

WIPO: Summary of the September Discussions on a Possible Berne Protocol and a Possible New Instrument

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In IRIS 1995-4: 5-6 the December discussions of the Committee of Experts on a possible Protocol to the Berne Convention and the discussions on the New possible instrument for the protection of the rights of performers and phonograms were summarized. These meetings were followed by meetings last September, during which discussions took place on the basis of proposals of the European Union, the United States and Australia. During the sessions it was decided that the work of the two committees of experts (resp. on the Protocol and on the New Instrument) would be combined as far as possible for the sake of efficiency. A clear distinction would however be asserted.

Progress on the Berne Protocol As to computer programs and databases the Committee decided that the proposals of the EU and the US could be inserted in a draft of the Treaty.

The abolition of non-voluntary licenses for sound recording of musical works is still causing difficulties. Some governments foresee problems with the disruption of established business practices. The subject remains on the agenda for the next meeting. In the meantime the governments will invest the possible difficulties in short papers. Although all delegations had in December agreed on the abolition of non-voluntary licenses for broadcasting, the abolition of non-voluntary licences for cable-retransmission of a broadcast could not be agreed upon.

Existing business practices could cause difficulties. The proposal for total abolition remains on the agenda for the Committee's next meeting.

For the normalisation of the duration of protection of photographic works the proposals by the EU and Australia will be carried over to a draft treaty.

Retaining on the agenda is the subject of communication to the public, because of the digital transmission.

Progress on the New Instrument As for the economic rights of performers, the EU proposal for reproduction rights and exclusive rights to authorise broadcasting, communication to the public and fixation of their live performances found strong support. The US wanted to minimize the rights of performers to the possibility of preventing certain acts. Furthermore the US wanted the rights to be restricted to

performances on a phonogram. The EU wanted to extend the provisions to audiovisual performers. No agreement was found and the subject remains on the agenda for the next meeting.

A moral rights provision was greatly supported, but will only be accepted by the US if it follows article 6bis of the Berne Convention, and if the moral rights will be waivable.

Progress on the Berne Protocol as well as on the New Instrument A right of distribution was still strongly supported. Most governments could not agree with an importation right as was supported by the US. The topic remains on the agenda.

A rental right was broadly supported for all categories of works, although some governments want to restrict the rental right to a limited number of categories.

The US stated that the Committee should consider the recognition of a digital transmission right or a distribution-by-transmission right . These proposals were strongly opposed. Further research on the topic is required and it remains therefore on the agenda. The possible protection of non-original databases remains on the agenda as well as the enforcement of rights .

The next meeting of the Committees will be held in February 1996 . For this meeting Government members of the Committees are invited to make further proposals. If this work has made sufficient progress, a conclusionary conference on the treaties will be held in July 1996 ; and once work on the proposals has gained momentum.

