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Negotiating Group on Trade-Related
Aspects of Intellectual Property Rights,
including Trade in Counterfeit Goods

PROVISIONS OF EXISTING INTERNATIONAL CONVENTIONS PROVIDING PROTECTION FOR INTELLECTUAL PROPERTY

Communication from the UNESCO Secretariat

At its fifth meeting, the Group authorised the Chairman to invite UNESCO to prepare with respect to conventions administered by UNESCO a factual statement providing a reference to provisions of existing international conventions providing protection for types of intellectual property included in MTN.GNG/NG11/W/12 (Section II, sub-paragraphs (i) through (vi)) (MTN.GNG/NG11/5, paragraph 37). In response, the UNESCO Secretariat has provided the following information.

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1. Document MTN.GNG/NG11/W/12 deals with issues relating to the various elements of intellectual property, that is to say industrial property (patents, trademarks, etc.) and literary and artistic property (copyright and neighbouring rights). This reply is confined to the latter, as it is the only element with which conventions administered by UNESCO are concerned.

2. The international instruments in question are the following:

(i) Universal Copyright Convention, adopted in 1952 and revised in 1971;

(ii) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (administered jointly with the ILO and WIPO);

(iii) Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms (administered jointly with WIPO);

(iv) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (administered jointly with WIPO);

(v) Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties (administered jointly with WIPO);

3. For the foregoing reasons, this note will confine itself to the issues mentioned in Section II(ii), paragraphs 38 to 40, of the above-mentioned document.

4. Paragraph 38: This paragraph raises the issue of the non-participation of some countries in the international conventions on copyright and neighbouring rights.

5. It is true that quite a large number of countries have not seen fit so far to accede to the above-mentioned Conventions. In this connection, UNESCO wishes to point out that the action programmes it has implemented over the last ten years have laid particular emphasis on extending the geographical scope of these Conventions. UNESCO has carried out a campaign to enhance awareness in this field among its member States, by means of information missions, surveys among States, and letters sent to States drawing their attention to the national and international importance of these instruments and the advantages ensuing from accession to them.

6. At the same time it also regularly organises activities, in the form of seminars, courses, training courses, lecture programmes and so forth, designed to interest inter alia the governments of countries not yet parties to the Conventions.

7. As a result of these continuing efforts, eighty States have so far acceded to, or ratified, the Universal Copyright Convention. It should be pointed out, however, that the process of accession to an international instrument is inherently time-consuming, although it has become more rapid over the last ten years.

8. Paragraph 39: The three issues mentioned in this paragraph concern only States not members of the Universal Convention. Any country party to the Universal Convention must bring its domestic legislation into line with the provisions of the Convention. In this connection, it should be noted that (i) Article II of the Universal Convention assimilates foreign authors to national authors and foreign works to national works; (ii) Article IV establishes in general terms that the minimum period of protection is twenty-five years after the author's death; (iii) Articles V, Vbis, Vter and Vquater lay down the necessary conditions that must be respected in order to obtain the compulsory licences for translation and reproduction of protected works.

9. To date, only the following States have applied to avail themselves of the provisions of Articles Vter and Vquater: Algeria, Bangladesh, Mexico, Republic of Korea and Tunisia.

10. Paragraph 40: Contrary to what is stated in the first part of this paragraph, membership of the Convention for the Protection of Producers Against Unauthorised Duplication of Their Phonograms is the largest, compared with the other Conventions. Forty-one States have become parties to this instrument since its adoption in 1971.

11. Sound and video recordings

With regard to the pirating of sound and video recordings, the following measures have been taken in this area:

(i) survey among all member States on the scale of the phenomenon and the reasons why offenders carry out unlawful duplication. The replies of States were analysed by the Secretariat and the results were circulated to UNESCO member

States and concerned non-governmental international organizations;

(ii) two studies on the phenomenon of piracy were carried out by UNESCO and presented at the two forums organized on the subject by WIPO;

(iii) a Committee of Governmental Experts met in June 1986 under the auspices of UNESCO and WIPO to deal with issues relating to the protection of sound and audio-visual recordings in connection with new duplication and broadcasting technology. Besides the general principles intended to guide national legislators, a recommendation condemning piracy and calling on all States to take the necessary measures to combat it was unanimously adopted.

12. In 1986 and 1987, other Committees of Governmental Experts also considered the protection of some other categories of works in relation to new technology. The latest, which met in December 1987, established general principles intended to guide national legislators in order to curb the unlawful use of printed works.

13. Computer software or programmes

A study concerning the protection of software was carried out jointly by UNESCO and WIPO and submitted for consideration by a Committee of Experts in March 1985. The experts and participating delegations were divided between those, forming quite a large group, who consider that copyright has the very great advantage of providing a legal basis which, if not perfect, is at least immediately available to attain the objective of protection, and others who wish to reserve the possibilities of recourse to other systems of protection that should be devised.

14. Since March 1985, the issue of software protection has continued to be a matter of concern to the Intergovernmental Committee of the Universal Copyright Convention. At its 1985 and 1987 sessions it studied the development of practice in this field in member States on the basis of replies received from governments to the circular letters sent by the Secretariat. Nevertheless, the issue is still included in the agenda of the next session (1989) of the Committee. 15. Cable retransmissions

In 1977, UNESCO and WIPO convened a working group to consider a study on the problems arising for copyright and neighbouring rights from cable retransmission of broadcast programmes.

16. Six further meetings, in the organization of which the ILO also joined, were devoted to this matter.

17. At its meeting in 1983, the Intergovernmental Committee of the Universal Copyright Convention adopted a text drafted by a sub-committee containing the "annotated principles of protection of authors, performers, producers of phonograms and broadcasting organizations in connection with distribution of programmes by cable".

18. This document was transmitted to all States and concerned organisations and has since been published in the UNESCO Copyright Bulletin.

19. Since 1983, the Secretariat has gathered information on developments in the law and practice in this sphere and reported on the situation to the Intergovernmental Committee of the Universal Convention at its

seventh session in June 1987.

20. At the Committee's request, the study of this issue is being pursued.