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Negotiating Group on Trade-Related Aspects 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

Revision

The following document, dated 1 September l988, has been received from the Director General of the World Intellectual Property Organization. It constitutes a revision of document MTN.GNG/NG11/W/24 and of addenda 1 and 2 to that document.

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, incuding 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 GATT document MTN.GNG/NG11/6, paragraphs 39 and 40 and Annex).

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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 98* 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 87 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 11 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 10 and 20 years for developing countries and between 5 and 10 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 Rev. 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, microorganisms, substances obtained by microbiological processes, cosmetics, fertilizers, mixture of metals and alloys, agricultural machines, anticontaminants, methods of agriculture or horticulture.

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

(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 98 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 Cooperation Treaty (PCT), which has 40 member States*, contains definitions of novelty, inventive step (or non-obviousness) and industrial applicability, which are the commonly applied patentability criteria.

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").

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

The grace period is recognized, in one form or another, in practically all of the 20 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 of America 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 of America).

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 of America 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 of America 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 of America, 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 98 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 87 member States (those which are bound by Acts subsequent to 1934), and not less than three months for 11 member States (whose which are not bound by Acts subsequent to 1934).

The Patent Cooperation Treaty (PCT) allows the nationals or residents of its 40 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% 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 procedings 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 of America). 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 18 months in Egypt and Spain; around 20 months in the United Kingdom and the United States of America; 24 months in Australia; 25 months in Thailand; between 30 and 36 months in China, Germany (Federal Republic of), Hungary, Japan, Republic of Korea, Switzerland; more than 36 months in 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 50 Swiss francs to approximately 900 Swiss francs. (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 98 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 87 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 the 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 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 of America--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 Rev. 1 which is reproduced in Annex IV of this document.

As regards "provisional protection," see the extract from WIPO document HL/CE/IV/INF/2 Rev. 1 which is

reproduced in Annex V 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 of America), 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 98 member States, patents applied for during the period of priority are independent as regards their normal duration. Under another provision, which binds 96 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 15 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 20 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 10 and 20 years for developing countries and between 5 and 10 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 20 years from the filing date with the duration of 17 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 WIPO document HL/CE/IV/INF/2 Rev. 1 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 98 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 87 member States (those which are bound by Acts subsequent to 1934), and not less than three months for 11 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 maintainance of the patent.

(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 owners from developing countries would benefit from a 50% 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 300 Swiss francs to approximately 19,000 Swiss francs.

(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 98 member States to take legislative measures providing for the grant of compulsory licenses 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 87 States, a compulsory license may not be applied for on the ground 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 license must be non-exclusive and is not transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

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) licenses 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 licenses 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 licenses 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 98 countries party to that Convention (a major exception being the United States of America).

Non-voluntary licenses 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 (AIPO)).

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

- non-voluntary licenses 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, Zaire);

- non-voluntary licenses 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 of America, Yugoslavia, Zaire, Zambia, Zimbabwe, member countries of AIPO);

- non-voluntary licenses 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 AIPO);

- non-voluntary licenses in the interest of national defense (e.g., Czechoslovakia, Hungary, Nigeria, Philippines, Republic of Korea, Romania, Sudan, Yugoslavia, member countries of AIPO);

- non-voluntary licenses 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 of America).

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 of America, Uruguay, Zambia, Zimbabwe, as well as, for national defense purposes, France, Netherlands and member countries of AIPO).

(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 98 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, intentional infringement of a patent is qualified as an offense 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 offense; 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 of America).

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 of America, 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 of America, 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 of America, 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/or 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 of America, 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 73 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 25 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, there are no commonly applied 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 Part 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 neighboring rights--that is, neighboring to the rights in literary and artistic works--such as the rights in phonograms, broadcasts, typographical arrangements of published editions. Neighboring rights are dealt with in Part VII.

In the field of copyright, there are two international conventions: the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as 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, 79 countries have adhered to the Berne Convention*. According to recent information, the question of adherence to the Berne Convention is under consideration in several countries including the United States of America and the Soviet Union.

(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 list of the States party to the Berne Convention is contained in Annex VII of this document. 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 audiovisual 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 20 years from the date of the first use or the first commercialization of the program and, at most, 25 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--insofar 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, 1983) 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 favor 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 favor 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 program 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 15 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 of America, 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, Brazil, 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 of America. 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 of America 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 THE RIGHT

(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. (E.g., 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 of America on September 16, 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 of America, a detailed cost-benefit analysis of various copyright formalities was submitted to the Copyright Office by King Research Inc. in February 1987 which analyzed 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 of America have been chosen as examples.

In the United States of America, 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 labor 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 three percent 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 conditional 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 honor 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 licenses. 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, which have been completed, 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 1986-87 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 audiovisual works and phonograms ("home taping"); reprography; computer storage, electronic publishing, display; rental and lending; satellite broadcasting; cable distribution.

In the second phase of WIPO's copyright program, a summary was made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works (June 1988). The third phase of WIPO's copyright program--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 February-March 1989.

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 of America 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 nonprofit 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 audiovisual 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 of America), 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 of America). 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 of America in respect of phonograms, in Denmark, Finland, Iceland and Sweden in respect of sheet music).

(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

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 50 years after his death. The protection of anonymous and pseudonymous works expires, as a rule, 50 years after the work has been lawfully made available to the public. In respect of cinematographic works, it may be provided that the 50-year term of protection be calculated from the making 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: 25 years from the making of such works.

The Berne Convention, as mentioned in item (4)(i), above, 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 50 years after his death.

Certain countries protect works for a longer period: Brazil and Spain for 60 years; Austria, Germany (Federal Republic of) and Israel for 70 years; Colombia, Guinea and Panama for 80 years, and Côte d'Ivoire for 99 years.

Certain other countries grant a shorter term of protection; as a rule, 25 years after the author's death. This applies, e.g., to Algeria, Cuba, Haiti, Kenya, Liberia, Malawi, 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 July 3, 1985, introduced two specific solutions concerning the duration of copyright protection. The term of protection was extended to 70 years in respect of musical works while it has remained 50 years in respect of all other works; for computer programs, only a 25-year term of protection has been granted from the making of the programs.

(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

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 licenses (non-voluntary licenses) 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 the right of reproduction of works published in printed or analogous forms of reproduction and of audiovisual 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 licenses 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 Neighboring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audiovisual 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 program 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 licenses 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, Luxemburg, Malawi, Mali, New Zealand, Nigeria, Pakistan, Sri Lanka, Turkey, United States of America, Yugoslavia, Zambia).

Non-voluntary licenses 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 of America, Zambia, Zimbabwe).

Non-voluntary licenses 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, Switzerland, Trinidad and Tobago, Turkey, United Kingdom, United States of America, Yugoslavia, Zambia).

Non-voluntary licenses 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 licenses 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 licenses), Algeria, Barbados, Dominican Republic, Ghana, Singapore, Trinidad and Tobago). However, such licenses are not applied in practice.

In some countries, non-voluntary licenses are applied also in respect of the right of public performance of works. In the United States of America, such licenses are applicable only in respect of the so-called "juke boxes" with reasonable fees. In other countries, however, the scope of such compulsory licenses is much wider (e.g., Cuba, Soviet Union where compulsory licenses 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 licenses (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 1980's, WIPO started an intensive anti-piracy program. So far, this program 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 audiovisual 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 offense; 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 of America, 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 judgment 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 60 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 19 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, there are no commonly applied 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 98 member States* 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. 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 favor 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 32 member States** 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

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

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

6608I or arrangements of colors, 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 model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) provide, in particular, for protection of two or three-dimensional trademarks against unauthorized reproduction or slavish or near-slavish imitation.

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, Nigeria, Pakistan, 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 98 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 benefitting 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 marks 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 the United States of America, only marks which are already in use can be validly registered (however, use is not required where the mark has been registered in another member State of the Paris Union). As regards Canada, use in that country is not required before filing of the application but is required before registation; where, however, an application is based upon a foreign registration, use in Canada is not required before registration (use in any country is sufficient). 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 the member States 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 670 Swiss francs and a complementary fee of 68 Swiss francs per designated State is to be paid. Compared with registration in each of the 27 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% 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.

(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 12 to 18 months. The duration of procedure is shorter, for example, in China (10 months), Egypt (three months), Hungary (six months), Mexico (nine months), Sweden (10 months), Switzerland (four to five months) and AIPO (nine months); it is longer, for example, in Australia (33 months), Canada (21 months) and Japan (26 months).

* The list of the States party to the Madrid Agreement (Marks) is contained in Annex IX of this document. 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 10 Swiss francs to approximately 750 Swiss francs. The increase for each additional class is roughly between 50 and 100% (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%) 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 98 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 services but could even extend to different products or services if the use of the trademark 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 trademark 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 registation is 20 years. However, it is possible to pay the fee only for a first period of 10 years, so that the registration ceases to have effect after those 10 years if the balance of the fee for the second period of 10 years is not paid. After the initial period of 20 years, an international registration may be renewed for subsequent periods of 20 years without any limitation concerning the duration of the right.

The Model Law fixes the duration of the initial period of registration at 10 years, with the possibility of subsequent renewals for periods of 10 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 5 and 20 years. The most common solution is an initial period of 10

years and subsequent periods of 10 years. Twenty-year periods are provided for in, for example, the United States of America (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 14 years, are provided for by the United Kingdom, Australia and other countries following the system of the United Kingdom. Periods of five years are provided for by Mexico.

(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 98 member States to grant a period of grace for the payment of maintenance fees. That period of grace must not be less than six months for 87 member States (those which are bound by Acts subsequent to 1934), and not less than three months for 11 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 the subsequent period of 20 years. The renewal fees are the same as the fees for the initial period of 20 years, namely, 670 Swiss francs (basic fee) and 68 Swiss francs for each designated State.

Under the Model Law, registration of a mark may be renewed for further consecutive periods of 10 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% 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 10 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 10 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 10 Swiss francs to approximately 1,250 Swiss francs.

(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 license) compulsory licenses 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 98 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, those 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 not only 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, intentional infringement is treated as an offense 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 offense; 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, Australia, Canada, France, Germany (Federal Republic of), Ghana, India, Japan, Kenya, Malaysia, Singapore, United Kingdom, United States of America, 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 of America, 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 of America, 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 of America, 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 of America, 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 of America, 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 of America, 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 73 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 25 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, there are no commonly applied 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 (in its version of 1987, that draft is 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), Spain (1988), Sweden (1986), United Kingdom (1987), United States of America (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 the 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 US law) or topography (the laws of Denmark, France, Germany (Federal Republic of), Netherlands, Spain 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 nine 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 eight 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 eight 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 six 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, Spain, United States of America), the registration has effect from the date of application. In the United States of America 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 450 Swiss francs in Japan, about 400 Swiss francs in the Federal Republic of Germany, about 140 Swiss francs in the Netherlands, about 130 Swiss francs in Spain and about 28 Swiss francs in the United States of America (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 six of the seven countries which provide for the registration of layout-designs of integrated circuits (Denmark, France, Germany (Federal Republic of), Netherlands, Spain, United States of America), the duration is ten years from first commercial exploitation or filing an application for registration, whichever is earlier, whereas in Japan the duration is ten years from the filing date of the application for registration. 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 calender year. In Denmark, France, Germany (Federal Republic of), the Netherlands, Spain 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 calender year after the creation of the layout-design.

(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

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, Spain, United States of America), 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 licenses.

(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, France and Spain, none of the existing laws on the protection of layout-designs of integrated circuits provides for the possibility of compulsory licenses. The Danish law contains a provision authorizing the Government to put into effect a possibility of compulsory licenses for cases where the owner of the right has refused to grant a contractual license on reasonable terms. The French law permits compulsory licenses for defense purposes, and the Spanish law on grounds of public interest.

(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 nine 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 of America), 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 fulfill 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.

PART V: INDUSTRIAL DESIGNS

(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, provides that industrial designs are one of the objects of industrial property. In one of its provisions, which binds 87 of the 98 member States* (those which are bound by Acts subsequent to 1934), the Paris Convention obliges member States to protect industrial designs. The other 11 member States are not bound by this provision because it is contained in Acts subsequent to 1934 by which they are not bound. Nothing is said in that provision about the means of providing such protection, so that countries may comply with the provision not only through special legislation for the protection of industrial designs, but also through the grant of such protection, for example, in their laws on copyright or their provisions against unfair competition.

The WIPO Model Law for Developing Countries on Industrial Designs (hereinafter referred to as the "Model Law") provides for a protection of industrial designs on the basis of registration. According to the Model Law, any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors, is deemed to be an industrial design, provided that such composition of form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft. The protection does not extend to anything in an industrial design which serves solely to obtain a technical result.

(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) provide, in particular, for protection of industrial designs against unauthorized reproduction or slavish or near-slavish imitation.

(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

Industrial designs are generally protected by virtue of a registration made pursuant to industrial design law (or patent law in countries, like the United States of America, where "design patents" are granted). In some countries, like France, industrial designs can also be protected through copyright law, such a protection requiring no registration.

* The list of the States party to the Paris Convention is contained in Annex I of this document. Most countries have a national registration system, for instance: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Ecuador, Egypt, France, Germany (Federal Republic of), German Democratic Republic, Hungary, India, Iraq, Ireland, Israel, Italy, Japan, Lebanon, Mexico, Monaco, Morocco, New Zealand, Nigeria, Nordic countries, Pakistan, Peru, Poland, Portugal, Republic of Korea, Spain, Sweden, Switzerland, Thailand, Tunisia, Soviet Union, United Kingdom, United States of America, Yugoslavia, Zaire, Zimbabwe.

Regional registration systems have been set up by the Benelux countries, by the member countries of the African Intellectual Property Organization (AIPO) and in the framework of the African Regional Industrial Property Organization (ARIPO).

(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 98 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 industrial designs abroad. It furthermore grants temporary protection to industrial designs in respect of products exhibited at certain exhibitions.

Under the Model Law, industrial designs must be new to be eligible for protection. Industrial designs that are contrary to public order or morality are not protected. Certain disclosures do not affect, under certain conditions, the novelty of an industrial design. Industrial designs are protected upon registration.

(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 most countries, foreigners have access to the system of protection of industrial designs without restriction (other than a possible requirement to be represented by a local agent).

Novelty and/or originality of appearance are criteria for registrability applied throughout the world. Purely technical aspects of the products are generally not protected. Industrial designs which are contrary to public order or morality are generally not eligible for protection.

(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 Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as the "Hague Agreement") offers substantial advantages concerning the duration and cost of procedures by providing for the possibility of international registration of industrial designs. Compared with registration in each of the 21 member States* of the Hague Agreement, international registration has the advantage of being much simpler and much cheaper.

The Model Law offers a choice to national laws as regards the examination of applications: they may provide for registration upon examination of formal requirements without examination of the application as to substance, or for registration after an opportunity for opposition is given, or for registration after examination of the application as to substance. The duration of the procedure for obtaining the right will therefore depend on the kind of procedure chosen.

(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 industrial design applicants from developing countries would benefit from a 50% reduction of the fees payable for the registration procedure.

(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 industrial designs depends on various factors, including in particular the kind of examination effected by the Office (merely formal examination, substantive examination, possibility of opposition, etc.). The average duration of procedure ranges from one week to more than three years. As examples, the following countries may be mentioned: Brazil (ordinary procedure: 42

months; special procedure: 11 months), Canada (8,5 months), China (10,5 months), Egypt (1 month), Germany (Federal Republic of) (1 week--if no irregularity-- to 2,5 months), Hungary (12 to 15 months), Japan (27 months), Sweden (11 months), Switzerland (2 months), Thailand (18 months), United Kingdom (6 months), United States of America (24 months).

* The list of the States party to the Hague Agreement is contained in Annex X of this document. The average cost of the procedure for registration (not including agents' fees) of an industrial design in respect of one article ranges, among a sample of countries of different levels of development and from various continents, from approximately 3 Swiss francs to approximately 230 Swiss francs. It is to be noted that in a number of countries such "registration fee" may include cost of publication and cover an initial period of the duration of registration.

(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 98 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 an industrial design confers upon its registered owner the right to preclude third parties from reproducing the industrial design in the manufacture of a product, from importing, offering for sale and selling a product reproducing the industrial design, and from stocking such a product for the purposes of offering it for sale or selling it.

Under the Model Law, the right extends only to acts done for industrial or commercial purposes and does not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in the country.

(ii) Current WIPO Activities

See item (1)(ii), above.

(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 countries providing for the registration of industrial designs, the exclusive right conferred by registration may be described in general terms as implying that no one may, without the registration's owner consent, use the design commercially by manufacturing, importing, offering for sale, selling or leasing an article the appearance of which is substantially similar to the design. This is, however, limited to the articles for which the design has been registered.

(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 1934 Act of the Hague Agreement, the term of protection is 15 years from the date of the international deposit. Under the 1960 Act of that Agreement, the term of protection may not be less than 10 years from the date of international deposit if the deposit has been renewed (i.e., the renewal fees have been paid), or 5 years from the date of international deposit in the absence of renewal; for any member State whose national legislation allows a term of protection longer than ten years for national deposits, the international deposit may be renewed several times, each time for an additional five-year period, until the expiration of the total period of protection allowed for national deposits by the domestic law.

Under the Model Law, the duration of the registration of an industrial design is 5 years from the date of application with a possibility of renewal for two consecutive periods of 5 years each.

(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 duration of registration of industrial designs varies significantly from country to country and ranges between 3 and 50 years.

A number of countries provide for short (less than 10 years) duration of registration. They are, for example, Republic of Korea (8 years), Iraq and Thailand (7 years), Bulgaria, Colombia, Costa Rica, Ecuador, Democratic People's Republic of Korea and Peru (5 years), Austria (3 years).

In Canada and Zaire, the duration of a registration is 10 years. A duration of 15 years is provided for by the legislation of the following countries: Benelux countries, Germany (Federal Republic of), Nordic countries, Switzerland, United Kingdom, Zimbabwe, member countries of AIPO. Longer registrations are available in Spain (20 years), France, Lebanon, Morocco and Monaco (up to 50 years), Portugal (unlimited duration subject to renewals).

In most countries, registration is made for a short initial period and may be renewed for subsquent(s) period(s) up to the maximum duration provided for by the national legislation. (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 98 member States to grant a period of grace for the payment of maintenance fees. That period of grace must not be less than six months for 87 member States (those which are bound by Acts subsequent to 1934), and not less than three months for 11 member States (those which are not bound by Acts subsequent to 1934).

Under the Hague Agreement, renewal of an international deposit is effected by the mere payment of the relevant fees.

Under the Model Law, the registration of an industrial design may be renewed for two consecutive periods

of five 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 industrial design owners from developing countries would benefit from a 50% reduction of the fees payable for the renewal of registrations.

(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 15 years in respect of one industrial design ranges, among a sample of countries of different levels of development and from various continents, from approximately 5 Swiss francs to approximately 2,850 Swiss francs.

(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 does not contain any provision on compulsory licensing in the field of industrial designs. However, it provides that the protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

(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

Compulsory licenses for non-working or in the public interest are provided for in the laws of the following countries: Algeria, Australia, Brazil, Bulgaria, Cuba, Czechoslovakia, Republic of Korea, Mexico, New Zealand, Nigeria, South Africa, Soviet Union, Sweden, the United Kingdom, Zambia, Zimbabwe and member countries of AIPO.

Compulsory licenses based on other grounds exist in a certain number of countries, for example:

- compulsory licenses for prior users, i.e., persons who started to use the industrial design before an application for its registration has been filed may, when the application leads to registration, obtain a compulsory licence to use the design (e.g., Nordic countries);

- compulsory licenses in case of interdependence of industrial designs, i.e., where an industrial design cannot be worked without making use of the registered industrial design of another person (e.g., Japan).

(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 98 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 the provisions of the national law relating to judicial and administrative procedure and to jurisdiction.

The Model Law contains provisions on civil procedures and remedies, as well as criminal sanctions. As regards the former, court proceedings can be instituted not only 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, intentional infringement is treated as an offense 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 offense; 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 civil remedies are provided for in, for example, the countries indicated hereafter:

- injunction: Australia, Bulgaria, Canada, Hong Kong, Ireland, Japan, New Zealand, United States of America, member countries of AIPO;

- compensation of damages: Australia, Bahamas, Benelux countries, Bulgaria, Canada, France, German Democratic Republic, Germany (Federal Republic of), Hong Kong, Ireland, Japan, Monaco, New Zealand, Nordic countries, Republic of Korea, Syria, United States of America, member countries of AIPO.

Criminal sanctions (imprisonment and/or fine) are provided for in, for example, the following countries: Bulgaria, Canada, France, Japan, Monaco, Nordic countries, Syria, Western Samoa, member countries of AIPO.

(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 73 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 25 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, there are no commonly applied national provisions and practices.

PART VI: GEOGRAPHICAL INDICATIONS

Introduction

In this document, the expression "geographical indications" means both indications of source and appellations of origin.

"Indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place. "Appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural and human factors. Appellations of origin are a special kind of indications of source: all appellations of origin are indications of source, but not all indications of source are appellations of origin. Consequently, what is said in this document about indications of source also applies to appellations of origin as a special kind of indications of source.

(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 and which has 98 member States*, provides that indications of source or appellations of origin are among the objects of industrial property.

In one of its provisions, which binds 87 States (those which are bound by Acts subsequent to 1934), the Paris Convention obliges member States to apply the remedies and sanctions described under item (8)(i), below, in cases of direct or indirect use of a false indication of the source of goods. The other 11 member States (those which are not bound by Act subsequent to 1934) are obliged to apply the said remedies and sanctions in cases where goods falsely bear as an indication of source the name of a specified locality or country, when such indication is joined to a trade name of a fictitious character or used with fraudulent intention.

* The list of the States party to the Paris Convention is contained in Annex I of this document. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (hereinafter referred to as the "Madrid Agreement (Indications of Source)"), which was concluded in 1891 and revised several times, obliges its 32 member States* to apply the remedies and sanctions described under item (8)(i), below, in cases where goods bear a false--or, in the case of 29 member States (those which are bound by Acts subsequent to 1925), a false or deceptive--indication by which one of the member States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin.

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the "Lisbon Agreement"), which was concluded in 1958 and revised in 1967, obliges its 16 member States** to protect appellations of origin of products of the other member States, recognized and protected as such in the country of origin and registered at the International Bureau of WIPO.

The WIPO Model Law for Developing Countries on Appellations of Origin and Indications of Source (hereinafter referred to as the "Model Law") contains model provisions for the protection of geographical indications in national laws.

(ii) Current WIPO Activities

Within the framework of the current revision of the Paris Convention, an amendment of that Convention has been adopted by a Main Committee of the Diplomatic Conference to the effect that the registration or use of official names of States as trademarks is to be prohibited. That amendment still requires final adoption by the Diplomatic Conference. In addition, it is being considered that in the Paris Convention a provision should be inserted which would clarify, and to some extent reinforce, the protection provided for under that Convention for geographical indications by establishing the principle that geographical indications may not be used or registered as trademarks if such use is likely to mislead the public or if the geographical indication in question has a particular reputation for specific products.

(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

As regards appellations of origin, the 16 member States of the Lisbon Agreement--and some other countries (including Argentina, Austria, Chile, Colombia, Greece, Morocco, Paraguay, South Africa, Spain and Yugoslavia)--provide for protection against any use of specified appellations of origin even where such use--for example because of an indication of the true origin--does not mislead the public. The said protection is typically based on a decision taken by the competent government agency or on a legislative act (decree, order or the like). Appellations of origin are, inter alia, used for the following products: wines, spirits,

* The list of the States party to the Madrid Agreement (Indications of Source) is contained in Annex XI of this document.

** The list of the member States of the Lisbon Agreement is contained in Annex XII of this document. cheese, poultry, olives, cigars, and certain industrial products such as lace and enamels. The government decision or legislative act typically defines the geographical area to which the appellation of origin applies and the characteristic features of the product in respect of which the appellation of origin is used; in some countries,

such as the United States of America, an appellation of origin is, in general, only defined by a reference to the geographical origin of the product but not also by a reference to the characteristic features or qualities of the product. The government decision or legislative act has effect only on the territory of the country by whose authority the said decision or act was adopted; effect in other countries can be achieved only through corresponding decisions or acts in those other countries or through agreements between States (which are either multilateral agreements such as the Lisbon Agreement or bilateral agreements). In the absence of such a decision, act or agreement, foreign appellations of origin can only be protected as indications of source, whose protection--as will be seen below--requires that there be a risk of misleading consumers.

As regards indications of source, protection is based either on express legislative provisions or on general principles recognized by court decisions according to which indications that mislead consumers are to be prohibited. Thus, practically all countries provide for a protection of indications of source against misleading use.

However, a geographical indication which is considered as such (namely as a reference to the geographical origin of a product) in the country in which the area to which the indication refers is located, may be considered in other countries not as a geographical indication but rather as a generic designation, namely a designation of a kind of product, or as a "semi-generic" designation, namely a designation of a kind of product provided that a "delocalizing" indication is added (for example, "Chablis of California" and "New York State Champagne" in the United States of America) and that certain quality requirements are respected.

(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 its 98 member States to grant national treatment in respect of the protection of geographical indications.

The Madrid Agreement (Indications of Source) obliges its 32 member States to protect indications of source but the courts of a member State can decide that an indication of source is to be considered on the territory of that State as a generic term. However, regional appellations concerning the source of products of the vine cannot be considered as generic terms.

The Lisbon Agreement obliges its 16 member States to protect appellations of origin which have been internationally registered. Appellations of origin which are protected as such in a member State can be registered internationally (by WIPO) at the request of the member State concerned, and such registration has effect in the other 15 member States except in any State which, within one year after registration, notifies WIPO of its refusal of the said effect. Up to September 1988, 725 appellations of origin have been registered under the Lisbon Agreement and 90 refusals have been received by WIPO. Under the Model Law, protection of appellations of origin is acquired through registration, or alternatively by special orders which are issued by the competent national authority. Indications of source are protected without a requirement of registration.

(ii) Current WIPO Activities

See item (1)(ii), above.

(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

See item (1)(iii), above.

(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

International registration under the Lisbon Agreement is effected by the International Bureau within two to four weeks upon receipt of the application for international registration. The fee for international registration is 300 Swiss francs per appellation.

(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

Whereas protection of indications of source is obtained automatically without any act by a government, the government decisions or legislative acts which are issued in some countries (for example, Algeria, France, Greece, Italy, Morocco, South Africa, Spain) in order to establish protection of appellations of origin require preparatory work of variable duration, but do not entail the payment of fees by those whose activities are to be protected by the relevant government decision or legislative act (for example, the producers of wine in a certain region). In countries that provide for the registration of appellations of origin (for example, Algeria and Israel), the duration and cost of the registration procedure is similar to the duration and cost of the procedure for the registration of trademarks.

(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

As regards the Paris Convention, see item (1)(i), above. As regards the Madrid Agreement (Indications of Source), see item (1)(i), above. In addition, a provision of that Agreement obliges 29 of its member States (those which are bound by Acts subsequent to 1925) to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers or any other commercial communication; the other 3 member States are not bound by this provision because it is contained in Acts subsequent to 1925 by which they are not bound. Furthermore, under the said Agreement the vendor is not prevented from indicating his name or address upon goods coming from a country other than that in which the sale takes place; but in such case the address or the name must be accompanied by an exact indication in clear characters of the country or place of manufacture or production, or by some other indication sufficient to avoid any errors as to the true source of the wares.

The Lisbon Agreement obliges its 16 member States to protect internationally registered appellations of origin against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation

is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or the like.

The Model Law reserves, subject to certain exceptions, the right to use, in the course of trade, a protected appellation of origin to producers carrying out their activities in the geographical area specified in the registration with respect to the products specified in the registration, provided that such products possess the essential characteristic qualities specified in the registration. In addition, under the Model Law, it is unlawful for any person other than the specified producers to use, in the course of trade, a registered appellation of origin, or a similar name, with respect to the products specified in the registration or similar products, even if the true origin of the products is indicated or if the appellation is in the form of a translation or is accompanied by a term such as "kind," "type," "make," "imitation," or the like.

The Model Law provides that the direct or indirect use of an indication of source which is false or which is likely to mislead the public is unlawful.

(ii) Current WIPO Activities

See item (1)(ii), above.

(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 countries which protect appellations of origin (see item (1)(iii), above) provide for a protection of such appellations regardless of the possibility of confusion, against any unauthorized use of an appellation of origin. This means that, even if the public is not misled by the use of the appellation of origin (for example, by adding information on the true origin of the product), the use of the appellation of origin by persons who are not entitled to such use is unlawful. The protection of indications of source depends in all countries on the possibility of a deception of the public about the geographical origin of the products in question. This means that, where an indication is used in a manner that might mislead the public with respect to the true origin of the product, such use is prohibited.

(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, the Madrid Agreement (Indications of Source) and the Model Law, the protection of geographical indications is not limited in time.

The Lisbon Agreement provides that an internationally registered appellation of origin cannot be deemed to have become generic in a member State as long as it is protected as an appellation of origin in the country of origin, and that it is protected, without renewal, for the whole of that period.

(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

As regards appellations of origin, in most countries where their protection is regulated by express provisions, the protection is not limited in time as long as the appellation complies with the requirements of the applicable provisions. In Algeria, the registration of an appellation of origin is valid for 10 years and is renewable indefinitely for like periods if it still complies with the requirements of the applicable provisions.

(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

There is no procedure for maintaining the right.

(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 generally no procedure for maintaining the right (see, however, item (5)(iii), second sentence, above).

(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 of the existing international treaties nor the Model Law permits or provides for compulsory licenses in respect of geographical indications.

(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

No national law provides for compulsory licenses in respect of geographical indications.

(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 98 member States to grant to nationals and residents of the other

member States, under the national treatment principle, the same legal remedies in respect of the protection of geographical indications as those it grants to its own nationals.

The Paris Convention further provides that all goods in connection with which a false indication of their source is directly or indirectly used must be seized on importation into a member State of the Paris Union where the indication 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, those measures are to be replaced by the actions and remedies available in such cases to nationals under the law of such a member State.

Under the Paris Convention, seizure takes place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country; however, any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in the goods referred to above and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, is in any case deemed an interested party. Two member States are not bound by the words "or in the country where the false indication of source is used" because those words are contained in Acts subsequent to 1925 by which the said States are not bound.

The Madrid Agreement (Indications of Source) obliges its 32 member States to provide for seizure upon importation of the goods involved in the cases referred to under item (1)(i), above. Seizure is also to be effected in the country where the false (or deceptive, see item (1)(i), above) indication of source has been applied, or into which the goods bearing the false (or deceptive) indication have already been imported. If the laws of a member State do not permit seizure upon importation, such seizure is to be replaced by prohibition of importation. If the laws of one of the 29 member States bound by Acts subsequent to 1925 permit neither seizure upon importation nor prohibition of importation nor seizure within the country, then, until such time as the laws of such country are modified accordingly, those measures are to be replaced by the actions and remedies available in such cases to nationals under the laws of such State, whereas if the laws of one of the 3 member States not bound by Acts subsequent to 1925 do not permit seizure within the country, such seizure is to be replaced by the actions and remedies available in such cases to nationals under the laws of such State. In the absence of any special sanctions ensuring the repression of false (or deceptive) indications of source, the sanctions provided by the corresponding provisions of the laws relating to marks or trade names are applicable.

Under the Madrid Agreement (Indications of Source), seizure takes place at the instance of the customs authorities, which must immediately inform the interested party, whether an individual person or a legal entity, in order that such party may, if he so desires, take appropriate steps in connection with the seizure effected as a conservatory measure. However, the public prosecutor or any other competent authority may demand seizure either at the request of the injured party or ex officio; the procedure will then follow its normal course. The authorities are not bound to effect seizure in the case of transit.

Under the Lisbon Agreement, legal action required for ensuring the protection of appellations of origin may be taken in each of the 16 member States under the provisions of the national legislation either at the instance of the competent Office or at the request of the public prosecutor, or by any interested party, whether a natural person or a legal entity, whether public or private.

The Model Law provides that any interested person and any interested group of producers or consumers may bring proceedings to obtain from the courts the issuance of an injunction to prohibit the unlawful use of a protected appellation of origin or of an indication of source, where such use is actually being carried on or is

imminent, and an order to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use, against persons making such unlawful use and persons who are parties to such use. Moreover, any person who has suffered damage as a result of such unlawful use is entitled to compensation from the person making such unlawful use and persons who are parties to such use. Furthermore, the Model Law provides for criminal sanctions (fine or imprisonment or both) in case of intentional unlawful use of a protected appellation of origin or of an indication of source.

(ii) Current WIPO Activities

See item (1)(ii), above.

(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

Countries having established a system of protection of appellations of origin generally provide for the following sanctions in respect of an unlawful use of an appellation of origin: civil sanctions, namely prohibition of continuation of actual use or imminent use (injunction), compensation of damages, publication of judgements and confiscation; criminal sanctions, namely fine and/or imprisonment; and administrative sanctions, namely seizure upon importation by customs authorities, seizure inside the country, in particular in order to secure evidence, and destruction of goods unlawfully bearing appellations of origin.

Unlawful use of indications of source is generally subject to the same kinds of sanctions.

(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 73 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 25 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, there are no commonly applied national provisions and practices.

PART VII: NEIGHBORING RIGHTS

Introduction

The expression "neighboring rights" is a term which is used for the sake of brevity and means the rights of performers, producers of phonograms and broadcasting organizations. Those rights are rights which are close to or "neighboring" on copyright in literary and artistic works. The word "copyright" itself is, however, used in two meanings. The basic and generally accepted meaning of "copyright" is the one in which this word is also used in the international copyright conventions and which only covers the protection of rights in literary and artistic works. Part II of this document deals with copyright in that meaning. The other, wider meaning of "copyright" (in which this word is used in some of the national laws of countries with Anglo-American legal traditions) also covers the protection of certain of the beneficiaries under the concept of neighboring rights, namely phonogram producers and broadcasters.

In the field of neighboring rights, there are two main international conventions: the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter: the Rome Convention) and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (hereinafter: the Phonograms Convention). Both Conventions are administered jointly by WIPO, Unesco and ILO.

The Rome Convention was adopted in Rome on October 26, 1961, and entered into force on May 18, 1964. So far, 32 countries have adhered to the Rome Convention.*

It should be noted that a number of countries with important entertainment industries (e.g., Australia, Canada, China, Hungary, India, Japan, Kenya, Nigeria, Singapore, Soviet Union, Spain, United States of America) are not yet party to that Convention.

The Intergovernmental Committee of the Rome Convention adopted a Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as the "Model Law") in Brussels in May 1974. The Model Law, along with a Commentary on it, was intended to serve as guidance to national legislators for the implementation of the Rome Convention.

The Phonograms Convention was adopted in Geneva on October 29, 1971, and entered into force on April 18, 1973. So far, 42 countries have adhered to the Phonograms Convention.**

* The list of the States party to the Rome Convention is contained in Annex XIII of this document.

** The list of the States party to the Phonograms Convention is contained in Annex XIV of this document.

5969d/DGO It is also to be noted that certain countries with important phonographic industries (e.g., Belgium, Canada, China, Ireland, Nigeria, Singapore, Soviet Union, Thailand) are not yet party to that Convention.

WIPO regularly monitors national legislation, case law and contractual practice concerning neighboring rights and actively promotes the adherence of further countries to the Rome Convention and the Phonograms Convention.

This document contains three chapters: chapter (A) deals with the protection of performers, chapter (B) deals with the protection of producers of phonograms and chapter (C) deals with the protection of broadcasting organizations.

(A) THE PROTECTION OF PERFORMERS

(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 Rome Convention obliges each Contracting State to protect the rights of performers in respect of their performances.

Under the Rome Convention, "'performers' means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works."

The Diplomatic Conference in Rome felt it unnecessary to define "performance." As the General Report of that Conference points out, it was considered that "performance" obviously means the activities of a performer as defined by the Convention.

(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

All the national laws of the countries party to the Rome Convention provide for the protection of performers in respect of their performances and offer definitions which, in general, correspond--with some differences of minor importance--to those given by the Rome Convention.

Several countries which are not party to the Rome Convention also provide for the protection of performers (e.g., German Democratic Republic, Greece, Guinea, Hungary, Iceland, Israel, Japan, Portugal, Spain, Zaire).

The definitions of "performers" and "performances" in national laws differ to some extent. There are certain national laws (e.g., the laws of the Nordic countries, Czechoslovakia, Hungary) which do not contain any specific definitions (it is the meaning of the word in common parlance which is thus accepted) and it is up to case law to decide about borderline cases. Some other national laws give a fairly general definition (e.g., the laws of Austria, Germany (Federal Republic of)), while still other national laws mention various categories of performers as examples (actors, singers, narrators, musicians, etc.) (e.g., the laws of Brazil, Chile, Ecuador, Guinea, Japan) or use verbs other than "perform" to describe certain types of activities of performers such as "act," "sing," "deliver," "declaim," "play in" (e.g., the laws of France, Philippines). The majority of national laws only refer to performers as persons who perform literary and artistic works, while certain other national laws (e.g., the laws of Ecuador, Guinea, Rwanda) provide that those who perform expressions of folklore are also considered performers. Finally, the majority of national laws only refer to performers in general terms and do not differentiate between the two major categories of them, namely between interpreters of works (such as conductors, directors) and performers proper (actors, singers, musicians, etc.), while in certain national laws, a distinction is made between those categories (e.g., in the laws of Chile, Ecuador, Ghana, Hungary, Japan, Portugal).

(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

Under the Rome Convention, a performance is protected if any of the following conditions is met:

- the performance takes place in another Contracting State,

- the performance is incorporated in a phonogram which is protected under the Convention,

- the performance, not being fixed on a phonogram, is carried by a broadcast which is protected under the Convention.

The Rome Convention does not require compliance with formalities as a condition of the protection of performances. At the same time, it does not exclude formalities at the national level in respect of performances included in phonograms.

However, if, as a condition of protecting the rights of performers in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, those are considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P , accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trademark or other appropriate designation), the notice must also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice must also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

As the General Report of the Diplomatic Conference in Rome makes clear, in countries where no formalities are required as a condition of protection, performances included in phonograms must be protected under the Convention even if such phonograms do not bear the notice specified by the Convention. (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 national laws of the countries party to the Rome Convention prescribe that the notice mentioned in item (i), above, must be indicated on the copies or containers of the phonograms (which, at least indirectly, is a condition also for the protection of the performances included in the phonograms).

(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

Under the Rome Convention, there are no procedures for obtaining the rights of performers.

(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 procedures for obtaining the rights of performers under national laws.

(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 Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to performers if the criteria for obtaining protection for their performances, mentioned in item (2)(i), above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to performers who are its nationals as regards performances taking place, or being broadcast, or first fixed, on its territory.

National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention. Under the Rome Convention, the protection provided for performers must include the possibility of preventing

- the broadcasting and the communication to the public, without their consent, of their live performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

- the fixation, without their consent, of their unfixed performance;

- the reproduction, without their consent, of a fixation of their performance, if the original fixation itself was made without their consent, if the reproduction is made for purposes different from those for which the performers gave their consent, or if the original fixation was made in accordance with those provisions of the Convention which allow exceptions to neighboring rights (see below in this item) and the reproduction is made for purposes different from those referred to in those provisions.

It should be noted that the words "the possibility of preventing" differ from those which are used in respect of the protection for producers of phonograms and broadcasting organizations ("the right to authorize or prohibit"). In respect of performers, States party to the Convention are free to choose the means used to implement the Convention (law of employment, of personality, of unfair competition or unjust enrichment, etc., or grant of an exclusive right to performers).

As far as the relations between performers and broadcasting organizations are concerned, the Rome Convention provides that if broadcasting was consented to by the performers, it is a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation

for broadcasting purposes and the reproduction of such fixations for broadcasting purposes. The terms and conditions governing the use by broadcasting organizations of fixations made for broadcasting purposes is to be determined in accordance with the domestic law of the Contracting State where protection is claimed. However, the domestic law must not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

The Model Law offers the following regulation of the relations between performers and broadcasting organizations: in the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would be normally inferred, the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance, the authorization to broadcast does not imply an authorization to fix the performance, the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation, and the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

Under the Rome Convention, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on the rights of performers, mentioned above, have no further application. The Rome Convention provides for possible exceptions to the protection guaranteed to neighboring rights owners, including performers. Exceptions are permitted as regards:

- private use,

- use of short excerpts in connection with the reporting of current events,

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic law, provide for the same kinds of limitations with regard to the protection of neighboring rights as it provides for, in its domestic law, in connection with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention.

(ii) Current WIPO Activities

In recent program periods, a thorough analysis of the worldwide copyright and neighboring rights situation has been carried out in the framework of various meetings convened jointly with Unesco.

In the first phase of analysis--in the 1982-83 and 1984-85 bienniums--WIPO activities concentrated on new uses (such as reproduction for private purposes, rental and lending, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighboring rights--including the rights of performers--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 and neighboring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis was a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988.

The scope and application of neighboring rights--including the rights of performers--in respect of certain new uses is also 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 scope of rights recognized by countries party to the Rome Convention corresponds, at least, to the minimum standards of the Rome Convention as outlined in item (i), above; but also the laws of several countries not bound by that convention recognize, generally, similar rights for performers.

Performers have the right to authorize and prohibit--or, at least, the possibility of preventing--the fixation as well as the broadcasting and the communication to the public of their live performances in a number of countries (e.g., in Argentina, Brazil, Chile, Colombia, Congo, Costa Rica, Czechoslovakia, Ecuador, France, Germany (Federal Republic of), Greece, Guinea, Hungary, Ireland, Italy, Japan, Mexico, Niger, Nordic countries, Portugal, Spain, United Kingdom, Uruguay).

The exceptions to the rights of performers in national laws correspond, in general, to the ones allowed by the Rome Convention, for example, private use. Several countries, however, have introduced a compensation system to counterbalance the prejudice to copyright and neighboring rights owners caused by the widespread private reproduction of audiovisual works and phonograms, in the form of a levy on blank tapes and cassettes and/or on recording equipment (e.g., Austria, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Norway, Portugal, Spain, Sweden). Performers also receive a certain share of such compensatory payments.

(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

The Rome Convention obliges the countries which are party to it to protect performances for at least 20 years. The starting point of this term of protection is, for performances incorporated in phonograms, the end of the year in which the fixation was made, and, for performances not incorporated in phonograms, the end of the year in which the performance took place.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than 20 years.

(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 term of protection of the rights of performers determined by the national laws of countries party to the Rome Convention--and, in general, also of countries not party to that convention but protecting the rights of performers--corresponds, at least, to the minimum term prescribed by that convention and mentioned in item (i),

above. Certain legislations, however, provide for a longer term of protection. The term of protection of the right of performers is 25 years, e.g., in Czechoslovakia, Ecuador, El Salvador, Germany (Federal Republic of); 30 years, e.g., in Chile; 40 years, e.g., in Guinea, Spain; 50 years, e.g., in Austria, Costa Rica, Denmark, France, Sweden; 60 years in Brazil.

(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

Under the Rome Convention, there are no procedures for maintaining the rights of performers.

(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 procedures for maintaining the rights of performers under national laws.

(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

Under a provision of the Rome Convention--a provision which concerns both the rights of performers and the rights of producers of phonograms--if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public (what are called "secondary uses" of phonograms), an equitable remuneration in the form of one single sum must be paid by the user to the performers, or to the producers of phonograms, or to both. (This is equivalent to compulsory licensing.) Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration. The Convention, however, allows various reservations in respect of that right to equitable remuneration. Any Contracting State may declare that

- it will not apply the Article which provides for that right;

- it will not apply that Article in respect of certain uses;

- as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article; - as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration must not be considered as a difference in the extent of protection.

The Model Law provides that the above-mentioned equitable remuneration should be paid to the producer of phonograms and that, unless otherwise agreed between the performers and the producer, half the amount received by the producer must be paid by the producer to the performers.

(ii) Current WIPO Activities

Even where compulsory licensing is allowed (see item (i), above), WIPO promotes collective administration of rights that is based on negotiations and contractual arrangements. (Collective administration is done by societies of neighboring rights owners or similar bodies. They give, in the name of the individual owners of rights, who are their members or who are otherwise associated with them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighboring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audiovisual works, phonograms and musical works in the framework of the series of meetings on various categories of works mentioned in item (4)(ii), above.

(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

As is mentioned in item (i), above, States party to the Rome Convention may make reservations to the provision of the Convention under which a single equitable remuneration must be paid to producers of phonograms or to performers or to both in case of a so-called "secondary use" (for the description of which see item (i), above) of phonograms published for commercial purposes. Of the countries party to the Rome Convention, five countries--Congo, Fiji, Luxembourg, Monaco, Niger--have declared that they do not apply such a system of remuneration for "secondary uses" of phonograms while ten countries made other reservations mentioned in item (i), above (namely, Austria, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Italy, Ireland, Norway, United Kingdom) (see item (B)(7)(iii), below).

The national laws of a number of countries provide for an equitable remuneration for "secondary uses" of phonograms along the lines indicated in item (i), above (e.g., Argentina, Austria, Barbados, Brazil, Chile, Colombia, Costa Rica, Czechoslovakia, El Salvador, Ecuador, France, Germany (Federal Republic of), Guinea, Ireland, Italy, Japan, Mexico, Nordic countries, Paraguay, Philippines, Uruguay).

(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 Rome Convention contains no provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;

- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation; and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighboring rights

to be violated, is liable to a fine for the first offense, and is liable to a fine or to imprisonment, or both, for each subsequent offense.

(ii) Current WIPO Activities

At the beginning of the 1980's, WIPO started an intensive anti-piracy program. So far, this program 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 audiovisual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii), above. These activities covered, inter alia, acts of piracy involving the infringement of neighboring rights, including the rights of performers.

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 offense; 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. (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 practically all countries party to the Rome Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are provided for the protection of the rights of performers. Conservatory measures and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

Civil remedies and/or criminal penalties are also provided for the protection of performers in some countries not party to the Rome Convention (e.g., in Argentina, Australia, Bangladesh, Ghana, Japan, Portugal, Spain, Trinidad and Tobago).

Certain new preliminary, conservatory measures have been developed in countries with Anglo-American legal traditions. Such measures can be obtained speedily, and contribute highly to fight piracy insofar as they can 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 and/or neighboring rights 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 only of the copyright and/or neighboring rights owner, without prior warning being given to the defendant. Secondly, the terms on which the order is granted enable the copyright and/or neighboring rights 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 judgment 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 Rome Convention, 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 another mode. (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, there are no commonly applied national provisions and practices.

(B) THE PROTECTION OF PRODUCERS OF PHONOGRAMS

(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 Rome Convention obliges each Contracting State to protect the rights of producers of phonograms in respect of their phonograms.

Under the Rome Convention, "'phonogram' means any exclusively aural fixation of sounds of a performance or of other sounds." The Phonograms Convention contains the same definition.

(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

All the national laws of the countries party to the Rome Convention provide for the protection of phonograms.

Several countries which are not party to the Rome Convention also protect rights of phonogram producers (e.g., German Democratic Republic, Guinea, Hungary, Iceland, Japan, Portugal, Spain, United States of America, Zaire).

The national laws of certain countries do not use the word "phonograms" but rather its synonym "sound recordings" (e.g., Australia, Ireland, New Zealand, Philippines, Singapore, Tanzania, United Kingdom, United States of America). Otherwise, the definitions of "phonograms" or "sound recordings" in various national laws are similar to each other and correspond, in all relevant elements, to the definition offered by the Rome Convention. (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

Under the Rome Convention, a phonogram is protected if any of the following conditions is met:

- the producer of the phonogram is a national of another Contracting State (criterion of nationality),

- the first fixation of the sound was made in another Contracting State (criterion of fixation),

- the phonogram was first published in another Contracting State (criterion of publication); if a phonogram was first published in a non-Contracting State but was also published in a Contracting State within 30 days of its first publication (simultaneous publication), it is considered as first published in the Contracting State.

Any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation.

No Contracting State may exclude the application of both the criterion of fixation and the criterion of publication. Furthermore, no country may exclude the application of the criterion of nationality; all must protect a phonogram whose producer is a national of another Contracting State. Nevertheless, there is an exception to this basic rule for States whose laws, on the date of the adoption of the Convention--that is, on October 26, 1961--, granted protection only on the basis of the place of the first fixation. Such States may declare that they will apply the criterion of fixation alone.

The Rome Convention does not require compliance with formalities as a condition of the protection of phonograms. At the same time, it does not exclude formalities at the national level.

However, if, as a condition of protecting the rights of producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, those are considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P , accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trademark or other appropriate designation), the notice must also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice must also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

As the General Report of the Diplomatic Conference in Rome makes clear, in countries where no formalities are required as a condition of protection, phonograms must be protected under the Convention even if they do not bear the notice specified by the Convention. The criterion of the protection of phonograms under the Phonograms Convention is that the producer of the phonograms be a national of another Contracting State.

Nevertheless, there is an exception to this basic rule for States whose laws, on the date of the adoption of the Convention--that is, on October 29, 1971--, granted protection only on the basis of the criterion of the place of first fixation. Such States may declare that they apply this criterion instead of the criterion of the nationality of the producer.

In respect of formalities, the provisions of the Phonograms Convention are similar to the ones contained in the Rome Convention.

The Model Law contains a provision under which, as a condition of protection of phonograms, all copies in commerce of the published phonograms or their containers must bear a notice which is practically the one that is described in the Rome Convention and the Phonograms Convention.

(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

As far as the criteria for the protection of phonograms are concerned, the criterion of fixation has been excluded by Fiji, Germany (Federal Republic of), Ireland and United Kingdom (and, thus, those countries only apply the criteria of nationality and of publication); the criterion of publication has been excluded by Congo, France, Luxembourg, Monaco and Niger (and, thus, those countries only apply the criteria of nationality and of fixation); Denmark, Finland and Italy only apply the criterion of fixation and do not apply either the criterion of nationality or the criterion of publication. All those countries made appropriate reservations to the Rome Convention (see item (i), above).

In respect of formalities, the national laws of the countries party to the Rome Convention and/or to the Phonograms Convention prescribe that the notice mentioned in item (i), above, must be indicated on the copies or containers of the phonograms, as a condition of protection.

(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

Under the Rome Convention and the Phonograms Convention, there are no procedures for obtaining the rights of phonogram producers.

(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 procedures for obtaining the rights of producers of phonograms under national laws. Although in the United States of America registration of works with the Copyright Office is not a condition for protection (but only a prerequisite for filing suits and a means of establishing prima facie evidence) most of those who aspire to protection actually register their works. The number of such registrations is currently more than

600,000 per year.

(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 Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to producers of phonograms if the criteria for obtaining protection for their phonograms, mentioned in item (2)(i), above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to producers of phonograms who are its nationals as regards phonograms first fixed or first published on its territory.

National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention.

Under the Rome Convention, the producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

The Rome Convention provides for possible exceptions to the protection guaranteed to neighboring rights owners, including phonogram producers. Exceptions are permitted as regards:

- private use,

- use of short excerpts in connection with the reporting of current events,

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic laws, provide for the same kinds of limitations with regard to the protection of neighboring rights as it provides for, in its domestic laws, in connection with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention. Under the Phonograms Convention, each Contracting State must protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

The means by which the Phonograms Convention is implemented is a matter for the domestic law of each Contracting State but it must include one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions.

Any Contracting State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions may, in its domestic law, provide with regard to the protection of producers of phonograms the same kinds of limitations as are permitted with respect to the protection of authors of literary

and artistic works. However, no compulsory licenses may be permitted unless all of the following conditions are met:

- the duplication is for use solely for the purpose of teaching or scientific research;

- the license is valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and does not extend to the export of duplicates;

- the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

(ii) Current WIPO Activities

In recent program periods, a thorough analysis of the worldwide copyright and neighboring rights situation has been carried out in the framework of various meetings convened jointly with Unesco.

In the first phase of analysis--in the 1982-83 and 1984-85 bienniums--WIPO activities concentrated on new uses (such as reproduction for private purposes, rental and lending, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighboring rights--including the rights of phonogram producers--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 and neighboring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis was a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988. The scope and application of neighboring rights--including the rights of phonogram producers--in respect of certain new uses is also 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 scope of rights recognized by countries party to the Rome Convention and/or the Phonograms Convention corresponds, at least, to the minimum standards of those conventions as outlined in item (i), above; but also the laws of several countries not bound by those conventions recognize, generally, similar rights for producers of phonograms.

The national legislations of countries party to the Rome Convention and/or the Phonograms Convention provide for an exclusive right for phonogram producers to authorize the reproduction of their phonograms. In addition, a number of other countries not party to either one or the other of the above-mentioned conventions provide for such an exclusive right (e.g., Bangladesh, Malaysia, Pakistan).

Producers of phonograms also enjoy protection against the importation of duplicates of their phonograms made without their consent, in all the countries party to the Phonograms Convention.

The right of phonogram producers to authorize the rental of their phonograms is explicitly recognized in

certain countries (e.g., in France, Japan, United States of America).

Producers of phonograms enjoy an exclusive right to authorize the broadcasting and communication to the public of their phonograms under the national laws of several countries (e.g., Australia, Bangladesh, Fiji, India, New Zealand, Pakistan, United Kingdom). Several other countries provide for a right of remuneration in that respect (see item (7)(iii), below).

The exceptions to neighboring rights in national laws correspond, in general, to the ones allowed by the Rome Convention and the Phonograms Convention, for example, private use. Several countries, however, have introduced a compensation system to counterbalance the prejudice to copyright and neighboring rights owners caused by the widespread private reproduction of audiovisual works and phonograms, in the form of a levy on blank tapes and cassettes and/or on recording equipment (e.g., Austria, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Norway, Portugal, Spain, Sweden). Producers of phonograms also receive a certain share of such compensatory payments.

(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

The Rome Convention obliges the countries which are party to it to protect phonograms for at least 20 years. The starting point of this term of protection is the end of the year in which the fixation was made. Under the Phonograms Convention, the duration of protection is a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration of protection, it must not be less than 20 years from the end either of the year in which the sounds embodied in the phonograms were first fixed or of the year in which the phonogram was first published.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than 20 years.

(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 term of protection of the rights of phonogram producers determined by the national laws of countries party to the Rome Convention and/or the Phonograms Convention--and, in general, also of countries not party to those conventions but protecting such rights--corresponds, at least, to the minimum term prescribed by those conventions and mentioned in item (i), above. Certain legislations, however, provide for a longer term of protection.

The term of protection of the rights of producers of phonograms is 25 years, e.g., in Czechoslovakia, El Salvador, Germany (Federal Republic of); 30 years, e.g., in Chile, Italy, Portugal; 40 years, e.g., in Guinea, Spain; 50 years, e.g., in Australia, Austria, Bahamas, Bangladesh, Canada, Costa Rica, Fiji, France, Ghana, Guatemala, India, Malaysia, New Zealand, Pakistan, Singapore, Sweden; 60 years in Brazil; 75 years in the United States of America.

(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

Under the Rome Convention and the Phonograms Convention, there are no procedures for maintaining the rights of producers of phonograms.

(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 procedures for maintaining the rights of producers of phonograms under national laws.

(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

Under a provision of the Rome Convention--a provision which concerns both the rights of performers and the rights of producers of phonograms--if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public (what are called "secondary uses" of phonograms), an equitable remuneration in the form of one single sum must be paid by the user to the performers, or to the producers of phonograms, or to both. (This is equivalent to compulsory licensing.) Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration. The Convention, however, allows various reservations in respect of that right to equitable remuneration. Any Contracting State may declare that

- it will not apply the Article which provides for that right;

- it will not apply that Article in respect of certain uses;

- as regards phonograms the producers of which are not nationals of another Contracting State, it will not apply that Article;

- as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration must not be considered as a difference in the extent of protection.

The Model Law provides that the above-mentioned single equitable remuneration should be paid to the producer of phonograms and that, unless otherwise agreed between the performers and the producer, half the amount received by the producer must be paid by the producer to the perfomers.

(ii) Current WIPO Activities

Even where compulsory licensing is allowed (see item (i), above), WIPO promotes collective administration of rights that is based purely on negotiations and contractual arrangements. (Collective administration is done by societies of copyright and/or neighboring rights owners or similar bodies. They give, in the name of the individual owners of rights who are their members or who are otherwise associated with them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighboring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audiovisual works, phonograms and musical works in the framework of the series of meetings on various categories of works mentioned in item (4)(ii), above. (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

As is mentioned in item (i), above, States party to the Rome Convention may make reservations to the provision of the Convention under which a single equitable remuneration must be paid to producers of phonograms or to performers or to both in case of a so-called "secondary use" (for the description of which see item (i), above) of phonograms published for commercial purposes. Such States may declare that they do not apply the relevant provisions or that they make certain other reservations concerning the extent of application of those provisions (see item (1), above).

Of the countries party to the Rome Convention, five countries--Congo, Fiji, Luxembourg, Monaco, Niger--have declared that they do not apply such a system of remuneration for "secondary uses" of phonograms while ten countries made other reservations. Denmark, Finland, Italy, Norway and the United Kingdom declared that they will apply the provision only in respect of certain uses, for instance use for economic gain or use in the form of broadcasting or, in addition to broadcasting, communication to the public but only if carried out for commercial purposes. Austria, Czechoslovakia, France, Italy, Norway and the United Kingdom declared that they will not apply the provision as regards phonograms the producer of which is not a national of another Contracting State. Austria, Czechoslovakia, Denmark, Finland, Germany (Federal Republic of), Italy, Norway and the United Kingdom used another possibility of reservation according to which a State which grants a right of remuneration for "secondary uses" of phonograms the producers of which are nationals of another Contracting State, may limit that right to the extent to which the latter State grants such a right of remuneration to producers which are nationals of the former State.

The national laws of a number of countries provide for a single equitable remuneration for "secondary uses" of phonograms along the lines indicated in item (i), above (e.g., Argentina, Austria, Barbados, Brazil, Chile, Colombia, Costa Rica, Czechoslovakia, El Salvador, Ecuador, France, Germany (Federal Republic of), Guinea, Ireland, Italy, Japan, Mexico, Nordic countries, Paraguay, Philippines, Uruguay).

(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

Neither the Rome Convention nor the Phonograms Convention contains provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations; - payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation; and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighboring rights to be violated, is liable to a fine for the first offense, and is liable to a fine or to imprisonment, or both, for each subsequent offense.

(ii) Current WIPO Activities

At the beginning of the 1980's, WIPO started an intensive anti-piracy program. So far, this program 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 audiovisual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii), above. These activities covered, inter alia, acts of piracy involving the infringement of neighboring rights, including the rights of producers of phonograms.

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 offense; 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.

(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 practically all countries party to the Rome Convention and/or the Phonograms Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are provided for the protection of the rights of producers of phonograms. Conservatory measures and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

In certain countries not party to the Rome Convention or to the Phonograms Convention, but where producers of phonograms are protected, civil and/or criminal remedies are also provided for the protection of producers of phonograms (e.g., in Bangladesh, Ghana, Guinea, Hungary, India, Pakistan, Portugal, Spain, Trinidad and Tobago). As far as conservatory measures are concerned, in several countries (mainly in countries with Anglo-American legal traditions) "Anton Piller Order" and "Mareva injuction" could be granted by a court, as mentioned in item (A)(8)(iii), above.

(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 Rome Convention, 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 another mode.

(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, there are no commonly applied national provisions and practices.

(C) THE PROTECTION OF BROADCASTING ORGANIZATIONS

(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 Rome Convention obliges each Contracting State to protect the rights of broadcasting organizations in respect of their broadcasts.

Under the Rome Convention, "'broadcasting' means the transmission by wireless means for public reception of sounds or of images and sounds." The Convention does not offer a separate definition of "broadcast," but it is generally understood as meaning the entire program transmitted by means of broadcasting irrespective of its contents.

(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

All the national laws of the countries party to the Rome Convention provide for the protection of broadcasts.

Several countries which are not party to the Rome Convention also protect the rights of broadcasting organizations (e.g., Bangladesh, Cyprus, German Democratic Republic, Ghana, Guinea, Hungary, Iceland, India, Kenya, Malaysia, Malta, New Zealand, Pakistan, Portugal, Singapore, Spain, Zaire, Zambia).

Certain countries with important broadcasting activities, for instance the United States of America, do not

grant protection to broadcasters under the statutes in this field.

In respect of the definitions of "broadcasting" and "broadcast" there are more important differences at the national level. While in the majority of national laws, those definitions--in keeping with the definition offered by the Rome Convention--only cover transmissions by wireless means, a number of national laws extend the definitions of "broadcasting" and "broadcast" to transmissions by wire (cable, etc.) (e.g., Bangladesh, Cyprus, India, Kenya, Malaysia, Malta).

(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

Under the Rome Convention, a broadcast is protected if any of the following two conditions is met:

- the headquarters of the broadcasting organization is situated in another Contracting State,

- the broadcast was transmitted from a transmitter situated in another Contracting State.

However, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State.

The Rome Convention does not require compliance with formalities as a condition of the protection of broadcasts.

(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

As far as the criteria for the protection of broadcasts are concerned, Denmark, Fiji, Finland, Ireland, Italy, Norway and the United Kingdom only protect broadcasts under the Rome Convention if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. All those States made appropriate reservations to the Rome Convention (see item (i), above).

National laws do not require compliance with formalities as a condition of the protection of broadcasts.

(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

Under the Rome Convention, there are no procedures for obtaining the rights of broadcasting organizations.

(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 procedures for obtaining the rights of broadcasting organizations under national laws.

(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 Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to broadcasting organizations if the criteria for obtaining protection for their broadcasts, mentioned in item (2)(i), above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory. National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention.

Under the Rome Convention, the broadcasting organizations have the right to authorize or prohibit

- the rebroadcasting of their broadcasts;

- the fixation of their broadcasts;

- the reproduction of fixations, made without their consent, of their broadcasts or of fixations of their broadcasts made for purposes in respect of which the Convention permits exceptions, if the reproduction is made for other purposes;

- the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The latter right of broadcasting organizations (that is, their right to authorize or prohibit the communication to the public of their television broadcasts in certain cases) is restricted in two ways. First, it is a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised (a term which is generally interpreted as a possible basis also for compulsory licenses). Second, Contracting States may make a declaration that they do not recognize that right.

The Rome Convention provides for possible exceptions to the protection guaranteed to neighboring rights owners, including broadcasting organizations. Exceptions are permitted as regards:

- private use,

- use of short excerpts in connection with the reporting of current events,

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic laws, provide for the same kinds of limitations with regard to the protection of neighboring rights as it provides for, in its domestic laws, in connection with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention.

(ii) Current WIPO Activities

In recent program periods, a thorough analysis of the worldwide copyright and neighboring rights situation has been carried out in the framework of various meetings convened jointly with Unesco. In the first phase of analysis--in the 1982-83 and 1984-85 bienniums--WIPO activities concentrated on new uses (such as reproduction for private purposes, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighboring rights--including the rights of broadcasting organizations--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 and neighboring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis was a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988.

The scope and application of neighboring rights, including the rights of broadcasting organizations, in respect of certain new uses is also 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 scope of rights recognized by countries party to the Rome Convention corresponds, at least, to the minimum standards of those conventions as outlined in item (i), above; but also the laws of several countries not bound by that Convention recognize, generally, similar rights for broadcasting organizations.

Broadcasting organizations enjoy the minimum protection mentioned in item (i), above, in the countries party to the Rome Convention. Some other countries also provide for comparable protection (e.g., Australia, Bangladesh, Cyprus, German Democratic Republic, Ghana, Guinea, Hungary, Kenya, Malaysia, Malta, New Zealand, Pakistan, Portugal, Singapore, Spain, Zaire, Zambia).

As regards the right of broadcasting organizations to authorize or prohibit the communication to the public of their television broadcasts in certain cases, as mentioned under item (i), above, a declaration not to recognize such right has been made by the following Contracting States: Austria, Italy, Luxembourg, Monaco, while two other Contracting States, namely Finland and Sweden have declared that they recognize it only in so far as communication to the public of television broadcasts in a cinema or a similar place is concerned.

The exceptions to the rights of broadcasting organizations in national laws correspond, in general, to the ones allowed by the Rome Convention.

(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

The Rome Convention obliges the countries which are party to it to protect broadcasts for at least 20 years. The starting point of this term of protection is the end of the year in which the broadcast took place.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than 20 years.

(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 term of protection of the rights of broadcasting organizations determined by the national laws of countries party to the Rome Convention--and, in general, also of countries not party to that Convention but protecting the rights of broadcasting organizations--corresponds, at least, to the minimum term prescribed by that Convention and mentioned in item (i), above. Certain legislations, however, provide for a longer term of protection.

Term of protection of the rights of broadcasting organizations is 25 years, e.g., in El Salvador, Germany (Federal Republic of), Pakistan, Peru; 40 years, e.g., in Guinea, Spain; 50 years, e.g., in Australia, Bahamas, Bangladesh, Fiji, France, India, Ireland, Malaysia, New Zealand, Singapore, Sweden, the United Kingdom; 60 years in Brazil.

(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

Under the Rome Convention, there are no procedures for maintaining the rights of broadcasting organizations.

(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 procedures for maintaining the rights of broadcasting organizations under national laws.

(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

Under the Rome Convention, broadcasting organizations have the right to authorize or prohibit the communication to the public of their television broadcasts if such communication is made in places accessible to the public. As is indicated in item (4)(i), above, that right is restricted in two ways. First, it is a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised. Second, Contracting States may make a declaration that they do not recognize that right.

The possibility for determining the conditions under which the right concerned may be exercised is considered as a basis for compulsory licenses. (The Berne Convention contains practically the same wording in its provision which allows compulsory licenses with regard to broadcasting of works and communication to the public by wire or by rebroadcasting of the broadcast of works.)

The Model Law on neighboring rights does not include this right, but the commentary draws attention to the fact that it is included in the, albeit optional, conventional minima for broadcasting organizations.

(ii) Current WIPO Activities

Even where compulsory licensing is allowed (see item (i), above), WIPO promotes collective administration of rights that is based purely on negotiations and contractual arrangements. (Collective administration is done by societies of copyright and/or neighboring rights owners or similar bodies. They give, in the name of the individual owners of rights who are their members or who are otherwise associated with them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighboring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audiovisual works, phonograms and musical works in the framework of the series of meetings on various categories of works mentioned in item (4)(ii), above.

(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

As mentioned under item (i), above, a non-voluntary licensing system can be laid down by domestic law. In respect of simultaneous and unchanged retransmission by cable, certain national legislations provide for compulsory licenses (e.g., Austria, Hungary, Trinidad and Tobago, United Kingdom).

(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 Rome Convention contains no provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;

- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation; and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighboring rights to be violated, is liable to a fine for the first offense, and is liable to a fine or to imprisonment or both, for each subsequent offense.

(ii) Current WIPO Activities

At the beginning of the 1980's, WIPO started an intensive anti-piracy program. So far, this program 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 audiovisual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii), above. These activities covered, inter alia, acts of piracy involving the infringement of neighboring rights, including the rights of broadcasting organizations.

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 offense; 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. (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 practically all countries party to the Rome Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are usually provided for the protection of the rights of broadcasting organizations. Conservatory measures and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

In some countries not party to the Rome Convention, civil remedies and/or penal sanctions are also provided for the protection of the rights of broadcasting organizations (e.g., Bangladesh, Ghana, Guinea, India, Japan, New Zealand, Pakistan, Portugal, Spain).

(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 Rome Convention, 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 another mode.

(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, there are no commonly applied national provisions and practices.

[Annexes follow]

ANNEX I

States party to the Paris Convention
(as of September 1, 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
Cuba
Cyprus
Czechoslovakia
Democratic People's Republic of Korea
Denmark
Dominican Republic
Egypt
Finland
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Mongolia
Morocco
Netherlands
New Zealand
Niger
Nigeria
Norway
Philippines
Poland
Portugal
Republic of Korea
Romania
Rwanda
San Marino
Senegal
South Africa

France
Gabon
German Democratic Republic
Germany, Federal Republic of
Ghana
Greece
Guinea
Guinea-Bissau
Haiti
Holy See
Hungary
Iceland
Indonesia
Iran (Islamic Republic of)
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kenya
Lebanon
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 of America
Uruguay
Viet-Nam
Yugoslavia
Zaire
Zambia
Zimbabwe

Total: 98

[Annex II follows]

5970d/DGO

ANNEX II

EXCLUSIONS FROM PATENT PROTECTION

Extract from WIPO document HL/CE/IV/INF/1 Rev.l

(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 (Islamic Republic of), 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 l992), 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 Republic, Germany (Federal Republic of), Ghana, Israel, Italy,* Kenya, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, OAPI,** Peru, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland,*** 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, Italy,* Japan, Kenya, Malaysia, Mexico, Mongolia, Netherlands, Norway, OAPI,** Peru, Poland, Romania, South Africa, Soviet Union, Spain, Sri Lanka, Sweden, Switzerland,*** Uganda, United Kingdom, United Republic of Tanzania, Viet Nam, Yugoslavia;

(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, OAPI,** Peru, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sri Lanaka, Sweden, Switzerland,*** Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

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

** Benin, 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.

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

(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 Repblic of), Ghana, Israel, Italy,* Kenya, Luxembourg, Malaysia, Mexico, Mongolia, Netherlands, Nigeria, Norway, OAPI,** Peru, Poland, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland,*** 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, Yugosavlia, Zambia (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, Italy,* Japan, Kenya, Mexico, Norway, OAPI,** Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Uganda, United Kingdom, United Republic of Tanzania, Yugoslavia;

(viii) Chemical Products (22): Bolivia, Brazil, Bulgaria, China, Cuba, Czechoslovakia, German Democratic Republic, Hungary, India, Mexico, Mongolia, Morocco (but only in the former zone of Tangier), Poland, Portugal, Republic of Korea, Romania, Soviet Union, Spain (until l992), 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 of America, Yugoslavia;

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

** Benin, 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.

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

(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 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), 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 therefore 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 exploited in Colombia), Denmark, Malawi, Mexico, New Zealand (where the Commissioner can refuse a patent therefor where the process produces a mere mexture 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) Microorganisms (9): Brazil, Cuba, Czechoslovakia (if used in industrial manufacture), German Democratic Republic, Hungary, Malaysia (except for man-made living microorganisms), Spain, Romania, Yugoslavia;

(xiii) Substances Obtained by Microbiological Processes (7): Czechoslovakia, Brazil, German Democratic Republic, Malaysia, Romania, Spain (until l992), Yugoslavia;

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

(xv) Fertilizers (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 follows]

ANNEX III

States party to the Patent Cooperation Treaty
(as of September 1, 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 of America

Total: 40

[Annex IV follows]

ANNEX IV

TABLE CONCERNING PRIOR USERS' RIGHTS

Extract from WIPO document HL/CE/IV/INF/2 Rev. 1

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	Right of Use Limited to

	Possession for Use	Preparations for Use	Use from Owner of Patent (or his Predecessor in Title)	Use or Preparations	Particular Provisions Scope of Original Use	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						

Country/ Regional Treaty	Right to Use Patented Invention Based on Possession, Preparations for Use or Use Before Filing Date or Priority Date					
	Possession	Facts Giving Rise to Right of Use: Preparations for Use	Use in Title)	Knowledge Must not be Derived from Owner of Patent (or his Predecessor	Right of Use Limited to Particular Provisions: Scope of Original Use or Preparations	Needs of Own Business
Democratic Republic	yes	yes				

For explanations and footnotes, see page 4 of this Annex.

Annex IV, page 2

Country/ Regional Treaty	Right to Use Patented Invention Based on Possession, Preparations for Use or Use Before Filing Date or Priority Date					
	Possession	Facts Giving Rise to Right of Use: Preparations for Use	Use in Title)	Knowledge Must not be Derived from Owner of Patent (or his Predecessor	Right of Use Limited to Particular Provisions: Scope of Original Use or Preparations	Needs of Own Business
Germany, Federal Republic of	yes	yes	under certain conditions (4)			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)
Norway	yes	yes		yes	(3)
Philippines					
Poland	yes	yes		yes	yes
Portugal					
Republic of Korea	yes	yes			yes (6)
Romania	yes	yes	yes		

For explanations and footnotes, see page 4 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	Right of Use Limited to		
	Possession	Preparations	Use		Scope of Original	Particular Provisions Needs of

	for Use	in Title)	Use or Preparations	Own Business	
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)
United States of America					
Uruguay					
Venezuela					
Yugoslavia	yes	yes			

For explanations and footnotes, see page 4 of this Annex.

Annex IV, page 4

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

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

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

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

(4) If 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.

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

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

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

[Annex V follows]

ANNEX V

TABLE CONCERNING PROVISIONAL PROTECTION OF APPLICANT

Extract from WIPO document HL/CE/IV/INF/2 Rev. 1

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
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(1)
Argentina
Australia XXXXXXXXXXXXXXXXXXX(2) XXXXXXXXXXXXX(2)
Austria XXXXXXXXXXXXXXXX
Belgium (3) ///////////////(1) ////////////////////////////////////
Brazil ///////////////(2) ////////////////////////////////////(2)
Bulgaria
Canada
Chile
China ////////////////////(2) ////////////(2)
Colombia
Czechoslovakia
Denmark ////////////////////(2) XXXXXXXXXXXXX(2)
Finland ////////////////////(2) XXXXXXXXXXXXX(2)
France XXXXXXXXXXX(1)(2) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)
German Dem. Rep. (4) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)
Germany, Fed. Rep. of ////////////////////////////////////
Greece
Hungary XXXXXXXXXXXXXX(2)
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)
India XXXXXXXXXXXXX(2)
Ireland XXXXXXXXXXXXX(2)
Israel XXXXXXXXXXXXX(2)
Italy XXXXXXXXXXXXXX(1)
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Japan XXXXXXXXXXXXXXXX(5)(6) XXXXXXXXXXXXXXXX
Luxembourg
Mexico
Morocco
Netherlands ////////////////(2)(7) XXXXXXXXXXXXX(2)
New Zealand XXXXXXXXXXXXX(2)
Norway ////////////////////(2) XXXXXXXXXXXXX(2)
Philippines
Poland XXXXXXXXXXXXXX(2)
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)
Portugal

For explanations, see page 2 of this Annex. The footnotes appear on page 3 of this Annex.

Annex V, page 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
Rep. of Korea	XXXXXXXXXXXXXXXX(6)(8)		XXXXXXXXXXXXXXXX
Romania			
South Africa (9)		XXXXXXXXXXXX(10)	
Soviet Union			
Spain	///////////////(11)	//////////////////////////////////////	
Sweden		////////////////////(2)	XXXXXXXXXXXXX(2)
Switzerland		//////////////////////////////////////(2)	XXXXXXXXX(2)(12)
Turkey			
United Kingdom		XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)	
United States of A.			
Uruguay			
Venezuela			
Yugoslavia	XXXXXXXXXXXXXXX(2)		
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX(2)			

Explanations

= no provisional protection

XXXXXXXXX = protection substantially equivalent to effects of patent

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

FD = Filing date.

P1 = 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.

Annex V, page 3

Footnotes

(1) If and from the time at which official copy of application is notified to individual user.

(2) Proceedings (or, at least, final decision) possible only after grant of patent.

(3) P1 takes place only at request of applicant.

(4) P1 corresponds to issue of provisional patent.

(5) If and from the time at which individual user received writ of warning or knew of application.

(6) Right cannot be exercised before P2.

(7) Only for acts performed after 30 days from serving writ of warning upon individual user.

(8) If and from the time at which individual user received writ of warning.

(9) P1 takes place only if application claims priority under the Paris Convention.

(10) Proceedings possible only after nine months from sealing of patent.

(11) If and from the time at which individual user was informed of application.

(12) P2 takes place only for a few specific technical fields.

[Annex VI follows]

ANNEX VI

DURATION OF PATENTS

Extract from WIPO document HL/CE/IV/INF/2 Rev. 1

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

(i) 20 years: Algeria; Belgium; Burundi; Chad; Denmark; Finland; France; Hungary; Israel; Italy;1 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; Barbados;3 Bulgaria; China; Czechoslovakia; Democratic People's Republic of Korea; Egypt;3 Iraq; Lebanon; Libya;3 Mongolia; Poland; Romania; Soviet Union; Syria; Thailand; Viet Nam;
(iv) 14 years: Malta;4 Mauritius;5
(v) 10 years: OAPI;6 Cuba;7
(vi) 5, 10, 15 or 20 years: Iran (Islamic Republic of);8 Tunisia;8
(vii) 5, 10 or 15 years: Turkey.9

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

2 The Swiss law also applies to Liechtenstein.

3 With the possibility of a five-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.

4 With 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.

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

6 With the possibility of a five-year extension for Benin, Burkina Faso, Cameroon, the 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.

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

8 Depending on the applicant's request.

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

(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 application.10

(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 publication date).11

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

(i) 16 years: Australia;12 Ireland;13 Malawi;14 New Zealand;13 Zambia;13
(ii) 14 years: India (except for process inventions for manufacturing food or medicine, for which the duration is five years from the date of sealing of the patent, or seven years from the date on which the complete specification was filed, whichever period is shorter).

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

11 With the possibility of a seven-year extension if the patented invention is actually and seriously worked in the country.

12 With 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 five-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).

13 With the possibility of a five-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.

14 [The text of this footnote appears on page 6]

Annex VI, page 3

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

(i) 17 years: Canada; Philippines; United States of America;15
(ii) 16 years: Bangladesh;16 Pakistan;16
(iii) 15 years: Bolivia; Iceland; Malaysia; Portugal; Sri Lanka; Uruguay;
(iv) 14 years: 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 National Directorate of Industrial Property); Dominican Republic;
(vii) 5 or 10 years: Venezuela, depending on the will of the applicant;
(viii) 5 years: Colombia;17 Ecuador;17 Peru.17

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

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

14 With the possibility of an extension of five or 10 years or for the term of the hostilities 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.

15 With 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.

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

17 With the possibility of a five-year extension if the patent is adequately worked.

[Annex VII follows]

ANNEX VII

States party to the Berne Convention
(as of September 1, 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
Lebanon

Total: 79

Libya
Liechtenstein
Luxembourg
Madagascar
Mali
Malta
Mauritania
Mexico
Monaco
Morocco
Netherlands
New Zealand
Niger
Norway
Pakistan
Peru
Philippines
Poland
Portugal
Romania
Rwanda
Senegal
South Africa

Spain
Sri Lanka
Suriname
Sweden
Switzerland
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
United Kingdom
Uruguay
Venezuela
Yugoslavia
Zaire
Zimbabwe

[Annex VIII follows]

ANNEX VIII

States party to the Nairobi Treaty on
the Protection of the Olympic Symbol
(as of September 1, 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 follows]

ANNEX IX

States party to the Madrid Agreement (Marks)
(as of September 1, 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

[Annex X follows]

ANNEX X

States party to the Hague Agreement
(as of September 1, 1988)

Belgium
Benin
Egypt
France
German Democratic Republic
Germany, Federal Republic of
Holy See
Hungary
Indonesia
Italy
Liechtenstein
Luxembourg
Monaco
Morocco
Netherlands
Senegal
Spain
Suriname
Switzerland

Tunisia
Viet Nam

Total: 21

[Annex XI follows]

ANNEX XI

States party to the Madrid Agreement
(Indications of Source)
(as of September 1, 1988)

Algeria
Brazil
Bulgaria
Cuba
Czechoslovakia
Dominican Republic
Egypt
France
German Democratic Republic
Germany, Federal Republic of
Hungary
Ireland
Israel
Italy
Japan
Lebanon
Liechtenstein
Monaco
Morocco

New Zealand
Poland
Portugal
San Marino
Spain
Sri Lanka
Sweden
Switzerland
Syria
Tunisia
Turkey
United Kingdom
Viet Nam

Total: 32

[Annex XII follows]

ANNEX XII

States party to the Lisbon Agreement
(as of September 1, 1988)

Algeria
Bulgaria
Burkina Faso
Congo
Cuba
Czechoslovakia
France
Gabon
Haiti
Hungary
Israel
Italy
Mexico
Portugal
Togo
Tunisia

Total: 16

[Annex XIII follows]

ANNEX XIII

States party to the Rome Convention
(as of September 1, 1988)

Austria
Barbados
Brazil
Burkina Faso
Chile
Colombia
Congo
Costa Rica
Czechoslovakia
Denmark
Dominican Republic
Ecuador
El Salvador
Fiji
Finland
France
Germany (Federal Republic of)
Guatemala
Ireland
Italy
Luxembourg
Mexico
Monaco

Niger
Norway
Panama
Paraguay
Peru
Philippines
Sweden
United Kingdom
Uruguay

Total: 32

[Annex XIV follows]

ANNEX XIV

States party to the Phonograms Convention
(as of September 1, 1988)

Argentina
Australia
Austria
Barbados
Brazil
Burkina Faso
Chile
Costa Rica
Czechoslovakia
Denmark
Ecuador
Egypt
El Salvador
Fiji
Finland
France
Germany (Federal Republic of)
Guatemala
Holy See
Hungary
India
Israel
Italy
Japan

Kenya
Luxembourg
Mexico
Monaco
New Zealand
Norway
Panama
Paraguay
Peru
Republic of Korea
Spain
Sweden
Trinidad and Tobago (as from October 1, 1988)
United Kingdom
United States of America
Uruguay
Venezuela
Zaire

Total: 42

[End of Annex XIV and of document]