

WIPO: December Discussions on a Possible Protocol to the Berne Convention

IRIS 1995-4:1/6

*Jaap Haeck
Institute for Information Law (IViR), University of Amsterdam*

In IRIS 1995-2: 3, reference was made to the December meeting of the Committee of Experts on a possible Protocol to the Berne Convention.

During this meeting, in the General discussion the sudden change of front of the U.S. delegation was remarkable. Had the U.S. during the previous three meetings been opposed to a possible Protocol, now it stated that the intellectual property rights should be re-examined in view of the establishment of a global information structure, "... and that the preparation of a possible Protocol provided a useful opportunity for this re-examination." The delegation also pointed out that the information structure could 'benefit all countries', if only new international understanding was reached for a better protection of authors.

The Committee agreed that the possible Protocol should contain provisions of a declaratory nature on the protection of computer programs. Discussions are still open as to the exact wording of the provisions; should the possible Protocol state that computer programs are literary works, or that they have to be protected as such? Although the formulation is still uncertain, the Committee agreed that as for databases, the possible Protocol should contain a provision "... making it clear that compilations - or "collections" - of data or other material, including databases, which by reason of the selection or arrangement of their contents constitute intellectual creations, were protected by copyright, and that such protection neither extended to the data or material itself nor prejudiced any copyright that might subsist in the contents of the database." The majority found that the possible protection of non-original databases "... should be considered for a possible inclusion in a new international instrument." In relation to the right of distribution the Committee agreed that copies should only be understood as tangible objects. To digital transmissions "... the right of communication to the public could be applied together with the right of reproduction and possibly the right of distribution." Another approach, supported by some delegations would be to create a new right of "digital delivery".

General approval was found to the inclusion of a rental right in the possible Protocol. Discussions are still open on the question if the rental right provisions should contain an exhaustive list of works to which it applies, or a minimum list, or if it should apply to all categories of works except works of architecture of

works of applied art.

With regard to the proposed right of importation views differed. The subject is kept on the agenda.

The Committee supported the abolition of non-voluntary licenses for sound recordings of musical works.

However, some interested parties disagreed. Therefore the subject remains on the agenda. All delegations agreed on the abolition of non-voluntary licenses for broadcasting.

The duration of protection of photographic works would have to be normalized, i.e. the same as for other works.

Finally the possible inclusion of provisions in the Protocol on circumvention of technical devices and right management systems was discussed. There was a positive approach to this inclusion, although many different questions were left open.

The next session of the Committee will be in September of this year.

Report of the fourth session of the Committee of experts on a possible protocol to the Berne Convention, Geneva, 5-9 December 1994. WIPO document BCP/CE/IV/3.

