cinema and so on. He observed that obligations and liabilities in the world of commercial cinema were handled mostly by contractual relationships, and to replace such contractual relationships by legislative regulations would be extremely difficult.

474. To resolve that question within the Diplomatic Conference, he offered two alternatives. The first one was to exclude audiovisual protection altogether, which, he said, would be in conformity with the established practice in the international regime of copyright and neighboring rights where minimum rights were being covered. He added that nothing would prevent a country or group of countries from conferring a higher level of protection than the required minimum. The second alternative was to include audiovisual fixations, but to allow Contracting States an unfettered right of reservation. He felt that that would allow his country to have discussions with its performers and film industry, and to progressively develop a legislative framework as the commercial practices changed.

475. He noted with interest the proposal by the Delegation of the United States of America. Referring to the point made by the Delegation of the European Communities that the ideas in the proposal by the Delegation of the United States of America had never been introduced in the discussions in the Committee of Experts, he said that one needed to draw a distinction

between the work of the Committee of Experts and the work being done in the Diplomatic Conference. The Committee of Experts was a committee of experts and no more; it had no political mandate. Nothing precluded a Delegation to introduce at the Diplomatic Conference new proposals or to raise issues connected with the subject of discussions.

476. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the Group of Central European countries and the Baltic States, supported the position of the European Community and its Member States on the scope of coverage of Draft Treaty No. 2, and supported Alternative B in all places where it appeared. He expressed his readiness to study the proposal by the Delegation of the United States of America.

477. Mr. OKAMOTO (Japan) said that, in regard to Article 6 on economic rights for unfixed performances, his Delegation strongly supported Alternative B, because, as far as unfixed performances were concerned, there seemed to be no reason to make any distinction or discrimination between musical performances and non-musical performances. As to Alternatives A and B for fixed performances, he stated that his Delegation reserved its position. He added that his Delegation supported Alternative C in Article 25 on reservations, and indicated that his Delegation would consider the proposal made by the Delegation of the United States of America seriously.

478. Mr. PROAÑO MAYA (Ecuador), referring to the proposal made by the Delegation of the United States of America on protection of the audiovisual sector, requested that it be presented formally in writing to other Delegations so that they could consider and examine it and use it as a basis for reaching an understanding.

479. Mrs. DE MONTLUC (France) noted that, since 1961 when the Rome Convention had been concluded, the legal situation of performers in the audiovisual sector had only progressed slowly at the international level while at the same time new technology in the cinema and audiovisual industries had developed considerably. It had been decided in the Committees of Experts that the situation of authors and producers of phonograms should be reviewed. She hoped that the proposals would be based on concrete rights that could be used against any person and would be homogenous at the international level. In her view, the proposal in the basic texts, which represented the outcome of work done in the past, constituted the point of departure for discussions within the Committee.

480. Mr. ZAPATA LÓPEZ (Colombia) fully shared the views expressed by the Delegation of the European Communities and France and emphasized the need to provide performers with broad and appropriate protection. In the new information era, developing countries might not play a significant role as suppliers of networks and services, but they would be major suppliers of content. As so many works protected by copyright such as performances, phonographic and audiovisual productions would be channelled through these networks, it was essential to provide a series of effective and interrelated rights to protect both artists and producers. He underlined the vital need to reach a compromise solution so as to achieve a balance among the various interests, stressing that not only large markets but also developing countries had a genuine interest in giving their artists and audiovisual productions effective protection.

481. Mr. ETRANNY (Côte d'Ivoire) said that he was in favor of recognizing the rights of performers in the audiovisual fixation of their performances. He reserved the right to make comments subsequently.

482. Mr. OPHIR (Israel) underscored that any Treaty to which the United States of America was not a Contracting Party would be inefficient and probably a mistake. He said that his Delegation looked forward to seeing the proposal by the Delegation of the United States of America, and to working with that Delegation to reach an acceptable compromise.

483. The CHAIRMAN suggested that written proposals be submitted, translated and distributed, and that, after private consultations and group meetings, the issue of audiovisual coverage of Draft Treaty No. 2 would be taken up again by the Committee.

[*Suspension*]

*Article 10 (Limitations and Exceptions) of the WCT (Article 12 of Draft Treaty No. 1);  
Article 16 (Limitations and Exceptions) of the WPPT (Articles 13 and 20 of Draft  
Treaty No. 2)*

484. The CHAIRMAN opened the floor for discussion of *Article 12 (Limitations and Exceptions) of Draft Treaty No. 1, and Articles 13 and 20 (Limitations and Exceptions) of Draft Treaty No. 2*. He observed that paragraph (1) of Article 12 of Draft Treaty No. 1 dealt with limitations on and exceptions to the rights granted to authors of literary and artistic works which were permissible under the proposed Treaty, while paragraph (2) dealt with limitations and exceptions which were permissible when the Contracting States were applying the Berne Convention. In both paragraphs, there were the three conditions which had been laid down in Article 9(2) of the Berne Convention concerning the right of reproduction, that is: (1) the limitations or exceptions had to concern only certain special cases; (2) they might never conflict with the normal exploitation of works; and (3) they might not unreasonably prejudice the legitimate interests of authors.

485. He mentioned that note 12.05 in the Basic Proposal concerning Draft Treaty No. 1 contained an interpretation of those provisions. In note 12.04, there was a remark which referred to Article 13 of the TRIPS Agreement, where the same conditions had already been incorporated as general principles governing any limitations on or exceptions to rights. He felt that the introduction of that kind of Article would mean that all limitations and exceptions which were permissible under the Berne Convention would survive and continue to exist on the national level, if they were in conformity with Article 9(2) of the Berne Convention concerning the right of reproduction and if they were in conformity with the corresponding provisions in Article 13 in the TRIPS Agreement. He stated that those conditions would apply to any additional aspects of protection in the new Treaty.

486. He pointed out that in note 12.06 there was a reference to the so-called minor exceptions. Those exceptions were based on an understanding of the Conferences in Brussels, in 1948, and in Stockholm, in 1967, as reflected in the reports of those Conferences. It was

not intended to prevent Contracting States from applying any limitations and exceptions traditionally considered acceptable under the Berne Convention. There was therefore no intention in the draft Treaty that the so-called minor exceptions should be excluded. He added that, generally speaking, the important limitations and exceptions that were considered permitted under the Berne Convention would still be permissible under the new Treaty, for example, when relating to education, scientific research, the need of the general public for information to be made available in libraries and persons with a handicap that prevented them from using ordinary sources of information.

487. He pointed out that in Draft Treaty No. 2, Articles 13 and 20 dealt with limitations and exceptions. In paragraphs (2) of those Articles, there was a clause that was similar to the clauses in Article 12 of Draft Treaty No. 1, which included the three-step test. In paragraphs (1), there was a clause which corresponded to Article 15(2) of the Rome Convention and the effect of that clause would be that Contracting Parties could in their national legislation provide the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provided for the protection of copyright in literary and artistic works.

488. Mr. KUSHAN (United States of America) expressed his Delegation's support for the inclusion of Article 12 in Draft Treaty No. 1, and Articles 13 and 20 in Draft Treaty No. 2, and suggested changes to two words in paragraph (1) to make the text reflect Article 9(2) of the Berne Convention. The first change was to delete the word "only," and the second change was to change the word "the" to the word "a," so that the phrase "conflict with the normal exploitation" would read "conflict with a normal exploitation." The proposed changes related to both Draft Treaties. He said that it was essential that the Treaties permit application of the evolving doctrine of "fair use," which was recognized in the laws of the United States of America, and which was also applicable in the digital environment. In particular, he stressed that the provisions of Article 12 should be understood to permit Contracting Parties to carry forward, and appropriately extend into the digital environment, limitations and exceptions in their national laws which were considered acceptable under the Berne Convention. Those provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that were appropriate in the digital network environment.

489. Mr. NØRUP-NIELSEN (Denmark) supported the inclusion of the Article on limitations and exceptions, but expressed doubts as to the necessity of paragraph (2). He pointed out that the three-step test had originated in Stockholm in 1967, mainly in response to the emerging phenomena of photocopying. He was not sure that that test was appropriate in the digital world. He observed that the Conference had strengthened the protection of basic rights, such as the rights of reproduction and making available to the public, but he felt that the new rules should not be a "straight jacket" for existing exceptions in areas that were essential for society. He gave as examples education, scientific research, library activities and the interest of persons with handicaps. He, therefore, suggested that the Conference adopt an agreed statement to clarify the need and importance of the limitations and exceptions of which he spoke above. He also supported the amendment proposed by the Delegation of the United States of America on limitations and exceptions.

490. Mr. AYYAR (India) supported the amendment proposed by the Delegation of the United States of America, and stressed that there should be no ambiguity about the applicability of all limitations and exceptions under the Berne Convention, which were not

limited to those enumerated in Article 9(2) of the Berne Convention. He underscored the Chairman's statement that all of the exceptions and limitations under the Berne Convention would survive in the new Treaties. He emphasized that the change from a physical format to a digital format should not in any way curtail the various limitations applicable to science, research, education, public interest, public lending, and, further, that there should be scope for national legislation to make such alterations as might be necessary.

491. Mr. KIM (Republic of Korea) expressed his Delegation's support for the proposal by the Delegation of Singapore, and the proposal by the United States of America. He proposed the deletion of paragraph (2) of Article 12 of Draft Treaty No. 1, referring to it as no more than a repetition of paragraph (1), which might cause unreasonable burdens on Contracting States. Regarding Articles 13 and 20 of Draft Treaty No. 2, he strongly preferred the language which appeared in the Rome Convention.

492. Mr. TIWARI (Singapore) referred to the support from the Delegations of the Republic of Korea and the United States of America for Singapore's earlier proposed amendment to paragraph (1) of draft Article 12. He stressed that the language in the TRIPS Agreement and in the Berne Convention should be strictly followed to avoid unintended consequences. He asked for clarification as to whether Article 12 applied to all rights granted in Draft Treaty No. 1, including those that provided for specific exemptions or limitations, and to Article 13 on technological measures and Article 14 on rights management information. He noted that the three-step test taken from Article 9(2) of the Berne Convention was limited to the right of reproduction; therefore, it produced a narrowing or restrictive effect. He supported the proposal by the Delegation of the Republic of Korea to delete paragraph (2) of Article 12, because it was inconsistent with the commitment to balance copyright laws, where exceptions and limitations adopted by the Conference were narrowed, and protection was made broader. He cited as examples the following Articles of the Berne Convention which would be narrowed by paragraph (2) of Article 12: Articles 2(4), 2(8), 2*bis*(1), 10(1), 10*bis*(1), 10*bis*(2) and 11*bis*(2). He also felt that paragraph (2) of Article 12 might be contrary to Article 20 of the Berne Convention which prohibited provisions in the Treaties which were contrary to the Berne Convention. He indicated that his foregoing comments on Article 12 applied likewise to Articles 13 and 20 of Draft Treaty No. 2. He asked whether the language of Article 15 of the Rome Convention might provide an alternative for allowing exceptions.

493. Mr. GYERTYÁNFY (Hungary) aligned his Delegation with the concerns expressed by the Delegations of Norway, India and other countries regarding paragraph (2) of Article 12. He stated that the paragraph could be interpreted to restrict existing exceptions under the Berne Convention relative to existing rights, such as in respect to public performance. He supported the deletion of paragraph (2), or, alternatively, an agreed statement declaring that it did not touch upon existing rights and exceptions under the Berne Convention.

494. Mr. REINBOTHE (European Communities) stressed that the Conference must achieve a fair balance between rights and interests, including flexibility for Contracting States in their defining the scope of rights. He felt that the clauses on exceptions and limitations were important in achieving those objectives, and that such clauses should be based as closely as possible on Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement.

495. Mr. WIERZBICKI (New Zealand) supported the changes to two words in paragraph (1) by the Delegation of the United States of America. He also indicated that his Delegation's acceptance of paragraph (2) was subject to the understanding that the provision did not affect any of the current limitations or exceptions provided under the Berne Convention.

496. Mr. MTETEWAUNGA (Tanzania) supported the provisions in Article 12 in Draft Treaty No. 1 and Articles 13 and 20 in Draft Treaty No. 2. He added that his Delegation had no objections to the proposed amendment by the Delegation of the United States of America.

497. Mr. OLSSON (Sweden) stated that his Delegation supported Article 12 with the amendments proposed by the Delegation of the United States of America. He added that his Delegation also favored an agreed statement by the Conference to the effect that Contracting States should be entitled to provide in their national legislation for the type of traditional limitations and exceptions permissible under the Berne Convention, such as education, scientific research, library activities and the interests of persons with handicaps.

498. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, supported Article 12 on limitations and exceptions on the understanding that the Article was applied in the sense of not allowing the inclusion of new limitations or exceptions not to be found in the Berne Convention concerning rights laid down in that Convention, and that the new rights contained in the present draft Treaty only allowed limitations or exceptions according to the same criteria as those contained in the Berne Convention, in other words, rights that did not conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author.

499. Mr. MBON MEKOMPOMB (Cameroon) said that his Delegation endorsed Article 12 of Draft Treaty No. 1 and Articles 13 and 20 of Draft Treaty No. 2. He welcomed the opportunity given to domestic legislation to determine the scope of these Articles. He considered it essential to refer to the Berne Convention and the TRIPS Agreement and indicated that care must be taken not to establish a number of Alternatives, reservations and limitations which could lead to a multiplicity of levels of protection worldwide, particularly at a time when methods of exploitation were being globalized. In this connection, it was necessary to promote the development and guarantees of protection for performers as effectively and harmoniously as possible.

500. Mr. SHEN (China) said that his Delegation in principle could support the proposals put forward by the Delegations of India, Sweden, the Republic of Korea and the United States of America. Regarding Article 12, he supported the view of the Delegation of the Republic of Korea that it should be shortened because there were already explicit provisions of that kind in the Berne Convention. Regarding Draft Treaty No. 2, he supported the current wording.

501. Mr. SØNNELAND (Norway) expressed his Delegation's support for the amendment proposed by the Delegation of the United States of America. He referred to the interventions by that Delegation and the Delegation of Denmark regarding the traditional limitations and exceptions under the Berne Convention. He supported the interventions by the Delegations of Denmark and Hungary concerning Article 12(2), as well as the intervention by the Delegation of Sweden regarding an agreed statement on the traditional limitations and exceptions under the Berne Convention.

502. Mrs. YOUM DIABE SIBY (Senegal) expressed concern at Article 12 of Draft Treaty No. 1. According to this Article, national legislation could provide limitations and exceptions affecting all the rights granted under the Treaty provided that they did not limit the protection already recognized in the Berne Convention. She pointed out that, in the Berne Convention, the only limitations concerned the right of reproduction and the establishment of different levels of protection in different countries would cause problems that should be avoided. She therefore proposed that there should be a minimum standard level of protection that did not prejudice the rights granted to authors. She added that some of her comments also applied to Articles 13 and 20 of Draft Treaty No. 2.

*Eighth Meeting*

*Tuesday, December 10, 1996*

*Evening*

*Article 10 (Limitations and Exceptions) of the WCT (Article 12 of Draft Treaty No. 1) and Article 16 (Limitations and Exceptions) of the WPPT (Articles 13 and 20 of Draft Treaty No. 2 (continuation))*

503. The CHAIRMAN opened the floor to continue the discussion on Article 12 of Draft Treaty No. 1 and Articles 13 and 20 of Draft Treaty No. 2.

504. Mr. ROGERS (Chile), referring to Article 12, supported the position of the Delegation of Colombia expressed on behalf of the Group of Latin American and Caribbean countries. Nevertheless, he said that his Delegation could not accept the inclusion of provisions that allowed States to adopt new limitations or exceptions not currently provided in the Berne Convention. He therefore proposed that the scope of Article 12 should be reviewed or, if not, he would support the proposal to delete paragraph (2) of the Article.

505. Mr. BOUWES (Netherlands) supported all of the proposals thus far which sought to maintain the existing exceptions and limitations, as they reflected the necessary balance between all the various interests. He felt that it was too early to determine in detail which specific exceptions and limitations were needed in the digital environment, that that question required further study, and that Article 12(1) provided the necessary framework. He stressed his Delegation's belief in the importance of copyright and neighboring rights in the digital environment, and, at the same time, of the accessibility of information under reasonable conditions.

506. Mr. HONGTHONG (Thailand) expressed his Delegation's support for the interventions by the Delegations of India, the Republic of Korea, Singapore and the United States of America, regarding paragraph (1) of Article 12. Regarding paragraph (2) of that Article, he supported its deletion, and referred to the interventions by the Delegations of the Republic of Korea and Singapore.

507. Mr. STARTUP (United Kingdom) supported the principles underlying Article 12 of Draft Treaty No. 1, and the inclusion of similar provisions in Draft Treaty No. 2, which he felt



were based on the well established principles of the Berne Convention and the TRIPS Agreement. He said that his Delegation was willing to look at minor drafting amendments to align the provisions more closely with those two agreements. He stated that his Delegation understood the concerns of those who wished to apply *mutatis mutandis* such limitations and exceptions, which traditionally were considered acceptable under the Berne Convention, to the digital environment. He took note of the point in note 12.08, but also drew attention to the other principle set out in 12.08, that, in the digital environment, what might formerly have been minor reservations might in reality undermine important aspects of protection. He also noted that the contrary might also be true, namely that, in the digital environment, some acts might prove to be of no economic significance and would, therefore, meet the conditions of the three-step test.

508. Mr. SILVA SOARES (Brazil), associated himself with the position expressed by the Delegation of Colombia on behalf of the Group of Latin American and Caribbean countries and by the Delegation of Chile concerning Article 12, which also applied to Articles 13 and 20 of Draft Treaty No. 2.

509. Mr. TARKELA (Finland) supported Article 12 of Draft Treaty No. 1 and Articles 13 and 20 of Draft Treaty No. 2. He felt that it was important for the Treaties to be adopted to make it possible to preserve the balance between the right holders' interests, on the one hand, and the interests of the general public and society, on the other hand. He supported the views expressed by the Delegations of Denmark, Norway, Sweden, the United States of America and other countries who had emphasized the need for Contracting States to be able to continue the application of limitations and exceptions traditionally acceptable under the Berne Convention. He also joined previous Delegations that had called for an agreed statement by the Conference on limitations and exceptions which served the needs of education, scientific research, library activities and the interests of persons with handicaps.

510. Mr. CRESWELL (Australia) supported the inclusion of paragraph (1) of Article 12 and an agreed statement regarding Draft Treaty No. 1. He felt that paragraph (2) of that Article should be deleted, and he referred to the prior interventions which had called for its deletion. He also referred to prior discussions on minor reservations, and noted that, in conjunction with the debate on Article 6, his Delegation had reserved its position regarding a special broadcasting license, since Article 6 had proposed the abolition of such licenses. He suggested that such a license would be in keeping with the agreed statements adopted in Brussels in 1948 and in Stockholm in 1967, and he asked that the concern of his Delegation be taken into account. Regarding Draft Treaty No. 2, he said that his Delegation supported paragraph (1) of Articles 13 and 20, but was still considering the benefits of adopting a restatement of Article 15(1) of the Rome Convention. He suggested for consideration the possibility of merging Articles 13 and 20 into one common provision.

511. Mr. YAMBAO (Philippines) agreed with the changes proposed by the Delegation of the United States of America in Article 12(1) of Draft Treaty No. 1, and supported Articles 13 and 20 of Draft Treaty No. 2, as drafted or as merged into a common provision. He expressed his Delegation's support for the principle that Contracting States be able to provide in their national legislation limitations and exceptions to rights granted in the Treaties. He also underscored the Chairman's observations in note 12.09 regarding the need to balance protection against important values in society including the interests of education, scientific

research, the need of the general public for information available in libraries and the interests of persons with handicaps that prevented them from using ordinary sources of information.

512. Mr. HENNESSY (Ireland) noted that the matter of limitations and exceptions was one which his country felt was particularly important in the digital environment. He supported the principles underlying the Basic Proposal, in that he believed that the existing texts balanced the interests of right holders and society at large, and that they should, subject to minor amendments, be acceptable. He saw, however, some merit in the proposals regarding the clarification of the position of existing exceptions referred to by a number of Delegations.

513. The CHAIRMAN recalled that the Committee would come back to those issues and decide on the language to be proposed after having analyzed the possible written proposals and the interventions and suggestions made. He noted that, during the discussion, some proposals had been made relating to the drafting and perhaps also the contents of the provisions. The Delegation of the United States of America had proposed that the word "only" be deleted from paragraph (1) of Article 12, a proposal that was supported by several Delegations, and it had proposed that the words "the normal exploitation" should be changed to "a normal exploitation." Doubts had also been expressed concerning the need for paragraph (2) of Article 12. In several Delegations' interventions, there had been elements which indicated that those Delegations were offering statements which included an understanding of how the Articles on limitations and exceptions should be interpreted and applied, and, towards the end of the discussion, the idea of a possible agreed statement was developed. He thought that there were elements in many interventions from which an agreed statement could be made.

514. He noted the clear opinion, expressed by some Delegations, that the provisions on limitations and exceptions in Draft Treaty No. 1 should not make possible limitations which were new and not allowed under the Berne Convention. He felt that it had to be made very clear that it would not be possible, and it was not even legally thinkable, that the Treaties would open new limitations concerning the rights provided in the Berne Convention.

*Articles 11 (Obligations concerning Technological Measures) and 14 (Obligations concerning Rights Management Information) of the WCT (Articles 13 and 14 of Draft Treaty No. 1); Articles 18 (Obligations concerning Technological Measures) and 19 (Obligations concerning Rights Management Information) of the WPPT (Articles 22 and 23 of Draft Treaty No. 2)*

515. The CHAIRMAN opened the floor for discussions on *Articles 13 (Obligations Concerning Technological Measures) and 14 (Obligations Concerning Rights Management Information) of Draft Treaty No. 1 and the corresponding provisions in Articles 22 and 23 of Draft Treaty No. 2*, by stating that those issues had already been discussed during the preparatory work. The provisions on obligations concerning technological measures were based on the proposals presented by certain Governments in the preparatory process, and those Articles were identical in the two Treaties. Some changes had been introduced compared to the provisions proposed by those Governments and the European Community and its Member States in the course of the preparatory work, taking into account the international discussion and the comments made in the course of the preparatory work in the Committees of Experts. Article 14 on obligations concerning rights management information

and the corresponding Article in Draft Treaty No. 2 were a simplified version of the proposal made by the Delegation in the course of the preparatory work in the Committees of Experts. Some elements had been removed, and a definition of rights management information had been inserted and redefined compared to the provisions found in the proposals and national bills. The changes aimed at having a more narrow scope of application and at streamlining the provisions.

516. He said that it would be advisable to consider at least one further element which would narrow the scope of application of the obligations concerning rights management information, namely the connection of the acts concerned to an infringement.

517. Mrs. MOULD-IDDRISU (Ghana) recalled that at the meetings of the Committees of Experts, the Delegation of her country had made very forceful representations concerning Article 13 of Draft Treaty No. 1 and Article 22 of Draft Treaty No. 2, asking for their deletion, because they were vague, because they would lead to confusion and because developing countries would be unable to implement such provisions. She said that the African Group and her Delegation wished to register most strongly their protest against the inclusion of those Articles in their present form. If the adoption of those Articles was not deferred for further discussion, at least their paragraph (3) should be redrafted to replace the words "the primary purpose" with the words "the sole purpose."

518. Mr. KIM (Republic of Korea) referred to the written proposals of his Delegation, which intended to address the concern on possible abuses of technological measures by authors or other right holders. Contracting Parties should be given discretionary power to impose conditions on the technological measures which were aimed at protecting the materials or works which were not supposed to be protected. He mentioned, as an example, a library which was exempted from liability, civil or criminal, for the reproduction of works for archival purposes and for public lending of works. The general public could copy parts of its material or articles in the library. Even such occasional copying would not be possible, due to technological measures, and the user would have no other choice than to buy the whole book or other material, which most individuals could not afford. Libraries or the general public would not have a technology expert who could circumvent the technological measures in order to have a look at the whole copy, the material or article, even if that were permitted. He pointed at the important role of libraries in education and research and stressed that the digital environment should not change the role of libraries in society. Exceptions and limitations which were permitted in the analog environment should also be respected in a digital environment. He pointed out that his Delegation's proposal would fulfill the very aim of protecting materials enjoying copyright protection, and clear away the concerns which had been raised by hardware manufacturers, telecommunication industries, education institutes and public libraries, and it would make sure that the general public would not be kept out of track in the information society.

519. Mr. VISSER (South Africa) recalled that his country's problems with Articles 13 and 22 had been raised on a number of occasions in the Committees of Experts and other meetings. He associated himself with the remarks made by the Delegation of Ghana, and added that, because of the difficulties with the current wording of Articles 13 and 22, there was a danger that no provision could be adopted relating to technological measures, and he strongly believed that those Articles addressed a real problem. He said that, for that reason, he would propose in writing that the obligation should simply be that Contracting Parties must provide

adequate legal protection and effective remedies against the circumvention of certain technological measures, which should have three characteristics; first, they should be effective technological measures; second, they should be used by right holders in connection with the exercise of their rights under the Treaties; and, third, they should restrict acts which were not authorized by the right holders or not permitted by law.

520. In respect of Article 14 on rights management information, he said that he would like to see the ambit of Article 14 expanded to include more than electronic rights management information, because he saw no justification for limiting the provision in that respect, and he supported the Chairman's suggestion that the obligations be linked to limitations and exceptions.

521. Mr. EKPO (Nigeria) supported the interventions by the Delegations of Ghana and South Africa and the amendment that the Delegation of South Africa would submit. With regard to Article 14 of Draft Treaty No. 1 and Article 23 of Draft Treaty No. 2, he said that his Delegation shared the view that those Articles should not be restricted to electronic information, and it, therefore, proposed that the word "electronic" in the two Articles be deleted.

522. Mrs. YOUM DIABE SIBY (Senegal) shared the views expressed by the Delegations of Ghana and South Africa. She considered, however, that the provisions in the basic texts concerning obligations relating to technological measures should be amended. She believed that it would be difficult to give States the responsibility for drawing up the technological measures needed to ensure the most appropriate protection. She would prefer to see the establishment of minimum international protection. With regard to the obligations on rights management information, contained in Article 14 of Draft Treaty No. 1 and Article 23 of Draft Treaty No. 2, she said that her Delegation supported the deletion of the word "electronic" in paragraph (1)(i) of these two Articles.

523. Mrs. BOUVET (Canada) stated that her Delegation was of the view that provisions on technological protection measures and rights management information could play a useful role in both Treaties, and it fully supported their inclusion. She added, however, that some wording in Article 13 of Draft Treaty No. 1 and Article 22 of Draft Treaty No. 2 would not be acceptable to her country. Although a number of safeguards had been built into the wording of those Articles, they still posed two types of problems: first, that the wording would create problems for producers and sellers of equipment which might have a significant non-infringing use but which could also be used to defeat copyright protection—in that context, the words "or primary effect" in paragraph (3) of Article 13 were particularly problematic; second, the draft provisions could interfere with access to works in the public domain or restrict access under fair use or fair dealing provisions or of specific exceptions which were consistent with the Berne Convention and the proposed Treaty.

524. She said that her Delegation was aware that a number of Delegations and non-governmental organizations were working on language which would greatly reduce the problems she had mentioned, and some of the language looked very promising. She stated that her Delegation supported the inclusion of provisions on rights management information in both Treaties. Among other things, the protection of the identity of the author could provide a useful supplement to the moral right of attribution under the Berne Convention and the proposed similar right in Draft Treaty No. 2. Nothing in the Treaties should require the

inclusion of rights management information. The current wording made its inclusion completely voluntary, that might, however, have to be made even clearer. Furthermore, provisions on rights management should not impose unreasonable burdens or technical problems for intermediaries, such as broadcasters.

525. Mr. KUSHAN (United States of America) stated that his Delegation strongly supported the inclusion of provisions concerning technological measures in both treaties. Without the safeguards of such provisions, right holders would make neither their works nor their phonograms available on the Internet. Those provisions were critical if the Internet were to develop into a fully mature and truly global market place for information and entertainment products for consumers in countries around the world. He said that his Delegation also strongly supported the inclusion of provisions on rights management information in the Treaties, but that it would recommend certain amendments and clarifications. He supported the view expressed by the Delegation of Canada that one of such amendments should be to include a provision making it clear that Contracting Parties could not require rights holders to provide rights management information. He referred to his Delegation's intention to propose certain changes in the scope of the coverage of the provision, for example, to ensure that the correction of inaccurate information by a right holder would not be treated as a prohibited act. He added that his Delegation believed that the provision should also address the problem of filing fraudulent rights management information with a public authority.

526. Mr. TIWARI (Singapore) stated that his Delegation would propose an amendment to Article 13(3) of Draft Treaty No. 1 by deleting the expressions "primary purpose" and "primary effect" and replacing them with the terms "sole intended purpose." He believed that that amendment would provide an appropriate balance between the need to safeguard the interests of rights holders against protection-defeating devices and the need to ensure that *bona fide* legitimate manufacturers and users of general-purpose equipment would not be exposed to liability for the possible use of such devices for illegitimate purposes. He said that his Delegation also shared the concern that the Article could outlaw copying for personal, scientific and educational uses.

527. In addition, he stated that the proposed Article created uncertainty as to whether it would still allow restrictions which allowed so-called reverse engineering or decompilation of computer programs, as found in the domestic legislation or case law in a number of countries, including the United States of America, Japan and the Member States of the European Community. He said that his Delegation believed that it would be dangerous to conjecture about the future based on a series of assumptions about how the technology would develop and effect copyright owners. It would be preferable to depend on existing laws and remedies to address each specific circumvention technology as it would arise, if existing law would prove inadequate. The proposed amendment, modeled after the software directive of the European Community, struck, in the view of his Delegation, the right balance and was consistent with the overall copyright policy of advancing the progress of science and recognizing the impact such a provision would have on product innovation and creativity in the manufacturing industry.

528. Regarding Article 14 on obligations concerning rights management information, he said that his Delegation was concerned over the scope of the provision and had, therefore, proposed that some form of limitation and exception be provided. When the right owner's permission was served to use a part of the work, there would be no issue, but the concern was

when parts of a work were used or dropped without authorization from the right owner. In that case, the provision might impede the ability to create new multimedia works as compilation and would restrict the individuals' ability to use portions of copyrighted works for private purposes. It had also been argued that, unless copies were distributed in some manner, there would be no prejudice from the mere removal or alteration of any rights management information. The scope of liability should also not be based on mere knowledge of unauthorized removal or alteration or of unauthorized distribution or communication to the public of such information. It should be made clear that liability would only attach to those who transmitted such information in furtherance of actual copyright infringement or for the purpose of such furtherance, as in the proposed legislation of the United States of America. He called for further study of the provision and stated that the same comments would apply, *mutatis mutandis*, to Articles 22 and 23 of Draft Treaty No. 2.

529. Mr. REINBOTHE (European Communities) stated that his Delegation considered Article 13 of Draft Treaty No. 1 and Article 22 of Draft Treaty No. 2 particularly important in order to ensure the effective protection of works and other subject matter in the new digital environment. The wording of those provisions were a substantial improvement with respect to previous proposals, including the one tabled by the European Community and its Member States. He said that his Delegation was aware of the need to achieve the right balance of rights and interests, and of the need to avoid any prejudice to activities and devices which served legitimate purposes. He underlined the importance of the element of knowledge, and of the link to an infringement of the rights concerned. Moreover, when seeking the right balance in those provisions, the elements of primary purpose and primary effect needed to be carefully assessed, and the provisions should possibly be simplified, without undermining their efficiency. He expressed interest in the suggestions made by the Delegation of South Africa.

530. Regarding Article 14 of Draft Treaty No. 1 and Article 23 of Draft Treaty No. 2, he found the provisions on rights management information somewhat complicated, but he said that they served a very useful purpose, even though in their present wording they might be too wide in scope and not sufficiently defined. He believed, therefore, that, in paragraph (1), a link to the preparation or facilitation of an infringement was needed, and, furthermore, a link would be appropriate to the violation of other legal obligations, such as with respect to remuneration rights, for example, by adding at the end of paragraph (1) the words "knowing that by so doing they are enabling or facilitating an infringement of any of the rights provided for under this Treaty." A similar reference could be made to the violation of other legal obligations.

531. Ms. DALEY (Jamaica) stated that her Delegation wished to suggest certain minor amendments to the wording of the provisions on technological measures in Article 13 of Draft Treaty No. 1 and Article 22 of Draft Treaty No. 2. The first amendment was solely for the purpose of grammatical consistency, namely that paragraph (1) in both Articles be amended by deleting the words "to know" and replacing them with the words "for knowing" so that it would read "by any person knowing or having reasonable grounds for knowing." Secondly, she suggested that paragraph (3) of both Articles 13 and 22 be amended by deleting the words "any of the acts covered by" and replacing them with the words "the contravention of, or the infringement of," so that the portion of the sentence would read "mechanism or system that prevents or inhibits the contravention of, or the infringement of, the rights under this Treaty." She said that, in the view of her Delegation, the formulation "any of the rights covered by the

rights under the Treaty” was too broad and unprecise and its proposed amendment would not contravene the basic intention of the Article.

532. Mr. WIERZBICKI (New Zealand) expressed support for Article 13, but subject to some points of concern to his Delegation. He said that his comments would apply equally to the similar provision in Draft Treaty No. 2. He referred to the words in the first line: “Contracting Parties shall make it unlawful,” and said that that language, in his interpretation, would require Contracting Parties to make that a criminal offense. He said that that caused difficulty for his Delegation because the equivalent provision in the national legislation of his country made that a civil offense, something for the right holders to enforce rather than imposing that obligation on the state. Secondly, he raised the question of the language of “primary purpose or primary effect,” and pointed out his Delegation’s concern with that language because it seemed to ignore the knowledge element. He suggested that, instead, the language should be “where it is known or there is reason to believe that it is to circumvent any process...” He felt that that language would make it more precise and related to the knowledge requirement. Regarding Article 14 of Draft Treaty No. 1 and the equivalent Article of Draft Treaty No. 2, he again raised the issue of the language “make it unlawful,” and stressed that that would have to be a civil offense rather than a criminal offense. He proposed that the words “and/or” be added at the end of clause (1)(i), and that the word “electronic” be added after the word “means” in the first line of paragraph (2).

533. Mr. ETRANNY (Côte d’Ivoire) shared the views expressed by the Delegations of Ghana, Nigeria, Senegal and South Africa and fully supported the amendment proposed by the Delegation of South Africa.

534. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, said that countries of the region recognized that measures related to obligations on technological measures and rights management information would lead to greater respect for the rights provided in the Treaties under discussion. He said, however, that the Spanish text of the Article on obligations on technological measures should be revised to make it consistent with the English text of the Article. With regard to obligations on rights management information, he proposed that in Article 14(1)(ii), the words “or make available” should be added after the words “communicate to the public.”

535. Mr. STARTUP (United Kingdom) observed that the provisions on technological measures were an essential underpinning of copyright and neighboring rights in the digital age. He felt that the basic proposal on that issue was similar in many respects to provisions already in the United Kingdom law, and, as such, was a good basis for such a provision. He recognized that there were concerns about possible effects on legitimate activities, and expressed his Delegation’s willingness to look at the drafting to see if it could be clarified in that respect. He was of the opinion that the provisions on rights management information were similarly of importance in the context of electronic reproduction and transmission. He stated that the scope needed to be narrowed, in particular by establishing an explicit link with the infringement of rights. He, therefore, supported the proposal made by the Delegation of the European Communities. He suggested that one further improvement might be to look at the definition itself of rights management information.

536. Mr. SCHONEVELD (Australia) stated that his country was in principle supportive of Article 13 of Draft Treaty No. 1, but, like others, had some concerns that the current language

might unwittingly restrict access to material in circumstances where it was not subject to copyright. He suggested that the Article contain adequate language to deny its application in regard to access to copyright material the free use of which was sanctioned by law, so as to confine its operations to clear cases of intended use for copyright breaches. He said that his comments in respect of Article 13 also applied in respect of Article 22 of Draft Treaty No. 2. He added that his Delegation also supported inclusion of a provision on rights management information, such as those in Article 14 of Draft Treaty No. 1, but felt that it was more desirable that the provision specifically provide for a link between the authorized removal or alteration and an act of copyright infringement. He felt that in Article 14(1) of Draft Treaty No. 1, some points of detail in drafting needed further clarification, and, in that regard, asked whether distribution extended to rental, and whether communication to the public was included under the Article, yet broadcast was not.

537. Mr. SØNNELAND (Norway) was, in general, in favor of the provisions on obligations concerning technological measures and rights management information. However, he agreed with those who had proposed narrowing the scope of those provisions, for the main reason that such provisions should not prevent legitimate use of works, for example, private and educational uses, and use of works which had fallen into the public domain.

538. Mrs. KADIR (Trinidad and Tobago) supported the amendments proposed by the Delegation of Jamaica regarding Articles 13 and 22, to provide more precision in those Articles.

539. Mr. KEMPER (Germany) joined those Delegations which had considered that the scope of the provisions in question should be narrowed. Specifically regarding the legal quality of sanctions, that is, the remedies that would be provided, he referred to the intervention by the Delegation of New Zealand, to the effect that the words "make unlawful" would mean that national legislation would require criminal remedies. He said that his Delegation felt that, in respect of the provisions on technological measures and copyright management information, the remedies that the Contracting Parties would have to provide should leave them more freedom, and might be civil or administrative or criminal remedies, at their choice. He observed that the corresponding wording of the provisions would need to be harmonized in that respect. He pointed out that Article 13(2) of Treaty No. 1 made it clear that the Contracting Parties would have the choice to determine the legal quality of the remedies.

540. Mr. GYERTYÁNFY (Hungary) recognized the emerging need and importance of technological measures to protect copyright, and also the need for the protection of those legitimate measures, and said that, therefore, his Delegation supported the essence of the Articles under discussion. He referred to Article 14 of Draft Treaty No. 1 and Article 23 of Draft Treaty No. 2, concerning rights management information. He proposed that the words "productions and" be added in sub-paragraph (ii) before the word "copies," in the two respective Articles.

541. The CHAIRMAN announced that the Committee had come to the end of the initial discussion on the two provisions of the two Treaties. He said that there were several Delegations which considered that, in the present form, those provisions should not be included in the Treaties. There were several Delegations which supported the essence of the principles of those provisions, and both groups of Delegations offered useful advice concerning drafting in order to make them internationally acceptable. There was in one



intervention a proposal to narrow the scope of the provisions concerning technological measures. There was a suggestion to redraft the passage concerning primary purpose or primary effect, to make it clearer. He observed that there were opinions according to which the provisions on rights management information should not only concern electronic, but any rights management information. There had been clear support for the suggestion that the provisions on rights management information should be narrowed by linking it to infringing acts. It was stressed in respect of both provisions, that activities which were lawful, which concerned materials in the public domain, and acts which had been authorized by the right holders, should not be made subject to those provisions. Reference had been made to libraries and educational activities, where materials would be used, and, in many cases, the materials might include devices in the sense of those provisions. The focus of the knowledge element was also commented upon. It was suggested that it should be carefully considered what should be the exact knowledge element in both provisions.

*Ninth Meeting*

*Wednesday, December 11, 1996*

*Morning*

*Work program*

542. The CHAIRMAN indicated that the next items to be considered by the Committee would be four clusters of Articles. The first cluster would include the provisions on enforcement in Draft Treaty No. 1 and in Draft Treaty No. 2. The second cluster would be the framework provisions of Draft Treaty No. 1, namely Articles 1, 2 and 15. The third cluster would be the framework provisions of Draft Treaty No. 2, that is, Articles 1, 3, 4, 24, 25, and 26. The fourth and last cluster would be the preambles and titles of the two Treaties.

*Article 14 (Provisions on Enforcement of Rights) of the WCT (Article 16 and Annex of Draft Treaty No. 1); Article 23 (Provisions on Enforcement of Rights) of the WPPT (Article 27 and Annex of Draft Treaty No. 2)*

543. The CHAIRMAN observed that the last Articles in the Basic Proposals on substantive provisions were the *Articles on enforcement—Article 16 of Draft Treaty No. 1 and Article 27 of Draft Treaty No. 2*. He noted that, in the two Treaties under discussion, the provisions on enforcement were identical, but they had been presented in two alternative forms.

Alternative A was based on a method according to which there was an Article referring to an Annex, which made it clear in paragraph (2) that the Annex formed an integral part of the Treaty. That followed the approach suggested by certain Delegations during the preparatory work in the Committees of Experts. Alternative B was based on a clause which made the same provisions in the TRIPS Agreement, Articles 41 to 61, applicable by reference, *mutatis mutandis*. He felt that that area had been very well analyzed, and that there was no need to offer any further initial remarks. He opened the floor for comments on the issue of enforcement.

544. Mr. KUSHAN (United States of America) pointed out that the original decision to include enforcement provisions in the Treaties preceded the successful conclusion of the Uruguay Round negotiations and the TRIPS Agreement. He said that the TRIPS Agreement, as concluded, provided a very satisfactory and balanced series of provisions on the enforcement of intellectual property rights. Many countries had been, or were in the process of, implementing those provisions. He stated that his Delegation was of the opinion that any new rights created by the Treaties would be subject to the same enforcement regimes that had been or would have been created by the WTO Members. It, therefore, did not believe that there was a need to include specific provisions on enforcement in the Treaties. He noted that in the light of the discussions in the WIPO Committees of Experts on the Settlement of Disputes, his Delegation saw a significant risk of creating confusion in the development and interpretation of the TRIPS provisions on enforcement, even if identical provisions were incorporated, *mutatis mutandis*, into the Treaties. He concluded that, for those reasons, his Delegation believed that the most appropriate course of action would be to omit provisions on enforcement from these Treaties.

545. Mr. KIM (Republic of Korea) reverted to the provisions on technological measures and rights management information, indicating that his Delegation was not convinced that those were matters for copyright and neighboring rights, and, was, therefore, against inclusion of those provisions in the Treaties. He said that some form of standardization was required, and he believed that WIPO was the most appropriate organization for such a standardization to be developed. Regarding the two Articles on enforcement, he stated that his Delegation was in favor of Alternative A in both Treaties.

546. Mr. TIWARI (Singapore) noted that both Alternatives A and B made reference to the TRIPS Agreement. He preferred that there be no connection with the TRIPS Agreement. He felt it was important to point out that neither the Berne Convention nor the Rome Convention contained any enforcement provisions. It was his opinion that the enforcement provisions in the TRIPS Agreement would also not be effective unless the dispute prevention and settlement provisions under Part IV. of the TRIPS Agreement were also incorporated. Rather, he preferred that enforcement of the provisions of both Treaties be left to national legislation of each Contracting Party, and he noted that that had traditionally been the practice under Article 36 of the Berne Convention, and the equivalent Article 26 of the Rome Convention. Each country should be in a position under its domestic law to give effect to provisions of the Treaties when it would become bound by their terms. He felt that consideration should also be given to a dispute resolution provision modeled on Article 33 of the Berne Convention, and its equivalent Article 30 of the Rome Convention, which provided a reference to the International Court of Justice, subject to the right of reservation from Contracting Parties who did not wish to be bound by the decisions of that Court. He added that his comments applied also to the corresponding Article 27 of Draft Treaty No. 2. He stated that his Delegation, therefore, supported the position taken by the Delegation of the United States of America to omit any mention of the TRIPS Agreement enforcement provisions.

547. Mr. GYERTYÁNFY (Hungary), speaking on behalf of Bulgaria, Croatia, the Czech Republic, The former Yugoslav Republic of Macedonia, Latvia, Poland, Romania, Slovakia, Slovenia and his own country, supported the inclusion of detailed provisions on enforcement in both Treaties. He favored Alternative A, that is, the inclusion of a full text in both Treaties. He thought that a *mutatis mutandis* reference could result in differing interpretations in the future, and stated that he preferred to strengthen the self-standing nature of the Treaties.

548. Mr. ABBASI (Pakistan) stated that the two Alternatives given in the Articles under discussion were substantially based on the TRIPS Agreement, which, he felt, gave a substantially higher level of enforcement than that provided under the Berne Convention; and, therefore, the enforcement provisions were not acceptable to his Delegation. As an alternative, he suggested that a ten-year transitive period should be allowed for developing countries.

549. Mr. REINBOTHE (European Communities) strongly supported the inclusion of enforcement provisions in the new Treaties, for three reasons. First, any provisions on rights were far less useful without provisions on enforcement, and it seemed to correspond to the modern approach to the protection of intellectual property worldwide that both rights and enforcement measures were provided for. Second, the new Treaties would be self-standing treaties, independent from the TRIPS Agreement. Third, the enforcement provisions in the TRIPS Agreement did not cover the new elements of protection in the new Treaties. He mentioned that the enforcement provisions in the TRIPS Agreement might not be ideal, but they had been agreed upon by a large number of countries which were also represented in the Diplomatic Conference. He believed that the enforcement provisions in the TRIPS Agreement constituted a good compromise. As a consequence, he suggested that the Conference adopt the TRIPS Agreement enforcement provisions for the new Treaties with only some technical modifications, for example, as an Annex to the new Treaties. He stated that his Delegation preferred Alternative A, which, it felt, provided for more transparency and for more clarity than Alternative B. He said that, as long as there was agreement on the need to attach enforcement provisions to the rights contained in the new Treaties, his Delegation would maintain some flexibility as to the way to achieve that end.

550. Mr. HONGTHONG (Thailand) supported the interventions by the Delegations of Singapore and the United States of America.

551. Mr. YAMBAO (Philippines) supported the opinions expressed by the Delegation of Singapore. He believed that enforcement of the provisions of the Treaties should be left to national legislation, and, therefore, enforcement provisions should not be incorporated in the Treaties. He pointed out that his country was still in the process of fully implementing its obligations under the TRIPS Agreement, and was not to take on additional obligations beyond those obligations.

552. Mr. ANTEQUERA PARILLI (Venezuela) pointed out that Andean community law already contained a rule binding on the five member countries regarding enforcement measures so his Delegation agreed with the special provisions on enforcement of rights that also appeared in the draft Treaties. In this connection, he supported Alternative A, which reflected efforts to adapt many of the provisions of the TRIPS Agreement, although it needed to be amended. Firstly, he noted that the proposal in Alternative A obliged Contracting Parties to ensure that enforcement procedures were available under their national law, although it would be more appropriate if the Treaties' enforcement procedures could be implemented as directly applicable rules. Secondly, certain aspects of the proposal in Alternative A should be modified so as to adapt but not reproduce the enforcement measures contained in the TRIPS Agreement, which had been elaborated solely to cover the exercise of trade-related rights, because the Treaties under consideration dealt with other rights that were not necessarily related to unlawful practices in commercial markets.

553. Ms. DALEY (Jamaica) was of the view that Article 1(1) of the Annex in both Draft Treaties was sufficient to impose an obligation on Contracting Parties with respect to enforcement. She proposed that Article 16 plus the Annex of Draft Treaty No. 1 and Article 27 plus the Annex of Draft Treaty No. 2 be deleted and be replaced by the text of Article 1(1) of the Annex of each Treaty which read: "Contracting Parties shall ensure that enforcement procedures are available under their laws so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements."

554. Mr. SHEN (China) supported the Delegations of Singapore and the Philippines. He was of the view that special provisions on enforcement of rights should reflect, and be replaced by, the text of Articles 33 and 36 of the Berne Convention. The enforcement issue should be resolved under national legislation and not through an international treaty. If there were problems between countries, they should be dealt with in keeping with Article 33 of the Berne Convention.

555. Mr. OPHIR (Israel) stated that the enforcement provisions in the Draft Treaties might be superfluous in light of the fact that many countries were required by the TRIPS Agreement to implement the enforcement procedures of the TRIPS Agreement. He added, however, that, if enforcement provisions were to be incorporated into the Treaties, his Delegation would support Alternative B. He noted that, while Alternative A also had merit, his Delegation believed that it might be premature to consider those in detail until it had been possible to fully implement and assess the provisions of the TRIPS Agreement in national legislation.

556. Mr. AYYAR (India) observed that, in the Committees of Experts, as well as in the intervention by the Delegation of the European Communities, an understanding had been expressed that the Treaties would be stand-alone Treaties. That being so, he stressed that it would be necessary for the Treaties to have appropriate enforcement provisions. Of the two Alternatives in the Basic Proposals, his Delegation was in favor of Alternative A, but it found the proposal of the Delegation of Jamaica very interesting. He emphasized that his country could not be party to any Treaty with Alternative B, which, in his Delegation's view, was difficult to understand unless it was an experiment to bring the Treaties within the fold of the TRIPS Agreement and the World Trade Organization. He expressed his concern about the larger question of two international organizations, both based in Geneva, simultaneously engaged in intellectual property matters with overlapping jurisdictions, and the interplay of the processes in those organizations being used to continuously reopen and revise treaties.

557. Mr. SØNNELAND (Norway) supported the intervention by the Delegation of the European Communities, and Alternative A.

558. Mrs. RETONDO (Argentina) fully supported the statement made by the Delegation of Venezuela, expressing a preference for Alternative A with the amendments proposed by the said Delegation to ensure that the enforcement provisions were directly applicable, as well as the amendments required to adapt the provisions of the TRIPS Agreement, which had been elaborated for the exercise of trade-related rights.

559. Mrs. YOUM DIABE SIBY (Senegal), said that her Delegation was not opposed to the inclusion of provisions providing for penalties in the Treaties, taking into account the separate status of these Treaties in comparison with other international instruments.

560. Mr. SCHONEVELD (Australia) stated that his Delegation preferred Alternative A, and referred to the reasons given in the intervention by the Delegation of the European Communities. He indicated that his Delegation would be open to consider other proposals which achieved the same result as Alternative A.

561. Mr. SILVA SOARES (Brazil) could not accept either Alternative A or Alternative B in the Article on the enforcement of rights. One solution could be to delete any reference to the enforcement of rights, because it might mean recourse to mechanisms for the settlement of trade disputes, which would not be an appropriate solution in a Treaty on private rights. He therefore preferred the solution of including a provision on the exclusive competence of national legislation, allowing States to determine how the rights would be enforced, along the lines proposed by the Delegation of Singapore.

562. Mr. EKPO (Nigeria) aligned his Delegation with others which had preferred that the provisions on enforcement be left to national legislation.

563. Mr. ROGERS (Chile) supported the inclusion of special provisions on enforcement of rights, with a preference for Alternative A.

564. Mr. TEYSERA ROUCO (Uruguay) said that, after having heard the sound arguments put forward by the Delegations of Venezuela, Argentina and the European Communities, his Delegation had changed its position with regard to this matter and preferred Alternative A.

565. Mr. MTETEWAUNGA (Tanzania) said that his Delegation was in favor of Alternative A. He also suggested that there be a grace period of ten years for developing countries.

566. Mr. PALENFO (Burkina Faso) said that his Delegation supported the inclusion of provisions on rights in the treaties and preferred Alternatives A in Article 16 of Draft Treaty No. 1 and Article 27 of Draft Treaty No. 2.

567. Mr. ZAPATA LÓPEZ (Colombia) pointed out that one of the lacunae highlighted in Treaties administered by WIPO was that they did not include special provisions to make respect for rights viable, so he believed that the time had come to provide provisions on the enforcement of rights in the Treaties under discussion. He therefore supported Alternative A proposed by the European Communities and supported by the Delegations of Venezuela, Argentina and Chile.

568. Mr. UGARTECHE VILLACORTA (Peru) expressed support for Alternative A in the Article under discussion.

569. Mr. KANDIL (Morocco), referring to the system for the enforcement of rights proposed in Article 16 of Draft Treaty No. 1 and Article 27 of Draft Treaty No. 2, said that his Delegation wished to keep the provisions in Articles 33 and 36 of the Berne Convention. He considered that national legislation should be entrusted with the responsibility for adopting

laws in this respect and consequently endorsed the views expressed by other Delegations to this effect. If a choice had to be made, his Delegation would prefer Alternatives A in Article 16 of Draft Treaty No. 1 and Article 27 of Draft Treaty No. 2.

570. Mr. CHAVULA (Malawi) said that his Delegation strongly supported the inclusion of enforcement provisions in the Treaties, based on his Delegation's understanding that the Treaties would be completely new and independent. He supported the intervention by the Delegation of the European Communities.

571. Mrs. KADIR (Trinidad and Tobago) believed that the provisions on enforcement should be left to national legislation, and supported the view that, since the Treaties would be independent instruments, they should contain some provisions on enforcement, but that the mechanics of the operation of those provisions should be left to national legislation. She supported the proposal by the Delegation of Jamaica.

572. Mr. GOVONI (Switzerland) said that his Delegation supported the inclusion of provisions on the enforcement of rights in the Treaties to the extent that such provisions were needed in order to ensure that the rights recognized in the Treaties were respected. He supported Alternative A, but said that his Delegation could envisage a compromise solution within the terms of Alternative B.

573. Mr. SHINAVENE (Namibia) stated that his Delegation supported Alternative A.

574. Mrs. YOUM DIABE SIBY (Senegal) said that her Delegation preferred Alternatives A in Article 16 of Draft Treaty No. 1 and Article 27 of Draft Treaty No. 2.

575. The CHAIRMAN stated that the initial discussion on enforcement provisions had concluded. Alternative A had gained support from the majority of those who had spoken on the matter. There were, however, also a number of Delegations which were against having special provisions on enforcement in the Treaties. He observed that a number of Delegations had referred to Articles 33 and 36 of the Berne Convention, and were of the view that the matter should be left on the basis of those provisions. He also noted that an important number of Delegations were not in favor of having special provisions on enforcement of rights, and had taken the position that the whole enforcement issue should be left to domestic legislation. He said that, in his view, there would be a possibility of having a specific clause stating that the matter of enforcement was left to domestic legislation. He felt that Alternative A had the support of the majority of those who had taken a position. He also drew attention to the position of the Delegation of Jamaica that proposed to drop the Articles on special provisions and the Annexes, and instead have a new Article based on the language in Article 1(1) of the provisions on enforcement in the Annexes. He said that the Committee had an opportunity to analyze the results of the first round of discussions on the issue of enforcement provisions, and then come back to the question and take a final stand on what kind of solutions should be suggested to the Plenary of the Conference.

*Articles 1 (Relation to the Berne Convention), 3 (Application of Articles 2 to 6 of the Berne Convention) and 13 (Application in Time) of the WCT (Articles 1, 2 and 15 of Draft Treaty No. 1)*

576. The CHAIRMAN introduced what he referred to as the “framework provisions” of *Draft Treaty No. 1*, that is, *Articles 1 (Relation to the Berne Convention) and 2 (Application of Articles 3 to 6 of the Berne Convention)*. He also suggested that the discussion include *Article 15 (Application in Time)*. As a matter of drafting, he suggested that the order of paragraphs (3) and (4) in Article 1 be reversed. He opened the floor for discussion.

577. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, expressed his concern regarding the relation between this Treaty and the Berne Convention as provided in Article 1. He considered that the objective of this relation should be to ensure that countries which acceded to the new Treaty undertook to respect its provisions as well as those of the Berne Convention both as regards substantive and administrative aspects. The Group of Latin American and Caribbean countries therefore proposed that Article 1 should be amended by adding the following at the end of paragraph (1): “This Treaty shall have no connection, either explicit or implicit, with other treaties or conventions that are directly or indirectly concerned with the same subject matter,” so that the part of the TRIPS Agreement on enforcement of rights did not apply to the present Treaty. The Group also proposed that paragraph 4 should be replaced by a provision establishing that “The States that become party to this Treaty shall comply with the provisions of the Berne Convention and of the Appendix thereto,” and the addition of a paragraph 5 providing that “The intergovernmental organizations party to this Treaty shall comply with the provisions of Articles 1 to 21 of the Berne Convention and with those of the Appendix thereto.” This would satisfy both the desire of the European Union to become party to the Treaty and that of the Group of Latin American and Caribbean countries to maintain a direct and permanent link with the provisions of the Berne Convention for countries acceding to this Treaty.

578. Mr. REINBOTHE (European Communities) expressed his Delegation’s support for Articles 1, 2 and 15 of Draft Treaty No. 1. He said that he had no particular comments on Articles 2 and 15. However, with respect to Article 1, he offered two suggestions. Regarding paragraph (4) of Article 1, he felt that the compliance obligation in paragraph (4) should refer to all Contracting Parties. He expressed the view that the current text could be read as if it were not applying to Contracting Parties that were not party to the Paris Act of the Berne Convention. Therefore, he preferred a compliance clause which was similar to, if not identical with, the compliance clause in Article 9.1., first sentence, of the TRIPS Agreement, that is, a general compliance clause, with the obligation to comply with Articles 1 through 21 and the Appendix of the Berne Convention. He suggested the deletion from the current paragraph (4) the words after the words “Contracting Parties,” that is, “that are not countries of the Union established by the Berne Convention,” so that the paragraph would read “Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.” He pointed out that, throughout the draft Treaty, references were made to the term “nationals,” and he felt that that might pose some problems to the European Community. He suggested that a footnote be added to Article 1, which would be almost identical with the footnote that was found in footnote No. 1 to Article 1 of the TRIPS Agreement. He proposed that the footnote read as follows: “When ‘nationals’ are referred to in the context of this Treaty, they shall be deemed in the case of a separate customs territory party to this Treaty to

mean persons, natural or legal, who are domiciled or have a real and effective industrial or commercial establishment in that customs territory.”

579. Mr. GYERTYÁNFY (Hungary), speaking on behalf of Bulgaria, Croatia, the Czech Republic, The former Yugoslav Republic of Macedonia, Latvia, Poland, Romania, Slovakia, Slovenia and his own country, supported the position taken by the Delegation of the European Communities.

580. Mrs. RETONDO (Argentina) supported the statement made by the Delegation of Colombia on behalf of the Group of Latin American and Caribbean countries. Nevertheless, she drew attention to an additional concern regarding Article 2 of Draft Treaty No. 1, which as currently worded was an unnecessary repetition of Article 1. The wording of this Article should be revised to distinguish it from Article 1 and make clear that Articles 3 to 6 were in fact part of this Treaty.

581. Mr. KUSHAN (United States of America) supported Article 1 as drafted. He referred to the intervention by the Delegation of Argentina on behalf of the countries of Latin America and the Caribbean, and stated that, first, with regard to the proposed change in paragraph (1), he did not understand what the proposed reference would accomplish and did not see value in attempting to make that type of exclusion. He believed that the provisions of the Treaty addressed the same subject matter as those addressed in other agreements, and that it had been drafted so as to avoid creation of obligations inconsistent with those other agreements. He said that his Delegation had no concern that there would be confusion or inconsistencies, and, therefore, he did not believe it would be wise to include the proposal in paragraph (2) which would add a reference to explicit or implicit connections to other treaties. He stated that his Delegation could also accept reversing the sequence of paragraphs (3) and (4). Finally, on the points raised by the Delegation of the European Communities, he was of the opinion that any intergovernmental organization that would become party to the Treaty would have to assume all of its obligations. The proposal, either in the form of a clarifying clause or the proposed footnote, did not appear to change any of those provisions.

582. Mr. CHEW (Singapore) asked for clarification on Article 1(3), which referred to the Paris Act of July 24, 1971, of the Berne Convention; he understood, however, that there was an amendment on September 28, 1979, and asked whether that would be of any bearing on the 1971 Act. Regarding Article 1(4), he said that his Delegation had difficulties with the provision as drafted. Although it was essentially based on Article 9.1. of the TRIPS Agreement, it did not take into account the last sentence of Article 9.1., which did not make it obligatory to apply Article 6*bis* on moral rights of authors. He underscored that that would mean that that provision, by omission of the last part of Article 9.1., would create a TRIPS-plus obligation, and he expressed the concern of his Delegation in that respect. Regarding Article 2 on the application of Articles 3 to 6 of the Berne Convention, he had in principle no objections to such application except that he would have liked to raise the query whether every single part of Articles 3 to 6 would be applicable. Articles 3 to 6 of the Berne Convention contained many provisions, and he felt that not all of them would be applicable to the new Treaty. Lastly, regarding Article 15, he appreciated the principle behind applying Article 18 of the Berne Convention, but he was of the view that a better model would be Article 70.1. to 5. of the TRIPS Agreement, which was more comprehensive and provided for safeguards for all parties to this Agreement, with the necessary changes to suit the circumstances of this Treaty.



583. Mr. SILVA SOARES (Brazil) shared the views expressed by the Delegation of Argentina regarding the need to revise the wording of Article 2. In this connection, as Treaty No. 1 was a separate treaty, a special arrangement along the lines of Article 20 of the Berne Convention could incorporate Articles 3 to 6 of the Berne Convention in Article 2 while Article 18 of the Berne Convention could be repeated in Article 15.

584. Mr. AYYAR (India) supported the intervention by the Delegation of Argentina.

585. Mr. CRESWELL (Australia) agreed with the reversal of the order of paragraphs (3) and (4) in Article 1. He suggested that it might be wise to insert, at the start of paragraph (4), the words "Subject to this Treaty." He referred to the existing possibility under the Berne Convention to enact statutory licenses, which perhaps as a result of the Treaty would not be possible in the future. He felt that it might be desirable to recast Article 2, so as to identify those provisions within Articles 3 to 6 of the Berne Convention that were intended to be applied. While his Delegation had not reached a conclusion as to whether that should be done, he thought that it would be desirable for a reference to be included in Article 2, to Articles 2 and *2bis* of the Berne Convention, or at least to Article 2, insofar as it defined indicatively, if not exclusively, the literary and artistic works to be protected. Since there was no direct linkage, it seemed that there should be a reference to the categorization of literary and artistic works in Article 2 of the Berne Convention.

586. Mr. ETRANNY (Côte d'Ivoire) said that his Delegation endorsed Article 1 of Draft Treaty No. 1, which was consistent with Article 20 of the Berne Convention. He was also in favor of the Chairman's proposal to reverse the order of paragraphs (3) and (4) of Article 1 and said that he was open to any proposals for amendment. He added that his Delegation supported Article 2, which referred to the major principles in this respect such as those contained in Articles 3 to 6 of the Berne Convention.

587. Mr. GOVONI (Switzerland) said that his Delegation shared the view expressed by the Delegation of the European Communities regarding Article 1 of Draft Treaty No. 1, and approved the proposal it had made to extend the obligation contained in paragraph (4) of the Article to all Contracting Parties. He said that he supported the idea of including a note to explain the concept of "nationals" in this context.

588. Mr. YAMBAO (Philippines) supported the amendment proposed by the Delegation of Argentina. He referred to the intervention by the Delegation of the United States of America, that there was no need of adding the additional sentence in paragraph (1) of Article 1 because the provisions had been drafted to make sure that they were independent of other agreements. He felt that it would not create harm if a categorical statement were made in the Treaty. He also favored reversing the order of paragraphs (3) and (4). With respect to Articles 2 and 15, he was in complete agreement with the provisions as drafted.

589. Mr. PROAÑO MAYA (Ecuador) said that the Treaty under discussion should be considered a new international treaty, with its own legal status and regulations that gave it its own specific identity.

590. Mr. HONGTHONG (Thailand) drew attention to Article 5(2) of the Berne Convention, in which the last clause stated that the means of redress to the author to protect his rights

should be covered exclusively by the laws of the country where protection was claimed, and asked whether the inclusion of enforcement provisions into the Treaty was not in conflict with the Berne Convention.

591. Mr. FICSOR (Assistant Director General of WIPO) said that there was no conflict between the Berne Convention and the provisions on enforcement included in the Basic Proposal, because the latter provisions were in harmony with Article 20 of the Berne Convention. He pointed out that, if Contracting Parties were to guarantee more efficient protection for the rights of authors, such as the more efficient protection that the proposed enforcement provisions would require, Article 20 of the Berne Convention would, of course, authorize a special agreement to that effect. In answer to the question raised by the Delegation of Singapore, he said that the September 28, 1979, amendment to the Berne Convention was not relevant for the obligation of Contracting Parties to comply with Articles 1 to 21 and the Annex of the Convention as established by the Paris Act of July 24, 1971, since that amendment only concerned the administrative provisions of the Convention and did not concern the substantive provisions included in Articles 1 to 21 and the Annex.

592. The CHAIRMAN also felt that there was no contradiction between the Berne Convention and the proposed enforcement provisions. He stated that the Committee had come to the end of the discussion on the "framework articles" of Draft Treaty No. 1. He was of the opinion that the general framework was acceptable to the Committee. He felt that further analysis and consultation might produce a next version to be considered by the Committee, and he indicated that the written proposal made by the Group of Latin American and Caribbean countries would be studied. He noted that there were some elements which had been supported by Delegations from other regions, such as the changing of the sequence of paragraphs (3) and (4) in Article 1. He observed that the Delegation of the European Communities had suggested a footnote along the lines of the footnote attached to Article 1 of the TRIPS Agreement, which would be considered by the Committee. He also said that there had been a suggestion that certain provisions of the Berne Convention should be reproduced, but he felt that that had to be analyzed in the light of the clear statements and clear understanding that the Treaty would be an independent Treaty.

*Articles 1 (Relation to Other Conventions), 3 (Beneficiaries of Protection under this Treaty), 4 (National Treatment), 20 (Formalities), 21 (Reservations) and 22 (Application in Time) of the WPPT (Articles 1, 3, 4, 24, 25 and 26 of Draft Treaty No. 2)*

593. The CHAIRMAN suggested that the Committee discuss the "framework articles" of Draft Treaty No. 2, which were Articles 1, 3, 4, 24, 25 and 26. He remarked that Article 1 had a similar function to Article 1 of Draft Treaty No. 1, and that Articles 3 and 4 had a function which corresponded to Article 2 of Draft Treaty No. 1. Article 3 took that which was applied in the TRIPS Agreement. Article 24 corresponded to Article 2 of Draft Treaty No. 1. He compared Article 26 of Draft Treaty No. 2 to Article 18 of the Berne Convention, in respect of its function to deal with the application in time of the protection provided in the Treaty, and noted that the approach was corresponding to the approach taken in the TRIPS Agreement. Regarding reservations under Article 25, he thought that it would not be useful to have a full discussion on reservations independent of the Articles to which such reservations applied.

594. He pointed out that the rules of the applicability of Draft Treaty No. 2 followed the mechanism of the TRIPS Agreement, which was applied, for the time being, by 126 countries. Since 128 countries were registered at the Conference, there was good reason to suggest the same method. Article 4 on national treatment took the model from two treaties. Paragraph (1) of that Article concerning national treatment followed the model in the TRIPS Agreement, and paragraph (2) took the model of Article 2.2. of the Rome Convention. He opened the floor for discussion.

595. Mr. SILVA SOARES (Brazil) drew the Drafting Committee's attention to an editorial problem concerning Article 3 of Draft Treaty No. 2, indicating that the Spanish text of paragraph 3 of this Article stated "*podrá recurrir a las posibilidades previstas en el Artículo 5(3)*" (may avail itself of the possibilities provided in Article 5(3)), which did not correspond to the English text.

596. Mr. WIERZBICKI (New Zealand) referred to Article 25 on reservations, and also to his prior intervention on Article 5 on moral rights. He suggested that Contracting Parties should have the ability to enter a reservation to the entirety of Article 5, and proposed to add as a new paragraph (2) to Article 25: "Any country upon becoming a Contracting Party to this Treaty, may, in a notification deposited with the Director General of WIPO, declare that it will not apply the provisions of Article 5." He pointed out that he had deliberately not sought to delete the reference in subparagraph (ii) of paragraph (1) to Article 5(1), since there might be signatories that only wished to utilize that particular reservation. He also referred to interventions by the Delegations of the United States of America and the European Community, in which it had been indicated that there might be major changes relevant to this Article.

597. Mr. KIM (Republic of Korea) drew attention to the fact that Article 26 was different than that which had been discussed in the Committees of Experts, and asked the Chairman for clarification as to why that was so. He proposed the following language: "Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty." He stated that that proposal was intended to maintain the current retroactive provisions, that is, Article 14.6. and Article 70.2. of the TRIPS Agreement. In particular, Article 70.2. of the TRIPS Agreement simply stated that copyright obligations as well as obligations with respect to the rights of producers of phonograms and performers, in existing copyright matters, should be determined solely on the basis of Article 18 of the Berne Convention. He said that his Delegation felt that more extensive retroactive protection was not necessary for the beneficiaries of neighboring rights, and it wanted to have the same provisions as in Article 15 of Draft Treaty No. 1.

598. The CHAIRMAN responded to the request for clarification, and stated that Article 26 had been drafted as an independent Article, and the intended way to apply it followed the same principles and the same general approach as that reflected in Article 18 of the Berne Convention. In his opinion, there was no difference in substance between the ideas and drafting in Draft Treaty No. 2 and the position expressed by the Delegation of the Republic of Korea.

599. Mr. GYERTYÁNFY (Hungary) expressed the opinion of his Delegation that the package being considered seemed to be too complex to be treated as a whole, at least with

respect to some of its parts, such as national treatment and reservations. Regarding Article 26, he expressed his Delegation's understanding that that rule went further than Article 18 of the Berne Convention. The rule on application in time seemed to have a real retroactive effect on the protection of performances and productions fixed before the time of the entry into force of the Treaty, and seemed to apply to the rights to be granted under the Treaty, at least for the time period foreseen in Article 21. However, he observed that there were countries where certain rights to be granted under the Treaty had already been existing for a long time, such as, for example, the distribution rights of producers of sound recordings. He sought clarification as to the protection of sound recordings which had fallen into the public domain by the time of the entry into force of the Treaty: would they be revived and/or protected again?

600. The CHAIRMAN responded by noting that the word "retroactivity" had been used. He pointed out that retroactivity, *per se*, had been excluded from the application of the provisions of the Draft Treaty by introducing the rule and clause in paragraph (2) of Article 26: "The protection shall be without prejudice to any acts taken and any contracts concluded or rights acquired before the entry into force of the Treaty." He believed that that meant that there would be no retroactive effect concerning prior acts and the provisions of the Treaty would not introduce an obligation to countries to change laws in such a way that prior agreements would be changed. He felt that that was in most countries probably already constitutionally prohibited. As far as the application in time was generally concerned, it was suggested that all possible protected subject matter within the time frame of the clauses on the term of protection would be protected. He observed that that meant that that clause would revive protection in those cases to which the Delegation of Hungary was referring. That was in order to achieve full harmonization, or, if not full harmonization, at least a harmonization which would not cause any market distortion. He acknowledged that revival of rights in some cases would cause practical problems.

601. Mr. KUSHAN (United States of America) shared some of the concerns that were expressed by the Delegation of Hungary, that there were six Articles upon which to comment. With regard to Article 1(2), he believed that a useful clarification could be made to that provision to eliminate the suggestion that it might establish some hierarchy between the systems of neighboring rights and copyright. He proposed to delete, in paragraph (2), the phrase "and, in particular, nothing in this Treaty shall in any way prejudice the rights granted to authors," so that the sentence, with the change proposed, would read: "Nothing in this Treaty shall derogate from existing obligations that Contracting Parties may have to each other under treaties for the protection of literary and artistic works under the Berne Convention for the Protection of Literary and Artistic Works." Regarding Article 3 on beneficiaries of protection, he believed that, as currently structured, it might have to be revisited in the context of some of the proposals his Delegation had made in relation to the audiovisual question. He pointed out that his Delegation had proposed to amend the first provision on points of attachment. As currently drafted, it relied on the points of attachment of the Rome Convention. He believed that Article 3 should be amended to supplement those points of attachment to permit nationality to serve as a point of attachment. In the course of considering such an amendment, he thought it might be beneficial to revisit whether there was a necessity for paragraph (3) of Article 3. With regard to Article 4 on national treatment, his Delegation felt that national treatment should be cast to be very general, along the lines of the Berne Convention. With regard to Article 24, he said that his Delegation could accept the text as drafted. With respect to Article 25 on reservations, he stated that his Delegation could support what would be Alternative D as part of a comprehensive package to address the

concerns of his Delegation with regard to audiovisual rights. Regarding Article 26, he supported the Article as drafted.

602. The CHAIRMAN noted the points raised by the Delegations of Hungary and the United States of America in respect to the Committee's consideration of a number of Articles at once. He stated that he was hoping that the Delegations would put forth their most important points, so that it would be possible to start the second round of deliberations and the drafting of the Treaties.

603. Mr. GYERTYÁNFY (Hungary) expressed the opinion of his Delegation that Article 26(2) did not exclude a kind of retroactivity. He understood that it was rather a safeguard clause, to protect contracts and acts of use commenced or pursued at the time of the entry into force of the Treaty.

604. Mr. CHEW (Singapore) said that he had no comments on Articles 1, 3, 4, 24 and 25. He was of the view that Article 26(1) might be inconsistent with Article 20.2. of the Rome Convention which did not make it obligatory for any Contracting State to protect performances, broadcasts or phonograms which had taken place or fixed before the Convention came into force for the State concerned. He stated that, in his Delegation's opinion, there was no problem with Article 26(2), it was consistent with Article 20.2. of the Rome Convention, which did not confer retroactive effect on those rights. The last paragraph of that Article also recognized that transitional provisions might be required for those who had invested, in good faith, in the production of copies when no protection existed. He stated that his Delegation could accept both Articles 26(2) and (3), which were consistent with the principles under the Rome Convention and with the copyright legislation of his country. However, Article 26(1) appeared to be difficult for his Delegation to accept, as it was inconsistent with Article 20.2. of the Rome Convention, and Article 70.1. of the TRIPS Agreement. In addition, he felt that Article 26(1) also appeared to be inconsistent with Article 1(1) of the Draft Treaty, which provided for a non-derogation of the obligations under the Rome Convention.

605. The CHAIRMAN observed that there was no intention to suggest or propose something that was consistent with the Rome Convention. He stated that what was intended was an element in the application of the new Treaty that differed from the approach taken in the Rome Convention.

606. Mr. CRESWELL (Australia) referred to the intervention by the Delegation of the United States of America, and observed that the Committee seemed to be heading towards adding another criterion for the points of attachment, and, therefore, producing a result that would not be in alignment with the TRIPS Agreement formula. He suggested that perhaps the opportunity should be taken to try to simplify the provision. He said that it was the experience of Australia, and perhaps some other countries, that it was an extremely complex process to establish points of attachment. Those in the Rome Convention were quite difficult, and when combined with the TRIPS Agreement formula, the net effect was very complex. Therefore, he felt that, if there was going to be a change and a departure from the Rome and TRIPS provisions, it would be tremendous if the whole thing could be simplified. He agreed with those Delegations that had suggested that the Committee would need to revisit Articles 4 and 25, relative to the application of the Treaty to audiovisual fixations.

607. The CHAIRMAN explained that he had suggested the solution for the points of attachment offered in his proposal on solely pragmatic grounds, as that solution, which was the TRIPS Agreement formula, had been adopted by 126 countries.

608. Mr. KIM (Republic of Korea), referring again to Article 26, still had doubts whether that Article offered a solution of the transitional situation similar to Article 18(3) of the Berne Convention which his Delegation found desirable. He also pointed at the non-retroactivity rule in Article 20.2. of the Rome Convention.

609. Mr. REINBOTHE (European Communities) supported Article 1 as currently drafted. In the view of his Delegation, the modifications of Article 1(2) proposed by the Delegation of the United States of America did not seem to be appropriate. He also supported Article 26 as drafted. Turning to Article 25, he referred to the amendment proposed by the European Community and its Member States, explaining that it was based on Article 25, Alternative C, of the present draft and combined with a proposal on national treatment, which clarified that a Contracting Party which would use the reservation possibility of Article 25 would not be entitled to national treatment in the area of the reservation. In respect of Article 24, he expressed doubts whether paragraph (2) was really needed. The country of origin was a point of attachment in the Berne Convention, but not in the Rome Convention. With respect to Article 3, he suggested to add a footnote on the definition of "nationals" which would be identical with the footnote already proposed by his Delegation for Article 1 of Draft Treaty No. 1. The footnote in its content was almost identical with footnote No. 1 to Article 1 of the TRIPS Agreement. Concerning Article 4, he expressed his Delegation's firm view that the scope of the national treatment provision in Draft Treaty No. 2 was, and should be, different from the national treatment obligation in Draft Treaty No. 1. The obligation under Article 4 of Draft Treaty No. 2 corresponded, in the view of his Delegation, to the shape of the national treatment obligation under the Rome Convention and under the TRIPS Agreement. It covered only the rights explicitly provided for in Draft Treaty No. 2 and did not, and should not, extend to, for example, remuneration schemes for private copying and other features not expressly guaranteed in Draft Treaty No. 2. The European Community insisted that material reciprocity should apply to the scope of protection going beyond the level stated in Draft Treaty No. 2. He stated that, if the understanding of Article 4 which he had just explained was not the common understanding, his Delegation would have to propose an amendment of Article 4 which would clarify the issue.

610. Mrs. BOUVET (Canada) highlighted the problems raised by Articles 4 and 25 of Draft Treaty No. 2 in the light of the latest developments in the protection of audiovisual fixation, and awaited the relevant proposals from the Delegations of the European Communities and the United States of America before taking a final decision on this issue. She indicated that one interpretation of Articles 4, 7 and 14 of Draft Treaty No. 2 combined might be that the provisions of the Treaty imposed a national treatment obligation similar to that to be found in the Berne Convention, which would compel Canada to offer the private copy regime, which existed in the draft law before the Canadian Parliament, to all foreign producers and performers. Consequently, she said that her Delegation intended to put forward an amendment to Article 4 in order to exclude private copying from the Treaty and so allow Member States not to grant national treatment in such cases.

611. Regarding Article 26, she stated that Canadian legislation did not give performers moral rights. She added that, if Article 5 of Draft Treaty No. 2 giving performers moral rights was

approved, there would have to be a provision allowing the gradual entry into force of the exercise of moral rights so that current contracts between performers and producers would not become invalid. She said that her Delegation would propose an amendment to this effect.

612. Mr. ANTEQUERA PARILLI (Venezuela) said that the Group of Latin American and Caribbean countries proposed that a clause similar to the safeguard clause in Article 1 of the Berne Convention be included in paragraph (2) of Article 1 of Draft Treaty No. 2.

613. Mr. KUSHAN (United States of America) said that his Delegation shared the view of the Delegation of Canada that the wording of Article 4 did in fact impose a broader obligation with regard to national treatment than what was assumed by the Delegation of the European Communities. He said that his Delegation believed that it was very important, especially in a treaty like the one under consideration, to have a forward-looking and expansive provision on national treatment. He stated that, as it was impossible to foresee technological developments and to know what kind of protection schemes might be offered in the future to ensure the interests of right holders, his Delegation's conclusion was that the most appropriate formulation for national treatment was a broad one, that is, an expansive and exclusive concept of national treatment. He rejected any solution confined to material reciprocity.

614. The CHAIRMAN stated that the deliberations had touched on all subjects of the two Draft Treaties but their preambles and titles. He then adjourned the meeting.

*Tenth Meeting  
Thursday, December 12, 1996  
Afternoon*

*Work program*

615. Mrs. TOLLE (President of the Conference) proposed that a meeting of the Steering Committee be convened immediately after the adjournment of the meeting.

616. Mr. ABEYSEKERA (Sri Lanka) supported the proposal by the President of the Conference and referred to the fact that a number of issues had not been fully resolved at the meeting of the Steering Committee the day before.

617. The CHAIRMAN agreed that it would be very useful to have a meeting of the Steering Committee immediately after the session.

618. Mr. SÉRY (Côte d'Ivoire) associated himself with the statement by the Delegation of Sri Lanka, but recalled that a request from the President of the Conference did not have to be seconded.

*Partly consolidated text of Draft Treaty No. 1 prepared by the Chairman  
(Document CRNR/DC/55)*

619. The CHAIRMAN recalled that the day before, the Steering Committee had decided that the Chairman of Main Committee I should prepare consolidated texts on the substantive provisions of Draft Treaty No. 1 and Draft Treaty No. 2. That decision reflected the desire for an accelerated schedule. Main Committee I had made good progress during the first three days of substantive discussions. It had received a number of written amendments and it had heard a series of interventions on all substantive issues and elements of the treaties, except their preambles and titles. New written proposals had been received in the evening, the day before, and some of them were still being processed by the Secretariat. As the number of written amendments had not been known to him at the meeting of the Steering Committee, the plan that new texts should be available by noon of that day had turned out to be too optimistic. A text for Draft Treaty No. 1 had been produced and distributed in all working languages. A consolidated version of Draft Treaty No. 2 would appear in the original language version within an hour, and in all the working languages as soon as technically possible. The original language version would give an opportunity for the Delegations to have a first impression. Some of the written amendments had been received so late during the drafting process that it had not been possible to consider them in all their details during the drafting. The versions being distributed were called partly consolidated texts because there had been reasons not to start drafting any amended Chairman's text on given articles. Regarding some articles, it was already known that written amendments would come which were not available yet, and concerning some articles, amendments were available, but they were so fundamental that first the Committee should be offered an opportunity to discuss and comment on them before any consolidated version would be drafted. Later, if the Committee would consider it useful, further partly consolidated versions could be produced where more and more elements would be drafted in order to find consensus in the Committee and at the Conference, and, finally, the Committee should adopt a comprehensive consolidated version of the texts to be considered by the Conference. Some parts of the partly consolidated text might reflect an assessment that certain provisions could be ready to be offered as basis for a consensus decision of the Committee, but continued discussion would show whether there were such provisions.

620. Mr. SÉRY (Côte d'Ivoire) expressed concern regarding the structure of the partly consolidated text prepared by the Chairman of Main Committee I. He would like to see the basis for the discussion continue to be the basic proposal, together with a summary of the amendments proposed and comments made by various Delegations, so as to permit an overall view of the points of agreement or disagreement and allow the regional groups to start negotiating on that basis. He asked whether it would be possible to have a consolidated text of the basic proposals on the Articles, as well as a summary of the amendments proposed and comments made by various regional groups.

621. The CHAIRMAN stated that the distributed text was not a comparative table of the suggestions and proposals made and that meant that all the proposals and suggested amendments made in written form by the Delegations were still valid and could be considered by the Committee. If the Committee so wished, a comparative table could be produced. He stressed that the partly consolidated text reflected only some ideas and some assessment of the Chairman and all the written proposals were still valid and subject to discussion. Some proposals had just been circulated to the Delegations, and he had not been able to combine all the proposals in such a way that one could ask any Delegation to withdraw any of its suggestions.



622. Mr. SÉRY (Côte d'Ivoire) indicated that all the amendments were in principle valid. The partly consolidated text of Draft Treaty No. 1 only contained a selection of certain proposals and did not take into account, for example, amendments that had not yet been submitted in writing. He could not agree with the Chairman's proposal and reiterated his request for the preparation of a consolidated text of amendments and proposals in relation to areas where there was agreement. Such an approach would make it easier to have an overall view of the amendments and proposals put forward by various Delegations and would highlight better the points of agreement.

623. The CHAIRMAN stated that, if all the written proposals should be consolidated, that would probably take until Friday afternoon or evening, so it would not be possible to have a cut-off date and then consolidate what would be at hand, which would include every amendment made in written form and also the oral suggestions. He was personally going through all the notes and all the verbatim records in order to find all the good ideas that had been put forward, and there was no idea, whatsoever, of omitting anything without consideration and without putting it to the Committee if that was its wish. He underlined that that had been the only way to produce a text overnight which could be used as a basis for considerations while having simultaneously on the table the Basic Proposals and all the written proposals.

624. Mr. KHLESTOV (Russian Federation) acknowledged that the Chairman had been working all night to produce the texts, and even if the Russian text gave his Delegation some grounds for questions, it was ready to work on the basis of that text. There would be a need for some additional proposals, but he considered the text acceptable as a basis for further progress.

625. The CHAIRMAN added that every single intervention made in Main Committee I, up to 20 minutes before the end of the deliberations the day before had been available for the drafting exercise. Therefore, he had had all materials available, even if all the written proposals had not been distributed or otherwise been available. The distributed texts were partly consolidated texts, not comprehensive texts, and they did not try to take all the suggestions into account, because that would not have been possible. He stated that the question was now how to proceed further in order to enable the Committee to take into account all the proposals that had been tabled but not yet considered by the Committee.

626. Mr. ROGERS (Chile) could not accept the partly consolidated text of Draft Treaty No. 1 prepared by the Chairman, which only included one of the proposals put forward by the Group of Latin American and Caribbean countries. He associated himself with the views expressed by the Delegation of Côte d'Ivoire and emphasized that a consolidated text meant a text containing all the amendments submitted, without exception, so he was reluctant to continue the work on the basis of the document submitted to the Committee.

627. The CHAIRMAN pointed out that he had not yet had the opportunity to present the consolidated texts and indicate which articles had not been touched at all. There were several articles on which there were proposals and it seemed that there were so many proposals that the Committee had to discuss those questions before any attempt to combine any approaches could be made.

628. Mr. ABEYSEKERA (Sri Lanka) stated that the members of the Asian Group felt that their proposals and concerns had not been adequately expressed or reflected in the texts prepared by the Chairman. The members of the Group had expected a document, based on the decisions made in the Steering Committee, but the document prepared by the Chairman did not correspond to those decisions. He suggested that the question be referred to the Steering Committee to decide how to proceed further also taking into account the views expressed by the Delegation of Côte d'Ivoire and the Delegation of Chile, on behalf of the Latin American and Caribbean countries.

629. Mr. SCHÄFERS (Germany) supported what had been stated by the Delegation of the Russian Federation. He understood the concerns expressed by the Delegations of Côte d'Ivoire, Chile and Sri Lanka, but the Diplomatic Conference followed a line, different from the course of other diplomatic conferences convened previously by WIPO, the last one for the Trademark Law Treaty in October 1994. That was the first time that Basic Proposals had been prepared by the Chairman of the Committees of Experts. It was clear from the outset that the Chairman could not follow the ordinary procedure, but he had done a good work. He thought that it would be the best to continue placing confidence in the Chairman and have discussions on the basis of the paper which he had presented. He stated that his Delegation was willing to discuss substance and not to adjourn the meeting immediately and it looked forward to hearing the Chairman's explanations of the presented text.

630. The CHAIRMAN said that, if a consolidated version of the proposals, in the sense of a comparative table listing the different amendments made to different articles was considered to be helpful, such a document could, of course, be produced. Since there were more and more written proposals, it could be difficult to produce a fully comprehensive document of that kind. He suggested that, after the procedural discussion, the Committee should continue its discussions on the basis of the amendments made by the Delegations. Many amendments had not been considered yet, but only distributed. The partly consolidated texts only represented a very short step in the direction of trying to establish tentative texts to be considered by the Committee, in certain limited cases and not concerning the most fundamental business.

631. Mr. EKPO (Nigeria) stated that his Delegation wished to place on record its appreciation for the work done so far by the Chairman and for his efforts to get the Conference going. He asked the Chairman to indicate how he intended to use the information from various groups that was not included in the partly consolidated texts. He felt that there could be difficulties in assessing what was common to everybody without having all the information available.

632. The CHAIRMAN clarified that all the provisions in the original Basic Proposal had been indicated in the partly consolidated text, in order to facilitate the deliberations on the basis of that new document. Nothing had been left out, and his intention was to start dealing with the written proposals which had not been commented on yet in such a way that for each article it could be indicated which documents contained amendments concerning a given provision. He said that the Committee could consider each proposal separately, or simultaneously, depending on the complexity of each issue.

633. Mr. KUSHAN (United States of America) said that, in the view of his Delegation, the Chairman had done what the Steering Committee had asked him to do, that is, to attempt to

produce a document that was intended to address some of the topics where opinions were not quite as far apart as with other topics. He felt that in the Steering Committee there had been an understanding that a number of topics would require specific opportunities for negotiations before any suggestions for a possible solution could be developed, and in his view those issues were clearly identified during the discussion of the Steering Committee. On the issues where the differences did not seem to be so severe, he stated that it was his understanding that a text could be drafted that possibly addressed some of the issues that had been raised by many Delegations orally and in written proposals. He said that his Delegation would welcome any document that might be prepared, whether it be a comparative table or any other document that would help finding out the possibilities for compromise, and it was willing to continue considering the written proposals and the oral comments that had been made during the past four days. He suggested that the Chairman briefly summarize the partly consolidated text and then the Steering Committee could decide the course of action for the next few days and, hopefully, address some of the concerns that had been voiced about how to find a solution to some of the issues that had been flagged by the various Delegations.

634. The CHAIRMAN recalled the decision of the Steering Committee that in the afternoon there should be no discussion on substance, but the documents should be introduced and explained. All questions posed by Delegations would be answered and then there would be time to analyze the written proposals and the documents which had been produced and to have consultations between and within the groups.

635. Mr. STARTUP (United Kingdom) expressed the thanks of his Delegation to the Chairman for the work he had put in the document which, he felt, was valuable even though it did not give the complete picture of the current state of play, but only attempted to represent the state of play on certain aspects under negotiation. He said that he would welcome the Chairman's explanations of how he had arrived at the interim consolidated text, which was the beginning of a process that still was a long way from its end.

636. The CHAIRMAN confirmed the interpretation by the Delegation of the United Kingdom of the intention and the possible function of the document.

637. Mr. SÉRY (Côte d'Ivoire) supported the proposal made by the Delegation of Sri Lanka. He noted that there was a difference of interpretation concerning the decision taken by the Steering Committee on the structure of the consolidated text and considered that it would be preferable to hold a new meeting on this question. He said that his Delegation was ready to continue the work, but would first like to receive clarification concerning the document to be considered because there was a real problem of interpretation.

638. Mr. EKPO (Nigeria) pointed out that amendments proposed by the African Group had not been reflected in the document prepared by the Chairman and that would make it difficult for that Group to contribute effectively to the discussions. Unless that matter was resolved, he found it difficult to see how the work could move forward.

639. The CHAIRMAN stated that much would be clearer once the procedural discussion was over and he had had the opportunity to explain which Articles in the document had been taken as they were, and in which places written proposals had to be the priority object for deliberations.

640. Mrs. DE MONTLUC (France) enquired what were the reasons that had led the Chairman to choose the proposals that appeared in the consolidated text, what was their origin and to what extent were they the result of an agreement among States? She also wished to know whether the title and the preamble were to be included in the discussion and whether there would be a subsequent partial examination by Article, including the preamble and title.

641. Mr. PROAÑO MAYA (Ecuador) underlined the need to accelerate the work and to limit the submission of proposals in order to be able to adopt the Treaties. He therefore suggested that the partly consolidated text of Draft Treaty No. 1 should be modified so that it contained all the proposals put forward by Delegations.

642. Mr. VÁZQUEZ (Spain) proposed that the work be pursued on the basis of the partly consolidated text prepared by the Chairman, without prejudice to consideration by Delegations of all the proposals so that they could reach a consensus to be integrated in a further consolidated text to be prepared by the Chairman. For this purpose, the comparative table of amendments proposed by the Delegation of Côte d'Ivoire would usefully complement this work.

643. Mr. SHEN (China) proposed an adjournment of the meeting which would enable his Delegation to review the text and submit its own proposals, before 10 a.m. or 11 a.m. the following morning.

644. The CHAIRMAN asked the Delegation of China whether it would accept that he first made a short presentation of the approach because otherwise it would be difficult to assess the value of the text in the groups and during consultations.

645. Mr. SHEN (China) accepted the Chairman's suggestion.

646. The CHAIRMAN noted that the discussion on procedure had clarified the situation somewhat, and the Committee could now look at document CRNR/DC/55. He repeated that the Basic Proposal continued to be the basis for the deliberations of the Conference and also for Main Committee I. He believed that documents CRNR/DC/55 and CRNR/DC/58 had been produced as decided by the Steering Committee. The full set of amendments presented to the Conference was available to each Delegation.

647. He pointed out that, in the working paper on Draft Treaty No. 1, under discussion, questions concerning the right of distribution had not been addressed, because consultations were going on and there were written proposals on that issue. Articles 13 and 14 on obligations concerning technological measures and obligations concerning rights management information had not been addressed either. Those issues had deliberately been set aside, because important proposals had been tabled and there were many proposals on those issues which had to be considered and discussed before any text, including even alternative solutions or reflecting different approaches, could be produced.

648. He pointed out that, to the Article on the right of reproduction, there were many amendments concerning which intensive consultations were going on. The small changes which had been made in Article 7 tried only to clarify the approach taken during the drafting of the Basic Proposal, specifically concerning the change in the order of some words in paragraph (1) which was purely technical, and, in paragraph (2), the clarifications did not

change the contents of those paragraphs. They corresponded to explanations on the intended interpretation that had repeatedly been offered in the consultation meetings and during the Conference. The changes made in the Draft Treaty, including Article 7(2), had not been taken from any suggestion or proposal made in the Committee, but were an attempt of the Chairman to clarify the intended contents of that Article. That meant that Article 7 was totally open for discussion, as it would be premature to look at that Article with any final suggestions, or conclusions, in mind. It also meant, for example, that all Articles to which the document of the African Group was referring had been set aside in producing the working paper and each item in that document had to be dealt with before any conclusion on those Articles could be reached. There had been no attempt by the Chairman in the working document to advance the deliberations on the questions regarding the right of importation, technological measures, rights management information and the right of reproduction.

649. He mentioned that, even though the title of the Treaty and the preamble had not been discussed yet, one proposal had been included in the preamble as a recommendation.

650. In Article 1(4), certain words had been deleted to reflect the exchange of views which had taken place in the Committee. He recalled that he had suggested himself that the order of paragraphs (3) and (4) be reversed, but, after having listened to the positions of those Delegations that had opinions on those provisions, he would prefer to let the Committee consider whether the order should be kept, in which case certain words in paragraph (4) might be deleted in accordance with a suggestion made by one Delegation and supported by others, very much in the same way as in the TRIPS Agreement.

651. In Article 2, the only additional element was based on a proposal made by the Delegation of the European Communities that a footnote should be added, containing the language from the footnote to Article 1 of the TRIPS Agreement. He had included that text, *mutatis mutandis*, in paragraph (2), but it might seem that that was not a suitable form to be taken into the Treaty, not even as a footnote or as an article or paragraph. Instead, when the final clauses had been discussed, and, if they would contain a provision corresponding to draft Article 100 concerning the eligibility of becoming party to the Treaty, the Committee might prefer to insert a reference to the organizations referred to in draft Article 100(2) and (3) that formed a customs territory.

652. Regarding Article 3 on the notion and place of publication, he noted that the two additions in paragraph (1) clarified the intended drafting and facilitated the understanding of the provision. The condition in Article 3(3) of the Berne Convention that publication should take place with the consent of the author had been included in the language in order to avoid that it would apply only by way of reference. In the end, the words "for purposes of applying the provisions of the Berne Convention" had been added for clarification.

653. He said that what was suggested regarding Article 4 on computer programs relied on the language of Article 2 of the Berne Convention and thereby tried to be a compromise which was tentatively put for the Committee's consideration.

654. Regarding Article 5 on collections of data (databases), he referred to the Committee's discussions and recalled that one of the proposals included the word "compilations," as in the TRIPS Agreement. Even though the Berne Convention used the word "collections," he had changed it on the understanding that there should be a harmonized international language in

that matter, and the word "compilation" would in this context underline the specific nature of those productions. At the end of the Article, the word "rights" had been replaced by "copyright" in order to clarify the reference and to obtain harmony with the TRIPS Agreement.

655. He pointed out that, in Article 6 on the abolition of non-voluntary broadcasting licenses, the words "within three" had been replaced by "within five," which was a tentative suggestion by the Chairman, and the deletion of paragraph (2) reflected his understanding of the opinion of the overwhelming majority of those Delegations that had taken a position on the provision.

656. Regarding Article 7 on the scope of the right of reproduction and Article 8 on the right of distribution and right of importation, he stressed that those Articles, as all other provisions, were subject to consultations, and they had only been included in the document for the convenience of the Delegations.

657. He noted that, concerning Article 9 on the right of rental, there had been a clear wish from many Delegations that the word "commercial" should be added and, if that was done, the need to have a definition of "rental" would diminish. In Article 9(2), the words "collections" had been changed to "compilations" which, as it had been clarified, should be understood as collections of data within the meaning of Article 5. In the end of paragraph (2), language from the TRIPS Agreement, concerning computer programs which were not essential objects of rental, had been added, following the opinion of the majority of the Delegations that took the floor on the matter.

658. He noted that, in Article 10 on the right of communication, no changes had been made on the basis of any proposals. He stated that he agreed with certain technical amendments which had been suggested in the Committee. Only some small printing errors in the references had been corrected.

659. Concerning Article 11, he said that he had the impression that all Delegations that had taken the floor had had the same approach as far as the subject matter was concerned, but there had been a suggestion that a different technique should be used. That was still a question to be considered by the Committee.

660. In paragraph (1) of Article 12 on limitations and exceptions, the only modification was to change the wording to correspond exactly to the wording of Article 9(2) of the Berne Convention. Regarding paragraph (2), it seemed that there was an opinion according to which that paragraph could be deleted. Tentatively that had been done, but he stated that he was hesitating whether that was the best approach.

661. Regarding Article 13 on obligations concerning technological measures, there were many written proposals which had to be analyzed by the Committee, and, therefore, no elements had been taken into the working document. That was also the case in respect of Article 14 on obligations concerning rights management information; however, in the similar working document on Draft Treaty No. 2, he had added an element which had been omitted in the Basic Proposal, namely the link to an infringement which probably also should be included in Draft Treaty No. 1. It was his understanding that such an addition was supported by many Delegations.

662. In Article 15 on application in time, no changes had been made, and it seemed that the framework provisions, at least as regarded the substance and approach, were acceptable to the Committee.

663. He indicated that, for practical reasons, the annexes to Article 16 on special provisions on enforcement had not been distributed and reproduced in the partly consolidated text, but they were still valid and referred to. He had added an Alternative C concerning enforcement, following a proposal from one Delegation supported by another Delegation. He noted that the opinions on the question of enforcement were divided; some Delegations found that there should be no provisions, others were in favor of Alternative A, and there were also some in favor of Alternative B. Alternative C represented another approach where paragraph (1) would reproduce language from Article 36(1) of the Berne Convention and paragraph (2) would take the first sentence, *mutatis mutandis*, from Article 41.1. of the TRIPS Agreement.

664. He recalled that the Steering Committee had decided that, as far as introduction of the working paper was concerned, there should be an introduction and then the Chairman should be available for explanations if there were questions from Delegations. He opened the floor for questions.

665. Mr. AYYAR (India) pointed out that a number of proposals, views and suggestions made by Delegations had not been reflected in the partially consolidated text prepared by the Chairman. For example, he had been repeatedly making the point that the Conference should not reopen the Uruguay Round and discuss issues that had been concluded in the TRIPS Agreement which itself provided for a review only after the expiry of the grace period allowed for developing countries. And yet his views had not been fully reflected in the partially consolidated text. It was, therefore, a matter of concern as to how the treaty language would be established. He found the procedures of the Conference difficult to understand. Compared to many international conferences, the delegates were not being provided a daily journal or a transcript of the interventions. Consequently, it was difficult for Delegations to check whether their interventions and proposals were correctly reflected. It was not clear whether the partly consolidated text prepared by the Chairman was in accordance with the decisions of the Steering Committee. If they were not, as it seemed to be the case, a new document should be prepared to reflect the varying shades of opinions. He felt that the procedural problems should be discussed in the Steering Committee in order to establish transparent, credible and acceptable procedures.

666. Mr. SHEN (China) reiterated his suggestion that the meeting be suspended. He added that his Delegation could not accept the first proposal in Article 1(2), and it was of the view that the suggestion regarding customs areas should be deleted as it could lead to confusion. He added that his Delegation also had other suggestions which it would make subsequently.

667. The CHAIRMAN adjourned the meeting.

*Eleventh Meeting*  
*Sunday, December 15, 1996*  
*Morning*

*Work program*

668. The CHAIRMAN opened the meeting and stated that its purpose, according to the decision of the Steering Committee, was to review the progress of the informal consultations. He referred to the fact that on Friday and Saturday, consultations and meetings of regional groups had taken place, and he invited the coordinators, spokesmen and representatives of the groups and of those Delegations that had engaged in consultations to take the floor.

669. Mr. SÉRY (Côte d'Ivoire) announced that the African Group had considered the two Treaties and was ready to initiate negotiations.

670. The CHAIRMAN mentioned that a number of proposals from different Delegations and groups of Delegations had been given to the Secretariat and made available to all participants in the Conference. All groups and Delegations had been able to take the contents of those proposals into consideration, during the informal consultations, except for some very few that had been distributed after Saturday afternoon. That meant that the deadline decided by the Steering Committee for the presentation of written proposals, that is, by Saturday, at 1 p.m., had functioned well, and the Committee had a rich source of constructive proposals.

671. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the Group of Central European countries and the Baltic States, said that that Group had thoroughly studied the outcome of the first round of the debate in Main Committee I and analyzed the written amendment proposals, and it had formed its position concerning the issues discussed. He declared that the Group and its members were ready to enter into formal, or, if necessary, continue informal negotiations at any time. He felt that there were a number of Articles, mainly in Draft Treaty No. 1, which could be agreed upon relatively easily, namely the preamble and Articles 1, 2, 3, 4, 5, 6, and probably 8, and Articles 9, 11, and probably 12, and finally Article 16. He suggested that formal discussions on those Articles begin immediately.

672. Mr. HONGTHONG (Thailand) stated, on behalf of the Asian Group, that it had completed its discussions on the substantive issues of the two Draft Treaties, and it was ready to participate in the negotiations in any manner or form.

673. Mrs. BOUVET (Canada) said that Group B was also ready to begin negotiations either formally or informally with other Member States. She considered that Articles 1 to 6 and 11 of Draft Treaty No. 1 should be considered first because their content, both as regards substantive issues and their wording, appeared to be the subject of a degree of consensus in comparison with other provisions where differences of view were more marked.

674. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, expressed full support for the proposal by the Delegation of Canada to initiate consultations and informal negotiations on Articles 1 to 6 and 11 of Draft Treaty No. 1.



675. The CHAIRMAN expressed his understanding of the intervention of the Delegation of Chile that the Latin American and Caribbean Group was ready to embark upon formal or informal negotiations or consultations, and noted that the Delegation of Chile confirmed that.

676. Mr. SHEN (China) noted with satisfaction the announcements of the Delegations that had just spoken that they were ready to embark on consultations or negotiations. He said that his Delegation had studied closely the proposed Articles and he felt that they, as well as the Basic Proposal, should serve as the basis for the first round of consultation and discussion. In principle, his Delegation supported the statement that the consultations should start with the Articles mentioned, leaving the more difficult issues for later.

677. Mr. SÉRY (Côte d'Ivoire), speaking on behalf of the African Group, endorsed the proposal to consider the list of certain Articles in order to achieve results. He said that the African Group had incorporated amendments from other regional groups in its final position which he was ready to explain to the Committee.

678. The CHAIRMAN pointed out that, at the given stage, the Committee was only expected to reach an understanding about the nature of the next step, whether there should be informal, or formal, deliberations or negotiations. He noted that there had been much flexibility in the indications of the positions, and he invited the spokesmen to offer their advice in that respect, noting that in informal consultations all interested Delegations would be invited to take part, and, in that case, the group coordinators should make sure that the groups would be properly represented. No Delegation would be excluded from informal consultations.

679. Mr. SÉRY (Côte d'Ivoire) noted that all Delegations that had spoken had expressed their desire to achieve positive results. He added that the African Group was also ready to associate itself with the general position in that regard.

680. Mr. ROGERS (Chile) underlined the need to hold consultations and proposed that Room IV be used for this purpose.

681. The CHAIRMAN stated that a consultation process taking place in a smaller room and having the character of an informal process would mean that decisions could not be made during that process, but indications on a possible consensus from the representatives of groups could be given in Main Committee I, which would facilitate its decisions.

682. Mr. KUSHAN (United States of America) said that his Delegation supported the suggestion made by the Delegation of Chile.

683. Mrs. BOUVET (Canada) endorsed the statements made by the Delegation of Chile on behalf of the Group of Latin American and Caribbean countries and by the United States of America.

684. The CHAIRMAN noted that the tendency was towards an informal continuation of the work. That would mean that in that process of consultation it would be explored where the groups could agree on issues, and the work would be, as suggested and supported by several Delegations, that discussions would start from the less controversial issues and then advance to the issues where negotiations and consultations still might be going on, possibly

simultaneously with the informal consultations. In that case, the Committee should avoid voting in the present meeting, but it should explore where it could find consensus.

685. He suggested that the informal consultations should start the same day, and that they should continue as long as there would be progress. He had had informal consultations with the President of the Conference who had indicated that in the evening there would be an evaluation of the informal consultations so far, and the President of the Conference would, on the basis of that evaluation, decide on possible proposals to the Steering Committee

686. Mr. TIWARI (Singapore) asked the Chairman to clarify whether the informal consultations would be transparent in nature.

687. The CHAIRMAN answered that his understanding of the suggestions made was that the informal consultation procedure would be completely transparent. Any Delegation wishing to participate in that procedure would have the possibility to do so. It might be advisable that the consultation take place in a somewhat more limited meeting than the whole of Main Committee I, but it would be up to the coordinators of the groups to ensure the proper and appropriate participation from the groups, taking into consideration that all Delegations that were interested in participating in given parts of the work should have the opportunity to do so.

688. Mrs. TOLLE (President of the Conference) took the floor in her capacity of both the President of the Conference and the Head of the Delegation of Kenya. She said that her Delegation had carefully followed the exchange of views that had taken place in order to enable the work to advance positively and constructively. In her capacity as President of the Conference, she had observed the same and she was now very optimistic regarding the possible outcome of the Conference. She congratulated the Delegations, individually and collectively, for the cooperative and positive manner in which they had worked during the last 48 hours. She said that she had observed the positive spirit which had been expressed across the room by the representatives of the various regional groups which sent a clear signal that everybody wanted a product to adopt and carry home by the end of the Conference. In her capacity as President of the Conference, she called on all Delegations to exercise maximum flexibility, tolerance, patience and understanding with each other. It was the time to make concessions, because only little time was left. She proposed to the Chairman that the present meeting try to adopt the easier Articles, and then be adjourned for informal consultations. She said that it was her expectation to get at least some form of conclusive report by the end of that day, so that a constructive work program for the remaining few days could be established by the Steering Committee the next morning.

689. The CHAIRMAN thanked the President of the Conference for her intervention, and, agreeing with her suggestion, proposed that the Committee followed the suggestion of three Delegations regarding which Articles to discuss first, in order to settle certain issues already in the present meeting.

690. Mr. SÉRY (Côte d'Ivoire) said that his Delegation supported the proposal made by the President of the Diplomatic Conference.

691. Mr. ROGERS (Chile) reaffirmed the desire of the Group of Latin American and Caribbean countries to make progress in the work and queried which Articles were really non-controversial.

692. The CHAIRMAN noted that the suggested lists of less controversial issues had Articles 1, 2, 3, 4, 5, 6 and 11 in common, and said that the Committee should try to settle those.

693. Mr. FICSOR (Assistant Director General of WIPO) said that it was his understanding that it was the wish of the Committee to use a smaller meeting room for informal consultations and indicated the possibilities available. He proposed Room IV for that purpose.

694. The CHAIRMAN asked the President of the Conference whether her suggestion implied that discussions on less controversial issues should continue in Main Committee I, rather than in informal consultations.

695. He clarified that Main Committee I would continue its meeting, and attempt to reach consensus in this formal meeting on certain items.

696. Mrs. TOLLE (President of the Conference) expressed her desire that the Conference save as much time as possible, and make as much progress as possible. She said that, in an effort to exercise maximum flexibility, and in the spirit of transparency, the Committee should dispose of those Articles on which consensus might be reached but then it should move to informal negotiations as soon as possible.

697. The CHAIRMAN stated that the Committee would quickly move through certain Articles to determine if consensus could be found on them. He proposed that, instead of official voting, rather an "indicative vote" take place. If there were consensus on a particular Article or paragraph, as determined by the indicative vote, it would be taken forward to the Plenary.

698. Mr. TIWARI (Singapore) asked the Chairman for clarification as to the change in the Committee's method of working. He noted that there were simpler Articles, and more difficult ones, but that many of the Articles were interconnected. He stressed that the new method of working should not preclude a Delegation from raising a point which was connected to another Article even if previously discussed. He reserved his Delegation's right to do so if required.

699. The CHAIRMAN pointed out that the Committee would work article by article now, and that any consensus which might be achieved would only be provisional. When the whole Treaty was presented, if there were a connection between adopted Articles and those which were being considered, it would be natural that Delegations might discuss such a connection.

700. Mr. TIWARI (Singapore) felt that there were Delegations which would see linkages between various provisions, and would be reluctant to agree to certain provisions because of such linkages. He stated, though, that his Delegation would not object to the manner in which the Committee would now proceed.

701. Mr. KUSHAN (United States of America) referred to the intervention by the Delegation of Singapore, and noted that his Delegation would like to also raise the issue of linkages. He thought that there might be some value in attempting to do some initial processing of the Articles, through informal consultations, so as to identify and resolve those linkages before formally attempting to adopt any Articles.

702. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, fully supported the views expressed by the Delegation of Singapore and then by the Delegation of the United States of America and emphasized that, even though the Articles in question were less controversial than others, they had also been the subject of proposals by Delegations and consequently he reserved the right to propose another procedure if the work did not progress.

703. Mr. SÉRY (Côte d'Ivoire) considered that the procedural aspect should take second place to consideration of the basic texts with the various proposals put forward by Delegations. He therefore hoped that the Articles would be considered one by one and be formally or informally adopted, but in any event the procedure should lead to significant progress in the work.

704. The CHAIRMAN introduced Articles 1, 2, 3, 4, 5, 6 and 11 of Draft Treaty No. 1 for discussion by the Committee, with the understanding that, if there were any difficulties with any Article, it would be relegated to further negotiation and consultation. He observed that the order of the Articles corresponded to their order in the Basic Proposal, and proposed that the Committee review each Article on a paragraph by paragraph basis. He noted that there was a proposal concerning paragraph (1) of Article 1, by the Group of Latin American and Caribbean countries.

705. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, drew attention to the proposal made by the Group on Article 1 of Draft Treaty No. 1, which consisted in the first place of deleting paragraph (1) of the current text and inserting the following: "This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works as regards Contracting Parties that are countries of the Union established by the said Convention. This Treaty shall have no connection, either explicit or implicit, with other treaties or conventions that are directly or indirectly concerned with the same subject matter." This made it clear that the reference to the Berne Convention solely concerned the 1971 Act and eliminated the risk that individual agreements pursuant to Article 20 could be interpreted as being part of the Berne Convention. The second part of the proposal was to replace the current paragraph (4) by the following: "The States that become party to this Treaty shall comply with the provisions of the Berne Convention and of the Appendix thereto." He explained that the purpose of this amendment was to reaffirm the importance of the Berne Convention and incite further accessions to it, however the Group would really like to see this provision worded to the effect that the linkage to the Berne Convention would be mandatory for States wishing to accede to the present Treaty. The last part of the proposal consisted of adding a new paragraph (5) in the following terms: "The intergovernmental organizations party to this Treaty shall comply with the provisions of Articles 1 to 21 of the Berne Convention and with those of the Appendix thereto," so as to separate obligations upon States from obligations upon intergovernmental organizations, which were only subject to the substantive provisions of the Berne Convention and not to the administrative provisions.

706. Mr. HONGTHONG (Thailand) supported the proposal made by the Group of Latin American and Caribbean countries.

707. Mr. VISSER (South Africa), speaking on behalf of the African Group, observed that, in the proposal by the Latin American and Caribbean Group, paragraphs (4) and (5) corresponded with the position of the African Group.

708. Mr. TIWARI (Singapore) asked for clarification regarding the issue of moral rights. He noted that the Treaty applied Articles 1 to 21 of the Berne Convention. He asked why, in view of the fact that the TRIPS Agreement was only two years old, there was now a necessity to include moral rights in the new Treaty. He pointed out that there was a general feeling in the Conference on the need to balance the interests between right holders and economic imperatives, and asked for the reasons behind the inclusion of moral rights.

709. Mr. KUSHAN (United States of America) noted that, with regard to the proposal made by the Latin American and Caribbean countries, that is, to insert a clause in paragraph (1), there were some questions which were not easy to address. He said that his Delegation did not understand the need for that type of reference to other treaties. He also wondered whether certain topics which were included in the Treaty did in fact have relationships to other agreements; he specifically referred to the question of provisions on enforcement. He stated that his Delegation did not see the need for including such a reference. With regard to the proposal to revise paragraph (4), he stated that his Delegation was able to support it, but only with reference to the questions that had been raised by the Delegation of Singapore. He felt that that was a matter of clarification, but also a matter for consensus. He thought that the Committee would have to revisit the Article under discussion, depending on what type of satisfactory solutions could be reached with regard to other provisions, specifically Article 4 in relation to computer programs.

710. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the Group of Central and Eastern European countries and the Baltic States, felt that the apparent fear of linkage of the Treaty with the TRIPS Agreement was unfounded. He referred to the intervention by the Delegation of Singapore regarding the question of moral rights. It was his opinion that the inclusion of moral rights in the Treaty was unavoidable, when one considered Article 20 of the Berne Convention, which precluded countries party to the Convention from concluding agreements on the same subject matter which would be contrary to, or provide less protection than, the Berne Convention.

711. The CHAIRMAN stated that there were two possibilities for the Committee as far as Article 1(1) was concerned. The first solution would be to include the text proposed by the Latin American and Caribbean Group. He noted that the first phrase of that proposal was identical to Article 1(1) of the Basic Proposal. The second solution would be to leave the said proposal pending, that is, to adopt the first sentence with the understanding that the Committee would come back to the second sentence. There would be a better conception a little later of the possible links and connections of the Treaty to other treaties.

712. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, wished to see paragraph (1) of Article 1 approved as a whole so that none of the text remained pending and proposed a vote if needed.

713. The CHAIRMAN asked if the Delegation of Colombia would like to defer the question.

714. Mr. ZAPATA LÓPEZ (Colombia) emphasized that the position of the Group of Latin American and Caribbean countries was that paragraph (1) should be considered as a whole.

715. The CHAIRMAN asked if the Latin American and Caribbean countries would agree to provisionally approve Article 1(1) as drafted.

716. Mr. ZAPATA LÓPEZ (Colombia) reaffirmed that the Group wished to see paragraph (1) considered in its entirety.

717. Mr. SÉRY (Côte d'Ivoire) explained that he was only speaking on behalf of his Delegation as the Delegation of South Africa would speak on behalf of the African Group. He pointed out that when a Delegation called for a vote on an amendment, any counter proposal should come from another Delegation and not from the Chairman of the Committee.

718. Mr. TIWARI (Singapore) asked the Chairman to reconsider the interventions by the Delegations of Colombia and the United States of America. He stressed that the basic rule of the Conference was to attempt to achieve as many things as possible by consensus. He felt that, if there were provisions which were problematical, it would be unwise to rush to a vote. It would be more advisable to move into informal consultations on such provisions. That would be more fruitful and less divisive, and, in his opinion, better for the Treaty.

719. The CHAIRMAN said that it was his understanding of the intervention by the Delegation of Colombia that, if the Committee would vote on paragraph (1), the vote should cover the proposal of the Latin American and Caribbean Group as a whole as an alternative to the Basic Proposal. He stated that the decision before the Committee was whether it should start voting, in the form of an indicative vote, on paragraph (1), or whether it should defer the vote in order to offer the possibility for informal consultations.

720. Mr. ZAPATA LÓPEZ (Colombia) was in favor of the second Alternative, namely to postpone the decision on this paragraph so that informal consultations could be held among coordinators of the various groups.

721. Mrs. M'KADDEM (Tunisia) noted that there were problems related to the adoption of certain Articles which, *a priori*, should be the subject of adoption by consensus without needing to vote. She wondered whether negotiations in an informal committee might lead to a solution so that there would be no need to hold a vote on the first Article. She wished to know whether Delegations could express points of view with the object of reaching a consensus or whether it was proposed to vote on this Article in any event.

722. The CHAIRMAN stated that the Committee would proceed and explore all the items where consensus could be found, and, when it became evident that consensus could not be found on some items, further consultation would take place. He expressed his confidence that the Committee would find a way to find solutions. He proposed that the Committee not discuss the procedure any more, because it seemed that Article 1(1) would be deferred to informal consultations.

723. Mr. EKPO (Nigeria) asked the Chairman for clarification as to the difference between informal consultations and formal consultations.

724. The CHAIRMAN explained that the distinction between formal procedures and informal procedures was the following: in a formal meeting, all the deliberations would be recorded and reflected in the summary minutes, whereas, in an informal meeting, no recording would be made and no summary minutes would be prepared and thus the discussions would be completely outside of any records of the Conference, and no decisions could be made. A possible consensus could be explored, and, if consensus were not found, possible proposals, on the basis of which the Conference, could ultimately decide, could be explored and established.

*Article 1 (Relation to the Berne Convention) of the WCT, paragraph (2)*

725. The CHAIRMAN asked the Committee if there was consensus as to paragraph (2) of Article 1, as included in document CRNR/DC/55, and stated that there was no objection.

726. *Main Committee I adopted by consensus paragraph (2) of Article 1 (Relation to the Berne Convention) of Draft Treaty No. 1, as included in document CRNR/DC/55.*

*Article 1 (Relation to the Berne Convention) of the WCT, paragraph (3)*

727. The CHAIRMAN submitted paragraph (3) of Article 1, as included in document CRNR/DC/55, to the Committee to determine if there was consensus on that paragraph. He noted that there had been discussion as to reversing the order between paragraphs (3) and (4).

728. *Main Committee I adopted by consensus paragraph (3) of Article 1 (Relation to the Berne Convention) of Draft Treaty No. 1, as included in document CRNR/DC/55.*

*Article 1 (Relation to the Berne Convention) of the WCT, paragraph (4)*

729. The CHAIRMAN presented paragraph (4) of Article 1 to the Committee, pointing out that there had been a proposal by the Group of Latin American and Caribbean countries. He noted that the Basic Proposal read: "Contracting Parties that are not countries of the Union established by the Berne Convention shall comply with Articles 1 to 21 and the Appendix of the Berne Convention." He drew attention to the proposal from the Group of Latin American and Caribbean countries, which read: "The States that become party to this Treaty shall comply with the provisions of the Berne Convention and the Appendix thereto," and noted that that proposal should be read in conjunction with paragraph (5) under the proposal which read: "The intergovernmental organizations party to this Treaty shall comply with the provisions of Articles 1 to 21 of the Berne Convention and with those of the Appendix thereto." There would be one obligation on the States, and a different obligation on the intergovernmental organizations which became party to the Treaty.

730. Mr. TIWARI (Singapore) asked for clarification as to whether the Committee was now dealing with paragraph (4), or paragraphs (4) and (5) of Article 1.

731. The CHAIRMAN indicated that the Committee was working only on paragraph (4) of Article 1, but, in the proposal by the Latin American and Caribbean countries, paragraphs (4) and (5) corresponded to the subject matter of paragraph (4) of Article 1.

732. Mr. TIWARI (Singapore) indicated that he did not have problems with the proposal from the Group of Latin American and Caribbean countries, in so far as the first part was concerned, regarding States which became party to the Treaty. His concerns related to the part which involved the Berne Convention, and specifically, the question of moral rights under Article 6*bis* of the Convention. He thought that there were cogent reasons for leaving that area to national law. He observed that the world was moving on to an area of digital technology, and that, therefore, that particular issue had to be managed in relation to the multimedia industry. He felt that there were good reasons as to why moral rights should not be made mandatory in the Treaty. He also noted that the provisions of the Treaty would apply to intergovernmental organizations. He stated that there had not been much discussion on the latter aspect. He urged that, at least, Article 1(4) and (5) in the proposal by the Latin American and Caribbean countries should be referred for further discussions.

733. The CHAIRMAN agreed that the said paragraph should be deferred for further consultations.

734. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries and with reference to paragraphs 4 and 5 of Article 1, expressed disagreement with the position of the Delegation of Singapore, which had questioned the obligation on Contracting States to protect moral rights, emphasizing that this possibility had not been considered by the Committees of Experts because the obligation to protect moral rights was clearly laid down in the Berne Convention and it would be inconceivable not to include this obligation in a Treaty that was an agreement pursuant to Article 20 of the Berne Convention.

735. The CHAIRMAN observed that the matter could not be resolved without a long discussion or a vote, or both, and, therefore, the issues under discussion were deferred for informal consultations.

736. Mr. SÉRY (Côte d'Ivoire) was surprised to note that there were in fact problems in adopting Articles which, at first sight, did not appear to raise any problems. He wondered whether it was appropriate to refer to moral rights in this paragraph. He recalled that Article 20 of the Berne Convention imposed respect for a certain level of protection contained in the Convention itself and said that his Delegation could not negotiate on the issue of moral rights

737. Mr. FICSOR (Assistant Director General of WIPO) observed that while, under Article 1(4) of the Basic Proposal, the obligation to comply with the Berne Convention only extended to the substantive provisions, that is, to Articles 1 to 21, under the proposal of the Group of the Latin American and Caribbean countries, that obligation would extend to all provisions of the Berne Convention, which meant that also to the administrative provisions and the final clauses, that is, also to Articles 22 to 38. Those articles provided for certain rights and certain obligations. For example, the right to participate in the Assembly of the Berne Union and in the Executive Committee, and the obligation to pay a fee as a member of



the Union. But there was also a provision that a State could become party to the Berne Convention, and a member of the Union, only if it acceded to the Convention. He asked whether it was meant by the proposal of the Latin American and Caribbean countries that only those countries could accede to the new Treaty which were party to the Berne Convention. He felt that, if that was the intention, it could be taken care of in the administrative and final clauses of the new Treaty.

738. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, wished to amend the proposal presented by the Group on Article 1 of Draft Treaty No. 1 to the effect that accession to the Berne Convention was an essential criterion for accession to this Treaty, thus making it mandatory to respect not only the substantive provisions of the Berne Convention but also the administrative structure provided under the Convention. He underscored the importance of the Executive Committee of the Berne Convention or the Coordination Committee of WIPO, bodies which took measures that were important for copyright cooperation with developing countries.

739. Mr. GOVONI (Switzerland) agreed with the Chairman's proposal to hold a discussion on paragraph (4) in an informal committee. He understood the concerns raised by the Delegation of Singapore, but emphasized that there could be no question of referring to moral rights. He drew attention to Article 20 of the Berne Convention, which imposed respect for a certain level of protection embodied in the Convention itself and said that his Delegation could not negotiate on the issue of moral rights.

740. Mrs. DE MONTLUC (France) supported the remarks made by the Delegation of Switzerland concerning moral rights.

*Article 3 (Application of Articles 2 to 6 of the Berne Convention) of the WCT (Article 2 of Draft Treaty No. 1)*

741. The CHAIRMAN introduced Article 2 of Draft Treaty No. 1 for consideration by the Committee. He mentioned that Article 2 of Draft Treaty No. 1 included an obligation to apply the provisions of Articles 3 to 6 of the Berne Convention, in respect of the protection provided for in the Draft Treaty. He said that, instead of creating a new set of rules on the international applicability of the new Treaty, the Article referred to the well established provisions in Articles 3 to 6. He noted that there were some proposals for amendment concerning Article 2, namely, from the Delegation of Brazil, that the substantive Articles should be transcribed, reproduced in full, from the Berne Convention in the new Treaty; from the Delegation of Australia, to the effect that the reference in Article 2 should be not only to Articles 3 to 6, but that it should also cover Article 2 of the Berne Convention. He observed that there would be a need to include in the discussion the issues of what should be done with any references to "nationals" as such references might affect international organizations.

742. Mr. SILVA SOARES (Brazil) underscored that the Conference was creating a new treaty and was not dealing any more with the concept of a protocol to the Berne Convention. He felt that it was dangerous to include by reference, or to make reference to, any articles of the Berne Convention. If the provisions included in those articles were needed, it would be more appropriate to simply transcribe them into the treaty.

743. The CHAIRMAN pointed out that there were two different technical ways to tackle the issue under discussion. One was the way the Basic Proposal had been drafted, and the other was the proposal from the Delegation of Brazil to reproduce the relevant articles. He referred to the fact that the Treaty would not be a protocol but a separate instrument. He stated that, when using the articles from the Berne Convention, the Committee would be using the articles in the latest version of the Berne Convention, which could be revised in the future.

744. Mr. CRESWELL (Australia) expressed his Delegation's interest in the proposal from the Delegation of Brazil which did address a specific problem. He observed that there were several references in Articles 3 to 6 to countries of the Union. It was his understanding that the Draft Treaty admitted the possibility that States not party to the Berne Convention could become party to it without having to be a member of the Berne Union. He said that his Delegation felt that further consideration was needed concerning all the implications of simply carrying the words of Articles 3 to 6 of the Berne Convention over into the Treaty, in that there could be a problem regarding countries which would join the Treaty without joining the Berne Convention. As to the proposal of his Delegation, he pointed out that there were references in the Draft Treaty to literary and artistic works, and his Delegation felt that there was a case for affirming in the Treaty, if it was going to be a free-standing Treaty, that the works being referred to were those that were defined indicatively, if not exhaustively, in Article 2(1) of the Berne Convention. His Delegation's proposal was framed to cover Articles 2 to 6, including Article 2*bis*.

745. The CHAIRMAN commented that, if the language of Article 2 in the Basic Proposal were approved, the Committee could consider whether the words "*mutatis mutandis*" should be incorporated in that provision, in order to overcome the technical aspects to which the Delegation of Australia had referred.

746. Mr. VISSER (South Africa), speaking on behalf of the African Group of countries, supported the proposals made by the Delegations of Brazil and Australia. He shared the view that Draft Treaty No. 1 was to have an existence of its own and was no longer merely a protocol to the Berne Convention. For that reason, he wished to see the text of Articles 3 to 6 be transcribed into the text of Draft Treaty No. 1. He also agreed with the proposal from the Delegation of Australia on the need to also include Articles 2 and 2*bis* of the Berne Convention.

747. Mr. SHEN (China) stated that, since Article 1(4) of Draft Treaty No. 1 had already made it very clear that all Contracting Parties should comply with the Berne Convention, there was no need to refer, in Article 2 of the Draft Treaty, to the application of the provisions of Articles 3 to 6 of the Berne Convention. He felt that no reference was necessary to customs territories. He thought that the term "nationals" was very clearly identified in the Berne Convention. He suggested the deletion of paragraph (2) from Article 2 of Draft Treaty No. 1, as proposed in the Chairman's partially consolidated text.

748. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the Group of Central and Eastern European countries and the Baltic States, supported the proposal made by the Delegation of Brazil that the relevant provisions of the Berne Convention should be transcribed with the necessary modifications into the new Treaty. He also supported the proposal of the Delegation of Australia to include Articles 2 and 2*bis* of the Berne Convention. He felt that

the transcription, with the necessary modifications, might also address some of the problems mentioned by the Delegation of China.

749. Mr. PROAÑO MAYA (Ecuador) supported the proposal made by the Delegation of Brazil concerning the need to incorporate the provisions of the Berne Convention and not simply refer to them. He also opposed the inclusion of paragraph (2) in the partly consolidated text of Draft Treaty No. 1, pointing out that the concept of customs territories corresponded to international trade mechanisms whereas this was a new Treaty that had to be adopted by States. He underscored the importance of giving suitable protection to authors for their creations without involving international trade mechanisms.

750. The CHAIRMAN said that, considering the importance of the matter and its possible consequences for other provisions in the Draft Treaty, he wished to hear other views.

751. Mr. KUSHAN (United States of America) stated that his Delegation supported the original formulation in the Basic Proposal. He said that, having listened to the concerns expressed by the Delegations that supported an incorporation of the text of the Berne Convention into the Draft Treaty, his Delegation still did not believe that that would be necessary, for two reasons: first, while it was clear that the obligations under the Berne Convention should be applied with respect to the protection under Draft Treaty No. 1, an attempt to transfer the language of all those provisions into that Treaty would be too time-consuming; second, if, in the future, there would be a possible amendment to the Berne Convention, the act to be applied would still follow from Article 1 of the Treaty, and it would be much simpler in that case to make a simple change of the reference. He stated that his Delegation could support the proposal of the Delegation of Australia that there be reference to Articles 2 to 6 of the Berne Convention.

752. Mrs. TOLLE (President of the Conference) noted with satisfaction that the proceedings had demonstrated goodwill and signaled that everybody wished to make progress. However, in order to accelerate that progress, she proposed that the session be adjourned and followed by informal consultations, the details of which should be coordinated by the Chairman and the regional coordinators.

753. The CHAIRMAN said that he still wanted to finish the discussion by giving the floor to the Delegations that had asked for the floor.

754. Mr. STARTUP (United Kingdom) stated that his Delegation would reserve its position on the substance of the Article for the informal consultations. Before proceeding to such consultations, he wished to hear the views of Dr. Ficsor, Secretary of the Conference and Main Committee I, on three questions, relating to the Articles under discussion: first, whether his understanding was correct that Article 1(4), in whatever form it ultimately might end up, and Article 2, would serve essentially different purposes, 1(4) requiring compliance with certain provisions of the Berne Convention and Article 2 applying certain articles of the Berne Convention to the protection under Draft Treaty No. 1; second, whether it would be advisable to extend the reference to the Berne Convention by also including Articles 2 and 2*bis* because of the need to define more clearly the subject matter of the Treaty; and, third, whether Article 2 in its current form, with or without the addition of such words as *mutatis mutandis*, would actually achieve the desired effect of simply incorporating those provisions into Draft

Treaty No. 1, without the need to rewrite and necessarily adapt them, something which might take additional time.

755. Mr. FICSOR (Assistant Director General of WIPO) said that his answer to all the three questions was yes.

756. Mr. KEMPER (Germany), with regard to the proposal of the Delegation of Brazil to incorporate the complete text of the relevant articles of the Berne Convention, supported the views expressed by the Delegation of the United States of America, and referred to the text of the TRIPS Agreement, which was also an agreement in its own right, and still the Agreement referred to the provisions of other international treaties instead of reproducing the text of those provisions.

757. The CHAIRMAN recalled that the solutions in the two Draft Treaties corresponded to the solution in Article 1.3. of the TRIPS Agreement. The Articles on the criteria of applicability was a different matter and needed a different solution.

758. Mr. WIERZBICKI (New Zealand) expressed his Delegation's support for the statement by the Delegation of the United States of America that Article 1 adequately dealt with the question raised by the Delegation of Brazil, and said that his Delegation had interpreted the Draft Treaty to refer to the Paris Act of the Berne Convention. He added that his Delegation also supported the comments by the Delegation of Australia.

759. Mr. TIWARI (Singapore) agreed with the Delegation of Australia that it was necessary to make a reference to Articles 2 and *2bis* of the Berne Convention, because that would enable the use of the definition of literary and artistic works under the Convention.

760. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, supported the text of Article 2(1) as currently written, because it related clearly to well-established points of attachment contained in the Berne Convention. He said that it would not be fruitful to adopt a different approach. Therefore, he endorsed the comments by the Delegations of Germany, the United Kingdom and the United States of America.

761. The CHAIRMAN noted that all Delegations seemed to support the suggestion by the President of the Conference that informal negotiations should begin after the present meeting with participation of representatives of the various groups, including the spokesmen of those groups. He invited the spokesmen of the groups to take care of the appropriate participation of each group, in such a way that the group that would be meeting for informal consultations would be smaller than the full Committee, but also taking into consideration the requirement of openness and transparency and taking into account that certain Delegations had specific interests in certain matters that would be subject for informal consultations.

762. Mrs. TOLLE (President of the Conference) announced that, following the reports that she would receive in the evening about the results of the informal consultations, she intended to convene a meeting of the Steering Committee the following morning.

763. After consultation with the Secretariat, the CHAIRMAN announced the beginning of informal consultations, and adjourned the meeting.

*Twelfth Meeting**Thursday, December 19, 1996**Morning*

764. The CHAIRMAN opened the meeting by introducing documents CRNR/DC/82 Prov. and CRNR/DC/84 Prov. containing the substantive provisions of the two Draft Treaties reflecting the results of the informal consultations started more or less a week ago. In the consultations, the various groups of countries had been represented in an appropriate way. Furthermore, all Delegations had had access to the consultations. He said that he had got the impression that all Delegations were committed to the common work. He underlined the very constructive and good atmosphere which had facilitated informal understandings in the consultation process.

765. Mr. ZAPATA LÓPEZ (Colombia), referring to the text of the substantive provisions of Draft Treaty No. 1, indicated that there was a problem in the Spanish text of the preamble, which should refer to the rights of authors on the one hand and the larger public interest on the other.

766. The CHAIRMAN invited all Delegations to hand over to the Secretariat in writing any translation corrections they might find necessary. Addressing the work plan of the Committee, he said that the current meeting was limited to the question of formal endorsement of the agreements on the substantive provisions of the two Draft Treaties reached in the informal consultations. A following meeting would deal with the agreed statements as well as with proposals for resolutions or recommendations to be adopted by the Conference. He added that it appeared that one of such resolutions or recommendations would deal with the question of audiovisual coverage of the protection of performers and another one would concern the third draft Treaty on a *sui generis* protection of databases that the Conference had not been able to discuss and negotiate. He suggested that the latter recommendation would aim at speedy continuation of the work on the third draft Treaty after the Diplomatic Conference.

*Preamble of the WCT*

767. The CHAIRMAN proceeded to the adoption of the provisions of Treaty No. 1 (document CRNR/DC/82 Prov.) leaving the title of the Treaty for later consideration, and he proposed that, first, the first three paragraphs of the Preamble be adopted.

768. *Main Committee I adopted by consensus the first three paragraphs of the Preamble of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

769. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the *ad hoc* Group of Central European countries and the Baltic States, introduced the fourth paragraph of the Preamble as set out in document CRNR/DC/82 Prov. He stated that the special reason and aim of the

Treaty was to restate and strengthen copyright protection particularly in a new technological environment. While referring in the preamble to the interest of the public and to groups of the public, the Treaty should also, as a matter of balance, emphasize the fundamental aim to give an incentive to creation and investment in creation.

770. Mr. KHLESTOV (Russian Federation) pointed out that there were certain problems with the Russian translation of the document which had to be addressed by the Drafting Committee.

771. Mr. FICSOR (Assistant Director General of WIPO) asked the Delegations to hand over their corrections as soon as possible, in order to enable the Secretariat to prepare revised texts of the various language versions for the Drafting Committee.

*772. Main Committee I adopted by consensus the fourth paragraph of the Preamble of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

773. Mr. AYYAR (India) introduced the fifth paragraph of the Preamble that his Delegation had suggested and the purpose of which was to avoid, in strict conformity with the Berne Convention, disharmony between the interests of right holders and the larger public interest.

*774. Main Committee I adopted by consensus the fifth paragraph of the Preamble, as included in document CRNR/DC/82 Prov.*

*Article 1 (Relation to the Berne Convention) of the WCT*

775. The CHAIRMAN invited proposals concerning Article 1 of Draft Treaty No. 1.

776. Mr. ZAPATA LÓPEZ (Colombia) stated that, in an effort to clarify the nature of the linkage between this Treaty and the Berne Convention, the Group of Latin American and Caribbean countries was putting forward for approval the following new wording for paragraph (1) of Article 1: "This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention nor shall it prejudice any rights and obligations under any other treaties."

*777. Main Committee I adopted by consensus Article 1(1) (Relation to the Berne Convention) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

778. The CHAIRMAN reminded the Committee that paragraphs (2) and (3) had already been approved by the Committee, and, therefore, only paragraph (4) should still be adopted.

779. Mr. VISSER (South Africa) explained that paragraph (4) was a simple compliance clause. All Contracting Parties had to comply with the substantive provisions of the Berne Convention. No distinction was made between Contracting Parties as to whether they were or were not party to the Berne Convention and as to whether they were States or international organizations. He proposed the adoption of paragraph (4), as included in document CRNR/DC/82 Prov.

780. *Main Committee I adopted by consensus Article 1(4) (Relation to the Berne Convention) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 2 (Scope of Copyright Protection) of the WCT (Article 1bis of Draft Treaty No. 1)*

781. The CHAIRMAN invited proposals concerning Article 1bis of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.

782. Mr. KUSHAN (United States of America) explained that the new Article 1bis was proposed as part of the understanding reached on Article 4 (Computer Programs).

783. Mr. PROAÑO MAYA (Ecuador) pointed out that Article 1bis corresponded exactly to Article 9.2 of the TRIPS Agreement, thus establishing a linkage with an international trade agreement, and his Delegation therefore had reservations concerning this Article. Nevertheless, it did not intend to create any obstacles to consensus on the Article.

784. *Main Committee I adopted by consensus Article 1bis (Scope of Copyright Protection) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 3 (Application of Articles 2 to 6 of the Berne Convention) of the WCT (Article 2 of Draft Treaty No. 1)*

785. The CHAIRMAN invited proposals on Article 2 of Draft Treaty No. 1.

786. Mr. CRESWELL (Australia) explained that, in the new text of Article 2, as amended from the Basic Proposal and as included in document CRNR/DC/82 Prov., reference was now made also to Articles 2 and 2bis of the Berne Convention. He announced that he would propose a statement on the application of those provisions to the protection under the Treaty, later.

787. *Main Committee I adopted by consensus Article 2 (Application of Articles 2 to 6 of the Berne Convention) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 3 (Notion and Place of Publication) of Draft Treaty No. 1*

788. The CHAIRMAN invited proposals on Article 3 (Notion and Place of Publication) of Draft Treaty No. 1.

789. Mr. REINBOTHE (European Communities) said that, in the view of his Delegation, Article 3(3) of the Berne Convention continued to provide for a valid definition of the concept of publication. Contracting Parties should be able to rely on that Article as incorporated in Draft Treaty No. 1 by Article 1(4), when defining criteria of eligibility for protection. Therefore, a separate provision, as proposed in the Basic Proposal on that issue, did not appear to be necessary in the Treaty. He said that a lot of effort had been deployed for the deliberations on Article 3, and his Delegation was confident that such deliberations had not

been in vain. They would, in the future, guide the application at domestic level of the concept of publication regarding the protection provided for by Draft Treaty No. 1.

790. *Main Committee I agreed by consensus on the deletion of Article 3 (Notion and Place of Publication) of Draft Treaty No. 1.*

*Article 4 (Computer Programs) of the WCT*

791. The CHAIRMAN invited proposals concerning Article 4.

792. Mr. KUSHAN (United States of America) said that his Delegation proposed an amendment to Article 4 as contained in the Basic Proposal. The amendment, which was already included in document CRNR/DC/82 Prov., was limited to the second sentence that now read: "Such protection applies to computer programs, whatever may be the mode or form of their expressions."

793. Mr. AYYAR (India) said that his Delegation agreed with that amendment as a result of the informal consultations and announced that he would propose later a statement to clarify the proper interpretation of Article 4 along with Article 1 *bis*.

794. *Main Committee I adopted by consensus Article 4 (Computer Programs) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 5 (Compilations of Data (Databases)) of the WCT*

795. The CHAIRMAN invited proposals concerning Article 5 of Draft Treaty No. 1.

796. Mr. AYYAR (India) recommended the text appearing in CRNR/DC/82 Prov. for approval, as it reflected the consensus reached in the informal consultations and was in conformity with the TRIPS Agreement.

797. *Main Committee I adopted by consensus Article 5 (Compilations of Data (Databases)) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 6 (Abolition of Certain Non-Voluntary Licenses) of Draft Treaty No. 1*

798. The CHAIRMAN opened the floor on Article 6 of Draft Treaty No. 1.

799. Mr. KIM (Republic of Korea) explained the results of the informal consultations, as contained in document CRNR/DC/82 Prov. Article 6(2) of the Basic Proposal on the abolition of mechanical licenses had been dropped, while Article 6(1), concerning the abolition of non-voluntary broadcasting licenses, had been maintained by extending the phasing-out period from five to seven years.

800. Mr. SHEN (China) recalled that, in the informal consultations, his Delegation, supported by several other Delegations, had pleaded for deletion of the entire Article 6. He



pointed out that broadcasting was, in many developing countries, a popular and important form of dissemination of information and means of enjoyment of literature and art, and that non-voluntary licenses for broadcasting, as established in the legislation of his country, were helpful in that respect and even beneficial to the fair remuneration of authors and other concerned parties. He stated that strong policy reasons in the respective countries commanded that they be free to maintain such non-voluntary licenses, and that, therefore, his Delegation requested deletion of Article 6.

801. The CHAIRMAN declared that a decision on Article 6 of Draft Treaty No. 1, as well as on Article 7 of that draft Treaty was deferred.

*Article 6 (Right of Distribution) of the WCT (Article 8 of Draft Treaty No. 1)*

802. The CHAIRMAN opened the floor on Article 8 of Draft Treaty No. 1.

803. Mr. KUSHAN (United States of America) proposed the text, as found in document CRNR/DC/82 Prov., for approval by consensus.

804. The CHAIRMAN noted that consensus could not yet be reached on Article 8 and deferred the discussion on it.

*Article 7 (Rights of Rental) of the WCT (Article 9 of Draft Treaty No. 1)*

805. The CHAIRMAN opened the floor on Article 9 of Draft Treaty No. 1.

806. Mr. AYYAR (India) proposed the text contained in document CRNR/DC/82 Prov. as the result of the informal consultations for adoption, by deleting—as a stylistic change—the word “and” after “computer programs” and inserting a comma instead.

807. Mr. UGARTECHE VILLACORTA (Peru) referring to the right of rental in Article 9, opposed the amendment contained in the document called substantive provisions of Treaty No. 1 and proposed keeping the text of the basic proposal, emphasizing that as far as rental was concerned Peruvian legislation did not discriminate in any way among various categories of works.

808. The CHAIRMAN deferred the discussion on Article 9.

*Article 8 (Communication to the Public) of the WCT (Article 10 of Draft Treaty No. 1)*

809. The CHAIRMAN invited proposals concerning Article 10 of Draft Treaty No. 1.

810. Mr. CRESWELL (Australia) said that his Delegation had been a long-time proponent of an improved right of communication to the public as a means of helping to provide effective copyright protection in the network environment and now was very pleased to move for adoption of Article 10 of Draft Treaty No. 1, which complemented the rights of communication already provided for in the Berne Convention, and which appeared to be one of the most important Articles, if not the most important Article, of the Draft Treaty.

811. *Main Committee I adopted by consensus Article 10 (Communication to the Public) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 9 (Duration of the Protection of Photographic Works) of the WCT (Article 11 of Draft Treaty No. 1)*

812. The CHAIRMAN opened the floor on Article 11 of Draft Treaty No. 1.

813. Mr. HENNEBERG (Croatia) introduced Article 11 as amended as a result of the informal consultations and as included in document CRNR/DC/82 Prov., explaining that the wording had been changed for formal reasons and for the purpose of clarification and simplification.

814. *Main Committee I adopted by consensus Article 11 (Duration of the Protection of Photographic Works) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 10 (Limitations and Exceptions) of the WCT (Article 12 of Draft Treaty No. 1)*

815. The CHAIRMAN opened the floor on Article 12 of Draft Treaty No. 1.

816. Mr. CRESWELL (Australia) suggested that Article 12, because of the obvious linkages between Articles 7 and 12, be reserved for further informal consultations.

817. Mr. SILVA SOARES (Brazil) supported the proposal of the Delegation of Australia.

818. The CHAIRMAN deferred the discussion on Article 12 of Draft Treaty No. 1.

*Article 11 (Obligations concerning Technological Measures) of the WCT (Article 13 of Draft Treaty No. 1)*

819. The CHAIRMAN invited proposals concerning Article 13 of Draft Treaty No. 1.

820. Mr. VISSER (South Africa) proposed the new wording contained in document CRNR/DC/82 Prov. In addition, he proposed insertion of the words "or the Berne Convention" after the words "this Treaty," to bring Article 13 into line with Article 14.

821. Mrs. RETONDO (Argentina) wished to see the Article on obligations concerning technical measures redrafted.

822. The CHAIRMAN said that language reservations were valid. Nonetheless, the text of Article 13 as amended by the Delegation of South Africa was clear.

*823. Main Committee I adopted by consensus Article 13 (Obligations concerning Technological Measures of Protection) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov., with the amendment proposed by the Delegation of South Africa.*

*Article 12 (Obligations concerning Rights Management Information) of the WCT (Article 14 of Draft Treaty No. 1)*

824. The CHAIRMAN invited proposals on Article 14 of Draft Treaty No. 1.

825. Mr. KUSHAN (United States of America) proposed Article 14 as amended in Document CRNR/DC/82 Prov. for adoption, and announced that his Delegation would propose an agreed statement concerning that Article.

*826. Main Committee I adopted by consensus Article 14 (Obligations concerning Rights Management Information) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 13 (Application in Time) of the WCT (Article 15 of Draft Treaty No. 1)*

827. The CHAIRMAN opened discussion on Article 15 of Draft Treaty No. 1.

828. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, expressed full support for Article 15 on application of the Treaty in time.

*829. Main Committee I adopted by consensus Article 15 (Application in Time) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 14 (Provisions on Enforcement of Rights) of the WCT (Article 16 of Draft Treaty No. 1)*

830. The CHAIRMAN invited proposals on Article 16 of Draft Treaty No. 1.

831. Ms. DALEY (Jamaica) supported Article 16 as amended in document CRNR/DC/82 Prov. which reflected the proposal put forward by her Delegation. She proposed that the word "special" in the title of the Article be deleted.

*832. Main Committee I adopted by consensus Article 16 (Provisions on Enforcement of Rights) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov., with the amendment proposed by the Delegation of Jamaica.*

833. The CHAIRMAN adjourned the meeting.

*Thirteenth Meeting  
Thursday, December 19, 1996  
Afternoon*

*Article 1 of the WPPT (Relation to Other Conventions)*

834. The CHAIRMAN opened the meeting and proceeded to Draft Treaty No. 2. He drew the attention of the Committee to the fact that, as a technical error, paragraph (3) had been left out from Article 1. That paragraph should be similar to the second sentence of Article 1(1) of Draft Treaty No. 1 and should read: "This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under, any other treaties."

*Preamble and Articles 1 (Relation to other Conventions), 2 (Definitions), 3 (Beneficiaries of Protection under this Treaty), 17 (Term of Protection), 18 (Obligations concerning Technological Measures), 19 (Obligations concerning Rights Management Information), 20 (Formalities) and 23 (Provisions on Enforcement of Rights) of the WPPT (Preamble and Articles 1, 2, 3, 21, 22, 23, 24 and 27 of Draft Treaty No. 2)*

835. The CHAIRMAN offered the following texts for adoption: the Preamble, Articles 1, 2, 3, 21, 22, 23, 24 of Draft Treaty No. 2 and an additional Article 27 thereof on enforcement of rights which had been omitted by error and which should be identical with Article 16 of Draft Treaty No. 1.

836. *Main Committee I adopted by consensus the Preamble and Articles 1 (Relation to other Conventions), 2 (Definitions), 3 (Beneficiaries of Protection under this Treaty), 21 (Term of Protection), 22 (Obligations concerning Technological Measures), 23 (Obligations concerning Rights Management Information), 24 (Formalities) and 27 (Provisions on Enforcement of Rights), as included in document CRNR/DC/84 Prov. and with the amendments in Article 1 indicated by the Chairman.*

837. The CHAIRMAN announced that he would later turn to the Articles still open when more clarity would have appeared about where voting was necessary.

838. Mr. GOVONI (Switzerland) asked that his Delegation's proposal on Article 6 be reflected in the text under consideration because this had not been done. He wished to see the words "except where the performance is already a broadcast performance" placed in square brackets in order to facilitate discussion and reach agreement on this Article.

839. The CHAIRMAN stated that the Committee had taken note of the intervention by the Delegation of Switzerland, but added that Article 6 of Draft Treaty No. 2 had not yet been submitted for adoption.

*Article 7 (Right of Rental) of the WCT (Article 9 of Draft Treaty No. 1)*

840. The CHAIRMAN opened the discussion on Article 9 of Draft Treaty No. 1.

841. Mr. UGARTECHE VILLACORTA (Peru) reaffirmed his position in favor of a general right of rental as contained in Decision 351 of the Cartagena Agreement or the European Directive on the right of rental. In his view, the trend to discriminate according to the type of work did not correspond to the philosophy of the Berne Convention or the TRIPS Agreement, as clearly shown by the harmonization of the term of protection for photographic works in this Treaty.

842. The CHAIRMAN noted that there was apparently no consensus on Article 9.

843. Mr. PROAÑO MAYA (Ecuador), referring to Article 9 on the right of rental, asked whether the comma that followed the word “phonograms” meant that the words “as determined in the national law of Contracting Parties” applied both to computer programs and cinematographic works embodied in phonograms, or if they only referred to the latter category.

844. The CHAIRMAN, after a consultation with the Secretariat, proposed to redraft the first two lines of Article 9 as follows:

“Authors of  
    (i) computer programs;  
    (ii) cinematographic works; and  
    (iii) works embodied in phonograms as determined in the national law of Contracting Parties,  
shall....”

He noted that this would make the reference and the qualification completely clear.

845. Mr. GOVONI (Switzerland) expressed his concern at the wording “as determined in the national law,” which led to different interpretations.

846. The CHAIRMAN noted that there was no consensus on Article 9 yet, and stated that, if that remained the case, a vote would be needed.

*Article 6 (Right of Distribution) of the WCT (Article 8 of Draft Treaty No. 1)*

847. The CHAIRMAN opened the floor on Article 8 of Draft Treaty No. 1.

848. Mr. WIERZBICKI (New Zealand) explained that his Government could reluctantly agree to paragraph (2) of that Article provided that the words “the conditions, if any,” were replaced by “the extent and the scope of any conditions” and that the corresponding changes were made in Articles 8 and 16 of Treaty No. 2. Those changes would remove an ambiguity existing in the texts as currently drafted. He stressed that the authorities of his country wanted absolute clarity that Contracting Parties were free to impose conditions or not to impose conditions.

849. Mr. KUSHAN (United States of America) recalled that the current text of paragraph (2) had been produced in the informal negotiations after a tremendous amount of effort, and significant concessions had been made by both sides to achieve a very balanced text. He stated that his Delegation could not accept the changes proposed by the Delegation of New Zealand and, therefore, supported the text of document CRNR/DC/82 Prov.

850. Mr. CRESWELL (Australia) said that, while his Delegation felt sympathy for the concern expressed by the Delegation of New Zealand, it could live with Article 8(2) as negotiated in the informal consultations. He added that his Delegation reserved the right to make a statement with respect to the understanding of Article 8(2).

851. Mr. SILVA SOARES (Brazil) said that his Delegation did not support the proposal made by the Delegation of New Zealand, but was also interested in making a statement on this issue.

852. The CHAIRMAN noted that it was justified to make such a statement.

853. *Main Committee I adopted by consensus Article 8 (Right of Distribution) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov.*

*Article 7 (Right of Rental) of the WCT (Article 9 of Draft Treaty No. 1)*

854. The CHAIRMAN opened the floor on Article 9 (Right of Rental) of Draft Treaty No. 1, recalling the drafting change that he had suggested earlier.

855. Mr. PROAÑO MAYA (Ecuador), referring to the Article on the right of rental, proposed that the words "as determined" in the expression "as determined in the national law of Contracting Parties" be preceded by the word "or" so that national legislation was given a certain degree of freedom to specify the categories of work covered by the right of rental.

856. The CHAIRMAN expressed his view that Article 9 reflected the common denominator for the majority of Delegations and that it could not be expected that a higher level of protection would be internationally acceptable.

857. Mr. UGARTECHE VILLACORTA (Peru) recognized that the objective was to reach agreement on minimum rights, but he nevertheless preferred the text of the basic proposal on the right of rental and proposed that it be maintained. Any other proposal should be put to the vote as an amendment.

858. The CHAIRMAN indicated that a vote on Article 9 appeared to be necessary.

859. Mr. ZAPATA LÓPEZ (Colombia) requested the Chairman to allow five minutes for consultations.

860. The CHAIRMAN stated that according to the Rules of Procedure, when the procedure of voting had been started, it could not be interrupted, and put Article 9, as contained in Document CRNR/DC/82 Prov. and amended by him, to vote.

861. *Main Committee I adopted, with 66 votes in favor, 6 votes against and with 18 abstentions, Article 9 (Right of Rental) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov., with the amendments proposed by the Chairman.*

*Articles 8 (Right of Distribution), 9 (Right of Rental), 10 (Right of Making Available of Fixed Performances), 12 (Right of Distribution), 13 (Right of Rental) and 14 (Right of Making Available of Phonograms) of the WPPT (Articles 9, 10, 11, 16, 17 and 18 of Draft Treaty No. 2)*

862. The CHAIRMAN opened the floor on Articles 9, 10, 11, 16, 17 and 18 of Draft Treaty No. 2, as contained in document CRNR/DC/84 Prov.

863. Mr. SILVA SOARES (Brazil) asked whether a decision was to be taken on the word "musical" which was in brackets.

864. The CHAIRMAN invited the Delegation of the United States of America to take the floor on that matter.

865. Mr. KUSHAN (United States of America) explained that his Delegation had, as the only Delegation, placed a reservation on the deletion of the word "musical," contained in brackets in Articles 9 and 11. His Delegation was now in a position to withdraw that reservation so that the word "musical" had to be deleted.

866. The CHAIRMAN thanked the Delegation of the United States of America for that clarification and for the withdrawal of its reservation. Consequently, the word "musical," so far in brackets, had to be deleted from Articles 9 and 11.

867. Mr. CRESWELL (Australia) asked the Chairman's permission to raise a drafting point. He understood that the Committee was trying to harmonize the counterpart provisions in the two Draft Treaties as far as possible. For that purpose, he suggested, for Article 10 (Right of Rental), to insert, after the words "commercial rental" in paragraph (1), the words "to the public." In a corresponding way, he proposed adding the words "to the public" in Article 11 after the words "making available."

868. The CHAIRMAN thanked the Delegation of Australia for its proposal. He added that identical insertions had to be made in the parallel provisions on the rights of phonogram producers, namely in Articles 17 and 18.

869. *Main Committee I adopted Articles 9 (Right of Distribution), 10 (Right of Rental), 11 (Right of Making Available of Fixed Performances), 16 (Right of Distribution), 17 (Right of Rental) and 18 (Right of Making Available of Phonograms) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., as clarified by the Delegation of the United States of America and with the amendments proposed by the Delegation of Australia.*

870. The CHAIRMAN pointed out the need to again engage in informal consultations on the remaining Articles of both Draft Treaties and adjourned the meeting.

*Fourteenth Meeting*  
*Thursday, December 19, 1996*  
*Evening*

*Absence of quorum*

871. The CHAIRMAN opened the meeting, stated that the quorum could not be reached and, after announcing that the informal consultation group would continue its work, immediately adjourned the meeting.

*Fifteenth Meeting*  
*Friday, December 20, 1996*  
*Morning*

*Article 6 (Abolition of Non-Voluntary Broadcasting Licenses) of Draft Treaty No. 1*

872. The CHAIRMAN opened the meeting and suggested to first decide about Article 6 (Abolition of Non-Voluntary Broadcasting Licenses) of Draft Treaty No. 1, as set out in document CRNR/DC/82 Prov.

873. Mr. SHEN (China) reiterated his Delegation's urgent desire to have Article 6 deleted.

874. Mr. DA COSTA CORDEIRO (Portugal) strongly supported the deletion of Article 6. He stressed that the abolition of non-voluntary broadcasting licenses would cause prejudice to the just balance between authors and broadcasters that had been reached since the Brussels Act of the Berne Convention (1948). Now that situations of monopoly occurred frequently, non-voluntary broadcasting licenses were needed more than ever. Those licenses permitted dissemination of works and consequently culture as well as the use of archives of broadcasters which were mankind patrimony.

875. The CHAIRMAN stated that there was no consensus on the deletion of Article 6. He put the proposed deletion of Article 6 to vote.

876. *Main Committee I adopted, with 54 votes in favor, 8 votes against and with 9 abstentions, the deletion of Article 6 (Abolition of Non-Voluntary Broadcasting Licenses) of Draft Treaty No. 1.*



*Article 7 (Scope of the Right of Reproduction) of Draft Treaty No. 1*

877. The CHAIRMAN invited Delegations to make proposals on Article 7 (Scope of the Right of Reproduction) of Draft Treaty No. 1.

878. Mr. VISSER (South Africa), speaking on behalf of the African Group of countries, moved for deletion of the whole of Article 7. In that case, the right of reproduction could be left subject to Article 9 of the Berne Convention and the well-established and flexible principles developed thereunder. That provision of the Convention had coped admirably with every technical development. He was confident that it would continue to do so.

879. Mr. KUSHAN (United States of America) said, that his Delegation supported the deletion of Article 7 only on the condition of acceptance of an appropriate agreed statement for the Records of the Diplomatic Conference.

880. Mr. NØRUP-NIELSEN (Denmark) said that his Delegation, while accepting the deletion of Article 7, thought that in that situation Article 9 of the Berne Convention could be applied with its normal flexibility.

881. *Main Committee I adopted by consensus the deletion of Article 7 (Scope of the Right of Reproduction) of Draft Treaty No. 1*

*Article 10 (Limitations and Exceptions) of the WCT (Article 12 of Draft Treaty No. 1)*

882. The CHAIRMAN submitted Article 12 (Limitations and Exceptions) of Draft Treaty No. 1 for approval.

883. Mrs. BOUVET (Canada) said that, in the light of the informal discussions, her Delegation proposed that paragraph (1) of Article 12 of Draft Treaty No. 1 be replaced by paragraph (1) of Article 12 in Document CRNR/DC/55, namely "Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author."

884. The CHAIRMAN noted that the proposal made by the Delegation of Canada meant that Article 12 would have the wording of the Basic Proposal except that in paragraph (1) the word "only" would be deleted and in both paragraphs the article "the" preceding the words "normal exploitation" would be replaced by the article "a."

885. Mr. KUSHAN (United States of America) said that his Delegation could support the proposed changes to Article 12, as outlined by the Chairman.

886. Mr. CRESWELL (Australia), supported the proposal by the Delegation of Canada, and added that his Delegation would look forward to seeing the terms of an agreed statement to be made with regard to Article 12(2).

887. Mr. NØRUP-NIELSEN (Denmark) supported the proposal by the Delegation of Canada.

888. Mr. OPHIR (Israel) supported the proposal by the Delegation of Canada.

889. Mr. TIWARI (Singapore) supported the proposal by the Delegation of Canada.

890. The CHAIRMAN noted that the agreed statements would have to be dealt with by the Committee after the approval of the Articles.

891. *Main Committee I adopted by consensus Article 12 (Limitations and Exceptions) of Draft Treaty No. 1, as included in document CRNR/DC/82 Prov., with the amendment proposed by the Delegation of Canada.*

892. The CHAIRMAN noted that all of the substantive Articles of Draft Treaty No. 1 had been adopted.

*Articles 5 (Moral Rights of Performers) and 22 (Application in Time) of the WPPT (Articles 5 and 26 of Draft Treaty No. 2)*

893. The CHAIRMAN submitted Article 5 (Moral Rights of Performers) of Draft Treaty No. 2 for discussion, pointing out that document CRNR/DC/84 Prov. reflected the results of the informal consultations.

894. Mr. STARTUP (United Kingdom) said that his Government's position on granting moral rights was well known; nevertheless, his Delegation understood the strong desire of other Delegations to see an international treaty for the first time provide for the moral rights of performers, and, therefore, after intensive informal discussions with other Delegations, his Delegation, in a spirit of compromise, was prepared to lift its reservation on Article 5, subject to the following amendments of Article 5(1): the version of the paragraph that appeared in square brackets would be the basis, and the words "[musical] performances" would be replaced by the words "live aural performances or performances fixed in phonograms." The agreement of his Delegation was further subject to the Committee's approval of the amendment to Article 26 proposed by the Delegation of Canada.

895. Mr. KUSHAN (United States of America) said that his Delegation supported the proposal of the Delegation of the United Kingdom.

896. The CHAIRMAN proposed for approval Article 5, paragraph (1), as amended by the Delegation of the United Kingdom, and paragraphs (2) and (3), as set out in document CRNR/DC/84 Prov., together with Article 26, as amended by the Delegation of Canada in document CRNR/DC/44, which would be included as a new paragraph (2) of that Article.

897. *Main Committee I adopted by consensus Article 5 (Moral Rights of Performers) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., with the amendment of paragraph (1) proposed by the Delegation of the United Kingdom, and Article 26 (Application in Time) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., with the amendment proposed by the Delegation of Canada in document CRNR/DC/44, included as a new paragraph (2).*

898. Mr. KEMPER (Germany) asked for the indulgence of the Committee for his offering an additional proposal linked to Article 5. Moral rights in his view should be granted on a universal basis, that is, without any criteria of attachment. The obligation to grant moral rights should not be depending on the nationality of a performer. Therefore, his Delegation proposed the following additional paragraph to be added to Article 3 which concerned beneficiaries of protection: "The right provided for in Article 5 shall be granted to any performer irrespective of his nationality."

899. The CHAIRMAN considered that that proposal would imply reopening of the decision that the Committee had just taken on Articles 5 and 26(2). He asked whether there was any support for reopening this question.

900. Mr. VÁZQUEZ (Spain) did not consider it necessary to reopen discussions on this matter and supported the paragraph as proposed because it corresponded to the universal nature of moral rights.

901. The CHAIRMAN, after a discussion with the Secretariat, advised the Committee that for reopening a question, a two-thirds majority was required. He asked whether there was any objection to reopening.

902. Mr. KUSHAN (United States of America) indicated that his Delegation had concerns with reopening an accepted compromise text. It was a matter of procedural concern. His Delegation felt it had to insist that the agreed compromise be kept as the Article had been accepted.

903. Mrs. DE MONTLUC (France) supported the proposal made by the German Delegation, but as it was not a basic provision she suggested that it be embodied in a simple statement.

904. The CHAIRMAN said that a substantial discussion of the matter would not be possible. The Committee had to decide whether this question should be opened or not. It seemed that there was support for the reopening and that there was also opposition against reopening. Therefore, a vote on this procedural question was necessary, and he reiterated that a two-thirds majority was required.

905. *Main Committee I declined, with 21 votes in favor and 37 votes against and with 10 abstentions, to reopen the discussions on Article 5 of Draft Treaty No. 2.*

*Article 6 (Economic Rights of Performers in their Unfixed Performances) of the WPPT*

906. The CHAIRMAN opened the floor on Article 6 (Economic Rights of Performers in their Unfixed Performances), recalling that in that Article the word "musical" was in square brackets.

907. Mr. KUSHAN (United States of America) said that his Delegation proposed the deletion of the word "musical" and supported the Article as it stood, without that word.

908. *Main Committee I adopted by consensus Article 6 (Economic Rights of Performers in their Unfixed Performances), with the amendment proposed by the Delegation of the United States of America.*

*Article 7 (Right of Reproduction) of the WPPT*

909. The CHAIRMAN opened the floor on Article 7 (Right of Reproduction) of Draft Treaty No. 2, as drafted in document CRNR/DC/84 Prov., recalling the Committee's decision to delete Article 7 (Right of Reproduction) of Draft Treaty No. 1.

910. Mr. VISSER (South Africa), speaking on behalf of the African Group of countries, proposed the deletion of the words "whether permanent or temporary," in paragraph (1) and also the deletion of the entire paragraph (2). He took the view that the remaining Article would be in line with the Committee's position concerning Draft Treaty No. 1 and would also incorporate some of the features of the definition contained in the Rome Convention. He further proposed that an agreed statement should be entered into the Records of the Conference.

911. Mr. KUSHAN (United States of America) supported the proposal made by the Delegation of South Africa on behalf of the African Group. He also agreed with the deletion of the word "musical."

912. Mr. SHEN (China) supported the proposal made by the Delegation of South Africa on behalf of the African Group.

913. Mr. DEBRULLE (Belgium) fully supported the proposal made by the African Group.

914. Mrs. DE MONTLUC (France) also supported the proposal put forward by the African Group.

915. Mr. TIWARI (Singapore) supported the proposals made by the Delegations of South Africa and the United States of America.

916. Mr. NØRUP-NIELSEN (Denmark) supported the proposal of the Delegation of South Africa.

917. *Main Committee I adopted by consensus Article 7 (Right of Reproduction) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., with the amendments proposed by the Delegations of South Africa and the United States of America.*

*Article 8 (Right of Modification) of Draft Treaty No. 2*

918. The CHAIRMAN opened the floor on Article 8 (Right of Modification) of Draft Treaty No. 2, recalling that there had been little support for that Article.

919. Mr. KUSHAN (United States of America) said that his Delegation could support deletion of Article 8 and its corresponding Article 15 with an agreed understanding that clarified the relationship between the right of modification and the right of reproduction.

920. The CHAIRMAN recalled that the understanding was that the right of reproduction met the need for protection in that respect.

921. *Main Committee I adopted by consensus the deletion of Article 8 (Right of Modification) of Draft Treaty No. 2 with the understanding mentioned by the Chairman.*

*Article 11 (Right of Reproduction) of the WPPT (Article 14 of Draft Treaty No. 2)*

922. The CHAIRMAN opened the floor on Article 14 (Right of Reproduction) of Draft Treaty No. 2.

923. Mr. VISSER (South Africa), speaking on behalf of the African Group, proposed the deletion of the words "whether permanent or temporary," in paragraph (1) and the deletion of paragraph (2), in order to bring Article 14 into line with Article 7. He recalled that there would be a proposal for an agreed statement.

924. *Main Committee I adopted by consensus Article 14 (Right of Reproduction) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., with the amendment proposed by the Delegation of South Africa.*

*Article 15 (Right of Modification) of Draft Treaty No. 2*

925. The CHAIRMAN opened the floor on Article 15 (Right of Modification) of Draft Treaty No. 2, proposing that a similar decision be taken as on Article 8.

926. *Main Committee I adopted by consensus the deletion of Article 15 (Right of Modification) of Draft Treaty No. 2.*

*Article 15 (Right of Remuneration for Broadcasting and Communication to the Public) of the WPPT (Articles 12 and 19, and later jointly Article 20a of Draft Treaty No. 2)*

927. The CHAIRMAN proceeded to Article 20a of Draft Treaty No. 2, as contained in document CRNR/DC/84 Prov., and resumed that during the informal consultations an agreement had been reached that the version of paragraph (1), which was not in brackets, should be retained, the brackets appearing within the text of that paragraph should be removed and the text therein retained. Paragraph (4) should have the following wording: "For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes."

928. Mr. GOVONI (Switzerland) requested that the formal adoption of Article 20a.3 be postponed until a decision had been taken on Article 4.

929. Mr. DEBRULLE (Belgium) shared the view expressed by the Swiss Delegation and considered that the importance of the matters to be resolved meant that a compromise should be reached first on Article 4.

930. The CHAIRMAN accepted the proposal made by the Delegation of Switzerland and supported by the Delegation of Belgium to defer the decision on the second sentence of paragraph (3) until after the adoption of Article 4 and asked the Committee whether it could confirm the contents of Article 20a, except for the second sentence of paragraph (3).

931. Mr. ROGERS (Chile) was in favor of adopting the Article on the right to remuneration for broadcasting and communication to the public in the sense that this right must be given to performers and producers of phonograms jointly, which was not clear from the Spanish version of the text.

932. The CHAIRMAN agreed that the Spanish version had to be brought into line with the English and French versions which he considered to be correct.

933. *Main Committee I adopted by consensus Article 20a (Right of Remuneration for Broadcasting and Communication to the Public) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov., with the amendments pronounced by the Chairman, except for the second sentence of its paragraph (3).*

*Article 20abis (Right of Digital Broadcasting and Communication to the Public) of Draft Treaty No. 2*

934. The CHAIRMAN opened the floor on Article 20abis (Right to Digital Broadcasting and Communication to the Public) of Draft Treaty No. 2.

935. Mr. KUSHAN (United States of America) said that his Delegation agreed to delete Article 20abis, on the condition that there would be an agreed statement clarifying that Treaty No. 2 did not represent a complete resolution on the level of rights of broadcasting and

communication to the public that should be enjoyed by phonogram producers and performers in the digital age.

936. *Main Committee I agreed by consensus on the deletion of Article 20abis (Right to Digital Broadcasting and Communication to the Public) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov.*

*Article 16 (Limitations and Exceptions) of the WPPT (Articles 13 and 20, and jointly later Article 20b of Draft Treaty No. 2)*

937. The CHAIRMAN recalled that Article 20b (Limitations and Exceptions) of Draft Treaty No. 2 had been agreed on in the informal consultations.

938. *Main Committee I adopted by consensus Article 20b (Limitations and Exceptions) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov.*

*Article 22 (Application in Time) of the WPPT (Article 26 of Draft Treaty No. 2)*

939. The CHAIRMAN proposed to decide on Article 25 (Reservations) later, in conjunction with Article 4 (National Treatment), and proceeded to Article 26 (Application in Time) of Draft Treaty No. 2. He recalled that the proposal made by the Delegation of Canada had already been adopted as Article 26(2), so that the text of Article 26, as contained in document CRNR/DC/84 Prov. would become Article 26(1).

940. *Main Committee I adopted by consensus Article 25(1) (Application in Time) of Draft Treaty No. 2, as included in document CRNR/DC/84 Prov.*

*Article 23 (Provisions on Enforcement of Rights) of the WPPT (Article 27 of Draft Treaty No. 2)*

941. The CHAIRMAN, referring to document CRNR/DC/84 Prov. Corr., drew the attention of the Committee to the fact that the day before it had decided to adopt an Article 27 (Special Provisions on Enforcement of Rights), in accordance with the wording of Article 16 of Draft Treaty No. 1.

942. Mrs. BOUVET (Canada) noted that several amendments to Article 4 had been put forward and her Delegation considered that this Article was of vital importance for Draft Treaty No. 2. Consequently, she requested that the meeting be suspended to allow these amendments and their implications to be studied.

943. Mr. KUSHAN (United States of America) supported the proposal by the Delegation of Canada to suspend the meeting with the understanding that that would offer opportunity for informal consultations which might help to advance and achieve a consensus.

944. Mrs. DE MONTLUC (France) supported the proposal made by the Delegation of Canada. She considered that Article 4 was essential because of its impact on both analog and

digital technology. She added that the wording would affect her Delegation's position concerning the signature and ratification of the Treaties.

945. The CHAIRMAN suspended the meeting.

[*Suspension*]

*Article 4 (National Treatment) of the WPPT*

946. The CHAIRMAN opened the floor on Article 4 (National Treatment) of Draft Treaty No. 2.

947. Mr. GOVONI (Switzerland) noted that Article 4 was the last obstacle to completion of the work leading to adoption of Treaty No. 2. In view of the divergent opinions on this proposal, he said that his Delegation had submitted an amendment to Article 4 based on the text of the TRIPS Agreement and this should constitute the basis for a compromise acceptable to all Delegations.

948. Mr. KUSHAN (United States of America) proposed, as a compromise that would be acceptable to his Delegation, two amendments to the proposal of the Delegation of Switzerland, namely to delete, in paragraph (1), the word "specifically" and to insert a second paragraph which said: "The obligation of paragraph (1) shall extend to remuneration systems for private copying of phonograms in a digital form, except that Contracting Parties shall only be required to extend protection to nationals of another Contracting Party to the degree that the other Contracting Party has established such a remuneration system." He recalled that that was the text of a paper circulating in the room. The second paragraph of the proposal of the Delegation of Switzerland would then become paragraph (3). He said that his Delegation believed that that was a truly mid-point compromise that reflected the realities of the future digital environment. The obligations outlined in this national treatment clause would, in a mixed remuneration system, for example, only extend to the portion of the system that was digital. In that clause, a fair principle of material reciprocity was recognized, providing for equality in enjoyment of rights between nationals in the varying systems wherever there was equality between those systems.

949. Mrs. BOUVET (Canada) thanked the Delegations of Switzerland and the United States of America for their proposed amendments with a view to reaching a compromise. She wished to see the word "specifically" included in the proposal made by Switzerland because her Delegation approved the following English wording: "With regard to the exclusive rights specifically granted in this Treaty."

950. Mr. GOVONI (Switzerland) read out his proposal as follows:

"(1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to



exclusive rights specifically granted in this Treaty and to the right to equitable remuneration provided for in Article 20a of this Treaty.

“(2) The obligation provided under paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 20a(3) of this Treaty.”

In addition, Article 20a(3), second sentence, should be deleted.

951. Mr. KUSHAN (United States of America) said that he was only taking the floor because the Delegation of Canada sought clarification about the way the proposal made by the Delegation of Switzerland would be amended by his Delegation. To his understanding, in the combined text, national treatment was limited to the rights set out in the Draft Treaty. Paragraph (2), as proposed by his Delegation, established the material reciprocity standard. Paragraph (3) excluded the obligation of national treatment with regard to reservations within the meaning of Article 20a.

952. The CHAIRMAN thanked the Delegation of the United States of America for the clarification. The proposals now seemed to be clear.

953. Mr. REINBOTHE (European Communities) recalled that his Delegation, in document CRNR/DC/59, had submitted a proposal on national treatment with respect to Draft Treaty No. 2, where it had taken the approach chosen by the Rome Convention, an approach that had been confirmed by the TRIPS Agreement a few years ago. He stated that his Delegation believed that that approach was the appropriate one for the type of protection that was envisaged in Draft Treaty No. 2. Therefore, just like in those two other agreements, the national treatment obligation should extend to those rights that were specifically granted and guaranteed in Draft Treaty No. 2 itself. While his Delegation confirmed its proposal, it felt the need to arrive at a compromise that would suit all Delegations. Such a compromise should not deviate from the basic approach and the structure of the national treatment obligation as contained both in the Rome Convention and in the TRIPS Agreement with respect to related rights. Therefore, the proposal submitted by the Delegation of Switzerland went into the right direction. It respected the approach and the structure of the national treatment obligation for related rights which he had just described. In particular, the proposal of the Delegation of Switzerland had some important elements that reflected the wording of the Rome Convention and also, in part, of the TRIPS Agreement. The Delegation of the United States of America proposed the word “specifically” in paragraph (1) to be deleted. However, that word “specifically” was, in the Rome Convention, even combined with the word “guaranteed.” Therefore, his Delegation, just like the Delegation of Canada, insisted on maintaining the word “specifically” in paragraph (1). The proposal submitted by the Delegation of the United States of America fell short of respecting the structure he had just described; in particular, paragraph (2) did not, in his view, only provide for material reciprocity. It rather provided for a clear national treatment obligation on top of the provisions enshrined in Draft Treaty No. 2 for remuneration systems for private copying of phonograms in a digital form; the material reciprocity provision was contained in the latter part of that paragraph submitted by the Delegation of the United States of America. On the contrary, the proposal made by the Delegation of Switzerland was the approach that had been shared by all States party to the Rome Convention and had been confirmed by all those countries that had adhered to the TRIPS Agreement.

954. Mrs. RETONDO (Argentina) expressed full support for the proposal put forward by the Delegation of Switzerland regarding national treatment, but was unable to accept the proposal by the Delegation of the United States of America, which contained references to private copying that had not been taken into consideration in the Treaties under discussion.

955. Mr. ZAPATA LÓPEZ (Colombia) first recalled that during the Committees of Experts his Delegation had always been in favor of dealing with private copying in these Treaties as a valid complement to the exclusive rights that might be granted. He could not accept the proposal made by the Delegation of the United States of America on national treatment because it allowed the possibility of establishing national treatment for remuneration systems for private copying, which was not taken into consideration in this Treaty. For this reason and for the reasons clearly expressed by the Delegation of the European Communities, he unreservedly supported the proposal made by the Delegation of Switzerland, which respected the focus and structure of national treatment in the Rome Convention and was in accordance with the TRIPS Agreement.

956. Mr. KUSHAN (United States of America) recalled that, while the Delegation of the European Communities had emphasized the importance of adhering to the structure of the Rome Convention, the new Treaty stood on its own. It was independent from the Rome Convention. He also noted that the proposal from the Delegation of Switzerland, standing alone, would not reach the level of the TRIPS Agreement. He stressed that, with its additional proposal, his Delegation was not seeking a free ride on other countries' remuneration systems for private copying. It was made expressly clear in its proposal that the obligation to extend national treatment with regard to the remuneration system was limited to the degree that the other Contracting Party had established such a system. That was fair treatment. The failure to give serious consideration to what his Delegation believed was a very fair arrangement was distressing to his Government. He urged Delegations to seriously consider that the text, as amended by his Delegation, would represent a compromise.

957. The CHAIRMAN noted that the Committee had to make a decision. There was a proposal put forward by the Delegation of Switzerland. The European Community and its Member States had earlier submitted a written proposal, but now supported the proposal of the Delegation of Switzerland. The Delegation of the United States of America had also submitted earlier a written proposal, and now it had pronounced a new proposal. The third proposal was the proposal by the Delegation of Switzerland, without the word "specifically" in paragraph (1). It seemed that some clarification was needed.

958. Mrs. BOUVET (Canada) recalled that her Delegation had proposed the addition of the word "specifically" in the proposal under discussion and asked whether the Delegation of the United States of America would agree to include it in its text so that there would only be two proposals under discussion.

959. The CHAIRMAN, answering to the last intervention, noted that the Delegation of Canada could support the proposal from the Delegation of the United States of America if the word "specifically" in paragraph (1) were maintained. Now there were two proposals: the proposal from the Delegation of Switzerland and the proposal from the Delegation of the United States of America, with a variation of the latter proposal suggested by the Delegation of Canada.

960. Mr. KUSHAN (United States of America) said that he wanted to clarify one point about what was on the table. His Delegation, in its earlier intervention, had expressed its willingness to take the proposal from the Delegation of Switzerland as a basis for the discussion, and to that proposal, it had requested two changes, one of which had been referred to by the Delegation of Canada and the second one was the insertion of a paragraph (2), as proposed by his Delegation. Turning to the question of the Delegation of Canada, he answered that his Delegation did not consider the word “specifically” to be necessary in that context, because it did not add anything to the meaning of the phrase. If that was the general understanding, then his Delegation could be flexible in retaining the word “specifically,” but if there was a different understanding, his Delegation would have to explore that matter further.

961. The CHAIRMAN stated that, first, the proposal of the Delegation of the United States of America had to be put to vote, as it was the most remote one from the Basic Proposal. Subsequently, the vote would be on the same text, but with the word “specifically” maintained in paragraph (1).

962. Mrs. BOUVET (Canada) said that she supported the proposal of the United States of America provided that the latter agreed to add paragraph (1) as suggested by the Delegation of Switzerland.

963. The CHAIRMAN asked the Delegation of the United States of America whether it accepted paragraph (1), as proposed by the Delegation of Switzerland, the word “specifically” being included.

964. Mr. KUSHAN (United States of America) said that he understood the question put as being if his Delegation would accept the word “specifically,” the other part of the question being that paragraph (2) of the proposal by his Delegation would be inserted in the proposal of the Delegation of Switzerland. If that was the condition, then his Delegation would accept the word “specifically” in paragraph (1).

965. The CHAIRMAN noted that now the procedure could be simplified. The proposal of the Delegation of the United States of America, as now amended, was to be put to vote first. It consisted of paragraph (1), as proposed by the Delegation of Switzerland, paragraph (2), as proposed by the Delegation of the United States of America, and paragraph (3), as proposed by the Delegation of Switzerland. That was a package. He invited Delegations who intended to vote “yes” to indicate their vote.

966. Mr. SÉRY (Côte d’Ivoire) requested clarification concerning the proposals that would be the subject of a vote.

967. Mr. MILESI FERRETTI (Italy) expressed concern about the procedure, because of the speed of the process, it was difficult to follow.

968. The CHAIRMAN noted that there were two clear proposals.

969. Mr. DEBRULLE (Belgium) said that the Swiss Delegation had formally put forward a proposal supported by other Delegations and it should therefore be taken into account.

970. The CHAIRMAN explained that there were written proposals and an oral proposal of the Delegation of Switzerland which corresponded to a non-paper being circulated in the room. The Committee so far had been willing and able to work on the basis of documents which were not official documents of the Conference.

971. Mrs. DE MONTLUC (France) said that her Delegation had for some time indicated its desire to take the floor in order to contribute towards a constructive solution to the debate. She regretted this delay and, in view of the many solutions put forward, she wished to refer to paragraph (4) of the proposal made by the Delegation of the European Communities and complete it along the lines mentioned by the Delegation of Canada by adding the word "existence" before the words "specifically guaranteed."

972. Mr. SHEN (China) also felt, as the Delegation of Côte d'Ivoire had expressed, that clarity was needed about what the vote was on and how many proposals were to be decided on.

973. The CHAIRMAN noted that there was sufficient reason to pronounce the proposals once again.

974. Mr. GOVONI (Switzerland) requested that the proposal he had made orally, whose text had been circulated, be put to the vote.

975. The CHAIRMAN asked the Delegation of Switzerland to pronounce the proposal very slowly once more. He would then invite the Delegation of the United States of America to do likewise. He indicated that the latter proposal would be put to vote first.

976. Mr. GOVONI (Switzerland) read out his proposal: Replace Article 4 by the following Article:

"(1) Each Contracting Party shall accord to nationals of other Contracting Parties as defined in Article 3(2) the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and to the right to equitable remuneration provided for in Article 20a of this Treaty.

"(2) The obligation provided under paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 20a(3) of this Treaty."

977. Mr. KUSHAN (United States of America) said that his Delegation moved to amend the proposal made by the Delegation of Switzerland by inserting the following paragraph, after paragraph (1): "The obligation of paragraph (1) shall extend to remuneration systems for private copying of phonograms in a digital form, except that Contracting Parties shall only be required to extend protection to nationals of another Contracting Party to the degree that the other Contracting Party has established such a remuneration system."

978. Mr. SAN DIEGO (Philippines) said that his Delegation would like to hear from the Delegation of Switzerland whether it accepted the amendment proposed by the Delegation of the United States of America, because that would reduce the options.

979. Mr. GOVONI (Switzerland) said that his Delegation had presented a proposal which had been supported by a number of Delegations and it did not intend to go back on its position for that very reason.

980. *Main Committee I rejected, with 4 votes in favor, 60 votes against and with 17 abstentions, the proposal of the Delegation of the United States of America.*

981. The CHAIRMAN announced that the next item would be to vote on the proposal by the Delegation of Switzerland.

982. *Main Committee I adopted, with 88 votes in favor, 2 votes against and with 4 abstentions, the proposal of the Delegation of Switzerland.*

983. The CHAIRMAN stated that Article 4 was now inserted in Draft Treaty No. 2, in the form proposed by the Delegation of Switzerland. He pointed out that the renumbering of the paragraphs and cross-references in the Treaty would be done by himself and the Secretariat.

#### *Titles of the Draft Treaties*

984. The CHAIRMAN suggested that the Committee consider the titles of the Draft Treaties. He mentioned that the Director General of WIPO had proposed that the titles of the Draft Treaties would be as follows: for Draft Treaty No. 1, the title would be "WIPO Copyright Treaty"; and, for Draft Treaty No. 2, the title would be "WIPO Performances and Phonograms Treaty." The Chairman pointed out that those proposals had been met with consensus during the informal consultations.

985. *Main Committee I adopted the titles of the Draft Treaties, as proposed by the Director General of WIPO.*

#### *Adoption of the texts of the Draft Treaties*

986. The CHAIRMAN proposed that the text as a whole be adopted by the Committee. He indicated that, if so adopted, it would next go before the Drafting Committee, and if there were no changes there, it would then be presented to the Plenary. But if there were changes or questions in the Drafting Committee, it would have to come back to Main Committee I for further consideration.

987. *Main Committee I adopted the texts of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.*

#### *Agreed statements concerning the WIPO Copyright Treaty*

988. The CHAIRMAN noted that there had been requests from Delegations that proposals for statements could be made. Because of the time constraints, he proposed a shortened and streamlined procedure for most of those statements. He stated that he would pronounce the

text of each statement in English, slowly, and one by one, indicating the proponents of each statement and the Article to which it referred.

989. Seeing no objection, the Chairman announced that the Delegation of Australia had proposed, that, in the context of Article 2 of Draft Treaty No. 1, the following statement would be included in the Records of the Conference: "It is understood that, in applying Article 2 of this Treaty, the expression 'country of the Union' in Articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty in the application of those Berne Articles in respect of protection provided for in this Treaty. It is also understood that the expression 'country outside the Union,' in those Articles in the Berne Convention, will in the same circumstances be read as if it were a reference to a country that is not a Contracting Party to this Treaty and that 'this Convention' in Articles 2(8), 2*bis*(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in Articles 2 to 6 of the Berne Convention to a 'national of one of the countries of the Union' will, when these Articles are applied in this Treaty, mean in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization." He noted that there was no objection to the statement. He added that, when the final numbering of the provisions of the Treaty was established, the reference to Article 2 of Draft Treaty No. 1 might change to Article 3 and that similar renumbering was possible in the case of other Articles to which agreed statements related.

990. He indicated that the Delegation of India had proposed the following statement to be included in the Records of the Conference, with reference to Article 4 of Draft Treaty No. 1: "The scope of protection for computer programs under Article 4 of this Treaty, read with Article 1*bis*, is consistent with Article 2 of the Berne Convention, and on a par with the relevant provisions of the TRIPS Agreement." He noted that there was no objection to that statement.

991. He stated that the Delegation of India had proposed the following statement concerning Article 5 of Draft Treaty No. 1: "The scope of protection for compilations of databases under Article 5 of this Treaty, read with Article 1*bis*, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement." He noted that there was no objection to that statement.

992. He offered, *ex officio*, the following statement concerning Articles 8 and 9 of Draft Treaty No. 1: "As used in these Articles, the expression 'copies and originals' being subject to the right of distribution and the right of rental, refer exclusively to fixed copies that can be put into circulation as tangible objects." He noted that there was no objection to the statement.

993. He stated that the Delegation of the United States of America had proposed, with reference to Article 9 of Draft Treaty No. 1, the following statement: "It is understood that the obligation under Article 9(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who under that Contracting Party's law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with Article 14(4) of the TRIPS Agreement." He noted that there was no objection to that statement.

994. He said that the Delegations of Singapore and South Africa and the Group of Latin American and Caribbean countries had proposed a statement in reference to Article 10 of Draft Treaty No. 1.

995. Mr. TIWARI (Singapore) pointed out that, in the written proposal on that point, the word "physical" had been added before the word "facilities," and after the word "communication," there had been the words "to the public." He asked for clarification on those discrepancies.

996. The CHAIRMAN indicated that, in the informal consultations, those words had been inserted as clarifying expressions.

997. Mr. TIWARI (Singapore) said that the addition of the word "physical" did not appear objectionable. However, he felt that the phrase "communication to the public" was useful, and suggested that it be reinserted after the second "communication" in the second line.

998. The CHAIRMAN pointed out that it had been felt in the informal consultations that the words "to the public" would not be necessary because, in the statement, reference was only made to the communication which was the operative term in the clauses on the right of communication in the Berne Convention, and in the Draft Treaty. He said that, in his opinion, that operative term in the Draft Treaties was always combined with the expression "to the public." He asked if the Delegation of Singapore would accept that the statement, when it referred to the expression "communication," was always used in combination with the expression "to the public."

999. Mr. TIWARI (Singapore) agreed with the clarification given by the Chairman.

1000. The CHAIRMAN stated that there appeared to be agreement on the agreed statement to Article 10 of Draft Treaty No. 1, which read as follows: "If it is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention."

1001. He said that the Delegations of the United States of America and of India had proposed the following statement to Article 12 of Draft Treaty No. 1: "It is understood that the provisions of Article 12 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 12(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention." He stated that this statement would be applicable, *mutatis mutandis*, also to Draft Treaty No. 2, and asked the Committee if there were any objections to that statement.

1002. Mr. CRESWELL (Australia) indicated that he had no problem with the statement just read by the Chairman. He referred back to Article 10, and recalled, that a part of the agreement regarding the final form of Article 10, in particular the reference to the Articles of the Berne Convention, was that Article 10 would be without prejudice to other Articles of the Berne Convention, such as Article 11*bis*(2). He said that his Delegation had dropped its

request to include a statement to that effect, on the understanding that the Chairman would make a declaration that the right of communication would have no application to the possibility of making statutory licenses with regard to retransmission. He also pointed out that, with regard to Article 12, the statement that was due to have been made or proposed in the name of the Delegation of Australia with regard to Article 6,<sup>\*</sup> would be appropriate to be made also in relation to Article 12. It was in the context of Article 12 that the Chairman's notes to the Basic Proposal made reference to the minor reservations and exceptions, and the two paragraphs of the proposed statement under Article 6 were appropriate, in the view of his Delegation, to be made or proposed in the context of Article 12.

1003. The CHAIRMAN, in response to the intervention by the Delegation of Australia, proposed that the Committee add one more sentence to the statement concerning Article 10, as follows: "It is further understood that nothing in Article 10 precludes a Contracting Party from applying Article 11*bis*(2)." He noted that, with that addition, the statement had been adopted.

1004. Mr. NØRUP-NIELSEN (Denmark) indicated that his Delegation, in respect to Article 12, would have liked to see some examples of the traditional exceptions, such as education, research, library activities and uses by persons with handicaps.

1005. The CHAIRMAN confirmed that the position of the Delegation of Denmark would be reflected in the Minutes of the Conference, as well as the position of the Delegation of Australia regarding the so-called minor reservations.

1006. He said that the Delegation of the Republic of Korea had proposed the following statement regarding Article 13 of Draft Treaty No. 1: "It is understood that, in applying this Article, Contracting Parties are given a discretionary power to make materials or works which are not original nor protected by law, and those in which the exclusive rights of authors are limited by law, to be used freely or against equitable remuneration."

1007. Mr. VISSER (South Africa) remarked that, earlier in the Committee, the Delegation of South Africa had indicated that it would also propose a statement in respect of Article 13. His Delegation had decided not to do so in view of the fact that it was a new provision which created a very delicate balance between the various interested parties, and, as a consequence, it thought it would be dangerous at the given stage to try and freeze certain positions in respect of that Article.

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\* That proposed statement read as follows:

"Australia accepts it being understood that in respect of the rights dealt with in this Treaty, Contracting Parties remain free to introduce any legislation they think necessary in the public interest in order to prevent or remedy any abuse of rights that may restrict or prevent competition.

"As was referred to in the Stockholm (1967) and Brussels (1948) Diplomatic Conferences, Australia accepts it being understood that in respect of rights dealt with in this Treaty, Contracting Parties may make minor reservations particularly for the needs of members of the public with disabilities, religious ceremonies, military bands and the requirements of education and popularisation."



1008. Mr. OLSSON (Sweden) associated his Delegation with the intervention by the Delegation of Denmark.

1009. The CHAIRMAN noted that there was no consensus on the last proposal.

1010. Mr. KUSHAN (United States of America) associated his Delegation with the intervention by the Delegation of South Africa in relation to the delicate balance that had been crafted. He stated that he believed that the formulation that had been offered as an understanding might not be very helpful in maintaining that delicate balance.

1011. The CHAIRMAN asked the Delegation of the Republic of Korea if it would be acceptable to have only reflected in the Minutes of the Conference the discussions on Article 13, and noted the agreement of that Delegation.

1012. He said that the Delegation of the United States of America had proposed the following statement in regard to Article 14 of Draft Treaty No. 1: "It is understood that the reference to 'infringement of any right covered by this Treaty or the Berne Convention' includes both exclusive rights and rights of remuneration. It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty." He observed that this statement was approved by the Committee. He added that this agreed statement would be applied, *mutatis mutandis*, also to Draft Treaty No. 2.

*Agreed statements concerning the WIPO Performances and Phonograms Treaty*

1013. The CHAIRMAN read the proposed statement from the Delegation of the United States of America regarding Article 1 of Draft Treaty No. 2: "It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyrights in works embodied in phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice-versa." He noted the approval of the Committee to this statement. He read the second sentence of the statement regarding Article 1: "It is further understood that nothing in Article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty." He noted the approval of the Committee to this statement.

1014. He proposed the following statement relative to the definition of "publication" in Article 2(e) of Draft Treaty No. 2, and as it appeared in Articles 9, 10, 16 and 17: "As used in these Articles, the expressions 'copies' and 'originals and copies,' being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects." He noted that the Committee approved that statement.

1015. The Chairman read the proposed statement from the Delegation of Belgium concerning Article 3(2) of Draft Treaty No. 2: "For the application of Article 3(2), the Contracting Parties understand that fixation means the finalization of the master tape ('*bande mère*')." He noted that it was approved by the Committee.

1016. The CHAIRMAN read the statement proposed by the Delegation of the United States of America in regard to Article 20 of Draft Treaty No. 2: "It is understood that Article 20 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by phonogram producers and performers in the digital age. Contracting Parties were unable to achieve consensus on differing proposals for aspects of exclusivity to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have, therefore, left the issue to future resolution." He noted that the Committee approved the statement.

1017. Mr. REINBOTHE (European Communities) offered the following statement concerning Article 3 of Draft Treaty No. 2: "It is understood that the reference in Articles 5(a) and 16(a)(iv) of the Rome Convention, to 'national' of another Contracting State will, when applied to this Treaty, mean in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization."

1018. The CHAIRMAN observed that the proposed statement by the Delegation of the European Communities was a useful clarification.

1019. Mr. SILVA SOARES (Brazil) stated that, regarding the proposed statement by the Delegation of the United States of America, his Delegation felt that it was not appropriate at this stage to speak of "Contracting Parties", but rather to use the term "Delegations."

1020. Mr. KUSHAN (United States of America) pointed out that it was not the Delegation of the United States of America which had made the last statement, but rather the Delegation of the European Communities.

1021. The CHAIRMAN asked the Delegation of the United States of America if it supported the proposed statement by the Delegation of the European Communities, and noted that both that Delegation and the Committee did support the proposed statement. He then referred to the change in wording proposed by the Delegation of Brazil, to use the word "Delegations" rather than "Contracting Parties," and noted that there was agreement on the latter change.

1022. Mr. VISSER (South Africa) proposed the following statement concerning Article 20a of Draft Treaty No. 2: "It is understood that Article 20a does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore, where such phonograms have not been published for commercial gain."

1023. The CHAIRMAN noted that the proposed statement by the Delegation of South Africa was approved by the Committee.

1024. He indicated that still a proposed statement by the Delegation of Belgium was to be approved by the Committee, and then adopted by the Conference.

1025. Mr. STARTUP (United Kingdom) stressed that his Delegation did not agree to the statement proposed by the Delegation of Belgium being adopted by the Conference, and suggested that it be simply recorded in the Records of the Conference.

1026. The CHAIRMAN, noting that there was no consensus on that statement, asked the Delegation of Belgium if its statement being recorded in the Records of the Conference would be acceptable to it.

1027. Mr. DEBRULLE (Belgium) noted that contacts with professional circles had not resulted in a satisfactory definition of the criterion of fixation. He suggested that a compromise be sought with the Delegation of the United Kingdom so as to arrive at a statement acceptable to all the other Delegations.

1028. The CHAIRMAN said that there was no choice but to have the proposed statement by the Delegation of Belgium appear in the Records of the Conference, and suggested that before the final plenary session, the Delegations of Belgium and the United Kingdom might negotiate a compromise on the question.

1029. Mr. CRESWELL (Australia) made the following statement regarding Article 8 of Draft Treaty No. 1 and Articles 9 and 16 of Draft Treaty No. 2: "Australia agrees to paragraph (2) in Article 8 in the WIPO Copyright Treaty, and in Articles 9 and 16 in the WIPO Performances and Phonograms Treaty, on the understanding that the paragraph will not affect existing, as well as future, national legislation providing for the importation of copies of works and phonograms that have been made by or with the consent of the rightholders."

1030. Mr. SILVA SOARES (Brazil) made the following statement regarding Article 8 of Draft Treaty No. 1 and Articles 9 and 16 of Draft Treaty No. 2, which he noted would have to be renumbered: "Brazil understands that Article 8 of the WIPO Copyright Treaty, and Articles 9 and 16 of the WIPO Performances and Phonograms Treaty, do not in any way affect the rights the Contracting Parties have to determine the conditions under which the right of distribution provided for in these Articles is exhausted after the first sale or transfer of ownership of the original or a copy of the work or a fixed performance or a phonogram, with the authorization of the rightholder, as covered by these Treaties."

1031. The CHAIRMAN noted that the statements would be reflected in the Records of the Conference.

1032. Mr. YAMBAO (Philippines) clarified that the process just taking place in the Committee was an important one, in which various Delegations were clarifying their obligations under the Treaties which had been agreed upon. He stated that, if the statements only meant to be manifestations by each Delegation of its understanding of the Treaty, his Delegation would not scrutinize them. However, if the statements were meant to be a basis for interpretation, then, in the absence of all of those manifestations in writing, his Delegation would have a general reservation about their validity as interpretation tools.

1033. The CHAIRMAN responded that the understanding of the Delegation of the Philippines was accurate, in that the proposals for statements would be made available in written form, they would be presented to the Plenary of the Conference, and the statements by

single Delegations, on their own behalf, would only be reflected in the Records of the Conference as they had been pronounced.

1034. Miss KALLINIKOU (Greece) reserved the right to make a general statement on the moral rights of performers at the end of the Diplomatic Conference.

1035. Mr. WIERZBICKI (New Zealand) associated his Delegation with the intervention by the Delegation of Australia relative to Article 8 of the WIPO Copyright Treaty, and Articles 9 and 16 of the WIPO Performances and Phonograms Treaty. He also confirmed his Delegation's understanding that the three Articles mentioned did not in any way affect the extent and scope of any conditions which national legislation might provide for in respect of the right of distribution provided for in those Articles.

1036. Mr. TIWARI (Singapore) associated his Delegation with the intervention by the Delegation of Australia, as supported by the Delegation of New Zealand, to the effect that the provisions on the right of distribution in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty did not affect his country's parallel import regime in any way.

1037. Mrs. DE MONTLUC (France) expressed her deep concern at the statements made by the Delegations of Singapore and South Africa regarding Article 10 of Draft Treaty No. 1 and said that her Delegation could not agree that they be considered an "agreed statement."

1038. Mr. KUSHAN (United States of America) referred to the proposal by the Delegation of Australia to incorporate certain statements, and stated that his Delegation would like to reserve its position on that question until it had had a chance to study the proposals in relation to Article 12 of Draft Treaty No. 1.

1039. Mr. SÉRY (Côte d'Ivoire) did not wish to return to agreed statements because the discussion had been held at the time these proposals had been made.

1040. The CHAIRMAN noted that the series of statements would be put before the Plenary in a working document so the Delegations would have the opportunity to examine them.

1041. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) associated herself with the proposed statement by Brazil.

1042. Mrs. BOUVET (Canada) stated that her Delegation agreed with the prior statement regarding paragraph (2) of Article 8 of Draft Treaty No. 1, and Articles 9 and 16 of Draft Treaty No. 2, on the understanding that those provisions would not affect existing, as well as future, national legislation providing for importation of copies of works, performances and phonograms that had been made and sold by or with the consent of the right holders.

1043. The CHAIRMAN stated that the Committee had heard the last declaration, and that the declarations would be put into the Records of the Conference. The substantive text of the Treaties would be combined with the text from Main Committee II, and then the Conference would proceed accordingly.

1044. Mr. FICSOR (Assistant Director General of WIPO) announced that the Drafting Committee would begin its work immediately.

1045. The CHAIRMAN adjourned the meeting.

*Sixteenth Meeting*

*Friday, December 20, 1996*

*Evening*

1046. The CHAIRMAN stated that he was opening what might be presumably the last meeting of Main Committee I. He mentioned that, in the preceding meeting, when the texts of the Draft Treaties were finalized, there had also been a series of proposals for agreed statements, as to which it had been agreed that they should be presented to the Plenary of the Conference. He pointed out that, when the Articles were approved, one of the Articles in Draft Treaty No. 1 had been deleted, and that deletion had been subject to the approval of another agreed statement on the same question.

1047. Mr. KUSHAN (United States of America) mentioned that his Delegation had been working with a number of other Delegations to try to fashion a statement that was to be created as part of the understanding that would accompany the deletion of Article 7 in Draft Treaty No. 1. His Delegation had been asked to present that proposal, which did not represent the views of any Delegation, but rather represented a composite of views of a number of Delegations which had expressed varying perspectives on the issues raised by the deleted Article 7. He noted that there would be a statement relating to both Draft Treaty No. 1 and Draft Treaty No. 2. With respect to the reproduction right issue, because Article 7 had been deleted in Draft Treaty No. 1, that statement would be an agreed statement in relation to Article 1(4) of Draft Treaty No. 1, which incorporated provisions of the Berne Convention. He read the following: "Contracting Parties confirm that the reproduction right as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention." He said that that was the full text of the statement for Draft Treaty No. 1, the WIPO Copyright Treaty. He indicated that there was a parallel statement which had been modified only to refer to the relevant provisions in Draft Treaty No. 2, and he read the following: "Contracting Parties confirm that the reproduction right as set out in Articles 7 and 14, and the exceptions permitted thereunder through Article 20b, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles." It was his belief that those statements conformed to the understanding that had been reached pursuant to the discussions related to Article 7 on the reproduction right in Draft Treaty No. 2. He invited the Secretariat to indicate its views on the second sentence in those statements because it was his understanding that the second sentence was a statement which had been accepted in substance for a fairly long time.

1048. Mr. FICSOR (Assistant Director General of WIPO) said that an understanding had been prevailing since 1982 in the international copyright community. In the beginning of the 1980's, there were two sessions of a Committee of Governmental Experts convened jointly by WIPO and Unesco. At the second session of that Committee, in Paris in June 1982, recommendations and principles had been adopted about the copyright questions in connection with the use of works in computer systems. In the recommendations and principles, it was stated several times, both in respect of copyright and in respect of neighboring rights, that storage of works in an electronic medium was to be considered reproduction. He repeated that what was included in the second sentence concerning both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty reflected what was an agreement in the copyright community, and what had been an agreement for nearly 15 years.

1049. Mr. MILESI FERRETTI (Italy) supported the proposed statement by the Delegation of the United States of America.

1050. Mr. ZAPATA LÓPEZ (Colombia) expressed his full support for the proposed agreed statement on the right of reproduction, which was supported by many Delegations belonging to the Group of Latin American and Caribbean countries. He believed that this statement was fully consistent with the provisions of Article 9 of the Berne Convention and did not in any way hinder the possibility given to countries of the Union to make reservations regarding the right of reproduction.

1051. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, supported the proposed statement. He indicated that the language of the statement had emerged through exchanges during the day. It might not have reflected what any Delegation would have wished ultimately; however, it was an acceptable basic proposition of well-established principles. He said that his Delegation agreed with what the Assistant Director General of WIPO had said, and with what had been pronounced by the Delegation of Colombia.

1052. Mr. KEMPER (Germany) supported the proposed statement. He observed that the second sentence, as the Assistant Director General of WIPO had pointed out, corresponded to the established interpretation of the Berne Convention. He felt that it was innocent and harmless, hardly sufficient, but he said that his Delegation accepted it.

1053. Mr. UGARTECHE VILLACORTA (Peru) supported the views expressed by the Delegation of Colombia regarding the agreed statement on the right of reproduction.

1054. Mr. SILVA SOARES (Brazil) supported the first sentence of the proposed statement. However, he did not think that "Contracting Parties" would be the exact term for this statement. He suggested that the Delegations present at the Diplomatic Conference confirm their positions. As to the second sentence, it was his Delegation's understanding that the access to make a work perceptible by browsing, and the transmission of a work through a computer network in the course of a temporary or non-permanent storage resulting from a technical procedure, did not infringe the exclusive rights of reproduction within the meaning of Article 9 of the Berne Convention.

1055. Mr. GYERTYÁNFY (Hungary), speaking on behalf of the Group of Central European countries and the Baltic States whose Delegations were present in the room, namely, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Hungary, Poland, Romania, Slovakia, and Slovenia, supported the full text of the proposed statement. He associated his Delegation with the interventions by the Delegations of the United States of America, Colombia and Germany, as well as with the intervention by the Assistant Director General of WIPO.

1056. Mr. SHEN (China) stated that his Delegation would support the proposed statement if the word "may" was inserted before the word "constitute."

1057. Mr. ANTEQUERA PARILLI (Venezuela) expressed his Delegation's support for the proposed agreed statements on the right of reproduction, which were both faithful to the concept of reproduction, even though national legislation might set certain limitations. There could be no doubt that electronic storage constituted reproduction. Regarding the proposed statement on Draft Treaty No. 2, he proposed that it be amended by replacing the words "the storage of a protected work in digital form constitutes a reproduction" by the following "the digital storage of a performance or phonogram constitutes a reproduction."

1058. Mr. KIM (Republic of Korea) stated that his Delegation had a problem in accepting the proposed statement. He said that there should be a balance of the various interests in the digital environment. He felt that the second sentence of the statement did not address the necessary concerns, and, as such, his Delegation favored deletion of the entire statement, and at the very least, deletion of the second sentence.

1059. Mr. ROGERS (Chile) fully supported the agreed statement on the right of reproduction and said that the concerns that might be felt by some Delegations could be met by the statement itself, which made Article 9 of the Berne Convention applicable, including paragraph (2) which referred to the possibility of allowing exceptions.

1060. Mr. TEYSERA ROUCO (Uruguay) supported the proposed agreed statements submitted as well as the arguments put forward by various Delegations, including that of Venezuela.

1061. Mr. AYYAR (India) expressed the opinion that it would be extremely strange if the Diplomatic Conference concluded without at least some sort of statement concerning the core of the digital agenda. It was necessary that there be some sort of a formulation, which would send a message to the world that the process of adjusting the digital agenda had begun at WIPO. He observed that the Delegations had not been able to come to a definitive conclusion, in the informal consultations, on treaty language. He believed that, because that was a new phase in which all of the participants might not have been fully aware of the implications, and given the fluidity of the situation in the market place as with other technological practices, it was impossible to come to agreement on treaty language. He remembered that the consensus in the informal consultations had been that those Articles should be dropped, but an appropriate statement should be agreed upon in the Plenary for the Records of the Conference. Therefore, he stressed that there should be some sort of a statement agreed to. He pointed out that a statement had been tabled, and, in his Delegation's view, it might not be perfect, since it was possible for countries to make their own interpretations of such a statement, but subject to those understandings, he strongly felt that the Conference should adopt the statement. He mentioned that the question of what type of exceptions and limitations should be enacted could also be debated, but he felt that it was

possible for national legislations to cope with a variety of situations, such as the issue of temporary reproduction as being integral to the technological process. It was understood that the proposed amendments would not reduce the discretion vested in the Member States under the Berne Convention in the matter of limitations and exceptions. Another aspect was the question of liability of the carriers. But he pointed out that that was part of a larger question, not limited to copyright, and the Conference needed to address it in a larger context. He suggested that there was a need for WIPO to establish procedures for continuously reviewing how the technical standards were evolving, and how the market places were evolving, in conjunction with the new Treaties. He offered his support for the proposed statement.

1062. Mr. ESPINOZA PAO (Nicaragua), having listened to the explanations by the Secretariat and the statement by the Delegation of Colombia, expressed support for the proposed agreed statements, underscoring the efforts made by the Delegation of the United States of America.

1063. Mr. KUSHAN (United States of America) supported the intervention by the Delegation of India. He reminded the Conference that the statement proposed by his Delegation was the work of a number of Delegations, and embodied much work by all of them.

1064. Mr. SHEN (China) indicated that his Delegation, while it had a right to its own opinion, would not oppose the proposed statement.

1065. Mr. ABBASI (Pakistan) indicated that his Delegation was uncertain as to the legal status of the proposed statement. In his understanding, several statements had been adopted by consensus, which gave them a certain status, especially if the statement served to interpret the treaty language. Those statements also involved the intent of the framers of the Treaties. He felt that many Delegations were willing to go along with the proposed statement, provided that some Delegations could have their own interpretation of the statement, in which case the statement did not enjoy the consensus of the Conference. However, a statement without consensus could not be given the same status as a statement adopted by consensus by all Delegations which were present in the Conference. Therefore, he stated that his Delegation had a problem with the proposed statement.

1066. Mr. SILVA SOARES (Brazil) agreed with the intervention by the Delegation of Pakistan. He stated that the statement could not be adopted based on consensus, since his Delegation could not agree with the second sentence of the proposed statement.

1067. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) was in favor of the statement proposed by the Delegation of the United States of America on the understanding that countries could provide the necessary clarification and nuances required for implementation at the national level.

1068. Mr. SÉRY (Côte d'Ivoire) asked whether the resumption of the work of Main Committee I without a prior vote on the decision taken previously in the Committee was in accordance with the Rules of Procedure.

1069. The CHAIRMAN responded, observing that Main Committee I had made a decision on the substantive clauses of the two Draft Treaties. The Committee, in the same session,



adopted and decided to present to the Plenary a number of proposals for agreed statements. The decisions on the Articles, and specifically the deletion of a certain Article, had been made on the condition that there would be an agreed statement on the subject matter dealt with in that deleted Article. In general, the agreed statements might refer to any Articles, or any subject matter dealt with in the Draft Treaties. He pointed out that the Delegation which had proposed this statement explained that the statement referred to Article 1(4) of Draft Treaty No. 1, and the second statement referred to the Articles which dealt with the right of reproduction in Draft Treaty No. 2. It was the Chairman's opinion that it was clearly in the competence of Main Committee I to consider and possibly adopt, and propose to the Plenary of the Conference, an agreed statement to that effect. He felt that there were no procedural problems in that matter.

1070. Mr. CRESWELL (Australia) said that the second sentence of the proposed statement probably reflected the effect of the copyright law of Australia. However, he referred to the intervention by the Delegation of Brazil, and observed that the proposed statement did not have the approval of all Delegations at the Conference. He, therefore, suggested that the statement might reflect that it was supported by a majority of the Delegations.

1071. Mrs. BOUVET (Canada) said that, in the light of the explanations given by the Assistant Director General of WIPO and the remarks made by the Delegations of Colombia and Germany, her Delegation supported the proposed statements on the right of reproduction.

1072. Mrs. ROMERO ROJAS (Honduras) expressed her full support for the proposed agreed statements on the right of reproduction.

1073. Mr. ALVAREZ (Costa Rica) supported the proposed statement by the Delegation of the United States of America.

1074. The CHAIRMAN reiterated that, as had been asked in prior interventions, the statements made by single Delegations were going to be recorded in the Records of the Diplomatic Conference. He asked the Committee if it could approve by consensus the first sentence in the proposed statement by the Delegation of the United States of America.

1075. *Main Committee I adopted by consensus the first sentence of the proposal by the Delegation of the United States of America.*

1076. Mrs. YOUM DIABE SIBY (Senegal) expressed her concern regarding the "agreed statement" on the right of reproduction. She said that the reaffirmation of the principle of Article 9 of the Berne Convention did not raise any problems, but this was not the case for the exceptions, which appeared to deprive the principle of any meaning. She wished to receive fuller explanations on this matter from those Delegations that had prepared the agreed statement.

1077. The CHAIRMAN explained that the statement referred to Article 9 of the Berne Convention, the exceptions thereunder, and to the scope of a right of reproduction, its functioning in the digital environment and to the functioning of, and the application of, the clause, or clauses, on exceptions under Article 9 in the Berne Convention. He stressed that the proposed statement did not by any means preclude the normal interpretation of the Berne Convention, since it referred to Article 9 of the Berne Convention. He felt that the same

seemed to be true as far as the second proposed statement was concerned, as the Articles on the right of reproduction of Draft Treaty No. 2 clearly were subject to possible limitations and exceptions. He stated that there should be no concerns on the possible limitations or exceptions regarding the right of reproduction, and that they might be applied according to the established interpretation of Article 9 of the Berne Convention. He pointed out that the interpretation of Draft Treaty No. 2 closely, if not identically, followed the interpretations of the Berne Convention.

1078. Mr. SÉRY (Côte d'Ivoire) requested clarification concerning the procedure for adopting a statement.

1079. The CHAIRMAN explained that, according to the Rules of Procedure for the Conference, the main aim and objective was to reach decisions by consensus. Main Committee I had always followed that objective. When consensus was not possible, the decision would be taken by a majority vote. Also, it was the task of Main Committee I to present to the Plenary any agreed statements upon which the Committee had favorably decided.

1080. Mr. SÉRY (Côte d'Ivoire) considered that a statement committed all States and was made by all the Contracting Parties. There could be no question of all the Contracting Parties agreeing if one of them objected; there should be a list of States which agreed to the statement. He therefore wished to receive further details regarding this matter.

1081. The CHAIRMAN stated that the first sentence in the proposed statement by the Delegation of the United States of America had been approved by the Committee by consensus. He suggested that the Committee could approve the second sentence of the statement. He observed that an agreed statement as such had no binding effect, it was merely a very high level indication of a position of interpretation.

1082. Mr. SÉRY (Côte d'Ivoire) expressed his doubts concerning the scope of the reservations made by certain Delegations and the reference to them in the record. This was no longer a Conference document. Moreover, the document as a whole had to be adopted and he asked whether this required a majority or was done by consensus. He added that the principles should be examined in the first instance and the arrangements discussed subsequently.

1083. The CHAIRMAN indicated that the decision would be made by vote, if necessary.

1084. Mr. SCHÄFERS (Germany) referred to the intervention by the Delegation of Côte d'Ivoire, and stated that the question had to be seen in the context of the Vienna Convention on the Law of Treaties. Agreed statements were instruments related to a treaty in the sense of the Vienna Convention. He noted that agreed statements had a lesser binding effect than the Treaties, and, therefore, it was certainly possible that such agreed statements could be adopted by majority, if necessary. He pointed out that that was the established practice in all the conferences under the aegis of WIPO.

1085. Mr. KUSHAN (United States of America) associated his Delegation with the prior intervention by the Delegation of Germany. He stated that the Conference was facing a

decision. If consensus was not possible, the Committee needed to take a decision, and that should be done by a vote.

1086. Mr. FICSOR (Assistant Director General of WIPO) observed that that was the last issue to be discussed, and that it was preferable to achieve an agreement based on consensus. He noted that the first sentence of the proposed statement had been approved by consensus. With regard to the second sentence, he felt that it had been a clearly established principle, since the early 1980's, that storage of works was to be considered reproduction, and that principle could hardly be questioned. He felt that the problem was rather about the interpretation of the word "storage." He suggested that a possible solution was that the second sentence might also be agreed upon by consensus, not excluding, however, the possibility of differing interpretations at the national level, which otherwise could not be fully excluded even in respect of certain aspects of the texts of the Treaties themselves. He added that it was another matter that some interpretations could be accepted as valid while some others not.

1087. Mr. AMRI (Tunisia) emphasized that Delegations were not Contracting Parties but represented their respective States. He asked whether an agreed statement was an integral part of the Treaty or whether accession or ratification of the Treaty was limited to the Treaty itself and statements were excluded. This was an important matter because, in his view, there was already an undertaking by States recognizing that Article 9 of the Berne Convention should be interpreted as such.

1088. The CHAIRMAN referred to the Rules of Procedure of the Conference, and stated that the objective of the Conference was to negotiate and adopt a treaty or treaties, to adopt any recommendation or resolution whose subject matter was germane to the treaty or treaties, and to adopt any agreed statements to be included in the Records of the Conference. The agreed statements were part of the Records of the Conference, and could be used in the interpretation of the treaty or treaties. He pointed out that the agreed statements were not subject to ratification or other measures to put them into force.

1089. Mr. EL NASHAR (Egypt) observed that the subject of the statement proposed by the Delegation of the United States of America was not covered by the Treaties. He noted that there was consensus on the first sentence, but not on the second sentence. In that case, he felt that there would be reservations as well as observations to be made by the Delegations who did not join in the consensus.

1090. Mr. BOGSCH (Director General of WIPO) asked if it were not possible to go a little further in the same direction as what had been proposed earlier. First, he suggested that the title of the statement could be: "Statement adopted by the Conference." It would not read "The Contracting Parties confirm" since there were no Contracting Parties yet. It could start out by saying, "The reproduction right," as a statement. And then there could be added a third sentence, which would read more or less as follows: "It is further understood that the interpretation of the term 'storage' is to be done in the light of the discussions of Main Committee I."

1091. Mr. SILVA SOARES (Brazil) supported the proposal by the Director General of WIPO.

1092. Mr. KUSHAN (United States of America) expressed the concern of his Delegation, for several reasons. He noted that as part of the decision to delete Article 7, there had been an understanding that there would be a statement. He stressed that his Delegation had made a proposal that represented the views of several Delegations. He agreed with the point by the Director General of WIPO, regarding deletion of the words "Contracting Parties confirm that." He thought it was well taken, and that it reflected the concerns expressed by the Delegation of Brazil. In regard to the suggestion that the interpretation of the statement should depend on comments that were recorded in Main Committee I, the Delegation had significant concerns because many comments that were offered during the discussion of the reproduction right, and which incidentally touched on storage, had been made in the informal consultations, and those would not be reflected in the Records of the Conference. He moved that the Committee take a decision on the text that was proposed by the Delegation of the United States of America, with the amendment that was offered and accepted, that is, the deletion of the words "Contracting Parties confirm that," which words would be deleted from the first sentence in each of the paragraphs. He strongly suggested that, if there was no consensus, a vote take place on the question.

1093. Mr. BOGSCH (Director General of WIPO) withdrew his suggestion in the light of the comments made by the Delegation of the United States of America.

1094. Mr. KIM (Republic of Korea) expressed the support of his Delegation for the suggestion by the Director General of WIPO. He indicated that his Delegation could not support the proposed statement as drafted, and, therefore, reserved its position on that issue.

1095. Mr. EKPO (Nigeria) indicated that his Delegation was not opposed to the statement, but was not in favor of it being a statement by consensus.

1096. Mr. OKAMOTO (Japan) referred to the prior intervention by the Assistant Director General of WIPO regarding the possible differing interpretations of the word "storage" at the national level, and with that clarification, expressed his Delegation's support for the proposed statement.

1097. Mr. YAMBAO (Philippines) said that the Conference could make any statements it wanted by consensus, if possible, but even by a vote, if necessary. He stressed, however, that, in the event that statements were made by means of a vote, it was understood that those statements could never be understood as an agreement within the context of the Vienna Convention.

1098. The CHAIRMAN recalled that the first sentence of the proposed statement by the Delegation of the United States of America had been adopted by consensus. He said that the second sentence would be put to a vote. Those who were in favor of the second sentence were to vote yes, and those who were opposed to the second sentence were to vote no.

1099. Mr. NGOUBEYOU (Cameroon), referring to the remarks made by the Delegations of Nigeria, Côte d'Ivoire and Tunisia, expressed the view that lack of a consensus on the adoption of a text was a very clear invitation to hold a roll call vote so that each Delegation could identify those in favor or against the text put to the vote. In addition, he wished to know what was the legal status of an agreed statement once it had been adopted by a majority.

1100. Mr. SILVA SOARES (Brazil) associated himself with the comments made by the Delegation of Cameroon.

1101. Mr. ABBASI (Pakistan) observed that it was his Delegation's understanding that the statement, if adopted by a vote, would not enjoy the same status as a statement adopted by consensus. He said that the procedure of voting integral paragraphs, sentence by sentence, aroused concern. He preferred that, if a vote had to be taken at all, there be a vote on the entire paragraph, which he felt would simplify the whole matter.

1102. The CHAIRMAN reminded the Committee that it had already adopted the first sentence by consensus.

1103. Mr. SÉRY (Côte d'Ivoire) said that he endorsed the proposal made by the Director General of WIPO and would put it forward as a proposal by his Delegation, which considered that interpretation of the word "storage" should be made in the light of the statements made by States at the beginning in Main Committee I.

1104. Mr. AMRI (Tunisia) said that his Delegation supported the proposal made by the Delegations of Côte d'Ivoire and Cameroon regarding a roll call vote.

1105. Mr. KANDIL (Morocco) said that his Delegation supported the proposals made by the Delegations of Cameroon and Côte d'Ivoire.

1106. Mr. SILVA SOARES (Brazil), referring to the remarks by the Delegations of Cameroon, Tunisia and Morocco, proposed that the roll call vote should be on the second part of the Article so that States which did not accept the proposal by the United States of America were recorded in the minutes of the Diplomatic Conference.

1107. The CHAIRMAN referred to the proposal put forward by the Delegation of Cameroon, and said that the first sentences in the two statements had already been adopted by consensus in Main Committee I. Therefore, the vote would concern the adoption of the second sentences in the two statements.

1108. Mr. NGOUBEYOU (Cameroon) explained that he had called for a roll call vote in order to avoid any misunderstandings regarding the number of States which approved or rejected the second part of the proposal by the United States of America.

1109. Mr. YAMBAO (Philippines) asked that the Committee reflect carefully on the reasons underlying the vote, before the vote was taken. He said that that was crucial, because, if there was consensus, the statement would be an aid in the interpretation of the Treaty. But if there was even one Delegation which objected to the statement, it would cease to be an agreed statement within the meaning of Article 31(2)(a) of the Vienna Convention, and would merely be part of the preparatory work of the Conference, with little value in terms of interpretation of the Treaty.

1110. The CHAIRMAN acknowledged the value of an agreed statement achieved by consensus. He said that it was still his intention to proceed with a vote if the Committee could not otherwise make such a decision on this matter.

1111. Mr. KUSHAN (United States of America) stressed that his Delegation had called for a vote a long time ago. He pointed out that there was also a request from another Delegation that the vote be taken by the roll call method.

1112. The CHAIRMAN noted that he had omitted a point of order from the Delegation of Algeria.

1113. Mr. KATEB (Algeria), referring to the comments made by the Delegation of Tunisia and to Article 1 of the Conference's Rules of Procedure relating to its objective and competence, said that the Conference was indeed free to adopt any agreed statement and include it in the minutes of the Conference, but he pointed out that the present meeting was that of Main Committee I and not of the Plenary Conference.

1114. Mr. KUSHAN (United States of America) stated that the issue before the Committee was adoption of the second sentence of the statements. He had also made a motion for a vote which had been seconded by some other Delegations. He emphasized that the Committee should now be engaging in that vote.

1115. The CHAIRMAN indicated that the Committee would proceed to a vote.

1116. Mr. SÉRY (Côte d'Ivoire) called for the meeting to be suspended to allow members of his group to hold consultations.

1117. Mr. KHLESTOV (Russian Federation) proposed that the Committee stop going around in circles, and that it undertake the vote.

1118. The CHAIRMAN again stated that the Committee would proceed now to the vote on the second sentence in the two statements. He noted that the floor would not be given for any other purpose than for a point of order.

1119. Mr. NGOUBEYOU (Cameroon), noting that the vote was about to take place, requested the Chairman to read out the text that would be put to the vote in order to have an unequivocal understanding. He did not support the request for a suspension of the meeting made by the Delegation of Côte d'Ivoire.

1120. Mr. SCHÄFERS (Germany) pointed out that the request for a roll call vote came from the Delegation of Cameroon on a certain question, and, therefore, it was up to the Delegation of Cameroon to tell the Committee what was the subject matter of the requested roll call vote. If the Delegation did not know what it was about, then it did not make sense to request a roll call vote.

1121. The CHAIRMAN asked the Delegation of Cameroon to explain the subject matter of the request for the roll call vote.

1122. Mr. NGOUBEYOU (Cameroon) asked the Chairman to identify the amendment to the draft text put to the vote as several proposals had been made, including that made and then withdrawn by the Director General, which had subsequently been taken up by the Delegation of Côte d'Ivoire.

1123. The CHAIRMAN deferred to a point of order by the Delegation of the United States of America.

1124. Mr. KUSHAN (United States of America) stated that he was making a point of order. He felt that it was difficult to follow the course of the debate, because there had been a convoluted path of interventions on the initial point of order. However, it all had originated with the motion which his Delegation had made for a vote on the text of the second sentence in each of the paragraphs proposed as statements. That was what the subject matter of the vote was to be. Thereafter, there had been a request for the vote to be taken in the form of a roll call vote, and everything since that point had been a point of order relating to the question of the vote. He emphasized that that was not a matter of opening up a sequence of issues for votes; that was a matter of voting on a specific text. He again stressed that that was a matter of a point of order; there had been a motion for a vote, which had been seconded, and there had been a request for a roll call vote. Since the vote was to be on the second sentence in each of the paragraphs proposed, he did not believe that it was necessary to list the various proposals that had been made during the course of the debate prior to the calling for the vote.

1125. Mr. FICSOR (Assistant Director General of WIPO), at the request of the Chairman, indicated the subject matter of the vote: the Committee had a proposal—from the Delegation of the United States of America—which consisted of two statements very similar to each other; one to Draft Treaty No. 1 and another to Draft Treaty No. 2. The Committee had made a consensus decision on the first sentences of each of those statements, and, therefore, the vote would not concern those first sentences. The Delegation of the United States of America had moved for a vote on the second sentences of each statement, but the discussion continued, and the vote had not started. The Director General of WIPO had made a proposal, but then, for the reasons indicated, he had withdrawn his proposal. After that, the Delegation of Côte d'Ivoire had reintroduced the proposal of the Director General, and that proposal had been seconded. Thus, there were two proposals concerning both statements. The more remote from the original proposal was proposed by the Delegation of Côte d'Ivoire, so, according to the Chairman's intention, the Committee should vote first on that proposal. He read the text of the second sentence in the proposal of the Delegation of the United States of America concerning Draft Treaty No. 1 which was the following: "It is understood that the storage of a protected work in digital form in an electronic medium constitutes reproduction within the meaning of Article 9 of the Berne Convention." Under the Director General's proposal, which had been withdrawn by him, but then reintroduced by the Delegation of Côte d'Ivoire, that second sentence would remain unchanged, but then one more sentence would be added to it to read as follows: "It is further understood that the interpretation of the term 'storage' is to be understood in the light of the discussions of Main Committee I." In respect of Draft Treaty No. 2, the second sentence in the proposal of the Delegation of the United States of America read as follows: "It is understood that the storage of a protected work in digital form in an electronic medium constitutes reproduction within the meaning of these Articles." The same sentence would be added under the proposal reintroduced by the Delegation of Côte d'Ivoire as to the statement concerning Draft Treaty No. 1, that is, the following one: "It is further understood that the interpretation of the term 'storage' is to be understood in the light of the discussions of Main Committee I." He stated that, as he understood the Chairman's intention, the Committee would first have a vote on the two statements simultaneously to decide whether or not it accepted the amended version as reintroduced by the Delegation of Côte d'Ivoire. The vote would be by roll call, because it had been requested by one Delegation, and it had been seconded by at least another.

1126. The CHAIRMAN asked the Secretariat to explain how the roll call vote would take place.

1127. Mr. GURRY (Secretariat) directed the Committee's attention to Rule 35(2) of the Rules of Procedure of the Conference, which governed the procedure for a roll call vote. He pointed out that the roll should be called in the alphabetical order of the names, in French, of the States, beginning with a Delegation whose name should be drawn by lot by the presiding officer, who was the Chairman. For that purpose, he had the box for the Chairman to draw by lot. He clarified the question regarding the Delegation of the European Communities. For the purpose of selecting the State with the name of which the Committee would begin the roll call vote, Rule 2(2) of the Rules of Procedure specifically excluded the Special Delegation from Member Delegations. He proposed commencing the roll call with the name of the State which was selected, through the list of the State Members of WIPO, in its order, and at the end would be the European Communities.

1128. *The CHAIRMAN drew by lot the Delegation of India.*

1129. Mr. GURRY (Secretariat) began the roll call vote by calling the name of India.

1130. Mr. AYYAR (India) asked that the text which the Committee was to vote be read again.

1131. Mr. FICSOR (Assistant Director General of WIPO), at the request of the Chairman, indicated that the vote was about the following amended proposal in respect of the first statement concerning the WIPO Copyright Treaty: "It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention. It is further understood that the interpretation of the term 'storage' is to be done in the light of the discussions of Main Committee I." In respect of the second statement concerning the WIPO Performances and Phonograms Treaty, the amended proposal read as follows: "It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles. It is further understood that the interpretation of the term 'storage' is to be done in the light of the discussion of Main Committee I."

1132. Mr. GURRY (Secretariat) again asked the Delegation of India to cast its vote, and then the roll call vote took place.

1133. The Delegations of the following States voted in favor of the proposed statements as amended: India, Indonesia, Mali, Morocco, Mexico, Mongolia, Namibia, Niger, Pakistan, Republic of Korea, Singapore, Thailand, Tunisia, Zimbabwe, Algeria, Angola, Belarus, Brazil, Burkina Faso, Côte d'Ivoire, Cuba, Egypt and Ecuador.

1134. The Delegations of the following States voted against the proposed statements as amended: Ireland, Italy, Jamaica, Japan, Nicaragua, Norway, New Zealand, Netherlands, Philippines, Poland, Portugal, Republic of Moldova, Czech Republic, Romania, United Kingdom, Slovakia, Slovenia, Sweden, Switzerland, Uruguay, Venezuela, South Africa, Germany, Argentina, Australia, Austria, Belgium, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Denmark, El Salvador, Spain, United States of America, The



former Yugoslav Republic of Macedonia, Russian Federation, Finland, France, Greece, Haiti, Honduras and Hungary.

1135. The Delegations of the following States abstained from the vote: Jordan, Kazakstan, Kenya, Libya, Malawi, Malta, Nigeria, Uzbekstan, Peru, Senegal, Sudan, Sri Lanka, Tajikstan, Togo, Trinidad and Tobago, Yemen, Zambia, Armenia, Azerbaijan, Cameroon, China, Gabon and Ghana.

1136. *Main Committee I rejected the proposed amendments, with 23 votes in favor, 46 votes against, and with 23 abstentions.*

1137. The CHAIRMAN said that the Committee would now proceed to the second vote and asked the Delegation of Cameroon whether the request for a roll call vote also concerned the second vote.

1138. Mr. NGOUBEYOU (Cameroon) responded in the affirmative to the question by the Chairman.

1139. The CHAIRMAN stated that the Committee would proceed to the second vote. He said that the subject of the vote would be the second sentences which were presented in the written proposal of the Delegation of the United States of America.

1140. Mr. AYYAR (India) observed that there had been much discussion earlier, before the voting, with reference to the interpretation of the Treaties, to the status of the statements, and to the provisions of the Berne Convention. He referred to his earlier intervention, which had been uncontested, that, because these statements embodied certain reflections, there was a full scope for interpretation and a full scope for national legislations to reflect on whatever was adopted. He noted that, within the framework of the Berne Convention and the Rome Convention, national legislation could provide the necessary exceptions and limitations. He said that he would not have raised that question now, but for the fact that the resolution just voted down contained a statement, the third sentence, that it was not susceptible to interpretation. His Delegation had some difficulty with the third sentence of the resolution that was voted down, because the whole course of the debate had gone on the premise that the value of those statements was of an interpretational nature, with flexibility as far as the interpretation was concerned. For that reason, his Delegation voted against the resolution. He emphasized that there was an assumption of flexibility in the Berne Convention and in the Rome Convention for exceptions and limitations.

1141. The CHAIRMAN stated that the part of the proposed statement which had already been adopted, included a reference to Article 9 of the Berne Convention, and the exceptions permitted thereunder. He observed that the normal interpretations, which were up to the governments and the parliaments of the States, would prevail. He referred to the exceptions to and limitations on the right of reproduction which were permitted under the Berne Convention, and under the Treaties still to be adopted, and said that their application would be governed by the normal rules.

1142. He said that the Committee would now proceed to the second vote. The text which would be put to vote would be the second sentences of the two statements. Although they had been pronounced many times, to be absolutely certain that everyone would understand what was being put to vote, he read the proposals. He read the second sentence of the first statement, as follows: "It is understood that the storage of a protected work in digital form in an electronic medium constitutes the reproduction within the meaning of Article 9 of the Berne Convention." He read the second sentence of the second statement as follows: "It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles."

1143. Mr. SCHÄFERS (Germany) pointed out that this second request for a roll call put forward by the Delegation of Cameroon, had to be seconded, according to the Rules of Procedure. He felt that there was still a little room for hope that it would not be seconded, but nevertheless, he asked to insist on the Rules of Procedure, which required seconding for such a request.

1144. The CHAIRMAN asked the Committee if any Delegation seconded the request by the Delegation of Cameroon for a roll call vote.

1145. Mr. SILVA SOARES (Brazil) seconded the request for a roll call vote.

1146. The CHAIRMAN declared that the roll call vote would now proceed. He stated that, if a Delegation was in favor of the adoption of the subject text, it should vote "yes"; if it was against adoption of the text, it should vote "no"; and any Delegation which wished could register an abstention from the vote.

1147. *The Chairman drew by lot the Delegation of South Africa.*

1148. The Delegations of the following States voted in favor of the proposed statements: South Africa, Germany, Argentina, Australia, Austria, Belarus, Belgium, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Denmark, El Salvador, Spain, United States of America, The former Yugoslav Republic of Macedonia, Russian Federation, Finland, France, Greece, Haiti, Honduras, Hungary, India, Ireland, Italy, Jamaica, Japan, Mongolia, Nicaragua, Norway, New Zealand, Netherlands, Peru, Portugal, Czech Republic, Romania, United Kingdom, Senegal, Slovakia, Slovenia, Sweden, Switzerland, Trinidad and Tobago, Uruguay, and Venezuela.

1149. The Delegations of the following States voted against the proposed statements: Algeria, Angola, Brazil, China, Côte d'Ivoire, Cuba, Fiji, Indonesia, Libya, Mali, Pakistan, Republic of Korea, and Republic of Moldova.

1150. The Delegations of the following States abstained from the vote: Armenia, Azerbaijan, Burkina Faso, Cameroon, Ecuador, Egypt, Gabon, Ghana, Jordan, Kazakstan, Kenya, Malawi, Malta, Morocco, Mexico, Namibia, Niger, Nigeria, Uzbekistan, Philippines, Singapore, Sudan, Sri Lanka, Thailand, Togo, Tunisia, Yemen, Zambia, and Zimbabwe.

1151. *Main Committee I adopted, with 49 votes in favor, 13 votes against and with 29 abstentions, the second sentences of the proposals by the Delegation of the United States of America.*

1152. The CHAIRMAN announced that the vote meant that the texts which had been put to vote were adopted, and they would be presented for adoption to the Plenary of the Conference. He thanked all Delegations and participants for their cooperation, and declared the meeting closed.

## SUMMARY MINUTES OF MAIN COMMITTEE II

*prepared by the International Bureau*

*Chairman:* Mr. Guido Fernando Silva Soares (Brazil)

*Secretary:* Mr. Francis Gurry (WIPO)

*First Meeting*

*Tuesday, December 17, 1996*

*Afternoon*

*Introductory remarks*

1. The CHAIRMAN opened the first meeting of Main Committee II responsible for discussing the basic proposal on the administrative and final clauses of the Treaties under consideration, expressing his gratitude at having been elected Chairman of the Committee, which he deemed a great honor not only to himself but also for his country. He underlined the need to speed up the work, stating that many Delegations did not have a sufficient number of delegates to be able to participate in Main Committees I and II simultaneously. He therefore proposed that the Committee review the final clauses rapidly in order to identify the most sensitive issues, which would then be discussed and considered in an informal negotiating committee. The Chairman put this proposal to the Committee and, in the absence of any opposition, it was adopted.
2. The Chairman introduced the provisions in the basic proposal. Regarding Article 98 on establishing an assembly for the Treaties, the Chairman pointed out that it was customary for such a body to be established in WIPO treaties in order to ensure the correct implementation and observance of the treaties. The meeting would have to consider the possibility of setting up a joint body under the Treaties responsible for their implementation. Article 99 dealt with the role of the International Bureau of WIPO in the administrative tasks concerning the Treaty.
3. The Chairman then turned to Article 100, which concerned eligibility for becoming party to the Treaty, drawing attention to two issues of great importance in the basic proposal, namely, the admission of international organizations as parties to the Treaty and the ratifications required for the entry into force of the Treaty. Article 101 on signature of the Treaty was customary in multilateral treaties and provided that the Treaty would remain open for signature for a period of one year. Article 103 did not raise any major problems as it dealt solely with determining at which time one could become party to the Treaty.

4. Regarding Article 104 on reservations to the Treaty, the Chairman pointed out that it was also customary in WIPO treaties not to allow reservations to the treaty and he considered that allowing reservations in the present Treaties, whose main objective was the harmonization of legislation at the global level, would be a dangerous solution. He then referred to Articles 105, 106 and 107, which were customary in this type of treaty and opened the discussion in order to hear proposals regarding the issues that required further study.
5. Mr. AMRI (Tunisia), referring to Article 98, commented that in such treaties there were usually two authorities: one administrative and the other legislative. In Article 98, the Assembly gave the Director General the powers required to carry out the tasks entrusted to him by the Treaty in question. It would perhaps be advisable to add a provision to Article 98 to the effect that the Assembly considered and approved the reports and activities of the Director General concerning the Treaties, as was done every two years for all the unions of conventions administered by WIPO.
6. The CHAIRMAN asked the Delegation of Tunisia to submit its proposal in writing.
7. Mr. GURRY (Secretariat) responded to the intervention by the Delegation of Tunisia, and drew attention to the Convention Establishing the World Intellectual Property Organization. He referred to the provisions in that Convention relating to the Director General of WIPO, and in particular, to Article 9(5), and stated that the Director General of WIPO was required to prepare draft programs, budgets and periodic reports on activities, and transmit the same to the Governments of the interested States and to the competent organs of the Unions of the Organization.
8. The CHAIRMAN asked the Delegation of Tunisia, in the light of the information given by the Secretary of the Committee, to take this aspect into account in any written proposal.
9. Mr. GASSER (Brazil) drew attention to two major issues that should be studied: firstly, the eligibility to become party to the Treaty, particularly as regards intergovernmental organizations. Secondly, the question of the titles of the Treaties, which was linked to the discussions in Main Committee I, the issue of reservations, and the number of ratifications required for entry into force.
10. The CHAIRMAN considered that the title of the Treaties was a matter of substance and should be considered by Main Committee I. Concerning reservations to the Treaty, he drew attention to the difference between the general reservation clauses as they appeared in the basic proposal, reservations that might be made to each Article and, finally, reservations which left certain aspects up to national legislation. What this Committee had to discuss was the first type of reservation, the prohibition on general reservations notified when new countries acceded.
11. Mr. SÉRY (Côte d'Ivoire) congratulated the Chairman on his election to the Chair. He shared the views expressed by the Delegation of Tunisia and hoped that the African Group, including Côte d'Ivoire, would participate in drafting any proposed amendment. He then requested the Chairman to proceed Article by Article in order to avoid any misunderstandings. On behalf of the African Group, he wished to receive an explanation regarding the difference between the European Community and any other consenting party, what exactly was the difference between intergovernmental organizations allowed to accede to the Treaty and other

Organizations? It appeared to him that, as the provisions stood, the European Community met the required criteria and fulfilled the conditions laid down straightaway, whereas other Organizations would have to show that they did so.

12. The CHAIRMAN agreed with the Delegation of Côte d'Ivoire that the discussion should be Article by Article, but indicated that it might sometimes be necessary to refer to any reservations to other Articles.

13. Mr. STOODLEY (European Communities) noted the Chairman's prior intervention regarding conducting the business of Main Committee II in the format of informal consultations. He said that his Delegation would be open to deal with each Article in a formal session of this Committee, or to go into informal sessions. He said that the main concerns of his Delegation were in relation to Articles 98 and 100 concerning the status of the European Community and its Member States, and other intergovernmental organizations.

14. Mr. YAMBAO (Philippines), speaking on behalf of the group of countries of the Asia and Pacific region, indicated that, to those countries, the most important provisions were Articles 98 and 100 concerning intergovernmental organizations. He also drew attention to the importance of Article 101, on the number of ratifications or accessions required to put the Treaties into force, and Article 104 with respect to reservations. He reserved the position of the said countries in respect to Article 104 on reservations, until the work of Main Committee I had been finished. He pointed out that the number of Treaties to be concluded, and to which the Administrative and Final Clauses would apply, would also be left to the work of Main Committee I. He deferred to the Chairman's discretion the question of conducting the business of Main Committee II through the format of informal consultations.

15. The CHAIRMAN indicated that the Committee could meet in informal sessions, and expressed his opinion that the place of the meeting did not influence the work. He said that the Committee could continue in the room where it was presently assembled, and could consider itself an informal meeting. At the end of the work, the Committee could change into a formal meeting, which would be more convenient. He said that it would not be necessary to move to another room for an informal meeting.

16. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) congratulated the Chairman on his election to the chair of Main Committee II and supported his proposal to organize informal consultations on the most controversial issues. She considered that some Articles might raise problems, for example Articles 98, 100 and 102 to 104. The other Articles namely, 99, 101 and 105 to 107, would require less discussion and she therefore proposed that the Committee should begin with these.

17. Mr. CHEW (Singapore) associated his Delegation with the intervention made by the Delegation of the Philippines, and expressed his opinion that certain articles should be deferred until Main Committee I had completed its work. The provisions which, he believed, the Committee should now focus on were: Article 98(3)(b), Article 100, and Article 103. He pointed out that the number "5" in square brackets was an extremely important and critical question. He stated that Article 104 on reservations was taken from Article 72 of the TRIPS Agreement, but noted that, as had been discussed in Main Committee I, the nature of the two Treaties discussed at the Diplomatic Conference was different from the TRIPS Agreement, and as such, whether reservations should or should not be allowed would have to depend on

the nature and the scope of the articles that would be agreed to in the Treaties. He deferred to the discretion of the Chairman as to whether the Committee conducted its business in formal or informal meetings.

18. The CHAIRMAN noted the support of the Committee for holding the meeting as informal sessions. He pointed out that there would be no record of what was discussed in the informal sessions, which he said was the main consequence of their being informal. He, therefore, adjourned the formal meeting, and opened the informal session.

*Second Meeting*

*Wednesday, December 18, 1996*

*Morning*

*Review of the results of informal consultations*

19. The CHAIRMAN opened the meeting and reviewed the progress the Committee had made in the informal consultations. He said that Article 101 had been adopted, subject to the question of the admission of European Community and its Member States. He said that regarding Article 102, it was a question to be decided as to the number of instruments of ratification or accession by States which would be necessary for the Treaties to come into force. He pointed out that the effective date of becoming party to the Treaties was tied to the question of the number of ratifications or accessions. Regarding Article 103, he stated that the Committee had to decide upon the number of ratifications or accessions, and the question of legitimacy of the European Community and its Member States to become a party to the Treaties. On the question of reservations, Article 104, he said that the Committee had understood that the term "reservations" in that Article meant reservations to particular clauses to the Treaty, since specific reservations that could be raised would be treated within the articles concerned. Regarding Article 105, he pointed out that there had been a correction in the main text proposed by the Director General of WIPO; it was the addition of the words "any Contracting Party." He confirmed that the Article now read: "The Treaty may be denounced by any Contracting Party..." The Chairman stated that that Article, as amended with the proposed change, had been approved by the Committee. He declared that the Committee had also accepted and approved Articles 106 and 107. He asked the Committee if there were any objections to it proceeding along the lines which he had just outlined.

20. Mr. ABEYSEKERA (Sri Lanka) asked for clarification regarding Article 106. He said that it was his understanding that the Committee was discussing the status of the European Community and its Member States, in paragraph (2), and that that aspect was still within square brackets until the status would be decided. However, he noted that the Article used the term "interested party," which could request the language to be established as far as the languages of the Treaty were concerned. He said that, to his understanding, that was the only place in the Treaties which contained anything about interested parties in relation to WIPO. He asked whether that meant that, if any Member State of WIPO was not a Contracting Party to the Treaty, could it exercise that right, or was it confined only to the Contracting Parties, because in the text there were only references to the rights of the Contracting Parties.

21. Mr. BOGSCH (Director General of WIPO) explained that WIPO traditionally considered an interested party to be a country which was party, or intended to become party, to the Treaties. He gave as an example, that, if Germany wanted to ratify the Treaty, it would want to have an official German translation, and WIPO would prepare that in the way it was outlined in the Article. So the term "interested party" really meant both Contracting Party and any WIPO Member State which intended to become a Contracting Party.
22. Ms. MARKOWITZ (United States of America) raised a point for clarification regarding the term "party." She noted that the text contained the term "party" fairly frequently, and it also used the term "Contracting Party." She asked if there was going to be one general term that would be used in the final text, or these two terms were generally interchangeable.
23. Mr. BOGSCH (Director General of WIPO) said that the terms were not interchangeable. He explained that the term "party" meant a country which was not a Contracting State. An interested party meant a country which might become a Contracting State, which had the intention to become one.
24. Ms. MARKOWITZ (United States of America) asked for further clarification. She noted that, for instance, Article 100(1) included the following text: "any Member State of WIPO may become party to this Treaty," whereas, in Article 98, the term "each Contracting Party" was used.
25. Mr. BOGSCH (Director General of WIPO) stated that, in the first instance, it was not a Contracting Party, it was a State in the process of trying to become one.
26. The CHAIRMAN drew the Committee's attention to Article 100, to the general criteria for becoming a party to the Treaty. He referred to paragraph (1), which stated that "any Member State of WIPO may become party to this Treaty".

#### *Relationship with the Berne Convention*

27. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, reaffirmed his Group's position regarding the importance of maintaining a close linkage between the Treaty under consideration and the Berne Convention, to the extent that membership of the Berne Union should be a requirement for accession to the new Treaty. Consequently, he submitted a proposal regarding Article 100 of the basic proposal on the administrative and final clauses of the Treaty, namely, to add the following words at the end of paragraph 1: "provided that the State is party to the Berne Convention for the Protection of Literary and Artistic Works."
28. Mr. BOGSCH (Director General of WIPO) referred to the notes attendant to draft Article 100. He stated that the note contained the reasons for which WIPO did not propose to tie the Treaty to the Berne Convention, and read the following: "As far as States are concerned, it is proposed that the Member States of WIPO be eligible to become party to Treaty. Membership in WIPO would be a logical requirement since the initiator of the treaty is WIPO, since all preparations took place in WIPO and since the subject matter of the Treaty is intellectual property. Furthermore, it is to be noted that, already now, WIPO has 157



Member States.” He added, that due to new accessions, WIPO had 161 Member States now. He pointed out that all the 120 States party to the Berne Convention, and 50 of the 51 States party to the Rome Convention, were members of WIPO. The missing one was the Dominican Republic, but he said that it was likely to become soon a member of WIPO. He stressed that in any case, any State not yet member of WIPO could easily become a member of WIPO—the list of the Member States of WIPO appeared in the Annex. He thought that it was unnecessary that a country wishing to accede to Treaty No. 1 be a member of the Berne Convention. The application of the substantive provisions of the Berne Convention would be made obligatory for any country that would become party to the Treaty. He said that the obligation which had been referred to in the intervention by the Delegation of Chile, namely that Contracting Parties must respect the Berne Convention, was being taken care of, just as in the TRIPS Agreement. In his opinion, it would unduly restrict the eligibility of countries to accede if the adherence to the Berne Convention were a condition. In round figures, WIPO had 160 Member States. There were 120 States party to the Berne Convention. If the proposal were to be accepted, 40 countries would be disqualified to become party to the Treaty.

29. Mr. ROGERS (Chile) emphasized that the latter proposal had been put forward on behalf of the Group of Latin American and Caribbean countries.

30. The CHAIRMAN asked the Delegation of Chile to explain again the reasons for its proposal.

31. Mr. ROGERS (Chile) explained that, in principle, the Group’s idea had been that the proposal regarding the obligation to be a member of the Berne Union in order to ratify the new Treaty would be incorporated in the preamble. As it had not been included in the preamble, the Group reserved the right to put the proposal forward again in Main Committee II, because it believed that it was an essential element that would guarantee the soundness and relevance of the new Treaty.

32. Mr. BOGSCH (Director General of WIPO) thought that the argument of the Delegate of Chile was logical. However, in Main Committee I, Article 1(4) of the Treaty had been accepted, namely that Contracting Parties that were not members of the Berne Union should comply with Articles 1 to 21 and the Appendix of the Berne Convention. That is to say, if the preoccupation of the group of Latin American and the Caribbean countries was that the Berne Convention should be respected, it was guaranteed. He stressed that the Committee was speaking about a very important question, politically, about the idea to exclude 40 countries that were Members of WIPO from the possibility of becoming parties to the new Treaty. That was a decision of very great consequence, and there was no reason for it because the Berne Convention would be respected in the same terms as in the TRIPS Agreement.

33. Mr. CHEW (Singapore) associated his Delegation with the intervention by the Director General of WIPO. He said that he supported the position taken by the Director General of WIPO for three reasons. First, the Treaties to be adopted by the Diplomatic Conference would be stand-alone, independent Treaties, and, as such, there should not be any link to any pre-condition to be party to the Berne Convention. Second, he felt that it was best to have the widest participation of countries as parties to the Treaties, and he noted that, as the Director General of WIPO had stated, to link the Treaties to the Berne Convention would exclude 40 countries immediately. He mentioned that Singapore itself had not yet become a party to the Berne Convention, although it intended to do so in the near future. Third, because of Article 1

of Treaty No. 1, Contracting Parties to that Treaty would already be *de facto* parties to the Berne Convention through compliance with the obligations of Articles 1 to 21 and the Appendix of the Berne Convention. For those reasons, he supported the Director General's position, and opposed the position put forward by the countries of Latin America and the Caribbean.

34. Mr. ZAPATA LÓPEZ (Colombia), speaking on behalf of the Group of Latin American and Caribbean countries, explained the Group's position regarding the need for an effective and specific linkage between the Treaty and the Berne Convention. He recalled that when the Committees of Experts had begun their work there had been talk of a Protocol to the Berne Convention. The countries of the Union wished to adapt the Berne Convention to the new situation, but they understood the arguments put forward by the International Bureau to the effect that the large number of Member States of the Berne Union meant that it was unrealistic to try to achieve the unanimity required for a revision of the Treaty. This was why a Protocol had been mentioned, as provided in Article 20 of the Berne Convention. Although the question of the linkage with the Berne Convention had not been considered during the meetings of the Committees of Experts, which focused on substantive matters, the Group of Latin American and Caribbean countries had at that time expressed its determination to establish an effective linkage and not simply make a reference to the Berne Convention. He emphasized the importance of pursuing the efforts made by the International Bureau to increase the number of signatories to the Berne Convention and expressed the view that the linkage making it obligatory to accede to the Berne Convention in order to accede to the new Treaty would be one method of promoting new accessions. Moreover, such an obligation would not be new in the context of treaties administered by WIPO, for example, the Rome Convention made it a requirement to be party to the Berne Convention or the Universal Copyright Convention and this practice had not been questioned before the International Court of Justice. He also considered that, without a specific link to the Berne Convention, the countries of the Berne Union would become a club of privileged members who would participate in an Executive Committee which in turn elected the members of the Coordination Committee of WIPO, a body of the utmost importance whose responsibilities included electing the Director General of WIPO and its highest officials. This was why he believed it necessary to increase the number of countries members of the Berne Union and thus prevent countries which acceded to the new Treaty without being a signatory to the Berne Convention finding themselves in the situation of being unable to participate in key decisions regarding WIPO.

35. Mr. SÉRY (Côte d'Ivoire) recalled that, at its meeting in Casablanca, the African Group had considered the Article in question and had supported the establishment of a close connection between the draft Treaty and the Berne Convention.

36. Mr. BOGSCH (Director General of WIPO) referred to the "close connection" mentioned in the prior intervention. It was his opinion that the close connection was there; it was established by Article 1, which said that every Contracting Party had to respect the obligations of the Berne Convention. He pointed out that it was not exact to say that all important decisions were taken in the Executive Committee of the Berne Union. In connection with the forthcoming election of the Director General of WIPO, a majority would have to be attained in the Executive Committee of the Berne Union, but that was the only important decision in which the Berne Union Members had some specific rights. He said that the Committee would be making not a legal decision, because legally everything was in order, since Contracting

Parties would have to respect the Berne Convention, but a political decision. He emphasized that, if the Committee established Berne Union membership as a condition for becoming party, it would throw out 40 countries and maybe more, because there were at least 20 countries which were Members of the United Nations and not Members of WIPO. Those 20 countries might soon become Members of WIPO, and then it would be 60 countries which would be barred from becoming party to the Treaties.

37. Mr. KHLESTOV (Russian Federation) supported the interventions by the Director General of WIPO and by the Delegation of Singapore. He felt that membership in the Berne Convention should not be a basis for excluding any State from the Treaty. It would be quite enough for the State to promise to fulfill or comply with the basic obligations of the Berne Convention.

38. Mr. ALABTHNI (Yemen) also associated his Delegation with the interventions by the Director General of WIPO and by the Delegation of Singapore. He believed that it was not necessary to advocate membership in the Berne Union with respect to the two Treaties. It was merely a question of respecting the provisions of the Berne Convention. In addition, he said, the new Treaties contained more rights than were included in the Berne Convention; consequently, he considered that the new Treaties provided new and further reasons for additional accessions. He said that the condition of Berne membership would prevent numerous countries from acceding to the new Treaties.

39. Mr. YAMBAO (Philippines) also opposed the requirement of Berne Union membership put forward by the group of Latin American and Caribbean countries. He observed that the Rome Convention had not grown so much because it was a closed Treaty. He said that the Treaties being considered at the Diplomatic Conference would not touch only on the Berne Convention—they would touch also on the Rome Convention. In his opinion, if the Latin America and Caribbean countries insisted on the Berne membership requirement to be imposed, the Committee should, for purposes of Treaty No. 2, require membership in the Rome Convention. He said that that would make it a really exclusive club, limited to only fifty-some States. Contrary to that position, he felt that the Delegations should want the widest possible application for the Treaties. From a legal point of view, it was in the best interests of Berne member States that non-Berne States become party to the Treaties.

40. Mr. MALAMBUGI (Tanzania) supported the position put forward by the Director General of WIPO. He felt that the Committee should attempt to entice as many States as possible to ratify the Treaties.

41. Mr. SÉRY (Côte d'Ivoire) said that, following the explanations by the Director General of WIPO and the statements by certain Delegations, his Delegation shared the view of the Director General provided that the provisions of Article 1 resolved the issue.

42. Mrs. JIMÉNEZ HERNÁNDEZ (Mexico) fully supported the position of the Delegation of Colombia, expressed on behalf of the Group of Latin American and Caribbean countries, as well as the statement by the Delegation of Chile. From the point of view of legal theory, it would be difficult not to lay down the requirement that accession to the Berne Convention was a requirement for accession to the new Treaty because the Treaty was deemed to be a special arrangement under Article 20 of the Berne Convention and it would not be easy to

conceive that a State might be party to a complementary agreement without being party to the main agreement.

43. Mr. CHRISTOV (Bulgaria) pointed out that Bulgaria had been party to the Berne Convention since 1921, and had witnessed the growth of membership in the Berne Union. He felt that the required application of Articles 1 to 21 and the Appendix of the Berne Convention, as specified in Article 1(4) of Treaty No. 1, would produce the necessary respect for the Berne Convention which was being requested by the Latin America and Caribbean countries. His Delegation, therefore, opposed the requirement of Berne Union membership, and supported the positions put forward by the Director General of WIPO. He also associated his Delegation with the intervention by the Delegation of the Philippines.

44. Mr. MAOPE (Lesotho) supported the points raised by the Director General of WIPO and the Delegation of Tanzania.

45. Mr. GASSER (Brazil) shared the views expressed by the Delegations of Colombia, Mexico and Chile.

46. Mr. BOGSCH (Director General of WIPO) reminded the Committee that time was getting short, and asked the countries of Latin America and the Caribbean if they could not accept the Article as drafted, subject to the final provisions of Article 1(4) of Treaty No. 1 containing the required application of Articles 1 to 21 and the Appendix of the Berne Convention.

47. The CHAIRMAN suggested that the matter could be put to a vote along the lines suggested by the Director General of WIPO.

48. Mr. ZAPATA LÓPEZ (Colombia) said that, although he complied with the request made by the Director General of WIPO, who knew better than anyone how the treaties administered by WIPO operated and were administered, he must underline the importance of the role played by the Coordination Committee, which was not only responsible for electing the Director General of WIPO but also for preparing the agenda and the draft budget of the Conference, the draft agenda for the General Assembly, advising the bodies of the Unions, the General Assembly, conferences and the Director General of WIPO regarding all administrative and financial matters and other issues of common interest to the Unions, particularly with regard to the budget for the common costs of the Unions. He pointed out that this important Committee was elected by the members of the Executive Committees set up under the Paris and Berne Unions. A simple reference to observance of the substantive provisions of the Berne Convention, as proposed, would not ensure respect for the administrative provisions he considered so important such as recognition of the exclusive rights of authors. Moreover, although the principle according to which ignorance of the law was no excuse existed in Colombia, these laws were published in the Official Bulletin of Colombia, in which all the instruments mandatory for Colombian citizens appeared. Consequently, he wondered whether a judge in a country that ratified the new Treaty without being a party to the Berne Convention could be asked to apply the provisions of the latter if they had not been published in the Official Bulletin of the country in question. In conclusion, he expressed the hope that, after five years of work and efforts, the outcome would not be a Treaty that did not correspond exactly to the original purposes.

49. Mr. CHEW (Singapore) suggested that it would be better to attempt to find consensus on that issue rather than proceed to a vote at that time. He asked all Delegations to consider their positions on the question under discussion, and to come to a consensus decision.

50. Mr. SCHÄFERS (Germany) supported the position put forward by the Director General of WIPO. He pointed out that, with respect to the election of the Director General of WIPO, he was not elected by the Executive Committee of the Berne Union, nor by the Coordination Committee. The Coordination Committee, composed of about 55 member countries, had the right by simple majority to make a proposal, and the final decision was taken by the General Assembly. All of the countries which might become Contracting Parties to the Treaties would be member States of WIPO; therefore, the attraction of having influence in the operations of the International Bureau through the Executive Committees, regarding, for example, the publication of laws, contributions, financial matters, etc., would serve to invite each and every Contracting Party to this Treaty to try to become a member of the Berne Union. He said that, therefore, he did not understand the concerns expressed by the Latin America and Caribbean countries.

51. Mr. ROGERS (Chile) did not wish a vote to be held for the moment.

52. The CHAIRMAN said that he was aware of the positions of the Delegations of Singapore and Germany and of the Latin American and Caribbean Group and asked whether the Delegation of Singapore was speaking on behalf of the Asian Group.

53. Mr. SÉRY (Côte d'Ivoire) said that his Delegation shared the views expressed by the representative of the Group of Latin American and Caribbean countries and considered that, in order to obtain the broadest possible support, Delegations should be given time to consult. Moreover, if there was to be a vote, he wondered whether the Rules of Procedure allowed a vote on a proposal by the Director General and expressed doubts in this connection.

54. Mr. JIMENEZ ADAY (Cuba) also thought that there should be a delay before voting because it was necessary to give everyone time to consider and reflect on the arguments put forward by the Delegations of Chile and Colombia, on behalf of the Group of Latin American and Caribbean countries.

55. Mr. YAMBAO (Philippines) asked the Committee to grant time to the Latin American and Caribbean countries, for them to reconsider their position. He also supported the suggestion by the Director General of WIPO, that those countries accept the Article as drafted, subject to finalization of Article I(4) in Treaty No. 1.

56. The CHAIRMAN suspended the meeting.

[*Suspension*]

*Number of instruments of ratification or accession necessary for the entry into force of the Treaties*

57. The CHAIRMAN invited Delegations to consider the question of the number of ratifications necessary for the entry into force of any Treaties adopted. He drew attention to the proposal made by the Delegation of Singapore on behalf of the Asian Group that the number should be one-third of Member States and also the proposal by the Group of Latin American and Caribbean countries that the figure should be only 15. He pointed out that the geographical scope of future treaties should be taken into account and said that the European Union had 15 Member States. He added that too high a number would raise problems of ratification liable to postpone the entry into force of the Treaties.
58. Mr. SÉRY (Côte d'Ivoire) said that the African Group wished to await the outcome of the meetings of Main Committee I before taking any decision on a number.
59. The CHAIRMAN asked the Delegation of Côte d'Ivoire to explain its position.
60. Mr. SÉRY (Côte d'Ivoire) explained that the number of ratifications could perhaps be lower than 15 if the content of the Treaty gave full and entire satisfaction to countries belonging to the African Group. On the other hand, a higher number might be considered if ratification of the Treaty required a longer period of reflection on the part of the States.
61. Ms. MARKOWITZ (United States of America) expressed the view of her Delegation that it was quite comfortable with the bracketed figure of "5." The Delegation was also able to support the suggestion made by the Director General of WIPO during the informal consultations that "10" would be a good number. She said that her Delegation's main concern, and the concern of the Director General of WIPO and a number of other speakers, was that the Treaties should come into force within a reasonable time. She did not want to set too high a number, so that those important obligations would remain in suspense internationally while the Treaties waited for a large number of countries to ratify.
62. The CHAIRMAN noted that new arguments had been put forward during the discussion, namely, on the one hand to leave States time for reflection before they took their decision to ratify the Treaty in question and to decide on the number of ratifications in the light of the substantive provisions and, on the other, the idea of the lowest possible number, supported by the Delegation of the United States of America.
63. Mr. BOGSCH (Director General of WIPO) indicated that each country would decide for itself when it should become a Contracting Party to the Treaties. He noted that, if the Treaties were very difficult to comply with, because of the new obligations, then it would take longer. If they would be easy Treaties, they would be ratified sooner. In his opinion, the content of the Treaties would have a direct influence on the speed in each individual country for the ratification. He said that that question had very little to do with the entry into force of the Treaties, because, even if the Treaties entered into force, it would not bind any country which had not ratified it.
64. Mr. KEMPER (Germany) supported the intervention by the Director General of WIPO. In his opinion, it did not make sense to hold the text of the Treaties hostage, so to speak. He noted that, if one were to look at the preamble and its third paragraph, namely, "recognizing the profound impact of the development and convergence of information and communication

technologies, on the creation and use of literary and artistic works,” one was able to see that it was discussing the adaptation or approximation of the advanced systems to the needs and requirements of the information society. He felt that everybody in the Committee and the Diplomatic Conference was well aware of the speed at which technological developments were taking place. Therefore, it did not make sense to set a high threshold. His Delegation had no problem with the “5,” as indicated in brackets. The Treaties should enter into force as soon as possible. He referred to what had been the course of action adopted at the Diplomatic Conference in 1994 for the Treaty on Trademark Laws. The ceiling for the entry into force was low, five instruments, and he observed that that was one of the reasons why it had already entered into force. He emphasized that there was no reason to put a high threshold for the entry into force of the Treaties.

65. Mr. HENNESSY (Ireland), speaking on behalf of the European Community and its Member States, said that those countries would have no problem with “5,” which had been suggested, or with “10,” as suggested by the Director General of WIPO. But, in any event, he stressed that the number should not be too high, and in that regard, “20” would seem like the absolute maximum number. It would be preferable that the Treaties come into force at an early date.

66. Ms. BETTS (Canada) supported the number “5,” and said that her Delegation was eager to see the Treaties come into force as quickly as possible.

67. Mr. KIM (Republic of Korea) said that his Delegation believed that the Treaties, once entered into force, would have a globally significant impact on related industries and international trade, on related goods and services, as well on a tremendous number of users, and therefore must not upset the universal character of exchange of information in that environment. He stressed that the impact of the Treaties would extend even to the countries which were not Contracting Parties to the Treaties. His Delegation supported the position of the countries of Asia and the Pacific that the number of ratifications or accessions should be 50.

68. Mr. CHEW (Singapore) referred to the discussions in Main Committee I, in which it had been indicated that the Treaties, when they would come into force, would have significant implications and a global impact. He pointed out that many of the articles in the Treaties created new rights, some of which were entirely new rights not found in the existing conventions. Existing rights under the Berne Convention had also been extended by the Treaties. He referred to the TRIPS Agreement, which, he said, had certain transitional provisions for developing countries which would enable some time to put into effect those obligations. He said that the Treaties in some areas had gone beyond the TRIPS Agreement. He drew attention to the fact that, as to the industrialized countries, the obligations of the TRIPS Agreement had been fully in force on January 1, 1996. But the developing countries had a few more years, until January 1, 2000, to implement their obligations under the TRIPS Agreement. Bearing that in mind, he said that the Delegates at the Conference would certainly not want to see the new Treaties overtaking obligations that had been agreed upon in a different forum, namely the World Trade Organization, only two years ago. That might create a pattern of negotiations where one treaty sought to supersede another so soon. He urged the Delegations from the industrialized countries to adopt a more reasonable stance on the question at hand, and referred to the suggestion by the Delegation of the European Community and its Members States, which had indicated that 20 would be a possible absolute maximum. He asked for flexibility, and indicated that the countries of the Asia and Pacific

region were prepared to also be flexible. He suggested that perhaps the number of parties that were taking part in this Conference could be used as an indication, and that a fraction of that number could be used as a guide as to the appropriate figure.

69. Mr. BOGSCH (Director General of WIPO) explained that the TRIPS Agreement would bind the developing countries which were members of the World Trade Organization in the year 2000. The present Treaty had no time limit for any country, developing or industrialized. He said that every country could wait a hundred years and could still not be forced to adhere to the Treaty. He stressed that there was a great difference in that, in the TRIPS Agreement, there was no flexibility. However, here, a country never had the obligation to accede to the Treaties. It was each country's decision. Each country could make its decision separately, individually, sovereignly, when it wanted to be bound by the Treaties. If the existence of the Treaties would have, as some of the participants had said, a *de facto* impact on the mood of the world, that impact, if it existed, would exist whether the Treaties were in force or not. It would have such an alleged impact from the end of the Diplomatic Conference, because there would be the Treaties the text of which would be known, whether in force or not. He asked the Delegates what was the value of preventing those five or ten countries which wanted to be bound to each other, to be able to do that. Since it was a voluntary decision by the countries, and since some countries wanted to have the benefits, why not let those countries which wanted to be bound soon to be bound soon. He said that it was not in any country's interest to prevent them.

70. Mr. SINHA (India) referred to the usefulness of the interventions by the Director General of WIPO. He expressed the desire of his Delegation that the Treaties come into force as early as possible. He also said that his Delegation would like the Treaties to be genuinely effective. He thought that the effectiveness of the Treaties might depend on how universal they would be. The Treaties dealt with the digital environment, and the digital environment did not respect national boundaries, but rather was genuinely global in nature, far more global in nature than any other medium known earlier. He pointed out that there was considerable interest among developing countries in intellectual property matters, and that that had been confirmed by the presence and the active participation of many developing countries in this Conference. In his opinion, the number of ratifications or accessions would have to be distinctly higher than that number considered in other treaties administered by WIPO, because there were over 120 Member States participating in the Diplomatic Conference. He felt that any figure agreed upon should have bearing on, or should be in the context of, that participation rather than earlier participations.

71. Mr. SCHONEVELD (Australia) indicated that his Delegation agreed with the interventions made by the Delegations of Canada and the United States of America on that issue. His Delegation would be prepared to accept 5 or 10, but was concerned that a higher number might unnecessarily delay the Treaties' coming into force amongst those countries that wanted to implement it.

72. The CHAIRMAN stressed that time was getting short, and that the question of the number of ratifications or accessions necessary for the Treaties to come into force had to be decided, since the important question involving the European Community and its Member States still required resolution. He said that the number of ratifications or accessions was a technical question, and not a political decision. He said that he had no problem with adjournment for informal consultations, but that, if the matter could not be decided by consensus, it would be put to a vote by the Committee.



73. Mr. BOGSCH (Director General of WIPO) stated that the discussion on that question had been thorough, and that everybody should be clear on the various arguments and reasons connected to that item. He suggested that perhaps consensus could be reached during an adjournment. He asked if any Delegations wished to make some explanation on the proposal of the European Community and its Member States, so that when the groups discussed that issue among themselves, they would already have answers to possible questions which they might have. He also pointed out that it would be against the Rules of Procedure to have a question decided only in the Plenary of the Conference. The Plenary of the Conference, according to the Rules, should pronounce itself on what was proposed by the Main Committees.

74. The CHAIRMAN asked the Delegations to try to resolve the questions which were pending during the adjournment. One was the number of ratifications or accessions necessary for the Treaties to come into force. He asked if there were any questions on the proposal by the European Community and its Member States.

75. Mr. SÉRY (Côte d'Ivoire) said that the African Group remained flexible regarding the number of ratifications required. With regard to the issue of the European Community, before taking a decision he wished to receive the relevant document in French.

*Voting by intergovernmental organizations party to the Treaties*

76. The CHAIRMAN reminded the Committee that it had before it the Basic Proposal, a second proposal on the framework of admission of new members, and a third proposal by the European Community and its Member States.

77. Mr. SINHA (India) asked for clarification on two points. First, regarding the European Community and its Member States, and referring to the proposed new Article 98(3)(b), he said that the last sentence was rather complex. He read that sentence: "The rights to vote as exercised between an intergovernmental organization and its member States, Contracting Parties to this Treaty, shall not, in any one vote, be exercised in any combination of votes, exercised by the member States and votes exercised by the organization." He indicated that that sentence, in its current form, was not clear, and asked that it be made more clear. Second, he referred to a proposal that was to recall a statement in the minutes of the Conference, specifically, that "the European Community and its Member States hereby indicate that their common practice is to deposit their instruments of ratification or accession simultaneously." He requested to have clarification as to what exactly was the legal status of the minutes of the Conference as compared to the text of the Treaties.

78. Mr. STOODLEY (European Communities) offered a clarification regarding the language in the proposal of the European Community and its Member States for Article 98(3)(b). He referred to discussions in connection with the Rules of Procedure of the Conference concerning the way in which the European Community would exercise voting rights. He said that, on behalf of the European Communities, his Delegation had made a clear statement that it was never the Delegation's intention to combine any voting with votes by the Member States. As an example, he mentioned the case where the Member States individually would be exercising their voting rights, but not all 15 of the Member States of the Community

exercised those rights, for example, only 10 of them did so. He emphasized that, in those circumstances, the European Community would not ever intervene to exercise the remaining five votes. He stated that the purpose of the language proposed was to give effect to that sentiment, that where the Member States exercised their voting rights individually, they would do so as they decided, if they were present. However, where the European Community exercised the voting rights, it would do so *en bloc* for the 15 Member States, which was, in fact, the capacity in which the European Community acted. He stressed that there would never be a case of individual Member States in a single vote exercising votes and the Community seeking to complete the votes for those Member States which did not exercise their rights.

79. Mr. BOGSCH (Director General of WIPO) clarified that the prior intervention was in respect to the second sentence of the proposal of the European Community and its Member States. He pointed out that the third sentence had to do with another question, namely, whether the Member State had to be present during the voting, which had been the controversial issue when the Rules of Procedure were being adopted. As far as the last sentence was concerned, the European Community and its Member States had indicated that their common practice was to deposit their instruments of ratification or accession simultaneously, and it had been proposed that that statement should be recorded in the minutes of the Conference. He referred to the intervention by the Delegation of India, and said that an obligation came only from the Treaty, and anything that was in the records was something which was simply recorded. It merely would record the fact that there existed a practice in the European Community.

80. The CHAIRMAN adjourned the meeting, and indicated that the next session of the Committee would be its last one.

*Third Session*  
*Thursday, December 19, 1996*  
*Afternoon*

*Adoption of the Administrative Provisions and Final Clauses*

81. The CHAIRMAN opened the meeting, and introduced document CRNR/DC/83 Prov., dated December 18, 1996, for consideration by the Committee, and proposed that it be addressed article by article. He referred to Article 100(1)(a), (b) and (c). There were no objections, and it was approved. He referred to paragraph (2)(a), (b) and (c). There were no objections, and it was approved. He referred to paragraph (3)(a). There were no objections, and it was approved. He referred to subparagraph (b), and read it: "Any Contracting Party that is an intergovernmental organization may participate in the vote in place of its Member States with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its rights to vote or vice versa." There were no objections, and it was approved. He referred to paragraphs (4) and (5). There were no objections, and they were approved. He referred to Article 101. There were no objections, and it was approved. He referred to Article 102(1), and read it: "Any Member State of WIPO may become party to

this Treaty.” There were no objections, and it was approved. He referred to paragraph (2). There were no objections, and it was approved. He referred to paragraph (3). There were no objections, and it was approved. He referred to Article 103. There were no objections, and it was approved. He referred to Article 104. There were no objections, and it was approved. He referred to Article 105, and read it: “This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.” There were no objections, and it was approved. He referred to Article 106. There were no objections, and it was approved. He referred to Article 107. There were no objections, and it was approved. He referred to Article 108. There were no objections, and it was approved. He referred to Article 109. There were no objections, and it was approved. He referred to Article 110. There were no objections, and it was approved.

### *Closing remarks*

82. The CHAIRMAN congratulated all of the Delegations, and opened the floor for declarations.

83. Mr. SÉRY (Côte d’Ivoire), taking the floor on behalf of the African Group, expressed his warm gratitude and congratulations to the Chairman on the work accomplished. He thanked the Director General of WIPO for his active participation and wise advice, as well as all the Delegations that had made concessions in order to achieve positive results by consensus.

84. Mr. KHLESTOV (Russian Federation) associated his Delegation with the congratulations to the Chairman by the Delegation of Côte d’Ivoire and the other such interventions. He said that the Committee had achieved compromise by all working together. He also congratulated the Director General of WIPO, the Secretariat and the interpreters.

85. Mr. YAMBAO (Philippines) joined all the Delegations in congratulating the Chairman for his able leadership of the Committee, and also noted the efforts by the Director General of WIPO, which he called ‘heroic.’ He also thanked all the Delegations present, on behalf of the Asian and Pacific group of countries, for the spirit of cooperation that had prevailed throughout the work of the Committee. He hoped that the same spirit would also prevail in the other rooms, so that the following day it could be said that they had succeeded in the Conference.

86. Ms. MARKOWITZ (United States of America) expressed the appreciation of her Delegation to the Chairman, the Director General of WIPO, the Secretariat, the interpreters and all participants, for bringing the work of the Committee to a successful conclusion. She observed that the decision concerning making provisions for the European Community to become party to the Treaties was very important. She stated that the provisions approved in the Committee, particularly Articles 102 and 103, offered a firm legal basis for pursuing any matter related to the Treaties with the European Community as well as with its Member States who would be party to the Treaties.

87. Mr. STOODLEY (European Communities) thanked the Chairman, the Director General of WIPO, the Secretariat, and all Delegations, for agreeing to include the European Community and its Member States with the status of a party to the Treaties.

88. Mr. ROGERS (Chile), speaking on behalf of the Group of Latin American and Caribbean countries, associated himself with the congratulations expressed by other Delegations to the Chairman of Main Committee II for the way in which he had directed the debates and thanked the Director General of WIPO, as well as the Secretariat, for the work accomplished.

89. Ms. BETTS (Canada) thanked the Chairman, the Director General of WIPO, and the Secretariat. She agreed that the provisions for the European Community to become party to the Treaties were very important.

90. Mr. BOGSCH (Director General of WIPO) thanked all Delegations for their efforts in the Committee.

91. The CHAIRMAN thanked all participants involved in the Committee's work. He noted that, for him, being the Chairman had been an unforgettable experience. He said that he was a professor of international law, and now he could say to his students that he had the magnificent experience of being the chairman of a committee in a Diplomatic Conference. In his opinion, very few professors of international law could say that they have had such a magnificent opportunity. For that, he expressed deep-felt thankfulness, and with that, he closed the meeting.



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## INDEXES

## NOTE CONCERNING THE USE OF THE INDEXES

These *Records* contain six indexes. The first two refer to the contents of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), respectively, under the number and title of each of the Articles of the Treaties.

The last four refer to the participants in the Diplomatic Conference: one to the Member Delegations of States that were represented in the Conference, one to the observer Delegations of States that were represented in the Conference, one to the Organizations that were represented in the Conference and the last to the individuals who represented the said States and Organizations.

All references in the indexes are to page numbers in these *Records*. Italicized numbers in the indexes to the Treaties refer to the page numbers of the summary minutes of the Diplomatic Conference concerning the adoption of the relevant Article or agreed statement by one of the Main Committees (in order to submit the draft to the Plenary of the Conference) or by the Plenary of the Conference.

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- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490
- Draft proposed by Main Committee I: 520
- Draft adopted by Main Committee I: 533
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 603, 607, 609, 611, 623, 624, 625, 627, 631, 633, 634
- Text of the paragraph: 45
- Article 2(d): "producer of a phonogram"*  
(*Article 2(d) in the Basic Proposal*)
- Text in the Basic Proposal: 44, 251
- Discussion in Main Committee I: 684 to 691, 759
- Proposal for amendment by the Delegation of Argentina: 426
- Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 446
- Proposal for amendment by the Delegation of Peru: 496
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 451
- Draft proposed by Main Committee I: 520
- Draft adopted by Main Committee I: 533
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 607, 627
- Text of the paragraph: 45

*Article 2(e): "publication"*  
(Article 2(e) in the Basic Proposal)

Text in the Basic Proposal: 44, 253

Discussion in Main Committee I: 680 to 681, 684 to 691, 759

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 451

Draft proposed by Main Committee I: 520

Draft proposed by Main Committee I: 533

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 607, 627

Text of the paragraph: 45

*Agreed statement*

Discussion in Main Committee I: 780

Draft agreed statement submitted by Main Committee I to the Plenary: 547

Discussion in the Plenary: 629

Text of the statement: 79

*Article 2(f): "broadcasting"*  
(Article 2(g) in the Basic Proposal)

Text in the Basic Proposal: 44, 253

Notes in the Basic Proposal: 252

Discussion in Main Committee I: 684 to 691, 759

Proposal for amendment by the Delegation of Australia: 435

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 452

Draft proposed by Main Committee I: 520

Draft adopted by Main Committee I: 533 to 534

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 607, 627

Text of the paragraph: 45

*Article 2(g): "communication to the public"*  
(Article 2(h) in the Basic Proposal)

Text in the Basic Proposal: 46, 255

Notes in the Basic Proposal: 254

Discussion in Main Committee I: 684 to 691, 699 to 703, 759

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 452

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 520

Draft adopted by Main Committee I: 534

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 603, 607, 609, 611, 623, 624, 625, 627, 631, 633, 634

Text of the paragraph: 47

**Article 3: Beneficiaries of Protection under this Treaty**

(Article 3 in the Basic Proposal)

Text in the Basic Proposal: 46, 257

Notes in the Basic Proposal: 256 to 258

Discussion in Main Committee I: 699 to 703, 725 to 730, 759

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 417

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 452

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 520 to 521

Draft adopted by Main Committee I: 534

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 603, 609, 611, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 47



*Agreed statements*

Discussion in Main Committee I: 781

Draft agreed statement submitted by Main Committee I to the Plenary: 547

Discussion in the Plenary: 629

Text of the statements: 80

**Article 4: National Treatment**  
(*Article 4 in the Basic Proposal*)

Text in the Basic Proposal: 46, 261

Discussion in Main Committee I: 699 to 703, 725 to 730, 770 to 776

Proposal for amendment by the Delegations of the European Community and its Member States: 415

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 417

Proposal for amendment by the Delegation of Canada: 425

Proposal for amendment by the Delegations of the European Community and its Member States: 463 to 464

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 452

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 521

Draft adopted by Main Committee I: 534

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 609, 611, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 47

## CHAPTER II

### RIGHTS OF PERFORMERS

**Article 5: Moral Rights of Performers**  
(*Article 5 in the Basic Proposal*)

Text in the Basic Proposal: 48, 263 to 265

Notes in the Basic Proposal: 262 to 264

Discussion in Main Committee I: 691 to 697, 699 to 703, 765, 766, 783

Proposal for amendment by the Delegation of Singapore: 397

Proposal for amendment by the Delegation of Argentina: 413 to 414

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 453

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 522

Draft adopted by Main Committee I: 535

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 609, 611, 613, 617, 623, 624, 625, 627, 631 to 634

Text of the Article: 49

**Article 6: Economic Rights of Performers in their Unfixed Performances**  
(*Article 6 in the Basic Proposal*)

Text in the Basic Proposal: 48, 267

Notes in the Basic Proposal: 266

Discussion in Main Committee I: 663 to 664, 699 to 703, 759, 766 to 767

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of Switzerland: 420

Proposal for amendment by the Delegation of Canada: 425

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 453

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 522

Draft adopted by Main Committee I: 535

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 609, 611, 613, 617, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 49

**Article 7: Right of Reproduction**  
(Article 7 in the Basic Proposal)

Text in the Basic Proposal: 50, 269 to 271

Notes in the Basic Proposal: 268 to 274

Discussion in Main Committee I: 667 to 675, 699 to 703, 767

Proposal for amendment by the Delegation of Israel: 406

Proposal for amendment by the Delegation of Norway: 407

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of Australia: 435

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 446 to 447

Proposal for amendment by the Delegation of Israel: 488

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 454

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491

Draft proposed by Main Committee I: 523

Draft adopted by Main Committee I: 535

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 609, 610, 611, 613, 617, 620, 623, 624, 625, 627, 631, 633, 634

Final text of the Article: 51

*Agreed statement*

Discussion in Main Committee I: 767, 784 to 796, 797 to 798

Discussion in the Plenary: 629 to 630

Text of the statement: 80

**Article 8: Right of Distribution**  
(Article 9 in the Basic Proposal)

Text in the Basic Proposal: 50 and 52, 279 to 281

Notes in the Basic Proposal: 278 to 288

Discussion in Main Committee I: 652 to 655, 699 to 703, 760 to 761, 762, 782, 783

Proposal for amendment by the Delegation of Singapore: 397

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of the United States of America: 466

Proposal for amendment by the Delegation of India: 485

Proposal for amendment by the Delegation of Australia, Canada and New Zealand: 495

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 454 to 455

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 523

Draft adopted by Main Committee I: 536

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 603, 609, 610, 611, 613, 617, 619, 620, 623, 624, 625, 627, 630, 631, 633, 634

Text of the Article: 53

*Agreed statement*

Discussion in Main Committee I: 780

Draft agreed statement submitted by Main Committee I to the Plenary: 547

Discussion in the Plenary: 629

Text of the statement: 79

**Article 9: Right of Rental***(Article 10 in the Basic Proposal)*

Text in the Basic Proposal: 52, 283

Notes in the Basic Proposal: 282

Discussion in Main Committee I: 657 to 663, 699 to 703, 762

Proposal for amendment by the Delegation of Japan: 398

Proposal for amendment by the Delegation of Russian Federation: 399

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of Australia: 436

Proposal for amendment by the Delegation of the United States of America: 467

Proposal for amendment by the Delegation of Japan: 494

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 455 to 456

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 524

Draft adopted by Main Committee I: 536

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 607, 609, 611, 613, 617, 618, 620, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 53

*Agreed statement*

Discussion in Main Committee I: 780

Draft agreed statement submitted by Main Committee I to the Plenary: 547

Discussion in the Plenary: 629

Text of the statement: 79

**Article 10: Right of Making Available of Fixed Performances***(Article 11 in the Basic Proposal)*

Text in Basic Proposal: 54, 285

Discussion in Main Committee I: 675 to 679, 699 to 703, 762

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447

Proposal for amendment by the Delegation of Argentina: 486

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 456

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491

Draft proposed by Main Committee I: 524

Draft adopted by Main Committee I: 536

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 603, 609, 611, 613, 617, 618, 623, 624, 625, 627, 631, 632, 633, 634

Final text of the Article: 55

## CHAPTER III

## RIGHTS OF PRODUCERS OF PHONOGRAMS

**Article 11: Right of Reproduction***(Article 14 in the Basic Proposal)*

Text in the Basic Proposal: 54, 295

Notes in the Basic Proposal: 294 to 298

Discussion in Main Committee I: 667 to 675, 768

Proposal for amendment by the Delegation of Norway: 407

Proposal for amendment by the Delegation of Israel: 407

Proposal for amendment by the Delegation of Australia: 435

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali,

- Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447
- Proposal for amendment by the Delegation of Israel: 489
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 456 to 457
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491
- Draft proposed by Main Committee I: 525
- Draft adopted by Main Committee I: 537
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 601, 609, 610, 611, 613, 617, 620, 627
- Text of the Article: 55
- Agreed statement*
- Discussion in Main Committee I: 768, 784 to 796, 797 to 798
- Discussion in the Plenary: 629 to 630
- Text of the statement: 80
- Article 12: Right of Distribution**  
(Article 16 in the Basic Proposal)
- Text in the Basic Proposal: 56, 303 to 305
- Notes in the Basic Proposal: 302 to 304
- Discussion in Main Committee I: 652 to 655, 760 to 761, 762, 782, 783
- Proposal for amendment by the Delegations of the European Community and its Member States: 414
- Proposal for amendment by the Delegation of the United States of America: 467
- Proposal for amendment by the Delegation of India: 485
- Proposal for amendment by the Delegation of Australia, Canada and New Zealand: 495
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 457 to 458
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490
- Draft proposed by Main Committee I: 525
- Draft adopted by Main Committee I: 537
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 601, 607, 613, 617, 618, 620, 627
- Text of the Article: 57 and 59
- Agreed statement*
- Discussion in Main Committee I: 780
- Draft agreed statements submitted by Main Committee I to the Plenary: 547
- Discussion in the Plenary: 629
- Text of the statement: 79
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 601, 610, 613, 617, 619, 620, 624, 627, 630
- Text of the Article: 57
- Agreed statement*
- Discussion in Main Committee I: 780
- Draft agreed statement submitted by Main Committee I to the Plenary: 547
- Discussion in the Plenary: 629
- Text of the statement: 79
- Article 13: Right of Rental**  
(Article 17 in the Basic Proposal)
- Text in the Basic Proposal: 56 and 58, 307
- Discussion in Main Committee I: 657 to 663, 762
- Proposal for amendment by the Delegation of Japan: 398
- Proposal for amendment by the Delegation of Australia: 435
- Proposal for amendment by the Delegation of the United States of America: 467
- Proposal for amendment by the Delegation of Japan: 494
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 458
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490
- Draft proposed by Main Committee I: 526
- Draft adopted by Main Committee I: 537
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 601, 607, 613, 617, 618, 620, 627
- Text of the Article: 57 and 59
- Agreed statement*
- Discussion in Main Committee I: 780
- Draft agreed statements submitted by Main Committee I to the Plenary: 547
- Discussion in the Plenary: 629
- Text of the statement: 79

**Article 14: Right of Making Available of Phonograms**  
(*Article 18 in the Basic Proposal*)

Text in the Basic Proposal: 58, 309

Notes in the Basic Proposal: 308 to 310

Discussion in Main Committee I: 675 to 679, 762

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447

Proposal for amendment by the Delegation of Argentina: 486

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 458

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491

Draft proposed by Main Committee I: 526

Draft adopted by Main Committee I: 538

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 613, 617, 618, 627, 632

Text of the Article: 59

CHAPTER IV

COMMON PROVISIONS

**Article 15: Right to Remuneration for Broadcasting and Communication to the Public**  
(*Articles 12 and 19 in the Basic Proposal*)

Text in the Basic Proposal: 58 and 60, 289 to 291, 313 to 315

Notes in the Basic Proposal: 288 to 290, 312 to 314

Discussion in Main Committee I: 684 to 691, 769 to 770, 772 to 776

Proposal for amendment by the Delegation of Switzerland: 420

Proposal for amendment by the Delegation of Canada: 425

Proposal for amendment by the Delegation of the United States of America: 428 to 429

Proposal for amendment by the Delegation of Australia: 436

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 459

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 526 to 527

Draft adopted by Main Committee I: 538

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 617, 627

Text of the Article: 59 and 61

*Agreed statements*

Discussion in Main Committee I: 769 to 770, 781

Draft agreed statements submitted by Main Committee I to the Plenary: 547

Discussion in the Plenary: 629

Text of the statements: 80

**Article 16: Limitations and Exceptions**  
(*Articles 13 and 20 in the Basic Proposal*)

Text in the Basic Proposal: 62, 293, 317

Notes in the Basic Proposal: 292, 316

Discussion in Main Committee I: 703 to 709, 770

Proposal for amendment by the Delegation of Israel: 406, 407

Proposal for amendment by the Delegation of the United States of America: 412

Proposal for amendment by the Delegation of Israel: 488, 489

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 459

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 528

Draft adopted by Main Committee I: 538 to 539

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 602, 609, 610, 612, 613, 616, 617, 619, 627

Text of the Article: 63

*Agreed statements*

Discussion in Main Committee I: 778 to 780, 784 to 796, 797 to 798

Discussion in the Plenary: 629 to 630

Text of the statements: 80

**Article 17: Term of Protection**  
(*Article 21 in the Basic Proposal*)

Text in the Basic Proposal: 62, 319

Notes in the Basic Proposal: 318

Discussion in Main Committee I: 682 to 684, 759

Proposal for amendment by the Delegation of the United States of America: 412 to 413

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416

Proposal for amendment by the Delegation of Australia: 436 to 437

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 460

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490

Draft proposed by Main Committee I: 528

Draft adopted by Main Committee I: 539

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 603, 609, 611, 617, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 63

**Article 18: Obligations concerning Technological Measures**  
(*Article 22 in the Basic Proposal*)

Text in the Basic Proposal: 64, 321

Notes in the Basic Proposal: 320

Discussion in Main Committee I: 709 to 716, 759

Proposal for amendment by the Delegation of the Republic of Korea: 408

Proposal for amendment by the Delegation of Jamaica: 419

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 460

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491

Draft proposed by Main Committee I: 528

Draft adopted by Main Committee I: 539

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 601, 610, 613, 616, 617, 618, 619, 627

Text of the Article: 65

**Article 19: Obligations concerning Rights Management Information**  
(*Article 23 in the Basic Proposal*)

Text in the Basic Proposal: 64, 323

Notes in the Basic Proposal: 322

Discussion in Main Committee I: 709 to 716, 737, 759

Proposal for amendment by the Delegation of Hungary: 421

Proposal for amendment by the Delegation of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela: 421

Proposal for amendment by the Delegation of the United States of America: 429 to 430

Proposal for amendment by the Delegation of Korea: 432

Proposal for amendment by the Delegation of Algeria, Angola, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Egypt, Ethiopia, Gabon, Gambia, Ghana,

- Kenya, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritius, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Togo, Tunisia, United Republic of Tanzania, Zambia and Zimbabwe: 447 to 448
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 460 to 461
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490
- Draft proposed by Main Committee I: 528 to 529
- Draft adopted by Main Committee I: 539 to 540
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 613, 616, 627
- Text of the Article: 65
- Agreed statement*
- Discussion in Main Committee I: 780
- Draft agreed statement: 547
- Discussion in the Plenary: 629
- Text of the statement: 81
- Article 20: Formalities**  
(*Article 24 in the Basic Proposal*)
- Text in the Basic Proposal: 66, 325
- Notes in the Basic Proposal: 324
- Discussion in Main Committee I: 725 to 730, 759
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 461
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 490
- Draft proposed by Main Committee I: 529
- Draft adopted by Main Committee I: 540
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 627
- Text of the Article: 67
- Article 21: Reservations**  
(*Article 25 in the Basic Proposal*)
- Text in the Basic Proposal: 66, 74, 151, 327
- Notes in the Basic Proposal: 150, 326
- Discussion in Main Committee I: 725 to 730
- Discussion in Main Committee II: 800, 801 to 802, 814
- Proposal for amendment by the Delegation of Israel: 394
- Proposal for amendment by the Delegations of the European Community and its Member States: 414 to 415
- Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416
- Proposal for amendment by the Delegation of New Zealand: 426 to 427
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 461
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491
- Draft proposed by Main Committee I: 529
- Draft adopted by Main Committee I: 540
- Draft prepared by Main Committee II: 512
- Draft adopted by Main Committee II: 516
- Draft Treaty, submitted by Main Committees I and II to the Plenary: 544
- Discussion in the Plenary: 603, 609, 610, 611, 616, 623, 624, 625, 627, 631, 633, 634
- Text of the Article: 67
- Article 22: Application in Time**  
(*Article 26 in the Basic Proposal*)
- Text in the Basic Proposal: 66 and 68, 329
- Notes in the Basic Proposal: 328
- Discussion in Main Committee I: 725 to 730, 765, 770
- Proposal for amendment by the Delegation of Korea: 409
- Proposal for amendment by the Delegation of Canada: 425
- Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 462
- Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491
- Draft proposed by Main Committee I: 529
- Draft adopted by Main Committee I: 540

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 617, 627

Text of the Article: 67 and 69

**Article 23: Provisions on Enforcement of Rights**  
(Article 27 in the Basic Proposal)

Text in the Basic Proposal: 68, 331, 225 to 233

Discussion in Main Committee I: 716 to 721, 759, 770

Proposal for amendment by the Delegations of the European Community and its Member States: 414

Proposal for scope of coverage for audiovisual performers by the Delegation of the United States of America: 416 to 417

Proposal for amendment by the Delegation of Jamaica: 422

Proposal for amendment by the Delegation of the United States of America: 466

Text in the partly consolidated Treaty, prepared by the Chairman of Main Committee I: 462 to 463

Proposal for amendment to the partly consolidated Treaty by the Delegation of China: 491

Draft proposed by Main Committee I: 530

Draft adopted by Main Committee I: 540 to 541

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 603, 609, 611, 613, 616, 623, 624, 625, 627, 631, 633, 634

Text of the Article: 69

CHAPTER V: ADMINISTRATIVE AND FINAL CLAUSES

**Article 24: Assembly**  
(Article 98 in the Basic Proposal)

Text in the Basic Proposal: 70, 137 to 139

Notes in the Basic Proposal: 136 to 138

Discussion in Main Committee II: 799, 800 to 801, 803, 812 to 813, 814

Communication by the European Commission: 374 to 376

Proposal for amendment by the Delegations of the European Community and its Member States: 498 to 499

Proposal for amendment by the Delegations of the European Community and its Member States: 541

Draft proposed by Main Committee II: 512

Draft adopted by Main Committee II: 512 to 513

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 627

Final Text of the Article: 71

**Article 25: International Bureau**  
(Article 99 in the Basic Proposal)

Text in the Basic Proposal: 72, 141

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Discussion in Main Committee II: 799, 801, 814

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**Article 26: Eligibility for Becoming Party to the Treaty**  
(Article 100 in the Basic Proposal)

Text in the Basic Proposal: 72, 143

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**Article 27: Rights and Obligations under the Treaty**  
(*Article 100bis in document CRNR/DC/81, Article 103 in the Draft proposed by Main Committee II*)

Discussion in Main Committee II: 814

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Draft proposed by Main Committee II: 512

Draft adopted by Main Committee II: 514

Draft Treaty, submitted by Main Committees I and II to the Plenary: 544

Discussion in the Plenary: 616, 627

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**Article 28: Signature of the Treaty**  
(*Article 101 in the Basic Proposal*)

Text in the Basic Proposal: 72, 145

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Discussion in Main Committee II: 799, 801, 802, 814

Draft proposed by Main Committee II: 512

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