Publication of three draft treaties in preparation of Diplomatic Conference

IRIS 1996-9:1/9

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On 30 August 1996, the World Intellectual Property Organization (WIPO) published the drafts of three treaties that are to be concluded at a diplomatic conference in Geneva which will take place from 2-20 December 1996. The first draft concerns an amended version of the Protocol to the Berne Convention which has been the subject of intense intergovernmental consultation during recent years. The Treaty would no longer have the status of a "protocol", because it would be open for adherence by States that are not member of the Berne Union. Also, the European Union, that has carried out the negotiations on behalf of its Member States, might become a party to the new treaty. The "certain questions" which are treated in the Treaty, pertain particularly to the use of copyright protected works in digital networks. One of the most important provisions is a proposal to extend the exclusive right of reproduction to include the temporary fixation of a work in a computer memory. However, contracting States would retain a limited freedom to exempt certain "transient" reproductions from the scope of the reproduction right. The Treaty would also widen the scope of the right of communication to the public to include interactive forms of communication, such as video-on-demand services. In addition, it would include the obligation on the part of the contracting States to prohibit the importation, production and distribution of products and software whose primary purpose is to defeat copy protection technology. Another provision would prohibit the removal or alteration of electronic rights management information.

Finally, the Treaty would confirm, in line with the existing TRIPs Agreement, that computer programs and databases qualify for protection under the Berne Convention.

The second draft Treaty concerns the protection of neighbouring rights of performing artists and phonogram producers by the "New Instrument", that has been under discussion in Geneva parallel with the Berne Protocol. The Treaty would grant to performing artists and phonogram producers an exclusive right of on-demand-delivery, either via the Internet or any other interactive medium. The Rome Convention of 1961, which would be complemented by the new treaty, does not contain a similar exclusive right.

The third draft treaty concerns the protection of non-original databases. In line with the EC Directive of 11 March 1996 on the legal protection of databases

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(Directive 96/9/EC see : IRIS 1996-2: 13, IRIS 1996-3: 6, and IRIS 1996-4: 6), the draft Treaty would protect the producers of (economically valuable) databases, that do not qualify for copyright protection. Non-original databases would be protected by a "right of reutilization" of the contents of the database. The draft Treaty contains two options as to the term of the proposed extraction right: either 15 years (as in the EC Directive) or 25 years (as in the pending United States proposal).

Draft rules of procedure of the Diplomatic Conference, 30 August 1996. Document CRNR/DC/2.

http://www.wipo.org/eng/diplconf/index.htm

Basic proposal for the administrative and final clauses of the Treaty to be considered by the Diplomatic Conference, 30 August 1996, Document CRNR/DC/3.

http://www.wipo.org/eng/diplconf/index.html

Basic proposal for the substantive provisions of the Treaty on certain copyright questions concerning the protection of literary and artistic works, 30 August 1996, Document CRNR/DC/4.

http://www.wipo.org/eng/diplconf/index.html

Basic proposal for the substantive provisions of the treaty for the protection of the rights of performers and producers of phonograms, 30 August 1996, Document CRNR/DC/5.

http://www.wipo.org/eng/diplconf/index.htm

Basic proposal for the substantive provisions of the treaty on intellectual property in respect of databases, 30 August 1996, Document CRNR/DC/6.

http://www.wipo.org/eng/diplconf/index.htm

World Intellectual Property Organization (WIPO), Diplomatic Conference on certain copyright and neighboring rights questions, Geneva, 2-20 December 1996, Draft Agenda, 30 August 1996, Document CRNR/DC/1.

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