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of Intellectual Property Rights, Including
Trade in Counterfeit Goods

EXISTENCE, SCOPE AND FORM OF GENERALLY INTERNATIONALLY ACCEPTED AND APPLIED STANDARDS/NORMS FOR THE PROTECTION OF INTELLECTUAL PROPERTY

Note Prepared by the International Bureau of WIPO

The following document, dated 3 May 1988, has been received from the Director General of the World Intellectual Property Organization.

Introduction

The present document has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) following a decision taken by the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, on 3 March 1988, inviting the said Bureau "to prepare a factual document to facilitate an understanding of the existence, scope and form of generally internationally accepted and applied standards/norms for the protection of intellectual property" (see document MTN.GNG/NG11/6, paragraphs 39 and 40 and Annex).

The present document contains four parts, namely, on patents (starting on page 2), on copyright (starting on page 14), on trade marks (starting on page 30) and on lay-out designs of integrated circuits (starting on page 40). Further parts are under preparation and will be furnished in due time.

Part I: Patents

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention"), which was concluded in 1883 and last revised in 1967, obliges its ninety-eight1 member States to protect inventions by patents; this obligation flows from a number of provisions of the Paris Convention, for example, those dealing with the right of priority. In one of its provisions, which binds eighty-seven States (those which are bound by Acts subsequent to 1934), the Paris Convention prevents a member State from refusing the grant of a patent or invalidating a patent on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law. The other eleven member States are not bound by this provision because it is contained in Acts subsequent to 1934 by which they are not bound.

The WIPO Model Law for Developing Countries on Inventions (hereinafter referred to as "the WIPO Model Law") provides that inventions concerning certain kinds of products, or processes for the manufacture of such products, may be temporarily excluded from patent protection by decree.

(ii) Current WIPO activities

The draft Treaty on the Harmonization of Certain Provisions in laws for the Protection of Inventions (hereinafter referred to as "the draft Patent Law Harmonization Treaty") provides that patents must be available for inventions in all fields of technology but allows national laws which exclude certain fields of technology from patent protection to continue to do so for a period to be fixed between fifteen and twenty years for developing countries and between five and ten years for other countries.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Patents are generally available for inventions in all fields of technology; however, the following technical fields are excluded from patent protection in certain countries (for details, see the extract from document HL/CE/IV/INF/1 which is reproduced in Annex II of this document):
pharmaceutical products, animal varieties, methods for treatment of human or animal body, plant varieties, biological processes for producing animal or plant varieties, food products, computer programs, chemical products, nuclear inventions, pharmaceutical processes, food processes, micro-organisms, substances obtained by microbiological processes, cosmetics, fertilizers, mixture of metals and alloys, agricultural machines, anticontaminants, methods of agriculture or horticulture.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to apply, under the national treatment principle, the same criteria to the nationals and residents of the other member States as to its own nationals. The Paris Convention also provides for a right of priority to the benefit of applicants from member States for their filings abroad. It furthermore grants temporary protection to inventions in respect of products exhibited at certain exhibitions.

The Patent Co-operation Treaty (PCT), which has forty member States1, contains definitions of novelty, inventive step (or non-obviousness) and industrial applicability, which are the commonly applied patentability criteria.

1The list of the States party to the Paris Convention is contained in Annex I of this document.

Under the WIPO Model Law, an invention is patentable if it is new, involves an inventive step and is industrially applicable. Certain disclosures do not affect, under certain conditions, the novelty of an invention ("grace period"). The whole contents of an earlier application which has not yet been published affect the novelty of an invention as if that application had already been published ("prior art effect of applications").

(ii) Current WIPO activities

The draft Patent Law Harmonization Treaty contains provisions on the grace period, on the prior art effect of applications, and on the right to a patent where several persons have filed different patent applications for the same invention (the draft treaty proposes that the right should belong to the person who was the "first-to-file" rather than to the person who was the "first-to-invent").

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1The list of the States party to the PCT is contained in Annex III of this document.

(iii) Commonly applied national provisions and practices, including wherever possible and indication for representative samples of countries of the distribution of use of such provisions and practices

In most countries, foreigners have access to the patent system without restriction (other than a possible requirement to be represented by a local agent). In a few countries, however (e.g. Japan, Republic of Korea, Spain, Thailand), such access is conditional upon an international treaty or, where no international treaty is applicable, upon reciprocity.

Novelty, inventive step (or non-obviousness) and industrial applicability are patentability criteria commonly applied throughout the world.

The grace period is recognized, in one form or another, in practically all of the twenty countries granting the highest number of titles of protection for inventions. However, the types of disclosure to which the grace period applies vary among countries. In certain countries (for example, countries party to the European Patent Convention (EPC)), the grace period applies only to disclosures resulting from certain exhibitions or from abuses, whereas in other countries (for example, the United States and Japan) it also applies to other disclosures originating from the inventor or his successor in title. Other differences exist, for example as regards the duration of the grace period (six months in the EPC member States and Japan, one year in the United States).

In those countries where the prior art effect of applications is recognized, there are certain differences in this respect. Examples of such differences are the following: in all those countries except one, the prior art effect of an application is retroactive to the earliest foreign filing date ("the priority date"), whereas in the United States it is only retroactive to the filing date in that country (and even to a later date in the case of international applications filed under the PCT); in all the said countries except two, the prior art effect is relevant to novelty only, whereas in the United States and the German Democratic Republic it is also relevant to inventive step.

Practically all countries recognize the "first-to-file" principle. The only countries recognizing the "first-to-invent" principle are the United States, the Philippines and Canada (but the new patent law of Canada, which is expected to enter into force shortly, provides for the "first-to-file" principle).

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant a period of grace for the payment of the fees prescribed for the maintenance of a patent application. That period of grace must not be less than six months for eighty-seven member States (those which are bound by acts subsequent to 1934), and not less than three months for eleven member States (those which are not bound by Acts subsequent to 1934).

The Patent Co-operation Treaty (PCT) allows the nationals or residents of its forty member States to make savings when they seek protection for their inventions in several of the member States, particularly if they use the PCT systematically. This is so mainly because a large part of the costs connected with the obtaining of patent protection abroad, including agent fees, is delayed until a time when the applicant has reliable indications as to the value of the invention. Such delayed costs can even be totally spared if, by that time, it has become evident that the applicant cannot obtain valid patents.

The WIPO Model Law provides that an application fee and progressively increasing annual fees (starting with the second year after the filing date of the application) are payable for the patent granting procedure and the maintenance of the application.

(ii) Current WIPO activities

In the framework of the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which patent applicants from developing countries would benefit from a 50 per cent reduction of the fees payable for the patent granting procedure and the maintenance of the application.

The draft Patent Law Harmonization Treaty provides for the possibility of requiring the payment of annual fees for the maintenance of a patent application, such fees being, however, not payable for the first two years following the filing date of the application. It prescribes that the due date for the payment of those fees is the last day of the month of the anniversary of the filing date.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The duration of the national proceedings for obtaining patents varies from country to country because of a number of factors. One factor is the type of examination which is applied: in certain countries, patent applications are examined as to substance, i.e., the novelty of the invention and other substantive patentability criteria are checked by the Patent Office before a decision on the grant of a patent is taken, whereas, in other countries such substantive examination does not take place; in some of the countries where substantive examination takes place, it is carried out only if a specific request for examination is made within a certain time-limit ("deferred examination system"), and such time-limit may be as long as seven years (e.g. in the Federal Republic of Germany and Japan), whereas substantive examination is carried out without a specific request in other countries (e.g. United Kingdom and United States). Another factor explaining differences in the duration of the patent granting procedure is the amount of the backlog, if any, of patent applications pending in the Patent Office. The following are examples of the duration of the national patent granting procedure (for countries having the "deferred examination system", the duration is calculated from the date on which examination is requested and not from the filing date of the patent application): less than eighteen months in Egypt and Spain; around twenty months in the United Kingdom and the United States; twenty-five months in Thailand; between thirty and thirty-six months in China, Germany (Federal Republic of), Hungary, Japan, Republic of Korea, Switzerland; more than thirty-six months in Australia, Brazil, Canada, Sweden.

The cost of the patent granting procedure also varies from country to country. It depends again on a number of factors, for example: the type of examination (see above), the level of "self financing" which the Patent Office must reach, the frequency of adaptation of the level of the fees to the general increase in the cost of living, the structure of the fee system, etc. Taking into consideration the official fees only (agent costs are to be added whenever the applicant is represented by an agent), the cost of the national patent granting procedure ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 50 to approximately Sww F 900.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents

of the other member States, under the national treatment principle, the rights it grants to its own nationals.

A provision of the Paris Convention which binds eighty-seven of its member States (those which are bound by Acts subsequent to 1934) provides that, where the law of a member State confers rights with respect to a product manufactured by a patented process, that State is obliged to grant to the owner of the patent the same rights if such a product is imported into it as those it grants in the case where such a product is manufactured on its territory.

The Paris Convention provides that the rights under a patent do not extend to the use of the patented invention on vessels, aircraft or land vehicles temporarily or accidentally entering the waters, airspace or land of a member State.

The WIPO Model Law provides that the owner of a patent has the exclusive right to the exploitation of the patented invention. Exploitation means, for a product patent, the making, importing, offering for sale, selling and using of a product, or the stocking of the product for the purposes of offering for sale, selling or using; for a process patent, exploitation means the use of the process, or the doing, in respect of a product directly obtained by means of the process, of any of the acts referred to above in connection with a product patent ("extension of process patent protection to products").

Under the WIPO Model Law, the right extends only to acts done for industrial or commercial purposes and in particular not to acts done only for scientific research.

The WIPO Model Law contains a provision similar to that of the Paris Convention concerning the use of the patented invention on vehicles in transit.

The WIPO Model Law grants, under certain conditions, to the prior manufacturer or user of an invention the right to continue to exploit it despite the grant of a patent.

(ii) Current WIPO activities

The provision referred to above of the Paris Convention which deals with the importation of products manufactured by a patented process is on the agenda of the ongoing revision of that Convention.

The draft Patent Law Harmonization Treaty basically provides for the same scope, with the same limitations, of the right conferred by a patent as the WIPO Model Law.

In addition, it provides that the right covers the supplying to the third parties of means intended for putting the patented invention into effect ("contributory infringement").

It also provides "provisional protection" to a patent applicant for the period between the publication, if any, of the application and the grant of the patent.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Particular care must be taken in making any attempt to define commonly applied national provisions and practices concerning the scope of the right conferred by a patent, mainly because the laws of the various countries are often not very precise in that respect. In very general terms, what has been said under items (i) and (ii), above, corresponds to the provisions and practices applied in many countries, subject to the remarks made thereafter.

In a number of countries, the law expressly mentions importation as being covered by the patent right (e.g. France, Germany (Federal Republic of), Italy, Japan, Republic of Korea, Spain, Sweden, United Kingdom), but the fact that the law of a country is silent on importation does not necessarily mean that such act is not covered by the patent right.

"Extension of process patent protection to products" is provided for in the laws of a number of countries

(e.g. Canada, Japan, Malaysia, Republic of Korea and countries party to the European Patent Convention). It is not recognized in the patent laws of a number of other countries (e.g. Argentina, Australia, India, United States - but in the latter country, importation of a product manufactured by using a process patented in that country, without being an infringement per se, is nevertheless unlawful).

As regards the rights of prior manufacturers or users, see the extract from WIPO document HL/CE/IV/INF/2 which is reproduced in Annex IV of this document.

As regards "contributory infringement", it is expressly mentioned in the patent laws of some countries (e.g. France, Germany (Federal Republic of), Japan, Republic of Korea, Spain, Sweden, United Kingdom and United States), but it may be also covered by other legal provisions such as those repressing participation in a (direct) infringement.

5. Duration of right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, which has ninety-eight member States, patents applied for during the period of priority are independent as regards their normal duration. Under another provision, which binds ninety-six States (those which are bound by Acts subsequent to 1925), of that Convention, patents obtained with the benefit of priority must have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

The WIPO Model Law provides for a duration of fifteen years from the filing date of the patent application, with a possible five-year extension if the patented invention is sufficiently worked in the country or if there are circumstances which justify the failure so to work the invention.

(ii) Current WIPO activities

The draft Patent Law Harmonization Treaty provides for a minimum duration of twenty years from the filing date of the patent application but allows national laws which provide for a shorter duration to continue to do so for a period to be fixed between fifteen and twenty years for developing countries and between five and ten years for other countries.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

For two main reasons, any comparison between national provisions and practices requires great precautions.

First, the starting point for the computation of the duration is not always the same. In a number of countries, the duration is computed from the filing date of the patent application, which is a date established early in the patent granting procedure. But in some other countries, it is computed from a date - the date of publication of the examined application or the date of grant of the patent - which varies in each concrete case, depending on the duration of the granting procedure. If one were to compare, for example, the duration of twenty years from the filing date with the duration of seventeen years from the grant, one would have to add to the latter duration the average duration of the procedure for obtaining the right (see under item (3)(iii) above).

Secondly, extensions of the duration are possible in a number of countries, for certain kinds of inventions and/or under certain conditions.

For a complete picture of the world situation, see the extract from an updated version of WIPO document HL/CE/IV/INF/2 which is reproduced in Annex VI of this document.

6. Cost of procedures for maintaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines,

and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant a period of grace for the payment of the fees prescribed for the maintenance of a patent. That period of grace must not be less than six months for eighty-seven member States (those which are bound by Acts subsequent to 1934), and not less than three months for eleven member States (those which are not bound by Acts subsequent to 1934).

The WIPO Model Law provides that progressively increasing annual fees are payable for the maintenance of the patent.

(ii) Current WIPO activities

In the framework on the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which patent owners from developing countries would benefit from a 50 per cent reduction of the fees payable for the maintenance of patents.

The draft Patent Law Harmonization Treaty provides for the possibility of requiring the payment of annual fees for the maintenance of a patent and prescribes that the due date for the payment of such fees is the last day of the month of the anniversary of the filing date of the application.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The total cost resulting from the payment of the fees which are due to maintain a patent until the expiration of its normal term, which corresponds to the maximum duration of protection, varies from country to country. The total amount of the maintenance fees which are payable until the expiration of the normal term of a patent ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 300 to approximately Sw F 19,000.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention allows each of its ninety-eight member States to take legislative measures providing for the grant of compulsory licences to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work. Under the Lisbon (1958) Act and the Stockholm (1967) Act of the Convention, which together bind eighty-seven States, a compulsory licence may not be applied for on the grounds of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it must be refused if the patentee justifies his inaction by legitimate reasons; such a compulsory licence must be non-exclusive and is not transferable, even in the form of the grant of a sub-licence, except with that part of the enterprise or goodwill which exploits such licence.

The WIPO Model Law contains provisions based on the provisions referred to above of the Paris Convention, as well as alternative provisions based on a preliminary draft established in 1977 in the framework of the revision of the Paris Convention.

The WIPO Model Law contains provisions on non-voluntary (compulsory) licences based upon interdependence of patents (patents are considered to be interdependent where a later patent cannot be exploited without infringing an earlier patent).

The WIPO Model Law contains provisions to the effect that the patented invention may be exploited, even without the agreement of the patent owner, by a government agency or a third person designated by a government authority where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy, so requires.

(ii) Current WIPO activities

The provisions referred to above of the Paris Convention which deal with compulsory licences for failure to work are on the agenda of the ongoing revision of that Convention.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Non-voluntary licences for non-working are provided for, generally along the lines indicated above in connection with the Paris Convention, in the laws applicable in the vast majority of the ninety-eight countries party to that Convention (a major exception being the United States).

Non-voluntary licences for interdependence of patents are provided for in the laws of a number of countries (e.g. Algeria, Argentina, Austria, Belgium, Barbados, Colombia, China, Cuba, Egypt, France, Hungary, India, Iraq, Israel, Italy, Japan, Netherlands, Nigeria, Nordic countries, Philippines, Poland, Portugal, Republic of Korea, Romania, South Africa, Spain, Sudan, Switzerland, Thailand, Uruguay, Yugoslavia, member countries of the African Intellectual Property Organization (OAPI)).

Non-voluntary licences based on other grounds exist in a certain number of countries, for example:

- non-voluntary licences in the public interest (e.g. Austria, Brazil, Bulgaria, Germany (Federal Republic of), India, Japan, Jordan, Mexico, Netherlands, Nordic countries, Republic of Korea, Spain, Switzerland, Zaïre;

- non-voluntary licences on grounds such as abuse of monopoly, the satisfaction of the reasonable requirements of the public, economic development, the development of international trade, the needs of export markets, the violation of antitrust laws (e.g. Algeria, Australia, Canada, Colombia, Czechoslovakia, France, India, Ireland, Israel, Jordan, Malawi, New Zealand, Nigeria, Philippines, Poland, Republic of Korea, Singapore, South Africa, Spain, Sudan, Thailand, Trinidad and Tobago, United Kingdom, United States, Yugoslavia, Zaïre, Zambia, Zimbabwe, member countries of OAPI),

- non-voluntary licences in the interest of public health, or in case of inventions relating to food or to medicines (e.g. Canada, Colombia, France, India, Ireland, Israel, Malawi, New Zealand, Nigeria, Philippines, Singapore, Sudan, Yugoslavia, Zambia, Zimbabwe, member countries of OAPI);

- non-voluntary licences in the interest of national defence (e.g. Czechoslovakia, Hungary, Nigeria, Philippines, Republic of Korea, Romania, Sudan, Yugoslavia, member countries of OAPI);
- non-voluntary licences in the field of the production or utilization of special nuclear material or atomic energy, or in connection with the implementation of standards such as those for hazardous air pollutants or those governing the emission of substances from new motor vehicles (United States).

In a number of countries, a patented invention can be used by or for the State without the agreement of the owner of the patent (e.g. Australia, Barbados, Canada, India, Ireland, Israel, Malawi, Malaysia, New Zealand, Nigeria, Philippines, Republic of Korea, Thailand, Trinidad and Tobago, United Kingdom, United States, Uruguay, Zambia, Zimbabwe, as well as, for national defence purposes, France, Netherlands and member countries of OAPI).

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents of the other member States, under the national treatment principle, the same legal remedies for infringement of patent rights as those it grants to its own nationals, possibly subject to the provisions of the national law relating

to judicial and administrative procedure and to jurisdiction.

The WIPO Model Law contains provisions on civil procedures and remedies, as well as criminal procedures and remedies. As regards the former, court proceedings can be instituted not only in case of actual infringement but also in case of imminent infringement, i.e. where acts are performed which make it likely that infringement will occur; the proposed civil remedies are damages, an injunction to prevent (further) infringement and any other remedy provided in the general law. As regards criminal procedures and sanctions, infringement of a patent is qualified as an offence punishable by a fine or by imprisonment or both.

(ii) Current WIPO activities

The draft Patent Law Harmonization Treaty provides that, if the subject matter of a patent is a process for obtaining a new product, the said product is, in the absence of proof to the contrary, deemed to have been obtained by the patented process ("reversal of the burden of proof") and that, in the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets must be taken into account.

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of counterfeiting (including where a patent is involved). The following conservatory measures are proposed: seizure of the counterfeit goods, sealing of the premises where acts of counterfeiting take place, seizure of the tools for the manufacturing or packaging of the counterfeit goods and of papers referring to such goods, ordering the termination of the acts of counterfeiting, ordering disclosure of the source of the counterfeit goods. The civil remedies which are proposed are damages, payment of legal costs (including lawyer's fees) and, subject to certain conditions, destruction of the counterfeit goods and of tools able to be used to continue acts of counterfeiting, as well as ordering the non-continuation of acts of counterfeiting. As regards criminal sanctions, any act of counterfeiting is qualified as an offence; under one alternative, the sanction is, where the act of counterfeiting was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The "reversal of the burden of proof" is provided for in the laws of most countries where the "extension of process patent protection to products" exists (see under item (4)(i) above) (e.g. Canada, France, Germany (Federal Republic of), Italy, Japan, Malaysia, Republic of Korea, Spain, Switzerland, United Kingdom), whereas it is not provided for in the laws of the countries where the said "extension" does not exist (e.g. Argentina, Australia, India, United States).

The following conservatory measures are provided for in, for example, the countries indicated hereafter (see also a description of "Mareva" injunctions in Part II (Copyright), item (8)(iii):

- interlocutory injunction: Argentina, Canada, Germany (Federal Republic of), Ghana, India, Kenya, Malaysia, United Kingdom, United States, Zimbabwe;

- measures such as inspection, description of infringing products and/or of instruments used for acts of infringement, authorization to enter upon or into any land or building in the possession of the alleged infringer, authorization to take samples or to try experiment (see also a description of "Anton Piller orders" in Part II (Copyright), item (8)(iii): Australia, Brazil, Canada, Egypt, France, Ghana, India, Italy, Kenya, Malaysia, Mexico, Switzerland, United Kingdom, Zimbabwe;

- seizure of infringing articles (and sometimes of instruments used in the act of infringement): Argentina, Brazil, Egypt, France, Hungary, Ghana, India, Italy, Japan, Kenya, Sweden, Switzerland, United Kingdom, Zimbabwe;

The following civil remedies are provided for in, for example, the countries indicated hereafter:

- injunction: Australia, Brazil, Canada, China, France, Germany (Federal Republic of), Ghana, Hungary, India, Japan, Kenya, Malaysia, Republic of Korea, Sweden, Switzerland, United Kingdom, United States, Zimbabwe;

- compensation of damages (or, in some of these countries, an account of profits): Argentina, Australia, Brazil, Canada, China, France, Germany (Federal Republic of), Ghana, Hungary, India, Japan, Kenya, Malaysia, Mexico, Republic of Korea, Sweden, Switzerland, United Kingdom, United States, Zimbabwe;

- measures such as confiscation, delivery up or destruction of infringing goods (and, in some of these countries, of the facilities used in the act of infringement): Argentina, Canada, France, Ghana, Japan, Kenya, Republic of Korea, Sweden, Switzerland, United Kingdom, Zimbabwe.

Criminal sanctions (imprisonment and fine) are provided for in, for example, the following countries: Argentina, Brazil, China, Germany (Federal Republic of), Japan, Mexico, Republic of Korea, Sweden, Switzerland, Thailand. On the other hand, no criminal sanctions seem to be provided for in, for example, the following countries: Australia, Canada, France, Ghana, Hungary, India, Kenya, Malaysia, United Kingdom, United States, Zimbabwe.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, which, in this respect, binds seventy-two States, the International Court of Justice is competent to decide on any dispute between two or more member States concerning the interpretation or application of the Convention, unless such dispute is settled by negotiations or otherwise. The other twenty-six States party to the Paris Convention are not bound by the provisions establishing the jurisdiction of the International Court of Justice.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, no mention is made of national provisions and practices.

Part II: Copyright

Introduction

The word "copyright" is used in two meanings. The basic and generally accepted meaning of "copyright" is the one in which this word is used in the international copyright conventions and which only covers the protection of rights in literary and artistic works. This document deals with copyright in that meaning. The other, wider meaning of "copyright" (in which this word is used mainly in the national laws of countries with Anglo-American legal traditions) extends to the protection of certain so-called neighbouring rights - that is, neighbouring to the rights in literary and artistic works - such as the rights in phonograms, broadcasts, typographical arrangements of published editions. Those neighbouring rights will be covered by a separate document.

In the field of copyright, there are two international conventions: the Berne Convention for the Protection of Literary and Artistic Works (hereinafter: the Berne Convention) and the Universal Copyright Convention. This document only deals with the Berne Convention, which is administered by WIPO. The Universal Copyright Convention is administered by Unesco.

The Berne Convention was adopted in Berne in 1886. It has been revised several times; last time in Paris in 1971. When this document refers to the Berne Convention, it always means the 1971 Paris Act of the Berne Convention.

So far, seventy-seven countries have adhered to the Berne Convention.1 According to recent information, the question of adherence to the Berne Convention is under consideration in several countries, including the United States and the Soviet Union.

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1The list of the States party to the Berne Convention is contained in Annex VII of this document.

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Berne Convention obliges the countries which are party to it to protect all literary and artistic works. The Convention contains a non-exhaustive list of such works which includes, inter alia, books and other writings; dramatic or dramatico-musical works; choreographic works; musical compositions with or without words; cinematographic works and works expressed by a process analogous to cinematography; works of drawing, painting, architecture and sculpture; photographic works. The obligation of the countries party to the Convention also extends to the protection of so-called derivative works (translations, adaptations, arrangements of music).

The word "work" is not defined separately. The records of the diplomatic conferences adopting and revising the Convention indicate, however, that it has always been considered evident that "works" are original, intellectual creations. That meaning of "works" is made clear also in the text of the Convention in respect of collections such as encyclopaedias and anthologies, where it is stated that the condition of protection is that such collections should be "intellectual creations".

Works of applied art and industrial designs are at the borderline of copyright and industrial property. The Berne Convention provides that it is a matter for legislation in countries party to the Convention to determine the extent of the application of their laws to works of applied art and industrial designs, as well as the conditions under which such works and designs are protected. The Convention makes it clear, however, that such productions should always be protected, either by copyright or by special industrial design law or by both.

(ii) Current WIPO activities

In the framework of the series of WIPO meetings which are described in item (4)(ii) below, the question of the protection of certain new types of works has also been discussed. There was an agreement at those meetings that the obligation of countries party to the Berne Convention to protect all literary and artistic works extends, inter alia, to all kinds of audio-visual works (in addition to cinematographic films, also to television creations, to works created in the form of videograms, etc.), to works created by means of computers and to data bases and similar compilations.

The protection of computer programs has been on the agenda of various WIPO meetings since 1971. In June 1974, an Advisory Group of Experts on the Protection of Computer Programs was convened, which later met three more times (last time in 1977). With the assistance of that Group, the International Bureau of WIPO drew up, and published in 1978, "Model Provisions on the Protection of Computer Software".

The Model Provisions have essentially adopted a copyright type approach (for example, they determined the originality of computer programs - in the sense that they should be the results of their creators' own intellectual efforts - as a criterion for obtaining protection and contained minimum standards which, in many respects, were close to the minimum standards under the Berne Convention); at the same time, they were

presented in the form of a sui generis protection system (although the minimum standards mentioned above were close to the ones prescribed by the Berne Convention, they still differed in certain respects and the term of protection was shorter: at least twenty years from the date of the first use or the first commercialization of the program and, at most, twenty-five years from the time when the program was created). Nevertheless, in the comments to the Model Provisions, it was stressed that the Model Provisions should not be understood as necessarily requiring the adoption of a separate law on the protection of computer programs; in many countries, the principles contained in them might simply amount to clarifications or extensions of existing legal rules and could be incorporated in so far as they had not already been included - in existing laws, for example, partly in copyright law and partly in the law on trade secrets or unfair competition.

The Committee of Experts on the Legal Protection of Computer Software (Geneva, 1982) considered a draft international treaty based on the WIPO Model Provisions. In view of the complexity of the problem, however, the Committee considered it premature to take a stand on the question of what was the best way of affording international protection for computer software.

The Working Group on Technical Questions Relating to the Legal Protection of Computer Software (Canberra, 1984) dealt extensively with possible definitions relating to computer programs; it examined technical means of protection against unauthorized use, and noted that such protection could never render legal protection superfluous; finally, it gave advice on the question of the classification of programs, particularly for the purposes of possible registration, deposit and access to them by users.

The document prepared for the meeting of the Group of Experts on the Copyright Aspects of the Protection of Computer Software (Geneva, 1985) stated that the majority of industrialized countries, and also some developing countries, were in favour of copyright protection of computer programs for the time being, and that was also stressed in the discussions and reflected in the report. There was, however, no unanimity within the meeting. Some countries seemed not to have decided yet which way they wanted to choose, while a smaller number of countries were in favour of a sui generis solution outside copyright.

The development of the protection of computer programs was further monitored and, on the basis of documents prepared by the International Bureau of WIPO, was discussed at the last two meetings of the Executive Committee of the Berne Union (that is, the Union of the countries party to the Berne Convention) in June 1985 and in June 1987. In a meeting which will take place, foreseeably, in June 1989, the Executive Committee will review the protection of computer programs again and it will be the September 1989 meetings of Governing Bodies of WIPO which will decide about the need, if any, for further action.

As described more in detail in item (4)(ii) below, model provisions will be discussed in the present 1988-89 programme period by a series of WIPO committees of experts whose purpose is to set clear standards based on the Berne Convention. It is contemplated that the model provisions will cover the definition and list of literary and artistic works to be protected.

Furthermore, the question of the protection of new types of literary and artistic works is intended to be discussed in the WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property to be held in Geneva in September 1988.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The list of protected works included in national copyright laws (both in countries party to the Berne Convention and in other countries) corresponds, by and large - with some differences in details of minor importance - to the non-exhaustive list offered by the Berne Convention.

In respect of works of applied art and industrial designs and models whose protection, as indicated in point (i) above, is left to national legislation, three main trends prevail: full separation of copyright protection and special design protection (e.g. in Italy and in certain countries with British legal traditions, such as Bangladesh, India, Israel, Pakistan): full cumulation of copyright protection and special design protection (e.g. in France and, for a period of fifteen years as defined in the Design Copyright Act 1968, in the United Kingdom; in the latter country, however, the modification of design protection is now under consideration);

and partial cumulation of copyright protection and special design protection (e.g. in the Benelux countries, Germany (Federal Republic of), United States, the Eastern European socialist countries).

As far as computer programs are concerned, the copyright legislation of the following countries has explicitly recognized the protection of computer programs: Australia, Chile, Dominican Republic, France, Germany (Federal Republic of), Hungary, India, Indonesia, Japan, Malaysia, Mexico, Philippines, Republic of Korea, Singapore, Spain, Trinidad and Tobago, Turkey, United Kingdom, United States. Draft laws to the same effect are under consideration in various other countries (e.g. in Canada, Denmark, Finland, Italy, Netherlands, Norway, Soviet Union, Sweden). In still other countries, although there are no explicit legal provisions, case law recognizes the copyright protection of computer programs.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The basic criterion for obtaining protection under the Berne Convention is that the author be a national of one of the countries of the Union, and if he is not a national of one of the countries of the Union, that his work be first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them are assimilated to nationals of that country.

Under the Convention, a work is considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

The protection, obtained through simultaneous publication, of works of authors who are not nationals of one of the countries of the Berne Union is what is called "back door" protection under the Berne Convention. Such a protection is not unconditional. Where any country outside the Union fails to protect, in an adequate manner, the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the former country and are not habitually resident in one of the countries of the Union.

The existence of protection in the country of origin is not a criterion of obtaining protection under the Berne Convention (principle of "independence of protection").

The enjoyment and exercise of copyright must not be subject to any formality.

There is only one further possible criterion of copyright protection, which the Convention allows to be applied but does not prescribe itself: it is a matter for legislation in the countries of the Union to prescribe that works, in general, or any specified categories of works, are only protected if they have been fixed in some material form.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There is a general trend towards the elimination of formalities as a condition of protection, and only formalities with prima facie evidentiary value are retained.

An important exception is the United States where one formality - the copyright notice - is a condition of enjoyment and exercise of copyright.

There are certain countries where registration is still a condition of copyright protection: e.g. Bolivia, El Salvador, Liberia, Nicaragua, Panama and Paraguay (none of which is party to the Berne Convention), and - in respect of works not covered by the international copyright conventions - also Argentina, Chile and Uruguay.

3. Duration/cost of procedures for obtaining rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

As indicated in item (2)(i) above, under the Berne Convention, literary and artistic works must be protected from the moment of their creation, without formalities. Therefore, the question of duration and cost of procedures for obtaining protection, generally, does not emerge.

For nationals of countries not party to the Berne Convention, however, obtaining "back door" protection through simultaneous publication may create, and, according to publishers, does create, additional costs. (For example Mr. Kenneth W. Dam, Vice President, IBM Corporation stated in his statement before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, House of Representatives of the United States on 16 September 1987, that simultaneous publication, for the purposes of "back door" protection of works published by IBM, costs $10 million per year.)

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In the United States, a detailed cost-benefit analysis of various copyright formalities was submitted to the Copyright Office by King Research Inc. in February 1987 which analysed all the costs to the United States Copyright Office and to the applicants in respect of registrations and recordations made by motion picture and textile industries (the latter for fabric design works). That is why the duration and costs of the formalities existing in the United States have been chosen as examples.

In the United States, the indication of a copyright notice on the copies of works is a condition of full copyright protection. That formality, however, involves no procedure and no substantial costs. The registration of initial ownership is not a condition of copyright protection but it is a procedural condition in case of proceedings started for copyright infringements. The fee to be paid for a registration is $10 and the average time in which the Copyright Office completes the procedure is about eight to twelve weeks (but the registration then is valid from the date of the application). The recordation of transfer of rights is also a procedural condition in case of infringement proceedings. The general fee of recordation is $10 per document of six pages or less (for one title), plus $0.50 per additional page and per title. The actual costs of registration and recordation, however, is more than the amount of fees to be paid to the Copyright Office. According to the study, the total yearly costs - including labour costs and the costs emerging with the deposit of copies of works - of registration to the Copyright Office and to the motion picture and textile industries were about $13.5 million per year in the period studied (1984-1985) of which only 3 per cent is expended by the Copyright Office and only one third of that amount is recovered by registration fees. The costs of recordation to the Copyright Office and to the two industries mentioned were less; they were $3 million per year. (The difference in the costs follows, however, from the difference between the number of registrations and the number of recordations. In the period studied, the number of registrations from the two industries mentioned was around 16,000, while the number of recordations for the same industries was around 3,300.)

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The scope of rights granted under the Berne Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

The principle of national treatment means that foreign authors whose works are protected under the Convention must enjoy in all countries party to the Convention the same protection as nationals do. The

obligation to extend national treatment to foreigners also means that protection must not be based on reciprocity. There are only three aspects in respect of which exception is allowed to this principle under the Convention, namely the protection of works of applied art/industrial designs and models, the "droit de suite" (see this point, below) and the term of protection, in certain limited cases (see item (5)(i) below).

The minimum standards prescribe the rights that the countries party to the Convention are obliged to grant and determine the limitations which are allowed to be applied in respect of those rights.

The exclusive rights to authorize certain uses of works that must be granted by countries party to the Berne Convention are the following:

- the right of reproduction of works in any manner or form;

- the right of public performance of dramatic, dramatico-musical and musical works, the right of recitation of literary works and the right of communication to the public of works performed or recited;

- the right of broadcasting of works or communication thereof to the public by other wireless means, and the right of communication to the public by wire (e.g. by cable) or by rebroadcasting of works broadcast as well as the right of public communication by loudspeaker and similar means of works broadcast;

- the right of translation of works;

- the right of adaptation, arrangement or other alteration of works;

- the right of authorizing cinematographic adaptation of works and of authorizing the reproduction and distribution to the public of the works thus adapted or reproduced and the cinematographic works - as original works - themselves, as well as the right of authorizing the public performance and communication to the public of the works thus adapted or reproduced and of the cinematographic works themselves.

The recognition of the "droit de suite" which is a right to an interest in the sale of original works of art and of original manuscripts is not an obligation under the Convention; it is only optional and, as indicated above, can be made condition on reciprocity.

The Berne Convention also contains provisions on the protection of the so-called moral rights; it provides that the author, independently of his economic rights, shall have the right to claim authorship of his work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honour or reputation.

The Berne Convention allows, in some restricted and precisely determined cases, certain limitations to the exclusive rights of authors. Such limitations are of two types: free uses (that is, uses of protected works without the obligation to ask for authorization and to pay any remuneration) and compulsory licences. The latter are covered by item (7) below. Free uses are only allowed for some strictly defined purposes, such as for quotations, illustration for teaching purposes, reporting current events and, in respect of the right of reproduction, in certain special cases, provided that such a limitation does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of authors.

In addition to the limitations explicitly mentioned in the text of the Convention, there is one more possibility for certain exceptions about which there was express agreement at various revision conferences, namely the possibility of "minor exceptions" to the right of public performance (a concept which is close to the notion of "fair use" or "fair dealing"; see item (iii) below).

(ii) Current WIPO activities

Three phases can be distinguished in this field:

The first two phases - the first of which is completed and the second of which is also fairly close to completion - have consisted of a thorough analysis of the worldwide copyright situation. They were carried out jointly with Unesco. The third phase, the phase of norm-setting, is about to start.

In the first phase of analysis - in the 1982-83 and 1984-85 bienniums - WIPO activities concentrated on new uses (such as copying for private purposes, storage of works in computer systems, rental and lending, direct broadcasting by satellite, cable distribution), while in the 1986-eighty-seven biennium, a second phase was started in which the specific questions were grouped according to the main categories of works. In connection with each category, principles were outlined which were intended to serve as guidance for governments and national legislators. The memoranda prepared for the meetings of the committees of governmental experts on various categories of works dealt with all problems - particularly the ones raised by the new technologies - in respect of the scope and the application of rights, and contained altogether 141 principles and a detailed commentary including an analysis of the obligations under the international copyright conventions and the provisions of national laws. The obligations of member countries of the Berne Union have been stated - on the basis of the Berne Convention - concerning, inter alia, the following uses: recording for private purposes of audio-visual works and phonograms ("home taping"); reprography; computer storage, electronic publishing, display; rental and lending; satellite broadcasting; cable distribution.

There is still one step to complete the second phase of WIPO's copyright programme: at the end of June 1988, a summary will be made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works.

The third phase of WIPO's copyright programme - separate from UNESCO - will concentrate exclusively on the interpretation and implementation of the Berne Convention. Draft model provisions are under preparation for national legislation in the field of copyright which will be based on the Berne Convention and will offer standards for as efficient and uniform an implementation of the Convention as possible. The draft model provisions will be discussed by a series of meetings of committees of experts, the first of which will be held in Geneva in November-December 1988.

The scope and application of certain rights is also intended to be discussed in the WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law Intellectual Property to be held in Geneva in September 1988.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The scope of rights recognized by countries party to the Berne Convention corresponds, at least, to the minimum standards outlined in item (i) above, but also the copyright laws of countries outside the Berne Union recognize, with more or less limitations, at least the rights of reproduction, the right of translation, the right of public performance and the right of broadcasting.

The rights concerning the reproduction and subsequent distribution of copies of works are regulated in the most detailed manner in national laws.

In countries with Anglo-American legal traditions, a special system of exceptions to copyright has been developed by case law which is called "fair use" or "fair dealing" and which practically cover, although in a more general way, all the free uses which are allowed under the Berne Convention. The 1976 Copyright Act of the United States offers a definition of "fair use" in the legislation itself, according to which fair use of works, including such use by reproduction in copies or phonorecords or by any other means, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered include: the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for, or upon the value of, the copyrighted work.

A great number of national laws allow free private use or personal use of works. Several countries,

however, have introduced a compensation system to counterbalance the prejudice to copyright owners created by the widespread private reproduction of audio-visual works and phonograms in the form of a levy on blank tapes and cassettes and/or on recording equipment (Austria, Congo, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Norway, Portugal, Spain, Sweden).

Schemes for exercising the right of reproduction in respect of reprographic reproduction or at least for granting compensation for such reproduction has also been introduced in several countries on legislative or contractual basis (e.g. Australia, Denmark, Finland, Germany (Federal Republic of), Netherlands, Norway, Sweden, United Kingdom, United States), and this question is under consideration in several other countries.

The control of copyright owners over distribution - including rental and lending - of their works is generally based on the right of reproduction and on contracts concluded on the basis of that right. In countries party to the Berne Convention, the right of distribution of cinematographic works is explicitly recognized. Furthermore, some countries recognize, in their legislation or on the basis of case law, the right of distribution of works, in general, with certain limitations (e.g. Austria, France, Germany (Federal Republic of), Italy, United States). The right of rental is also separately recognized in respect of certain categories of works in some countries (e.g. in France, Japan and United States in respect of phonograms, in Denmark; Finland Iceland and Sweden in respect of sheet music).

5. Duration of rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Berne Convention obliges the countries which are party to it to protect literary and artistic works for the lifetime of the author and for fifty years after his death. The protection of anonymous and pseudonymous works expires, as a rule, fifty years after the work has been lawfully made available to the public. In respect of cinematographic works, it may be provided that the fifty-year term of protection be calculated from the making of the work available to the public or, failing such an event, from the making of the work.

There are only two categories of works, namely photographic works and works of applied art, in respect of which the minimum term of protection prescribed by the Berne Convention is shorter: twenty-five years from the making of such works.

The Berne Convention, as mentioned in item (4)(i), exempts the term of protection from the obligation of extending national treatment to foreigners. The term is governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term does not exceed the term fixed in the country of origin of the work.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In general, the term of protection determined by national laws is the life of the author and fifty years after his death.

Certain countries protect works for a longer period: Brazil and Spain for sixty years; Austria, Germany (Federal Republic of) and Israel for seventy years; Colombia, Guinea and Panama for eighty years; and Côte d'Ivoire for ninety-nine years.

Certain other countries grant a shorter term of protection; as a rule, twenty-five years after the author's death. This applies, e.g. to Algeria, Cuba, Haiti, Kenya, Liberia, Malawi, Malta, Nigeria, Soviet Union and Zambia (none of these countries is party to the Berne Convention).

Special terms apply to photographic works and works of applied art.

In France, the Law of 3 July 1985 introduced two specific solutions concerning the duration of copyright protection. The term of protection was extended to seventy years in respect of musical works while it has remained fifty years in respect of all other works; for computer programs, only a twenty-five year term of protection has been granted from the making of the programs.

6. Duration/cost of procedures for maintaining rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

As indicated in item (3)(i) above, literary and artistic works must be protected, under the Berne Convention, without formalities and procedures for obtaining rights. Equally, no formalities and procedures are allowed to be applied in national laws of countries party to the Convention for maintaining rights.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no national copyright laws under which any procedure would be needed for maintaining rights.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

As indicated in item (4)(i) above, the Berne Convention only allows limitations to the exclusive rights of authors in certain restricted and precisely determined cases. Compulsory or legal licences (non-voluntary licences) are allowed in the following cases and under the following conditions:

- in respect of the right of broadcasting of works and the communication to the public of works broadcast;

- in respect of the right of recording but only of musical works and any words pertaining thereto, if the copyright owner has already authorized a previous recording;

- in respect of the right of reproduction of works, in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the copyright owner;

- exclusively in developing countries, in respect of the rights of translation of works published in printed or analogous forms of reproduction and of audio-visual fixations prepared and published for the sole purpose of being used in connection with systematic instructional activities, for teaching, scholarship or research, under several conditions; the copies produced under such licences must not be exported.

(ii) Current WIPO activities

Even where compulsory licensing is allowed (see item (i) above), WIPO promotes collective administration of rights, because collective administration is based purely on negotiations and contractual arrangements. (Collective administration is done by authors' societies or similar bodies. They give, in the name of the individual authors who are their members or who are otherwise associated with them, authorization for certain uses of the works, collect fees for the use of those works and distribute those fees among the owners of the rights in them according to the extent and frequency of the actual use of works.) WIPO organized an

International Forum on the Collective Administration of Copyrights and Neighbouring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audio-visual works, phonograms, musical works and the printed word in the framework of the series of meetings on various categories of works mentioned in item (4)(ii) above. A detailed WIPO study on collective administration is under preparation, and collective administration will also be covered by the WIPO model provisions for national copyright laws to be discussed in the 1988-89 programme period.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Non-voluntary licences are applied in various countries in respect of the right of broadcasting of works, generally along the lines indicated in item (i) above (e.g. in Bulgaria, Cyprus, Czechoslovakia, Egypt, German Democratic Republic, Hungary, India, Japan, Luxembourg, Malawi, Mali, New Zealand, Nigeria, Pakistan, Sri Lanka, Turkey, United States, Yugoslavia, Zambia).

Non-voluntary licences are applied in various countries in respect of the right of communication to the public by cable, or otherwise by wire, of works broadcast, generally along the lines indicated in item (i) above (e.g. in Australia, Austria, Denmark, Ireland, Israel, Japan, Kenya, Malawi, Malta, Nigeria, Poland, Sri Lanka, Trinidad and Tobago, United Kingdom, United States, Zambia, Zimbabwe).

Non-voluntary licences are applied in various countries in respect of the right to make sound recording of musical works, generally along the lines indicated in item (i) above (e.g. in Australia, Austria, Barbados, Canada, Cuba, Cyprus, Czechoslovakia, Ghana, India, Israel, Japan, Malawi, Nigeria, Romania, Singapore, Soviet Union, Sri Lanka, Trinidad and Tobago, Turkey, Switzerland, United Kingdom, United States, Yugoslavia, Zambia).

Non-voluntary licences are applied in certain countries in respect of the rights of reproduction, in certain special cases of reprographic reproduction, of writings and graphic works generally along the lines indicated in item (i) above (e.g. Australia, Dominican Republic, Germany (Federal Republic of), Mali, Netherlands, Portugal, Singapore, Spain, Tunisia, Yugoslavia).

Non-voluntary licences are made possible in some developing countries in respect of the right of translation and the right of reproduction of works published in printed or analogous forms of reproduction under certain conditions generally along the lines indicated in item (i) above (e.g. India, Mexico (the only two countries party to the Berne Convention whose copyright laws provide for such licences), Algeria, Barbados, Dominican Republic, Ghana, Singapore, Trinidad and Tobago). However, such licences are not applied in practice.

In some countries, non-voluntary licences are applied also in respect of the right of public performance of works. In the United States, such licences are applicable only in respect of the so-called "juke boxes" with reasonable fees. In other countries, however, the scope of such compulsory licences is much wider (e.g. Cuba, Soviet Union where compulsory licences cover any public performance of published works).

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Berne Convention contains two provisions for the enforcement of rights. First, it establishes a presumption of authorship; the author must, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, if his name appears on the work in a usual manner. Second, it provides that infringing copies of works must be liable to seizure in any country of the Union where the work enjoys protection; this provision also applies to reproductions coming from a country where the work is not protected or has ceased to be protected. If recordings of musical works are made on the basis of compulsory licences (see item (7)(i) above), and imported without permission from the countries concerned into a country where they are treated as infringing recordings, they are also liable to seizure.

(ii) Current WIPO activities

At the beginning of the 1980s, WIPO started an intensive anti-piracy programme. So far, this programme has included the organization of two WIPO Worldwide Forums on Piracy in 1981 and 1983, an anti-piracy resolution by the Conference of WIPO in 1985, and the elaboration of detailed principles on anti-piracy measures concerning the piracy of audio-visual works, phonograms and the printed word, in the series of meetings on various categories of works mentioned in item (4)(ii) above.

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of piracy. The following conservatory measures are proposed: seizure of the pirate copies, sealing of the premises where acts of piracy take place, seizure of the tools for the manufacturing or packaging of the pirate copies and of papers referring to such copies, ordering the termination of the acts of piracy, ordering disclosure of the source of the pirate copies. The civil remedies which are proposed are damages, payment of legal costs (including lawyer's fees) and, subject to certain conditions, destruction of the pirate copies and of tools able to be used to continue acts of piracy, as well as ordering the non-continuation of acts of piracy. As regards criminal sanctions, any act of piracy is qualified as an offence; under one alternative, the sanction is, where the act of piracy was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

It is also partly for the purpose of offering further guarantees against piracy that WIPO prepares the establishment of an international register of audiovisual works. A Committee of Experts discussed a draft treaty and draft regulations on the establishment and operation of such a register, at the beginning of March 1988. The conclusions adopted by the Committee urged the convocation of a diplomatic conference as soon as possible for the adoption of a treaty on the establishment of an international register along the main lines of the draft treaty prepared by the International Bureau of WIPO. The September 1988 meetings of the Governing Bodies of WIPO will decide about the convocation of the diplomatic conference.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In the last decade, a number of countries have legislated in the field of copyright. Many of the new laws contain severe provisions concerning procedures, remedies and sanctions to be applied against piracy (e.g. Barbados, Benin, Burkina Faso, Cameroun, Central African Republic, Ghana, Guinea, Malaysia, Mali, Mauritius, Portugal, Republic of Korea, Rwanda, Singapore, Trinidad and Tobago, Zaire).

In other countries, the existing laws have been specifically modified to introduce new or stronger remedies, sanctions and other measures against piracy (e.g. Australia, Austria, Brazil, Chile, Denmark, Finland, France, Germany (Federal Republic of), Hungary, India, Israel, Italy, Kenya, New Zealand, Paraguay, Philippines, Sri Lanka, Sweden, United States, Uruguay).

Certain new preliminary, conservatory measures have been developed in countries with Anglo-American legal traditions which can be obtained speedily, which assist in the collection of evidence against a pirate, and which prevent the destruction of evidence and the removal of financial resources against which damages may be claimed. For example, the "Anton Piller order" is an order granted by the court permitting the inspection of premises on which it is believed some activity is being carried on which infringes the copyright of the plaintiff. The order has, in particular, the following features: first, the order is granted ex parte, that is, on the application and in the presence alone of the copyright owner, without prior warning being given to the defendant. Secondly, the terms on which the order is granted enable the copyright owner to inspect the premises of the defendant, and all documents (including business information, such as bills, invoices, sources of supply and customer lists) relating to the alleged infringement. Thirdly, the order for inspection is often accompanied by an injunction restraining the defendant from altering or removing in any way articles or documents referred to in the order for inspection.

A further development in some jurisdictions has been the "Mareva" injunction. This remedy was developed to deal with cases in which there was a danger that a defendant would move his assets out of the jurisdiction in which the action is brought before a judgement of damages could be enforced. The injunction

has the effect of freezing the defendant's assets until the proceedings are completed. One particularly important aspect of the injunction is that it binds third parties, such as banks, thus effectively preventing the manipulation of the defendant's assets during the period in question.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Berne Convention, which, in this respect, binds sixty-four countries, the International Court of Justice is competent to decide on any dispute between two or more countries party to the Convention concerning the interpretation or application of the Convention, unless such dispute is settled by negotiations or otherwise. The other thirteen countries party to the Berne Convention are not bound by the provisions establishing the jurisdiction of the International Court of Justice.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, no mention is made of national provisions and practices.

Part III: Trademarks

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention for the Protection of Industrial Property (hereinafter referred to as the "Paris Convention"), which was concluded in 1883 and last revised in 1967, obliges its ninety-eight members States1 to protect trademarks, namely signs which distinguish the products offered by an enterprise from those of competitors, as well as service marks, namely signs which distinguish services offered by an enterprise from those of competitors. Paris Union member States are free to determine which kind of signs (visible, audible, three-dimensional, etc.) may serve as trademarks.

1The list of the States party to the Paris Convention is contained in Annex I of this document. The Paris Convention, however, provides that registration of a trademark in a Paris Union member State establishes a right in all other member States to the effect that registration of the trademark in those other member States can be refused only on certain grounds which are specified in the Paris Convention, namely infringement of existing rights, lack of distinctive character, violation of morality or public order or deceptive character of the mark. The Paris Convention prohibits the registration and use of State emblems and official hallmarks as trademarks. Moreover, the Paris Convention provides for a reinforced protection in favour of a trademark that is well known in a member State of the Paris Union; in such a case, a trademark must be protected in the said State even if it has not been registered in that State. Finally, according to the Paris Convention, the nature of the goods to which a trademark is to be applied may not form an obstacle to the registration of the mark.

The Nairobi Treaty on the Protection of the Olympic Symbol of 1981 obliges its thirty-two member States1 to protect the Olympic symbol (five interlaced rings) against registration and use as a mark.

The Model Law for Developing Countries on Marks, Trade Names and Acts of Unfair Competition

published by WIPO's predecessor organization in 1967 (hereinafter referred to as the "Model Law") provides for a protection of trademarks and service marks on the basis of registration. According to the Model Law, "trademark" means any visible sign serving to distinguish the goods of one enterprise from those of other enterprises; "service mark" means any visible sign serving to distinguish the services of one enterprise from those of other enterprises. Trademarks or service marks may consist, in particular, of arbitrary or fanciful descriptions, names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, envelopes, emblems, prints, stamps, seals, vignettes, selvedges, borders and edgings, combinations or arrangements of colours, and shapes of goods or containers. Thus the Model Law admits three-dimensional signs for registration. The Model Law excludes from registration as trademarks or service marks any signs which consist of shapes or forms imposed by the inherent nature of the goods or services or by their industrial function, which are descriptive or have become the customary designation of the goods or services concerned, or which lack distinctive character.

(ii) Current WIPO activities

The draft model provisions on the protection against counterfeiting and piracy provide, in particular, for protection of two or three-dimensional trademarks against unauthorized reproduction or slavish or near-slavish imitation.

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1The list of the States party to the Nairobi Treaty is contained in Annex VIII of this document.

It is contemplated that the draft Treaty on the harmonization of trademark laws, which will be prepared in 1989 (hereinafter referred to as the "draft Trademark Law Harmonization Treaty"), will provide for an obligation to register (not only to protect) service marks and to register three-dimensional signs (for example, the shape of a bottle) as a trademark or a service mark.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Trademarks and service marks are protected in practically all countries of the world.

In respect of trademarks, a registration system exists in the great majority of countries; only the following countries do not seem to provide for the possibility of registering trademarks (they nevertheless protect trademarks on the basis of general principles): Angola, Bhutan, Burma, Cape Verde, Comoros, Djibouti, Equatorial Guinea, Guinea, Guinea Bissau, Laos, Madagascar, Maldives, Mozambique, Oman, Sao Tome and Principe.

Service mark protection is granted in a great number of countries on the basis of registration and in practically all countries on the basis of general principles, such as the protection against unfair competition; the following countries do not seem to provide for the registration of service marks: Bahamas, Bangladesh, Belize, Botswana, Burundi, China, Cyprus, Democratic Yemen, Dominica, El Salvador, Fiji, Gambia, Ghana, Greece, Grenada, Guyana, India, Indonesia, Iran, Iraq, Ireland, Jamaica, Japan, Jordan, Kenya, Kiribati, Kuwait, Lebanon, Lesotho, Liechtenstein, Malawi, Malaysia, Malta, Mauritius, Nepal, New Zealand, Nigeria, Pakistan, Panama, Papua New Guinea, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Switzerland, Syria, Thailand, Tonga, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu and Zambia.

Uncertainty exists in some countries whether three-dimensional signs (for example, the shape of a bottle) can be registered as a trademark.

Generally, only distinctive (in particular, non-descriptive) and non-misleading marks are eligible for protection.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to apply, under the national treatment principle, the same criteria to the nationals and residents of the other member States as to its own nationals. The Paris Convention also provides for a right of priority to the benefit of applicants from member States for filing applications for the registration of their trademarks abroad. Moreover, the Paris Convention grants temporary protection to trademarks used in respect of products exhibited at certain exhibitions. Finally, the Paris Convention provides that if, in any country, use of a registered mark is compulsory, the registration may be cancelled on the grounds of failure to use only after a reasonable period, and then only if the person concerned does not justify failure to use.

The Model Law grants national treatment to all foreigners (whether or not benefiting from an international convention). Trademarks and service marks are protected upon registration; if a registered trademark or service mark has not been used for five consecutive years, it may be removed from the Register.

(ii) Current WIPO activities

It is contemplated that the draft Trademark Law Harmonization Treaty will provide for an obligation to accept trademarks for registration without actual use, subject to the possibility of denying protection or cancelling a registration after a certain period of non-use.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In most countries, foreigners have access to the system of protection of marks without restriction (other than a possible requirement to be represented by a local agent). In a few countries, however (e.g. Republic of Korea, Switzerland), such access is conditional upon an international treaty or, where no international treaty is applicable, upon reciprocity.

In Canada and the United States, only marks which are already in use can be validly registered (however, use before registration is not required in Canada, and it is not required in the United States where the mark has been registered in another member State of the Paris Union). In many countries, marks which have not been used within a certain period (typically, five years) are no longer protected (normally, such lack of protection is not automatic but requires an action by an interested party, for example, an action to cancel the registration). In a number of countries, protection may be acquired without registration, merely on the basis of use.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as the "Madrid Agreement (Marks)") - a treaty which was concluded in 1891 and last revised in 1967 and which is administered by WIPO - offers substantial advantages concerning the duration and cost of procedures by providing for the possibility of international registration of trademarks and service marks. The international registration has effect in any of its twenty-seven member States1 according to the request of the applicant, unless such effect is refused by a designated State within a certain time limit. The International Bureau of WIPO accomplishes the procedure of international registration of trademarks and service marks within about three weeks. For each international registration a basic fee of Sw F 670 and a complementary fee of Sw F 68 per designated State is to be paid. Compared with registration in each of the twenty-seven member States of the Madrid Agreement (Marks), international registration has the advantage of being much simpler and much cheaper.

The Model Law provides for prompt registration of a trademark or a service mark upon application, after examination of formal requirements and possibly also examination of substantive requirements.

(ii) Current WIPO activities

In the framework of the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which trademark and service mark applicants from developing countries would benefit from a 50 per cent reduction of the fees payable for the registration procedure.

WIPO is engaged in promoting accessions to the Madrid Agreement (Marks), in order to enlarge the geographical scope of that Agreement. Moreover, two draft protocols have been prepared by the International Bureau of WIPO which are expected to facilitate such accessions and to establish the desirable links with the future European Community trademark system. They would render the Madrid Agreement still more attractive, in particular as regards cost of procedures. Those two protocols will be considered by a diplomatic conference in the first half of 1989.

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1The list of States party to the Madrid Agreement (Marks) is contained in Annex IX of this document.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The duration of the procedure for the registration of trademarks and service marks depends on various factors, including in particular the kind of examination effected by the Trademark Office (merely formal examination, substantive examination, possibility of opposition, etc.). The average duration is about twelve to eighteen months. The duration of procedure is shorter, for example, in China (ten months), Egypt (three months), Hungary (six months), Mexico (nine months), OAPI (nine months), Sweden (ten months) and Switzerland (four to five months); it is longer, for example, in Australia (thirty-three months), Canada (twenty-one months) and Japan (twenty-six months).

The average cost of the procedure for registration (not including agents' fees) of a word mark in one class ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 10 to approximately Sw F 750. The increase for each additional class is roughly between 50 and 100 per cent (it is to be noted, however, that in a number of countries the basic fee already covers up to two or three classes). In some countries, the fee is higher (between 10 and 80 per cent) for figurative marks and combinations between word marks and figurative marks.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents of the other member States, under the national treatment principle, the rights it grants to its own nationals.

The Model Law provides that the registration of the mark confers upon its registered owner the right to preclude third parties from any use of the mark, or of a sign resembling it, in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered, or for other goods or services in connection with which the use of the mark, or sign is likely to mislead the public, and from any other use of the mark, or of a sign resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark.

(ii) Current WIPO activities

It is contemplated that the draft Trademark Law Harmonization Treaty will contain provisions on the scope of the right conferred.

(iii) Commonly applied national provisions and practices, including wherever possible an indication

for representative samples of countries of the distribution of use of such provisions and practices

Practically all countries of the world grant protection to trademarks and service marks against the use of the same or a confusingly similar mark in respect of the same or similar products or services. In exceptional cases of trademarks or service marks with a particularly high reputation, the scope of protection is not limited to similar products or service but could even extend to different products or services if the use of the trade mark in respect of such products or services is likely to lead to a confusion concerning the source of such products or services or concerning any connection that may be assumed to exist between the trade mark owner and the other enterprise that uses the trademark for different products or services, or is likely to lead to a prejudice as regards the reputation of the mark ("dilution").

5. Duration of right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Madrid Agreement (Marks), the duration of the initial period of international registration is twenty years. However, it is possible to pay the fee only for a first period of ten years, so that the registration ceases to have effect after those ten years if the balance of the fee for the second period of ten years is not paid. After the initial period of twenty years, an international registration may be renewed for subsequent periods of twenty years without any limitation concerning the duration of the right.

The Model Law fixes the duration of the initial period of registration at ten years, with the possibility of subsequent renewals for periods of ten years.

(ii) Current WIPO activities

It is contemplated that the draft Trademark Law Harmonization Treaty will provide a uniform initial period of registration of a mark with a possibility of renewal for subsequent uniform periods.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

All existing laws provide for the possibility of an unlimited duration of the registration of a mark, subdivided into renewal periods that vary between five and twenty years. The most common solution is an initial period of ten years and subsequent periods of ten years. Twenty-year periods are provided for in, for example, the United States (where the continuation of protection, however, depends on the filing of an affidavit of use of the mark every sixth year), Switzerland and Spain. Initial periods of seven years, followed by subsequent periods of fourteen years, are provided for the United Kingdom, Australia and other countries following the system of the United Kingdom. Periods of five years are provided for by Mexico.

6. Duration/cost of procedures for maintaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges eighty-seven member States to provide for a period of grace for the payment of maintenance fees. That period of grace must not be less than six months for eighty-seven member States (those which are bound by Acts subsequent to 1934), and not less than three months for eleven member States (those which are not bound by Acts subsequent to 1934).

Under the Madrid Agreement (Marks), renewal of an international registration is effected by the mere payment of the relevant fees, which cover subsequent periods of twenty years. The renewal fees are the same as the fees for the initial period of twenty years, namely Sw F 670 (basic fee) and Sw F 68 for each designated State.

Under the Model Law, registration of a mark may be renewed for further consecutive periods of ten

years merely by paying the relevant fee.

(ii) Current WIPO activities

In the framework of the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which trademark and service mark owners from developing countries would benefit from a 50 per cent reduction of the fees payable for the renewal of registrations.

It is envisaged that the draft Trademark Law Harmonization Treaty will provide for an obligation to allow the renewal of the registration of a trademark or service mark for subsequent periods of ten years by merely paying the relevant fee.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In most countries renewal is effected without any procedure of examination through the mere payment of a renewal fee. Renewal fees vary from country to country. The fee for ten years in respect of a word mark in one class ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 10 to approximately Sw F 1,250.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

None.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The laws of most countries do not provide for compulsory licensing of a trademark or service mark. Only some Latin American countries permit in exceptional circumstances (in particular, unjustified refusal to continue a contractual licence) compulsory licences of trademarks.

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents of the other member States, under the national treatment principle, the same legal remedies against any infringement of their rights as those it grants to its own nationals, possibly subject to provisions of the national law relating to judicial and administrative procedure and to jurisdiction.

The Paris Convention further provides that all products unlawfully bearing a trademark must be seized on importation into a member State of the Paris Union where such trademark is entitled to legal protection. Seizure is likewise to be effected in the member State where the unlawful affixation occurred or in the member State into which the products were imported. If the legislation of a member State does not permit seizure on importation, seizure is to be replaced by prohibition of importation or by seizure inside the country. If the legislation of a member State permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures are to be replaced by the actions and remedies available in such cases to nationals under the law of such a member State.

The Model Law contains provisions on civil procedures and remedies, as well as criminal sanctions. As

regards the former, court proceedings can be instituted in case of actual infringement, but also in case of imminent infringement; the civil remedies include compensation of damages and any other sanction provided for in the civil law. As regards criminal sanctions, infringement is treated as an offence punishable by a fine or by imprisonment or both.

(ii) Current WIPO activities

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of counterfeiting. The following conservatory measures are proposed: seizure of the counterfeit goods, sealing of the premises where acts of counterfeiting take place, seizure of the tools for the manufacturing or packaging of the counterfeit goods and of papers referring to such goods, ordering the termination of the acts of counterfeiting, ordering disclosure of the source of the counterfeit goods. The civil remedies which are proposed are compensation of damages, payment of legal costs (including lawyers' fees) and, subject to certain conditions, destruction of the counterfeit goods and of tools able to be used to continue acts of counterfeiting, as well as ordering the non-continuation of acts of counterfeiting. As regards criminal sanctions, any act of counterfeiting is qualified as an offence; under one alternative, the sanction is, where the act of counterfeiting was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The following conservatory measures are provided for in, for example, the countries indicated hereinafter (see also a description of "Mareva" injunctions in Part II (Copyright), item (8)(iii)):

- interlocutory injunction: Argentina, Canada, France, Germany (Federal Republic of), Ghana, India, Japan, Kenya, Malaysia, Singapore, United Kingdom, United States, Zimbabwe;

- measures such as inspection, description of infringing products and/or of instruments used for acts of infringement, authorization to enter upon or into any land or building in the possession of the alleged infringer (see also a description of "Anton Piller orders" in Part II (Copyright), item (8)(iii)): Argentina, Australia, Brazil, Canada, Egypt, France, Germany (Federal Republic of), Ghana, India, Italy, Kenya, Malaysia, Mexico, Singapore, Switzerland, United Kingdom, United States, Zimbabwe;

- seizure of infringing articles (and sometimes of instruments used in the act of infringement): Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Italy, Japan, Kenya, Malaysia, Singapore, Sweden, Switzerland, United Kingdom, United States, Zimbabwe.

The following civil remedies are provided for in, for example, the countries indicated hereafter:

- injunction: Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Italy, Japan, Kenya, Malaysia, Mexico, Republic of Korea, Singapore, Sweden, Switzerland, United Kingdom, United States, Zimbabwe;

- compensation of damages (or, in some of these countries an account of profits): Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Italy, Japan, Kenya, Malaysia, Mexico, Republic of Korea, Singapore, Sweden, Switzerland, United Kingdom, United States, Zimbabwe;

- measures such as confiscation, delivery up or destruction of infringing goods (and, in some of those countries, of the facilities used in the act of infringement): Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Italy, Japan, Kenya, Malaysia, Republic of Korea, Singapore, Sweden, Switzerland, United Kingdom, United States, Zimbabwe.

Criminal sanctions (imprisonment and/or fine) are provided for in, for example, the following countries: Argentina, Australia, Brazil, Canada, China, Egypt, France, Germany (Federal Republic of), Ghana, Hungary, India, Italy, Japan, Kenya, Malaysia, Mexico, Republic of Korea, Singapore, Sweden, Switzerland, United Kingdom, United States, Zimbabwe.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, which, in this respect, binds seventy-two States, the International Court of Justice is competent to decide on any dispute between two or more member States concerning the interpretation or application of the Convention, unless such dispute is settled by negotiations or otherwise. The other twenty-six States party to the Paris Convention are not bound by the provisions establishing the jurisdiction of the International Court of Justice.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, no mention is made of national provisions and practices.

Part IV: Layout-Designs of Integrated Circuits

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

With the assistance of the Committee of Experts on Intellectual Property in Respect of Integrated Circuits (which met in three sessions in 1985, 1986 and 1987), WIPO has prepared a draft Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (hereinafter referred to as the "draft Treaty"). According to a decision taken by the General Assembly of WIPO and the Assembly of the International Union for the Protection of Industrial Property (Paris Union), a diplomatic conference for the adoption of the said Treaty will be convened during the current biennium (1988-89). The draft Treaty provides for an obligation to protect layout-designs of integrated circuits according to uniform standards in particular in respect of protected acts and duration of protection.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The following countries have adopted special laws on the protection of layout-designs of integrated circuits: Denmark (1987), France (1987), Germany (Federal Republic of) (1987), Japan (1985), Netherlands (1987), Sweden (1986), United Kingdom (1987), United States (1984). Moreover, the Council of the European Communities adopted in 1986 a directive obliging all member States of the European Communities to adopt such special laws. All of these aforementioned laws grant protection for layout-designs of integrated circuits. The object of protection is either called layout-design (the Swedish law), circuit-layout (the Japanese law),

mask work (the United States law) or topography (the laws of Denmark, France, Germany (Federal Republic of), Netherlands and United Kingdom, which are based on the directive of the Council of the European Communities.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty establishes the obligation to protect layout-designs of integrated circuits that are original or correspond to equivalent conditions (without restricting the freedom of Contracting States to renounce this requirement); Contracting States shall grant national treatment to nationals and residents of other Contracting States without any conditions of reciprocity; and Contracting States shall be allowed to make protection dependent on the filing of material identifying the protected layout-design for registration with a government authority and on a statement concerning first commercial exploitation where such exploitation has taken place before the registration.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

(a) Conditions of protection as regards the object of protection

The eight existing laws on the protection of layout-designs of integrated circuits require either explicitly or implicitly that the layout-design be "original". Basically, this means that a layout-design cannot be protected if it has been copied since a copied layout-design lacks originality. The laws of the member States of the European Communities require that the layout-design must be the result of some intellectual effort.

(b) Conditions of protection as regards nationality or residence of the owner of the right

With the exception of the Japanese law, which is silent on this point, the other seven laws grant protection in principle only to nationals or residents of the respective country (or, in the case of countries member of the European Communities, of any such country), with a possibility of extension of protection to foreigners through an administrative decision on the basis of reciprocity. However, in the seven countries concerned, first commercial exploitation by a foreigner in the territory of the respective country may entitle the said foreigner to be protected even if the country of his nationality does not grant reciprocity.

(c) Basis of protection

The laws of Sweden and the United Kingdom do not provide for a registration system; they protect layout-designs on the basis of creation or first commercial exploitation. The Japanese law protects layout-designs of integrated circuits only if they are registered. The laws of the remaining five countries provide for protection upon first commercial exploitation, and require registration as a condition for instituting legal proceedings.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of

integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty provides that a Contracting State may make protection of the layout-design of an integrated circuit dependent on the filing of material identifying the protected layout-design and the payment of a fee; the amount of the fee would be a matter for national determination.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In those countries which provide for registration of layout-designs of integrated circuits (Denmark, France, Germany (Federal Republic of), Japan, Netherlands, United States), the registration has effect from the date of application. In the United States even a rejected registration is sufficient as a basis for instituting legal proceedings.

The cost of registration varies from country to country. The registration fee is about Sw F 450 in Japan, about Sw F 400 in the Federal Republic of Germany, about Sw F 140 in the Netherlands and about Sw F 28 in the United States (Denmark and France have not yet decided on the amount of the fee to be charged).

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty establishes an obligation to provide for protection against the unauthorized copying and incorporating in a microchip of a layout-design of an integrated circuit, and against the unauthorized distribution of articles containing microchips with copied layout-designs.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The existing laws on the protection of layout-designs of integrated circuits provide for a protection against unauthorized copying of the layout-design and unauthorized distribution (in particular importing and selling) of articles containing a copied layout-design.

5. Duration of right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty establishes an obligation to provide for protection for a term of at least ten years from the date of registration or the date of first commercial exploitation anywhere in the world.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In those countries which provide for the registration of layout-designs of integrated circuits (Denmark, France, Germany (Federal Republic of), Japan, Netherlands, United States), the duration is ten years from first

commercial exploitation or filing an application for registration, whichever is earlier. In Sweden and in the United Kingdom, the duration is ten years from first commercial exploitation. In all countries, the ten-year period expires at the end of the calendar year. In Denmark, France, Germany (Federal Republic of), the Netherlands and the United Kingdom, failure to register or commercially exploit does not indefinitely extend the protection: in such cases, the possibility of obtaining protection expires at the end of the fifteenth calendar year after the creation of the layout-design.

6. Duration/cost of procedures for maintaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty allows registration but does not provide for periods within the duration of the right; thus a procedure for maintaining the right is not provided for.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In those countries which provide for a registration of layout-designs of integrated circuits (Denmark, France, Germany (Federal Republic of), Japan, Netherlands, United States), the duration of the right does not depend on any maintenance procedure. Registration confers (in Japan) or confirms (in the other countries) the right for the full duration of ten years.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty does not permit any compulsory licences.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

With the exception of the laws of Denmark and France, none of the existing laws on the protection of layout-designs of integrated circuits provides for the possibility of compulsory licences. The Danish law contains a provision authorizing the Government to put into effect a possibility of compulsory licences for cases where the owner of the right has refused to grant a contractual licence on reasonable terms. The French law permits compulsory licences for defence purposes.

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. The draft Treaty establishes an obligation to provide for measures to ensure the prevention and repression of infringement.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

All of the eight countries which have laws on the protection of layout-designs of integrated circuits provide for civil sanctions if the rights of the owner of the layout-design are violated. Those civil sanctions include a prohibition to continue the illegal act ("injunction"), an obligation to pay compensation for damages and in some countries the destruction of infringing products. Criminal sanctions (imprisonment and fines) are provided for in the laws of Germany (Federal Republic of), Japan, Netherlands and Sweden.

In some countries (in particular the United States), administrative sanctions, for example the seizure, forfeiture and destruction of infringing products, may be ordered.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

At present, there are no international treaties or guidelines concerning the protection of layout-designs of integrated circuits. However, WIPO is preparing such a treaty (see item (ii) below).

(ii) Current WIPO activities

See item 1(ii) above. It has been proposed to include in the draft Treaty provisions on consultation procedures for the settlement of disputes that arise because one Contracting State believes that another Contracting State does not fulfil its obligations or exceeds its rights under the Treaty.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

None.

ANNEX I

States party to the Paris Convention
(as of 1 May 1988)

Algeria
Argentina
Australia
Austria
Bahamas
Barbados
Belgium
Benin
Brazil
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
China
Congo
Côte d'Ivoire
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Mongolia
Morocco
Netherlands
New Zealand
Niger
Nigeria
Norway
Philippines

Cuba
Cyprus
Czechoslovakia
Democratic People's Republic of Korea
Denmark
Dominican Republic
Egypt
Finland
France
Gabon
German Democratic Republic
Germany, Federal Republic of
Ghana
Greece
Guinea
Guinea-Bissau (as from 28 June 1988)
Haiti
Holy See
Hungary
Iceland
Indonesia
Iran (Islamic Republic of)
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kenya
Lebanon
Poland
Portugal
Republic of Korea
Romania
Rwanda
San Marino
Senegal
South Africa
Soviet Union
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syria
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Kingdom
United Republic of Tanzania
United States
Uruguay
Viet Nam
Yugoslavia
Zaire
Zambia
Zimbabwe

Total: ninety-eight

ANNEX II

Exclusions from patent protection

Extract from WIPO document HL/CE/IV/INF/1

(i) Pharmaceutical products (49): Argentina, Australia (where the Commissioner can refuse to grant a patent therefor where the product is a mere mixture of known ingredients), Bolivia, Brazil, Bulgaria, Canada (unless produced by processes also claimed or their equivalents), Chad, China (if obtained by chemical processes), Colombia, Cuba, Czechoslovakia, Ecuador, Egypt (as regards chemical inventions), Finland, German Democratic Republic, Ghana, Greece, Hungary, Iceland, India, Iran, Iraq, Lebanon, Libya (as regards chemical inventions), Malawi, Mexico, Monaco, Mongolia, Morocco, New Zealand (where the Commissioner can refuse a patent therefor where the product is a mere mixture of known ingredients), Norway, Pakistan, Peru, Poland, Portugal, Republic of Korea, Romania, Soviet Union, Spain (until 1992), Syria, Thailand, Tunisia, Turkey, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zambia (where the Registrar can refuse a patent therefor where the product is a mere mixture of known ingredients), Zimbabwe (where the Registrar can refuse a patent therefor where the product is a mere mixture of known ingredients);

(ii) Animal varieties (45): Algeria, Austria, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Cyprus, Denmark, Ecuador, EPC, Finland, France, German Democratic Repuglic, Germany (Federal Republic of), Ghana, Israel, Italy1, Kenya, Luxembourg, Malaysia, Mexico, Netherlands,

Nigeria, Norway, OAPI2, Peru, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland3, Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

(iii) Methods for treatment of human or animal body (44): Austria, Barbados, Belgium, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Cyprus, Denmark, Ecuador, EPC, Finland, France, German Democratic Republic (except for apparatuses), Germany (Federal Republic of), Ghana, Hungary, India, Israel, Italy1, Japan, Kenya, Malaysia, Mexico, Mongolia, Netherlands, Norway, OAPI2, Peru, Poland, Romania, South Africa, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland3, Uganda, United Kingdom, United Republic of Tanzania, Viet Nam, Yugoslavia;

_____

1In this memorandum, the information on Italy also applies to the Holy See and San Marino (see Annex I, paragraphs 94 and 106).

2Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Gabon, Mali, Mauritania, Niger, Senegal, Togo. Chad is a member of OAPI but is party to the Libreville Agreement which, in Article 3 of its Annex I, only excludes pharmaceutical compositions and remedies from patent protection.

3In this memorandum, the information on Switzerland also applies to Liechtenstein (see Annex I, paragraph 99).

(iv) Plant varieties (44): Algeria, Austria, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Canada, China (except for relevant processes), Colombia, Cuba, Cyprus, Denmark, Ecuador, EPC, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Israel, Kenya, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, OAPI1, Peru, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland2, Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

(v) Biological processes for producing animal or plant varieties (42): Algeria, Austria, Bahamas, Barbados, Belgium, Brazil, Canada, Colombia, Cuba, Cyprus, Denmark, Ecuador, EPC, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Israel, Italy3, Kenya, Luxembourg, Malaysia, Mexico, Mongolia, Netherlands, Nigeria, Norway, OAPI1, Peru, Poland, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland2, Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

(vi) Food products (35): Australia (where the Commissioner can refuse to grant a patent therefor where the product is a mere mixture of known ingredients), Bolivia, Brazil, Bulgaria, Canada (unless produced by processes also claimed or their equivalents), China, Czechoslovakia, Colombia, Cuba, Denmark, Ecuador, Egypt (as regards chemical inventions), Finland, German Democratic Republic, Hungary, Iceland, India, Libya (as regards chemical inventions), Malawi, Mexico, Mongolia, New Zealand (where the Commissioner can refuse a patent therefor), Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Thailand, Tunisia, Venezuela, Viet Nam, Yugoslavia, Zambia (where the Registrar can refuse a patent therefor where the product is a mere mixture of known ingredients), Zimbabwe (where the Registrar can refuse a patent therefor where the product is a mere mixture of known ingredients);

(vii) Computer programs (32): Australia, Austria, Belgium, Brazil, Canada, Cyprus, Denmark, EPC, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, Israel, Italy3, Japan, Kenya, Mexico, Norway, OAPI1, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

_____

1Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Gabon, Mali, Mauritania, Niger, Senegal, Togo. Chad is a member of OAPI but is party to the Libreville Agreement which, in Article 3 of its Annex I, only excludes pharmaceutical compositions and remedies from patent protection.

2In this memorandum, the information on Switzerland also applies to Liechtenstein (see Annex I, paragraph 99).

3In this memorandum, the information on Italy also applies to the Holy See and San Marino (see Annex I, paragraphs 94 and 106).

(viii) Chemical products (22): Bolivia, Brazil, Bulgaria, China, Cuba, Czechoslovakia, German Democratic Republic, Hungary, India, Mexico, Mongolia, Morocco (but only in the previous zone of Tangier),

Poland, Portugal, Republic of Korea, Romania, Soviet Union, Spain (until 1992), Uruguay, Venezuela, Viet Nam, Yugoslavia;

(ix) Nuclear inventions (14): Brazil, Bulgaria, China, Cuba, Czechoslovakia, German Democratic Republic, India, Japan, Mexico, Poland, Republic of Korea, Romania, United States, Yugoslavia;

(x) Pharmaceutical processes (10): Australia (where the Commissioner can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Brazil, Colombia (unless if exploited in Colombia), Malawi, Mexico, New Zealand (where the Commissioner can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Republic of Korea, Turkey, Zambia (where the Registrar can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Zimbabwe (where the Registrar can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture);

(xi) Food processes (9): Australia (where the Commissioner can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Brazil, Colombia (unless if exploited in Colombia), Denmark, Malawi, Mexico, New Zealand (where the Commissioner can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Zambia (where the Registrar can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture), Zimbabwe (where the Registrar can refuse a patent therefor where the process produces a mere mixture of known ingredients by mere admixture);

(xii) Micro-organisms (9): Brazil, Cuba, Czechoslovakia (if used in industrial manufacture), German Democratic Republic, Hungary, Malaysia (except for man-made living micro-organisms), Spain, Romania, Yugoslavia;

(xiii) Substances obtained by microbiological processes (7): Czechoslovakia, Brazil, German Democratic Republic, Malaysia, Romania, Spain (until 1992), Yugoslavia;

(xiv) Cosmetics (2): Bulgaria, Republic of Korea;

(xv) Fertilisers (2): Mexico, Yugoslavia;

(xvi) Mixture of metals and alloys (2): Mexico, Yugoslavia;

(xvii) Agricultural machines (1): Thailand;

(xviii) Anticontaminants (1): Yugoslavia;

(xix) Methods of agriculture or horticulture (1): India.

ANNEX III

States Party to the Patent Co-operation Treaty
(as of 1 May 1988)

Australia
Austria
Barbados
Belgium
Benin
Brazil
Bulgaria
Cameroon

Central African Republic
Chad
Congo
Democratic People's Republic of Korea
Denmark
Finland
France
Gabon
Germany, Federal Republic of
Hungary
Italy
Japan
Liechtenstein
Luxembourg
Madagascar
Malawi
Mali
Mauritania
Monaco
Netherlands
Norway
Republic of Korea
Romania
Senegal
Soviet Union
Sri Lanka
Sudan
Sweden
Switzerland
Togo
United Kingdom
United States

Total: 40

ANNEX IV

Table Concerning Prior Users' Rights

Extract from WIPO Document HL/CE/IV/INF/2

Country/ regional treaty	Right to use patented invention based on possession, preparations for use or use before filing date or priority date					
	Facts giving rise to right of use			Knowledge must not be derived from owner of patent (or his predecessor in title)	Right of use limited to	Particular provisions
	Possession	Preparations for use	Use		Scope of original use or preparations	Needs of own business
OAPI		yes	yes			yes
Argentina						
Australia						
Austria		yes	yes			yes
Belgium	yes	1/	yes			
Brazil						
Bulgaria		yes	yes	yes		
Canada						2/
Chile						
China		yes	yes		yes	
Colombia						
Czechoslovakia		yes	yes	yes		
Denmark		yes	yes		yes	3/
Finland		yes	yes		yes	3/
France	yes	1/	1/			
German Democratic Republic		yes	yes			

For explanations and footnotes, see page 58 of this Annex.

Country/ regional treaty	Right to use patented invention based on possession, preparations for use or use before filing date or priority date					
	Facts giving rise to right of use			Knowledge must not be derived from owner of patent (or his predecessor in title)	Right of use limited to	Particular provisions
	Possession	Preparations for use	Use		Scope of original use or preparations	Needs of own business
Germany, Federal Republic of		yes	yes	under certain conditions4		yes
Greece		yes	yes			yes

Hungary	yes	yes	yes			
India						5/
Ireland						5/
Israel	yes	yes			yes	
Italy		yes		yes		
Japan	yes	yes	yes	yes		
Luxembourg	yes	yes				
Mexico	yes	yes				
Morocco						
Netherlands	yes	yes	yes			
New Zealand						5/

For explanations and footnotes, see page 58 of this Annex.

Country/ regional treaty	Right to use patented invention based on possession, preparations for use or use before filing date or priority date					
	Facts giving rise to right of use			Knowledge must not be derived from owner of patent (or his predecessor in title)	Right of use limited to	Particular provisions
	Possession	Preparations for use	Use		Scope of original use or preparations	Needs of own business
Norway		yes	yes		yes	3/
Philippines						
Poland		yes	yes		yes	yes
Portugal						
Republic of Korea	yes	yes			yes	6/
Romania		yes	yes	yes		
South Africa						7/
Soviet Union		yes	yes	yes		
Spain		yes	yes		yes	yes
Sweden		yes	yes		yes	3/
Switzerland		yes	yes			yes
Turkey						
United Kingdom		yes	yes			5/

For explanations and footnotes, see Page 58 of this Annex.

Country/ regional treaty	Right to use patented invention based on possession, preparations for use or use before filing date or priority date					
	Facts giving rise to right of use			Knowledge must not be derived from owner of patent (or his	Right of use limited to	Particular provisions
	Possession	Preparations	Use		Scope of	Needs of

	for use	predecessor in title)	original use or preparations	own business
United States				
Uruguay				
Venezuela				
Yugoslavia	yes	yes		

For explanations and footnotes, see Page 58 of this Annex.

Explanations and Footnotes

"yes" means that the solution indicated in the heading of the table is provided for in the applicable legislation (if there is no "yes" under the heading "Facts Giving Rise to Right of Use", possession, preparation for use or use before the filing date or priority date do not create a right to use the patented invention).

Footnotes

1Since possession is sufficient, it is assumed that preparations for use or use create the same right as possession.

2Specific articles produced before the grant of a patent may be used and sold also after grant.

3Use or preparation for use between priority date and first publication of application may under special circumstances justify a compulsory licence.

4If the applicant, or his predecessor in title, has, before applying for a patent, disclosed the invention to other persons and reserved his rights for the case that a patent might be granted, any person knowing of the invention because of this disclosure cannot claim a prior user's right relying on measures he has taken within six months from the disclosure.

5Use for government purposes is exempted from patent effects if invention has been recorded or tried, before the priority date, by or on behalf of government and this was not dependent upon a communication derived from the owner of the patent or his predecessor in title.

6Patent effects do not extend to identical products existing in the country at the national filing date.

7Secret use on a commercial scale within the country before priority date affects novelty.

ANNEX V

Table Concerning Provisional Protection of Applicant

Extract from WIPO Document HL/CE/IV/INF/2

Country/ regional treaty	Provisional protection between filing date and date on which effects of patent begin		
	Period between FD and P1	Period between P1 and P2	Period between P2 and DE
OAPI	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX1		
Argentina			
Australia		XXXXXXXXXXXXXXX2	XXXXXXXXXXXXX2
Austria	XXXXXXXXXXXXX		
Belgium3	//////////////1		
////////////////////////////			

Brazil ////////////2
////////////////////////////2_____
_____
Bulgaria_____
Canada_____
Chile_____
China ///////////////2
////////////2_____
Colombia_____
Czechoslovakia_____
_
Denmark ///////////////2
XXXXXXXXXXXXX2_____
_____
Finland ///////////////2
XXXXXXXXXXXXX2_____
_____
France XXXXXXXXXXX1,2
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX2_____
_____
German Dem. Rep.4
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX2_____
_____
Germany, Fed. Rep. of
////////////////////////////_____
_____
Greece_____
Hungary XXXXXXXXXXXXX2
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX2_____
_____
India
XXXXXXXXXXXXX2_____
_____
Ireland
XXXXXXXXXXXXX2_____
_____
Israel
XXXXXXXXXXXXX2_____
_____
Italy XXXXXXXXXXXXX1
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX_____
_____
Japan XXXXXXXXXXXXX5,6
XXXXXXXXXXXXXX_____
_____
Luxembourg_____

For explanations, see page 60; the footnotes appear on page 61.

Country/ regional treaty	Provisional protection between filing date and date on which effects of patent begin		
	Period between FD and P1	Period between P1 and P2	Period between P2 and DE

Mexico		
Morocco		
Netherlands	////////////2,7	
XXXXXXXXXXXXX2		
New Zealand		
XXXXXXXXXXXXX2		
Norway	///////////////2	
XXXXXXXXXXXXX2		
Philippines		
Poland	XXXXXXXXXXXXX2	
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX2		
Portugal		
Republic of Korea	XXXXXXXXXXXXX6,8	
XXXXXXXXXXXXXX		
Romania		
South Africa9		
XXXXXXXXXXX10		
Soviet Union		
Spain	////////////11	
////////////////////////////		
Sweden	///////////////2	
XXXXXXXXXXXXX2		
Switzerland	////////////////////////////2	
XXXXXXXXXX2,12		
Turkey		
United Kingdom		
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX2		
United States		
Uruguay		
Venezuela		
Yugoslavia	XXXXXXXXXXXXX2	
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX2		

Explanations

_____
_____ = no provisional protection

_____
XXXXXXXXXX_____ = protection substantially equivalent to effects of patent

_____
//////////_____ = protection not equivalent to effects of patent (e.g. mere right to reasonable compensation)

FD = Filing date
Pl = Publication of unexamined or not completely (i.e. not covering novelty and inventive step) examined application

P2 = Publication of application after examination of all formal and substantive grounds
DE = Date on which effects of patent begin

Footnotes

1If and from the time at which official copy of application is notified to individual user.
2Proceedings (or, at least, final decision) possible only after grant of patent.
3P1 takes place only at request of applicant.
4P1 corresponds to issue of provisional patent.
5If and from the time at which individual user received writ of warning or knew of application.
6Right cannot be exercised before P2.
7Only for acts performed after thirty days from serving writ of warning upon individual user.
8If and from the time at which individual user received writ of warning.
9P1 takes place only if application claims priority under the Paris Convention.
10Proceedings possible only after nine months from sealing of patent.
11If and from the time at which individual user was informed of application.
12P2 takes place only for a few specific technical fields.

ANNEX VI

DURATION OF PATENTS

Extract from an updated version of WIPO document HL/CE/IV/INF/2

(a) Duration, counted from the filing date of the application:

(i) 20 years: Algeria; Belgium; Burundi; Chad; Denmark; Finland; France; Hungary; Israel; Italy1; Monaco; Morocco; Netherlands; Nigeria; Norway; Rwanda; South Africa; Spain; Sudan; Sweden; Switzerland2; United Kingdom; Zaire (except for medicine inventions for which the duration is 15 years from the filing date of the application); Zimbabwe; European Patent Convention;

(ii) 16 years: Bahamas; Jordan;

(iii) 15 years: Brazil; Barbados3; Bulgaria; China; Czechoslovakia; Democratic People's Republic of Korea; Egypt3; Iraq; Lebanon; Libya3; Mongolia; Poland; Romania; Soviet Union; Syria; Thailand; Viet Nam;

(iv) 14 years: Malta4; Mauritius5;

_____

1The Italian Law also applies to the Holy See and San Marino.

2The Swiss Law also applies to Liechtenstein.

3With the possibility of a 5-year extension. In Barbados, an extension is granted if the patent owner proves that the invention is being sufficiently used in the country at the date of the request or that there are circumstances that justify the failure to use the invention sufficiently in the country. In Egypt and Libya, an extension is granted if the invention is of particular importance and if the patent owner proves that he has not secured an adequate return for his efforts and expense.

4With the possibility of an extension for a period apparently not indicated in the law, on the grounds that the patent owner has not been adequately remunerated by the patent.

5With the possibility of up to a 14-year extension, on grounds apparently not indicated in the law.

(v) 10 years: OAPI1; Cuba2;

(vi) 5, 10, 15 or 20 years: Iran3; Tunisia3;

(vii) 5, 10 or 15 years: Turkey4.

(b) Duration, counted from the date following the filing date of the application:

(i) 20 years: Germany (Federal Republic of); Luxembourg;

(ii) 18 years: German Democratic Republic;

(iii) 15 years: Greece.

(c) Duration, counted from the publication date of the examined application (e.g for opposition):

(i) 18 years: Austria, but not beyond 20 years from the filing date of the application;

(ii) 15 years: Japan, but not beyond 20 years from the filing date of the application;

(iii) 12 years: Republic of Korea, but not beyond 15 years from the filing date of the application5.

_____

1With the possibility of a 5-year extension for Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Gabon, Mali, Mauritania, Niger, Senegal and Togo if the petitioner proves that the patented invention is being worked on the territory of one of the member States at the date of the request or that there are legitimate reasons for failing to work it. Chad is a member of OAPI but is party to the Libreville Agreement which provides for a term of 20 years from filing without extension.

2With the possibility of a 5-year extension, the law apparently not indicating the grounds therefor.

3Depending on the applicant's request.

4The law does not appear to indicate on what the actual duration depends.

5In cases where the application is not published (e.g. secret patents), the duration is 12 years from the date of grant of the patent.

(d) Duration, counted from the publication date of the unexamined application:

7 years: Yugoslavia (publication occurs 18 months after the filing or priority date, unless the applicant requests an earlier publication, in which case, it would seem that duration is to be counted from such earlier publcation date)1.

(e) Duration, counted from the date "the complete specification is lodged":

16 years: Australia2; Ireland3; Malawi4; New Zealand3; Zambia3.

(f) Duration, counted from the date of grant of the patent:

(i) 17 years: Canada; Philippines; United States5;

_____

1With the possibility of a 7-year extension, if the patented invention is actually and seriously worked in the country.

2With the possibility of an extension, on grounds that the patent owner has been inadequately remunerated by the patent (in which case, the extension may be for a further 5-year term, or, in exceptional cases, for 10 years) or on grounds of war loss (in which case, the extension is for such further term as the court thinks fit).

3With the possibility of a 5-year or a 10-year extension. In Ireland, an extension is possible if the patent owner proves that he has not been sufficiently remunerated by the patent, and, in extending the term of the patent, due regard is taken of the merits of the invention. In New Zealand, an extension is possible if the patent owner proves that he has not been adequately remunerated by the patent or if, by reason of hostilities with any foreign State, he has suffered a loss or damage. In Zambia, an extension is possible if the patent owner proves that by reason of hostility with any foreign State he has suffered loss and damage or he has not derived an adequate remuneration from the patent.

4With the possibility of an extension of 5 or 10 years or for the term of the hositilities between Malawi and any foreign State, if the patent owner has not obtained an adequate remuneration from the patent or if he has suffered a loss or damage because of the hostilities.

5With the possibility of an extension for certain patented inventions subjected to regulatory review before their commercial marketing or use, in which case the duration may be extended for a specified period of time (under normal circumstances, a time equal to the regulatory review period which occurs after the patent is issued, provided that the period remaining in the term of the patent after the date of regulatory approval, when added to the regulatory review period, does not exceed 14 years). The possibility of such an extension usually applies to inventions related to a drug, food or cosmetics.

(ii) 16 years: Bangladesh1; Pakistan1;

(iii) 15 years: Bolivia; Iceland; Malaysia; Portugal; Sri Lanka; Uruguay;

(iv) 14 years: India (except for process inventions for manufacturing food or medicine, for which the duration is 5 years from the date of sealing of the patent, or 7 years from the date of the patent (i.e. the date on which the complete specification was filed), whichever period is shorter); Mexico; Trinidad and Tobago;

(v) 5, 10, or 20 years: Haiti (the law does not appear to indicate on what the actual duration depends);

(vi) 5, 10 or 15 years: Argentina, depending on the invention's merits and the wishes of the applicant (the decision is made by the Patent Office); Dominican Republic;

(vii) 5 or 10 years: Venezuela, depending on the will of the applicant;

(viii) 5 years: Colombia2; Ecuador2; Peru2.

(g) Duration, expiring on the same date as the corresponding patent in the United Kingdom:

Cyprus; Ghana; Kenya; Uganda; United Republic of Tanzania.

_____

1With the possibility of a 5-year or a 10-year extension if the patent owner proves that the patent has not been sufficiently remunerative.

2With the possibility of a 5-year extension if the patent is adequately worked.

ANNEX VII

States Party to the Berne Convention
(as of 1 May 1988)

Argentina
Australia
Austria
Bahamas
Barbados
Belgium
Benin
Brazil
Bulgaria
Burkina Faso
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Congo
Costa Rica
Côte d'Ivoire
Czechoslovakia
Cyprus
Denmark
Egypt
Fiji
Finland
France
Gabon
German Democratic Republic
Germany (Federal Republic of)
Greece
Guinea
Holy See
Hungary
Iceland
India
Ireland
Israel
Italy
Japan
Liechtenstein
Luxembourg
Madagascar
Mali
Malta
Mauritania
Mexico
Monaco
Morocco
Netherlands
New Zealand
Niger
Norway
Pakistan
Philippines
Poland
Portugal
Romania
Rwanda
Senegal
South Africa
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Thailand
Togo
Tunisia
Turkey
United Kingdom
Uruguay
Venezuela
Yugoslavia
Zaire
Zimbabwe
Lebanon
Libya

Total: 77

ANNEX VIII

States Party to the Nairobi Treaty on
the Protection of the Olympic Symbol
(as of 1 May 1988)

Algeria
Argentina
Barbados
Bolivia
Brazil
Bulgaria
Chile
Congo
Cuba
Cyprus
Egypt
El Salvador
Equatorial Guinea
Ethiopia
Greece
Guatemala
India
Italy
Jamaica
Kenya
Mexico
Oman
Qatar
San Marino
Senegal
Soviet Union
Sri Lanka
Syria
Togo
Tunisia
Uganda
Uruguay

Total: 32

ANNEX IX

States Party to the Madrid Agreement (Marks)
(as of 1 May 1988)

Algeria
Austria
Belgium
Bulgaria
Czechoslovakia
Democratic People's Republic of Korea
Egypt

France
German Democratic Republic
Germany, Federal Republic of
Hungary
Italy
Liechtenstein
Luxembourg
Monaco
Mongolia
Morocco
Netherlands
Portugal
Romania
San Marino
Soviet Union
Spain
Sudan
Switzerland
Viet Nam
Yugoslavia

Total: 27