INTERGOVERNMENTAL COPYRIGHT COMMITTEE

Twelfth session of the Committee of the Universal Convention as revised in 1971 Paris 18-22 June 2001

COMITÉ INTERGOUVERNEMENTAL DU DROIT D'AUTEUR

Douzième session du Comité de la Convention universelle révisée en 1971 Paris 18-22 juin 2001

COMITÉ INTERGUBERNAMENTAL DE DERECHO DE AUTOR

Duodécima reunión del Comité de la Convención Universal revisada en 1971 París 18-22 de junio de 2001

МЕЖПРАВИТЕЛЬСТВЕННЫЙ КОМИТЕТ ПО АВТОРСКОМУ ПРАВУ

Двенадцатая сессия Комитета Всемирной конвенции, пересмотренной в 1971 г. Париж 18-22 июня 2001

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FINAL REPORT

Introduction

1. The Intergovernmental Copyright Committee (hereinafter referred to as "the Committee"), set up by Article 11 of the Universal Copyright Convention as revised at Paris on 24 July 1971, held its twelfth ordinary session at UNESCO Headquarters, Paris, from 18 to 22 June 2001, with Mr Mayer Gabay (Israel) in the chair.

2. Twelve Member States of the Committee were represented, namely: Algeria, Argentina, Austria, Cameroon, Chile, China (People's Republic of), Cuba, Greece, Israel, Japan, Portugal and United States.

3. The following 17 States Parties to the Universal Copyright Convention but not members of the Committee sent observers: Bolivia, Colombia, Costa Rica, Croatia, Czech Republic, Ecuador, El Salvador, Haiti, Holy See, Hungary, Lebanon, Mexico, Panama, Poland, Spain, Switzerland and Ukraine.

4. The following six States not Parties to the Universal Copyright Convention were also represented: Honduras, Jordan, Kuwait, Thailand, United Arab Emirates and United Republic of Tanzania, together with the Palestinian Authority.

5. The representatives of the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and of the Director-General of the World Intellectual Property Organization (WIPO) attended the meetings of the Committee in an advisory capacity. The European Commission was represented by an observer.

6. The representatives of the following seven international non-governmental organizations also attended the meetings of the Committee as observers: International Literary and Artistic Association (ALAI), Association Valentin Haüy pour le bien des aveugles (AVH), International Association of Art (IAA), Conseil national français des arts plastiques, International Federation of Film Producers' Associations (FIAPF), International Federation of Musicians (FIM) and International Federation of the Phonographic Industry (IFPI).

7. The list of participants is annexed to the final report.

Opening of the session

8. The session of the Committee was opened by Mr Gabay, Chairperson of the Committee.

9. The representative of the Director-General, Mr Mounir Bouchenaki, Assistant Director-General for Culture, welcomed all the participants and wished the meeting every success in its work. With regard to UNESCO's activities in the field of copyright, he emphasized the importance of teaching the subject at university level for the purpose of assisting the developing countries in training national specialists. UNESCO, he continued, was engaged in a new phase of drawing up an instrument concerned with the safeguarding and international protection of traditional culture and folklore as the intangible heritage of humanity. He invited the Committee to reach conclusions on the various matters on the agenda and stressed the importance UNESCO attached to the outcome of the twelfth session of the Intergovernmental Committee.

Adoption of the Agenda

10. On the proposal of the Chairperson of the Committee, it was decided to consider item 8 after item 10 of the agenda. After making that change, the Committee unanimously adopted the agenda contained in document IGC(1971)/XII/1 (prov.).

Information on the state of accession to the international conventions administered by UNESCO alone or jointly with WIPO and ILO (IGC(1971)/XII/2)

(i) Universal Copyright Convention – 1952 text

11. The Secretariat informed the Committee that since its eleventh ordinary session (23-27 June 1997) the number of Member States Parties to the Convention had remained unchanged. It recalled that the accession of Azerbaijan and the Republic of Moldova mentioned in document IGC(1971)/XII/2 had in fact been announced to the Committee at its eleventh session. The number of Member States Parties to the Convention, as at 19 March 2001, consequently remained unchanged at 98.

(ii) Universal Copyright Convention – text revised in 1971

12. A single State, Liechtenstein, had notified the Director-General of UNESCO, on 11 August 1999, of its accession to the text of the Convention of 24 July 1971.

It was also to be noted that the Committee had already been informed at its eleventh session of the accession of the former Yugoslav Republic of Macedonia. That new accession brought the number of States Parties to the 1971 text to 62.

(iii) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)

13. The Secretariat informed the Committee that, since its eleventh session, the following 14 States had deposited their instruments of accession to the Rome Convention: Albania on 1 June 2000; Belgium on 2 July 1999; Canada on 4 March 1998; Cape Verde on 3 April 1997; Croatia on 20 April 2000; Dominica on 7 May 1999; Estonia on 28 January 2000; Latvia on 20 May 1999; the former Yugoslav Republic of Macedonia on 2 December 1997; Lebanon on 12 May 1997; Liechtenstein on 12 July 1999; Lithuania on 22 April 1999; Nicaragua on 10 May 2000; Romania on 22 July 1998.

It also noted that the Committee had been informed at its eleventh session of the accession of Poland (on 12 March 1997). Those new accessions had brought the number of States Parties to the Convention, as at 19 March 2001, to 67.

(iv) Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonograms Convention)

14. The Secretariat informed the Committee that, since its eleventh session, the following 11 States had acceded and become Parties to the Convention: Croatia on 20 April 2000; Estonia on 28 May 2000; Kazakhstan on 3 May 2001; Latvia on 23 August 1997; Liechtenstein on 12 October 1999; Lithuania on 27 January 2000; Republic of Moldova on 17 July 2000; Romania on 1 October 1998; Saint Lucia on 2 April 2001; the former Yugoslav Republic of Macedonia on 2 March 1998; Ukraine on 18 February 2000.

As at 19 March 2001, the number of States Parties to the Convention stood at 65.

(v) Convention relating to the Distribution of Phonogram-carrying Signals Transmitted by Satellite (Satellite Convention)

15. The Secretariat also informed the Committee that, since its eleventh session, three States had acceded to that Convention: Costa Rica, on 25 March 1999; the former Yugoslav Republic of Macedonia, on 2 September 1977; and Jamaica, on 12 October 1999.

By 19 March 2001, the States Parties to that Convention totalled 24.

(vi) Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties

16. No further State had acceded to that Convention. On 19 March 2001, the following seven States had deposited their instruments of accession, acceptance and/or Declaration of succession to that Convention: Czech Republic, Ecuador, Egypt, India, Iraq, Peru and Slovakia. In accordance with its Article 13, this Convention would enter into force only with the deposit of the 10th instrument of ratification, acceptance or accession.

17. The Committee took note of all the information provided by the Secretariat. The Chairperson of the Committee observed that it was important that the Committee take into account, in the course of the discussion on item 8 relating to future sessions of the Committee, of the large number of States Parties to the Universal Convention, namely, 97.

Legal and technical assistance to States (IGC(1971)/XII/3)

18. Introducing that document, the Secretariat provided information on the activities carried out since the last session on the Committee, in March 2001. Those activities had mainly focused on:

(i) the development of the teaching of copyright and neighbouring rights;

(ii) support for the collective management of rights through the publication of a practical guide intended for developing countries and countries in transition, in order to help them organize the effective exercise of recognized rights and facilitate the public's lawful, swift and equitable access to protected cultural works and performances;

(iii) legal assistance and consultation services to Member States;

(iv) efforts to achieve the legal protection and safeguarding of the contents of traditional culture and folklore; and

(v) information for specialists and the groups concerned on the present situation regarding the ratification of the Conventions, the progress of the legal protection of copyright and neighbouring rights, and the debate on the general problem of the adaptation of protection in relation to the way in which modes of production and distribution of protected cultural works and performances have changed. This information is provided by means of the Copyright Bulletin (quarterly publication), issued by the Organization in Chinese, English, French, Russian and Spanish, and the UNESCO website. Since 2001, the Copyright Bulletin has been published electronically (http://www.unesco.org/culture/copyright).

19. Special emphasis was placed on the teaching of copyright and neighbouring rights at university. The Committee had already been informed of developments in the implementation of UNESCO's special programme in that regard, which it had regularly supported during its previous sessions. A network of UNESCO Chairs had been set up in Latin America and the Caribbean to foster inter-university cooperation aimed at the further training of specialists in that field. The success of that network, called RAMLEDA, had led to the establishment of 34 specialized Chairs in other universities in the region.

Three Chairs had been established in the Arab region: Tunisia (1998), Jordan (2000) and Algeria (2000). Two UNESCO Chairs were being established in Morocco and Egypt respectively.

In Africa, the process of establishing a Chair in Senegal and another in Cameroon had begun.

In the countries in transition, a Chair had been established in Moscow (Russian Federation) in 1998 and preparations were under way for a Chair in Georgia and another in Kazakhstan.

The teaching of copyright at university under the UNESCO Chairs system was facilitated by a UNESCO textbook, published in Spanish (1993), French (1997) and English (1998). Publication of the Russian and Arabic versions of the textbook was in progress.

20. The safeguarding and legal protection of traditional culture and folklore had become one of UNESCO's priority activities. That heritage, which was an important component of the cultural heritage, made vulnerable by its oral nature, today had a greater need to be preserved and promoted in society, both as a means of promoting cultural diversity and as a tool for giving effective support to the endogenous cultural development of developing countries.

In consequence, UNESCO had been committed by its governing bodies to a new phase in creating an international protected status for the intangible heritage (traditional culture and folklore and traditional knowledge) which sought to involve, with increased obligations, local communities, national authorities and international cooperation in a spirit of solidarity in the establishment of standardized, complementary and user-friendly inventories of the various components of that intangible heritage, and in the implementation of the principles that should govern its utilization in society.

21. The Chairperson of the Committee spoke of the usefulness of a wide-ranging international campaign for the promotion and effective enforcement of copyright protection. He urged UNESCO to carry out those useful activities in cooperation with WIPO in view of

its own limited financial possibilities. He also suggested that UNESCO's programme on the teaching of copyright at university should include the training of specialists serving in the police, customs, etc., with a view to strengthening the enforcement of national legislation, which needed to be applied more effectively in many countries.

22. The delegations that took the floor thanked the Secretariat for all the assistance provided to States, which was most useful for the appropriate protection of copyright and neighbouring rights.

23. The delegation of Chile also considered coordination and collaboration between UNESCO and WIPO to be fundamental, particularly where assistance to developing countries was concerned. It stressed the importance and usefulness of complementary coordination of the action taken by the two organizations to safeguard and protect traditional culture and folklore.

24. The Secretariat informed the Committee that UNESCO and WIPO had long-established relations, which were governed by a Cooperation Agreement that the two organizations were striving to implement purposefully and effectively in accordance with needs. He observed that UNESCO was no longer responsible for the preparation and updating of standard-setting international instruments in the field of the protection of copyright and neighbouring rights. For the last few years, that work had been carried out exclusively by WIPO, which was the principal United Nations agency responsible for codifying and administering the protection of intellectual property. The two organizations also cooperated closely in the management and promotion of international conventions in that field, which they were legally obliged to administer in common.

The Organization's activities aimed at promoting the teaching of copyright, assistance to States and information for specialists and the general public complemented those of WIPO and contributed to broader satisfaction of the major needs of developing countries, which were to build up a national system of copyright that would be capable of contributing effectively to the country's endogenous cultural development and serving as an active partner in the preparation and enforcement of an international consensus in that field.

25. The representative of the European Commission informed the Committee that the European Commission intended to participate constructively in the work undertaken in the context of WIPO on the issue of possible legal protection for expressions of folklore. To that end, the Commission had ordered a study on the desirability of such protection and the form that it might take. That study, conducted for the Commission by independent experts, was available on request. However, it did not necessarily represent the official position of the European Union. On the subject of traditional knowledge and access to genetic resources which had a bearing on industrial property, the Commission had taken part in the debate that had unfolded at WIPO in May 2000, at the meeting of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

26. The Chairperson of the Committee observed that it would be desirable for UNESCO to direct its action towards the safeguarding, conservation and preservation of folklore and traditional knowledge, and for WIPO to take responsibility for protection of the intellectual property aspects of that heritage while at the same time coordinating their joint efforts.

27. The United States delegation stated that, in regard to the protection of folklore, there was a great need for training and information. Substantial assistance on various aspects connected with folklore should be provided to developing countries. In its opinion, it was not

indispensable to create a new international instrument in that field, since the legal protection of folklore could be secured through the existing system of intellectual property (copyright, neighbouring rights, trademarks and patents, etc.).

In regard to the effective enforcement of national legislation on copyright, it informed the Committee that the issue had been the focus of particular attention by the United States Government. An intra-governmental process involving the State Department, the Department of Justice and other bodies, and also the customs authorities, had been organized in order to improve coordination and strengthen the training activities conducted by the United States and WIPO. The objective was to strengthen the effective protection of copyright. Moreover, it expressed agreement with the delegation of Chile concerning the absolute need for close cooperation between UNESCO and WIPO in order to avoid duplication or dispersal of the efforts of the two organizations.

28. The delegation of Algeria, while expressing its support for the work done on the teaching of copyright, urged UNESCO to expand that programme and extend it to all developing countries. It also suggested that the UNESCO Chairs should coordinate their activities with other advanced training institutions in each country in order to extend education in copyright and neighbouring rights to specialized training institutions or schools for judges, customs officers, police officers and the senior staff of ministries and local authorities.

29. The delegation of China described the numerous information and training activities undertaken in the field of copyright in China with a view to strengthening further the protection of copyright. It stated that research units on the teaching of intellectual property at university had been established in more than 70 institutions. Expressing satisfaction at the work accomplished by UNESCO, it drew attention to the fact that UNESCO's *Copyright Bulletin* had been published in Chinese by the national copyright administration since 1994. It hoped that the already extensive cooperation with UNESCO would be continued and strengthened.

30. The Secretariat, responding to comments on the protection of folklore, informed the Committee that that intangible heritage had become a priority sector for the Organization. It recalled that that cultural heritage, made vulnerable by its oral nature, now had an even greater need to be safeguarded and promoted in society, since it was both an excellent means of preserving cultural diversity and an effective tool for providing support for the endogenous cultural development of developing countries.

The results of the evaluation, conducted in 1998 and 1999 in cooperation with WIPO, of the need for a more appropriate legal protection of that heritage, and the conclusions of the evaluation (1995-1999) of the implementation of the 1989 UNESCO Recommendation provided further confirmation of that need. UNESCO had commenced a new phase in the preparation of an international protected status for that intangible heritage on that basis. The intention was to speed up its action in particular during implementation of the Programme and Budget for 2002-2003 that the General Conference would be required to adopt at its 31st session, in October 2001. The preparation of a new international instrument for the safeguarding and protection of the range of expressions of traditional culture and folklore and traditional knowledge was intended to involve, with increased obligations, local communities, national authorities and international solidarity in the establishment of standardized, complementary and accessible inventories of the various components of that intangible heritage and in the enforcement of the equitable principles that should govern its utilization in society.

UNESCO would work in cooperation with WIPO, the Secretariat of the Convention on Biodiversity, FAO and WHO so that a new protected status for that heritage, in keeping with UNESCO's statutory mission and respectful of the attributions and competence of other international organizations in the United Nations system, might be prepared and founded on a broad international consensus that would guarantee the effectiveness of its implementation.

The role of service and access providers in digital transmission and their responsibility regarding copyright (IGC(1971)/XII/4)

31. Introducing the document, the Secretariat pointed out that the study had been prepared in accordance with the Committee's decision at its eleventh session (para. 43 of the report).

The question of the responsibility of access and service providers had been the subject of intense debate since the adoption of the WIPO Copyright Treaty (1996). The lack of agreement on the nature and scope of the right of reproduction in the digital environment in that new instrument and the apparent contradiction of the declaration relating to Article 9 of the Berne Convention, aimed at clarifying that right, and the declaration relating to Article 8 (right of communication) of the Treaty adopted by the Diplomatic Conference appeared to require that codification of this important issue be referred back to national law.

The study outlined, in that connection, the experience of the United States of America. The approach there had been the outcome of thorough negotiation between authors and other right-holders on the one hand and, on the other, American Internet companies. That negotiated system determined in a detailed manner the limits of access and service providers' liability for infringements of copyright and neighbouring (related) rights in the context of digital data transmission activities if access and service providers were willing to respect the legally recognized rights of authors and acted expeditiously when alerted to put an end to copyright infringements.

The European Commission's approach was technically different but had the same objective. Contrary to the implications of the study prepared by Ralph Oman, that approach was governed primarily by the Directive on Electronic Commerce of 8 June 2000, and not by the Directive on Copyright and Neighbouring Rights in the Information Society of 22 May 2001. The status of liability of intermediaries was regulated by a single system for all third party or societal rights. The common liability system thus instituted was not confined to infringements of copyright or neighbouring rights. It also covered respect for personal rights, good moral standards, the protection of young people and issues relating to apologia for crime or racism, etc.

That system included conditions exempting intermediaries from liability for transport, caching and hosting activities on the multimedia electronic network communication system. Such liability had to be borne in accordance with respect for rights granted to authors and other right-holders by the Directive of 9 April 2001 on Copyright and Neighbouring Rights in the Information Society of 22 May 2001.

The point of the debate on that issue was whether the two experiences of the States of the European Union had struck an appropriate balance between the creators of cultural works and performances and the Internet industry. It also provided a good opportunity to learn about other national approaches and experiences.

It was also of great interest to know how copyright exceptions, recognized by treaty law and national legislation, could be usefully and objectively exercised while respecting the interests of all parties. Acknowledgement of that problem was an excellent means of

completely refuting unfounded attacks on copyright and of organizing in an equitable manner regular access to knowledge and information, which had become one of the crucial requirements of the information society.

32. The Chairperson of the Committee remarked that, with regard to the liability of service providers, WIPO, like UNESCO, had become involved in that field and closer cooperation between the two organizations with a view to working out satisfactory solutions was to be encouraged.

33. The delegation of Argentina raised the need to clarify the rules determining the applicable law and the competent jurisdiction to settle matters relating to infringements committed by access and service providers.

34. The delegation of Austria, after congratulating the Secretariat on the quality of the documents, observed that access and service providers enjoyed a special exemption, under the Directive on the Protection of Copyright in the Digital Environment, contained in Article 5(1). That Directive also stipulated, in Article 8(3), that right-holders could bring an injunction against access and service providers when they contributed to an infringement of copyright committed by a third party. The liability of intermediaries, meanwhile, was regulated by the Directive on Electronic Commerce of 20 June 2000. The system set out in that Directive had the same objective as the Digital Millennium Copyright Act (DMCA) of the United States of America. It defined the liability of access and service providers in a horizontal approach. That approach could lead to non-observance of rights recognized by the above-mentioned Directive on the protection of copyright in the digital environment. The speaker recalled in that connection the scope of the protection of rights and the mandatory and optional exceptions provided in the European Directive, on which claims regarding the liability of access and service providers must be based.

35. The delegation of the United States gave detailed information about the way in which the Digital Millennium Copyright Act (DMCA) had codified the responsibility of Internet service providers (ISPs). It recalled that the DMCA was an update of the general law governing copyright protection, the Copyright Act of 1976, which did not exempt ISPs but only limited their potential responsibility in the case of certain activities, and subject to their complying with certain conditions.

When the question of the responsibility of ISPs had arisen in the United States, national law already stipulated that temporary copies saved on computer during the transmission of cultural works and performances on the Internet were copies subject to copyright whenever they could potentially constitute a breach of protected rights. That principle, enshrined in national law, was the one that the DMCA proposed to apply to the responsibility of ISPs when, in the exercise of their professional activity, they committed an infringement of the rights of authors and of other right-holders.

The DMCA identified various forms of activity in which the service provider might enjoy legal limited responsibility: transport, “caching”, “hosting” and other technical transmission operations of protected cultural works and performances, but only if certain conditions were fulfilled.

The DMCA had set up for that purpose the system of “notice and take down”. When an ISP received, from a right-holder, a notification informing it that a breach of copyright had been committed through its system, the ISP was obliged to take account of that information and to act to restrict all access to the offending information through its system, on pain of being held accountable. The impugned party which believed that, contrary to the notification

given to the ISP, the accusation against it was unfounded, might request the ISP to restore access to the information in accordance with the agreements governing their relations.

That system appeared to work well, to the satisfaction of the ISPs, even if they complained about the volume of complaints, and also to the satisfaction of right-holders, even if they would prefer the system to be more efficient.

The delegation stated that that system of limiting the responsibility of ISPs had enabled it to create an equitable balance among the interests of all parties, and it encouraged the other countries to act similarly to persuade the right-holders and ISPs involved in the process of communicating protected cultural works and performances on the Internet to establish operational systems which took fairly into account the legitimate interests of both parties.

The delegation said that exceptions to rights should be treated with the utmost care because they might result in serious financial injury to the right-holders. The United States Congress had begun to examine that matter with respect to certain categories of users, in particular for use in classrooms and in distance education. There was a need to ensure that those users respected copyright, and that the works were used exclusively for the stated purpose, taking care not to make them accessible to the general public. The same applied to public libraries. It was essential to strike a good balance in that regard in order to avoid unwelcome consequences for legitimate uses of the works.

36. The delegation of Cameroon noted the importance of the balance between the various interests struck in the United States legislation and the European Directive. It announced that Cameroon’s new copyright law had defined the major principles that would determine the liability of intermediaries in the digital transmission of cultural works and services protected by copyright. However, reflection needed to be completed, in the light of international experience, on the way in which they should be codified and made operational.

37. The Chinese delegation informed the Committee of the rapid growth in the use of the Internet in China, with some 30 million users forecast for the end of 2001. However, the rate of growth remained slow in relation to the total population. The main use was for e-mail. The Chinese Government was currently working on changes to the copyright law in order to adapt it to the digital environment and intended to introduce into the new text provisions concerning the right of reproduction and public communication in that environment. That law would be adopted before China became a member of the World Trade Organization (WTO). The Chinese delegation stated that the problem of exceptions to and limitations of rights, in particular in regard to use by libraries, remained to be resolved, and requested UNESCO’s assistance in that respect.

38. The representative of Poland stressed the importance of determining in what cases and under what conditions there was indirect, temporary or potential violation. Those aspects should, he considered, be included in national legislation in the light of Article 9.2 of the Berne Convention concerning exceptions to the right of reproduction.

39. The representative of the European Commission took the floor to state that the study carried out by UNESCO should be amended to take account of the Directive relating to certain legal aspects of services in the information society, and in particular electronic commerce, on the domestic market, and wished to supplement the statement made by the Austrian delegation. She said that the Directive on Electronic Commerce defined the common rules governing general liability of service providers in the context of the information society, and that the Directive on the harmonization of certain aspects of copyright and neighbouring rights in the information society defined the scope of authors’ recognized rights in the digital

environment, with one specific exception, Article 5(1), in order to ensure the technical functioning of electronic transmissions. All Member States of the European Union must incorporate in their national legislation the implementing rules for those Directives for the purpose of harmonizing the domestic market. She reported that the balance struck by the Directive in regard to the harmonization of certain aspects of copyright and neighbouring rights in the information society had been achieved after extensive negotiations with the parties concerned. That balance should facilitate optimal use of the potential of the Internet in the interests of all, including right-holders. Regarding exceptions to rights, she emphasized that the Directive proposed the mandatory exception mentioned above, and that the other exceptions were voluntary. Those exceptions covered, *inter alia*, private copying, teaching, reprographic reproduction and other cases mentioned in the Berne Convention. She stated that those exceptions had a very variable economic impact, which in some cases was minimal.

40. The representative of the International Federation of Film Producers Associations (FIAPF) expressed satisfaction with the balance achieved in the DMCA and European Union Directive on Electronic Commerce. He also noted that the Information Society Directive did not deal with liability and that Mr Oman's study incorrectly gave the impression that the European Union has dealt with the issue of service provider liability in the Information Society Directive by means of an exception to the reproduction right when in fact this was done in the Directive on Electronic Commerce by means of limitations on liability subject to certain conditions. He did note that because the exception in the Information Society Directive, which might deal with some aspects of caching, there was some confusion between the two directives but that in any event service providers must meet the conditions in the E-Commerce Directive to be eligible for the limitations on liability.

41. The representative of the International Federation of Phonographic Industry (IFPI) stressed the importance of achieving a balance between the legitimate interests of ISPs and those of right-holders. With regard to the question of ISP liability, a prerequisite for obtaining the balance is that right-holders are granted protection that ensures that their rights are adequately protected in the online environment. Any limitations to liability should therefore be considered only after countries have adjusted their copyright laws so as to ensure that right-holders enjoy such rights. Finally, he pointed out that neither the DMCA nor the European Electronic Commerce Directive provided total limitations to liability for injunctive relief, a point which, he said, is of utmost importance in the fight against online piracy.

42. At the stage of adoption of the report concerning this point, the delegation of the United States of America made the following statement. As countries begin to grapple with the very important issue of Internet Service Providers (ISP) liability, it is important that the working document under discussion does not contribute to giving the wrong impression as to how countries are dealing with this issue. An international consensus is developing an approach based on limitations on liability. The Oman study may give the wrong impression that ISP liability is being dealt with by means of an exception to the reproduction right. The United States delegation asked that the Final Report reflect that the Chair, the Austrian and the European Commission delegations, as well as the industry (FIAPF and IFPI) raised the paper's shortcoming of not addressing ISP liability in the European Union in the context of the Directive on Electronic Commerce.

International experience in regard to procedures for settling conflicts relating to copyright in the digital environment (IGC(1971)/XII/5)

43. In introducing the study, carried out at the request of the Committee at its eleventh session (para. 41 of the Report), the Secretariat stressed the salient aspects of the problems examined, which were not limited to copyright disputes. The study began by summarizing the

theoretical foundations of the alternative mechanisms for settling disputes in a digital environment characterized by fluidity, intangibility, delocation of information, encryption techniques, techniques for the protection of anonymity, and the ever-increasing number of information highways. It then outlined the first attempts to introduce such mechanisms and examined questions relating to their appropriate organization and effective functioning with an eye to their future development as a possible alternative approach for the administration of justice in the various fields of business, including that of intellectual property. In that connection, the study noted that the degree of autonomy of will granted by national legislation in respect of copyright and neighbouring rights left the door open to extensive possibilities for online arbitration in that field. There the fundamental question was the need to take care to prevent the evolving *lex electronica* from developing in such a way as to generate new contractual rules that would ignore the rights of authors and other right-holders recognized by the relevant national legislation and international conventions.

44. The Committee took note of the various points raised by the study.

Practical aspects of the exercise of the *droit de suite*, including in the digital environment, and its effects on developments in the international art market and on the improvement of the protection of visual artists (IGC(1971)/XII/6)

45. In the statement on that item, the Secretariat recalled that the Committee had that question before it in accordance with the request expressed by several delegations during its eleventh session (para. 50 of the report). The document submitted to the Committee for information and assessment fell into three parts: *droit de suite* management, the impact of *droit de suite* on the art market, and the role that *droit de suite* should play in the improvement of the status of visual artists. The scope of *droit de suite*, as outlined in the study, extended to a range of artistic works, including art photographs and signed craft objects. The right to information for artists and their beneficiaries concerning sales operations, with the obligations of sellers to make known the titles of the works, the names of their authors and the selling price and to respond to the requests of authors or their collective management companies, was presented as crucial to the effective exercise *droit de suite*, which national legislation should sanction. The subject of the percentage of the remuneration on the retail selling price was raised, with a preference expressed for a fixed percentage and a critical appreciation given of the graded rates according to the size of the retail sale price, chosen by the European Directive on *Droit de Suite*. The study emphasized that *droit de suite* could, admittedly, have an impact on the market. But the deciding factors determining the development of an art market were, rather, taxation (VAT) and the objective existence of abundant artistic creativity which was varied and of high quality. Recognition and enforcement of *droit de suite*, on the other hand, encouraged creativity and the enrichment of the artistic heritage and contributed to the legitimate social welfare of artists.

46. Opening the debate, the Chairperson observed that *droit de suite* was recognized chiefly in Europe, but had not yet been incorporated into the legislation of numerous countries. Much therefore remained to be done to promote recognition of that right at the international level. In Israel, where that right was not recognized, it appeared to be difficult to change attitudes and to convince legislators. He added that that issue was not being examined by WIPO.

47. The Algerian delegation informed the Committee that *droit de suite* had been recognized in Algeria since 1973, with royalties of 5% of the resale price. The body responsible for the collective administration of copyright and neighbouring rights was currently sensitizing artists and art galleries to the need for broader application of *droit de*

suite. A website on works protected by *droit de suite* was under construction, and would allow the exchange of works with other bodies concerned by national artistic production.

48. The delegation of Cameroon informed the Committee about the consultation on a draft decree concerning practical application of *droit de suite*. That draft contained provisions requiring information to be provided on the resale of works of art, and introducing sanctions for failure to provide information on the author of the work, the price of sale and the seller.

49. The representative of the European Commission indicated that the European Commission was preparing a Directive on *droit de suite*. That Directive was intended to put an end to the competition distortions which affected the domestic market for works of modern and contemporary art by universalizing and harmonizing *droit de suite*. That Directive would be adopted in July 2001. The European Directive on the matter would have to be incorporated in national legislation by all the Member States of the Union within four years. The Member States which did not implement *droit de suite* on the entry into force of that Directive would be able, for a further four years, to limit it to living artists and thus not to apply it to the authors' heirs. That period could be extended by two years or reduced if international negotiations had, meanwhile, made it possible to extend *droit de suite* internationally.

50. The representative of WIPO indicated that it was indispensable for all international organizations concerned by the protection of the rights and interests of creative artists to cooperate. He was pleased to see that a number of important issues relating to problems encountered by several States had been included in the Committee's agenda. Although the Universal Convention did not deal with electronic transmission, it was important that the Committee should pay particular attention to the digital environment. He noted that certain issues discussed by the Committee had already been resolved in the two new WIPO treaties of 1996. WIPO was endeavouring to ensure that a maximum number of countries were made aware of the importance of those two new treaties, whose entry into force would help to harmonize national legislation regarding electronic transmission. The two international treaties of 1996 had already been ratified by 26 countries, and were expected to enter into force shortly. It was indispensable for international organizations to cooperate in order to ensure the effective implementation of those treaties.

51. The representative of the International Literary and Artistic Association (ALAI) welcomed the progress achieved in recognition of *droit de suite* in the national legislation of various countries, and noted the objective difficulties that hampered the consecration and implementation of that right by States. He called for a continuation of the efforts of the international institutions concerned and UNESCO aimed at securing better recognition of *droit de suite*.

52. The Chairperson stressed that UNESCO should strengthen its activities on protection of *droit de suite* in order to convince States of the importance of recognition of that right.

Partial renewal of the Committee (IGC(1971)/XI/8)

53. The Secretariat observed that the document had been drawn up in response to the Committee's request for more detailed study of the UNESCO system of electoral groups, which had been presented to it at its eleventh session (para. 56 of the report) as a system that could possibly be adopted for the renewal of the Committee. The aim was to determine whether that system could provide a 9/9 parity membership for the representatives of the developing countries and the industrialized countries each time that the Committee was partially renewed in accordance with its statutes.

The study prepared by the Secretariat had finally demonstrated that it would be difficult to achieve the desired result with the UNESCO system of electoral groups. Given the fixed number of 18 Member States on the Committee, such a system could even create problems with each significant increase in the number of States Parties to the Convention. Such an increase would increase the number of States Parties within electoral groups. The electoral groups could have the right, at some point, to request an adjustment in their representation on the Committee in proportion to their size. That could be done only by reducing the representation of other groups, since the total number of members of the Committee remained unchanged at 18.

In view of that considerable risk, and also because of the disappearance of the old blocs of States and the emergence of a new era in inter-State relations and international cooperation, the Secretariat expressed the view that the Committee's current rules of procedure should be maintained and applied on the basis of the gentleman's agreement used in the past, which had functioned well at the eleventh session. The Committee took note of that suggestion.

54. The Chairperson reminded the Committee that the term of office of six of its members would expire at the end of the current session: Algeria, Australia, Chile, India, Israel and the United States.

55. In the absence of the representative of India, Vice-Chairperson, who was unable to attend, the Committee elected Chile Vice-Chairperson, on the proposal of the Chairperson, in accordance with its Rules of Procedure, and in particular Rule 47. Argentina and Japan were also elected by the Committee as ad hoc members of the Nominations Committee, as stipulated in Rule 47 of the Rules of Procedure. The Nominations Committee, composed of the Chairperson of the Committee (Israel), the two Vice-Chairpersons (Algeria and Chile) and two ad hoc members (Argentina and Japan), then met in private and proposed the following six members for election to the Intergovernmental Copyright Committee: Algeria, Croatia, India, Israel, Ukraine, United States.

56. The proposal of the Nominations Committee was adopted unanimously.

57. Following those elections, the Intergovernmental Committee was composed of the following members: Algeria, Argentina, Austria, Cameroon, China, Croatia, Cuba, France, Greece, Guatemala, India, Israel, Japan, Morocco, Portugal, Russian Federation, Ukraine, United States.

Election of the Chairperson and two Vice-Chairpersons of the Committee (Rule 17 of the Rules of Procedure)

58. The delegation of Argentina, on behalf of the members of the Committee, proposed the re-election of Mr Mayer Gabay (Israel) as Chairperson of the Committee, and the election of the representatives of Cameroon and China as Vice-Chairpersons. That proposal was seconded by the delegation of the United States and adopted by acclamation.

59. The delegation of Ukraine thanked the Committee for the confidence it had placed in its country by electing it as a full member and expressed its country's willingness to work within the Committee to promote the protection of copyright worldwide.

60. The delegation of Croatia, thanking the Committee for its election to serve on it, likewise expressed that country's willingness to work within the Committee to promote the safeguarding of copyright throughout the world.

Future sessions of the Committee (IGC(1971)/XII/7)

61. The Committee debated that item on the basis of information contained in the reference document and the opening statement by the Assistant Director-General for Culture, to which the Secretariat gave a brief introduction. After an exchange of views on the nature and scope of each of the options proposed in paragraph 6 of document IGC(1971)/XII/8, the Committee decided by consensus, provisionally and in view of the circumstances, to lengthen the periodicity of its statutory meetings from two to four years. It therefore amended Rules 2.1, 42 and 43 of its Rules of Procedure accordingly. Pursuant to that provisional decision to hold regular meetings of the Committee every four years, the 13th session of the Intergovernmental Committee would be held at the end of the first half of 2005.

Other business

62. At the conclusion of the work of the Committee, the representative of the Palestinian Authority made a statement concerning agenda item 4, "Assistance to States". He informed the Committee of his country's efforts to draft a new law on copyright and to organize the collective administration of rights. However, he regretted that the current situation in his country hampered the adoption of the bill by the parliament, which was unable to meet, and made it difficult to reorganize the various government structures. He also informed the Committee of Palestine's willingness to ratify the international conventions on intellectual property, as neighbouring countries had done, and hoped that UNESCO might provide Palestine with legal and material assistance for the organization of its national system of copyright and neighbouring rights.

63. The Chairperson endorsed the request for assistance made by the representative of the Palestinian Authority, and invited the Secretariat to exert the requisite efforts in response to that legitimate request.

Date and place of the next session

64. The Committee decided, in accordance with the Rules of Procedure, to ask the Secretariat to fix the most appropriate place and date for its next session.

Adoption of the report

65. This report was adopted unanimously, with the amendments submitted by certain delegations.

Closing of the session

66. The Chairperson recalled the importance of UNESCO's role in the promotion and safeguarding of copyright and neighbouring rights. He emphasized the scale of the work to be accomplished in that field in cooperation with WIPO, ILO and other international organizations.

67. The representative of the Director-General thanked the members of the Committee and all the participants for the interest that they had taken in the twelfth session of the Committee, which had raised important issues for the determination of properly balanced protection of authors in the digital environment and for the promotion of *droit de suite*.

68. After the customary expressions of thanks, the Chairperson declared the session closed.