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Panel 4B. Multilateral Developments

**The preparation of a WIPO instrument/treaty on exceptions or
limitations for the visually impaired in the light of
the WIPO-Unesco Model Provisions on the same
adopted in the “guided development” period**

Dr. Mihály Ficsor*

I have been closely followed the preparatory work of a WIPO instrument/treaty “on limitations and exceptions for visually impaired persons/persons with print disabilities” (hereinafter: VIP instrument/treaty). At the November 2012 session of the WIPO Standing Committee on Copyright and Related Rights (SCCR), sufficient progress has been made in the preparatory work, so much that the WIPO General Assembly, at its December 2012 extraordinary session,¹ and then a Preparatory Committee² decided on the convocation of a Diplomatic Conference to adopt a “Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities” to take place in Marrakesh, Morocco, from June 17 to 28, 2013. At the February session of SCCR, further progress was made.³ Certain important issues still have to be settled which hopefully will take place at the Informal Session and Special Session of the SCCR and the subsequent session of the Preparatory Committee from April 18 to 20, 2013.

My intention is to contribute to the documentation of this panel debate by a paper on the preparation and adoption by a Working Group under my chairmanship in 1982 by a Working Group of the WIPO-Unesco Model Provisions on Exception or Limitations for the Visually Impaired which has led to the adoption of provisions on such exceptions or limitations in many countries.

The attached paper (and the existence of such exceptions and limitations in a number of countries) confirms the validity of the statement that an “a2k” (access to knowledge) treaty has been existing since the very adoption of the Berne Convention in 1886,⁴ since the Model Provisions have been adopted in accordance with the Convention; at that time, in particular on the basis of the three-step test under Article 9(2) as inserted at the 1967 Stockholm Diplomatic Conference. It also indicates

* Member and Honorary President of the Hungarian Copyright Council, former Assistant Director General of the World Intellectual Property Organization (WIPO).

¹ See WIPO document WO/GA/42/3.Prov.

² See WIPO documents VIP/PM/5 and 6.

³ See WIPO document SCCR/25/2.

⁴ In fact, the principle that the international copyright norms to be included in the Convention should also ensure access to knowledge was stated at the very first of the three Berne Diplomatic Conferences in 1884 by Numa Droz, the President of the Conference. “Consideration also should have to be given to the fact that limitations on absolute protection are dictated, rightly in my opinion, by the public interest. The ever-growing need for mass instruction could never be met if there were no reservation of certain reproduction facilities, which at the same time should not degenerate into abuses.” English translation of the Minutes of the Sixth Meeting of the first – 1884 – Berne Diplomatic Conference published in “1886 Berne Convention Centenary 1986,” WIPO publication, 1986, p. 105.

that, for the application of such exceptions and limitations, there would not be a need for any new treaty.

Nevertheless, in view of latest WIPO documents on this issue, even if it seems that there is no final and definite word on whether a soft-law instrument, a partly soft-law and partly binding instrument or a genuine treaty is to be adopted, the probability of a treaty has substantially increased (although in the title of the latest version mentioned above, still reference is made both to both alternatives, the decision of the Preparatory Committee is already about the convocation of a Diplomatic Conference to adopt a Treaty.

Even if the adoption and application of the above-mentioned Model Provisions indicates that such exceptions or limitations may be applied also on the basis of the existing international norms on copyright, the adoption of a treaty may be justified by two special reasons for which this category of exceptions and limitations are exceptional and different from others. First, the issue has become highly emotional which is understandable due to the situation and status of the visually impaired. In close connection with this, the cause of such exceptions and limitations have become so much heavily charged from the viewpoint of international IP policy that it may be beneficial for the public image of copyright if a treaty were finally adopted. Second, although such exceptions and limitations are applicable also on the basis of the existing treaties, the subject matter concerned, namely that access should be granted to accessible format copies, may justify an agreement to organize international cooperation for this purpose.

Thus, if a treaty is adopted it will be exceptional in the field of copyright exceptions and limitations. In a way the title appearing in the decision of Preparatory Committee also refers to it. In substance such a treaty would be a cooperation agreement to facilitate access to special-format copies. It would be an “accessible-format treaty.” This would justify its unique nature.

Of course, the contents – the substantive provisions – of the instrument or treaty are truly important. From this viewpoint, it is worthwhile noting that the basic considerations taken into account for the Model Provisions and the principles on which they are based – which concern the majority of key issues of the current preparatory work – still seem to be surprisingly actual and valid.

In this respect, I refer to the summary in my introductory notes in the attached paper:

- (i) Brazil which, since the very beginning, has been playing an important role in the preparatory work leading to the convocation of the Marrakesh Diplomatic Conference, also initiated the then WIPO-Unesco project to deal with the copyright status of handicapped – in particular visually impaired – persons.
- (ii) The US was among the active promoters of providing appropriate exceptions and limitations of the visually impaired in that period too.
- (iii) NGOs representing blind people – first the World Council for the Welfare of the Blind (WCWB) and then the World Blind Union (WBU) – actively participated also in those meetings (although not in such a decisive manner and enjoying such great support as the WBU now.
- (iv) There was complete agreement in 1982 too that the exceptions or limitations for the visually impaired should be “subject to the obligations under the international conventions” (including the key obligation to respect the conditions of the “three-step test” which, at that time, was still only provided for exceptions to and limitations of, the right of reproduction in Article 9(2) of the Berne Convention).
- (v) The principle of a balanced approach – “a proper balance between the needs of handicapped persons and the legitimate interests of copyright owners” – was stressed also at that time.

(vi) In this connection, it was also emphasized that “the problem under consideration was of a social nature and that the authors and copyright owners should not be the only ones to bear the burden of this solution;” and that “the opinion according to which copyright as such is considered an obstacle for the handicapped was not the right approach to the problem, and that only some unnecessary obstacles... should be removed.”

(vii) There was agreement also in that period that the specific conditions and requirements of blind people in developing countries should be duly taken into account.

(viii) It was stressed also in the debates on the Model Provisions that, wherever it was possible, preference should be given to access granted by the owners of rights based on the “possibility of negotiation, either on an individual or on a collective basis;” and that commercial availability of accessible format copies – as put in the report: “the fact of a publisher of works for the handicapped having already undertaken publication” – would have to exclude the need for the application of exceptions or limitations.

(ix) As a basic principle, it was identified also at that time that the “appropriate guarantees should be provided in order to prevent” “that the copies of works intended for use by handicapped persons might also be used by the general public.”

My paper follows which is composed of introductory notes and of quotations from the relevant WIPO documents as published in the then WIPO review *Copyright* by highlighting the particular relevant aspects.

WIPO-Unesco Model Provisions on Exceptions or Limitations for the Visually Impaired

(How they were proposed by the joint sessions of the Executive Committee of the Berne Convention and the Unesco Intergovernmental Copyright Committee in 1977, 1979 and 1981; how they were adopted by a WIPO-Unesco Working Group in 1982; and how they were discussed and noted with approval in the subsequent joint sessions of the two Committees in 1983 and 1985)

Introductory notes

1) The nearly two decades between the adoption of the last revision of the Berne Convention in Paris 1971 (which took place in parallel with the revision of the Universal Copyright Convention) until the end of the 1980s, when the TRIPS negotiations and the preparatory work leading to the adoption of the two WIPO “Internet Treaties” (the WCT and the WPPT) began, was characterized as the “guided development period” of the international copyright system.

That period is described in the following way in the Guide to the Copyright and Related Rights Treaties Administered by WIPO published by the Organization:

...As mentioned above, the Berne Convention, after its adoption in 1886, was revised quite regularly, more or less every 20 years, until the “twin revisions” in Stockholm in 1967 and in Paris in 1971. The revision conferences, as also mentioned above, were convened, in general, in order to find responses to new technological developments (such as phonography, photography, radio, cinematography, television). In the 1970s and 1980s, a great number of very important new technological developments took place (reprography, video-technology, compact cassette systems facilitating “home taping,” satellite broadcasting, cable television, the increasing importance of computer programs, computer-generated works and electronic databases, etc.). For a while, the international

copyright community followed the strategy of "guided development,"⁵ rather than trying to establish new international norms. The same strategy was followed in respect of the related rights covered by the Rome Convention, which has never been revised. The recommendations, guiding principles and model provisions worked out by the various WIPO bodies (at the beginning, frequently in cooperation with UNESCO) offered guidance to governments on how to respond to the challenges of new technologies. They were based, in general, on the interpretation of existing international norms (for example, concerning computer programs, databases, "home taping," satellite broadcasting, cable television); but they also included some new standards (for example, concerning distribution and rental of copies).

...The guidance thus offered in the said "guided development" period had quite an important impact on national legislation, and contributed to the development of copyright all over the world... At the end of the 1980s, however, it was recognized that mere guidance would not be sufficient anymore; new binding international norms became indispensable.⁶

2) I participated in two subsequent capacities in the WIPO-Unesco activities in that "guided development period:" first, between July 1977 until May 1985, in my capacity of Director General of the Hungarian Bureau for the Protection of Authors' Rights as the head of the Hungarian delegation in the various joint meetings of the two organizations, and from May 1985, as the Director of the Copyright Division of WIPO (becoming later Director of the Copyright Department and then Assistant Director General in charge of copyright).

As the delegate of Hungary, I had the honor to be the chairman of several WIPO-Unesco copyright meetings which discussed issues in respect of which the positions of industrialized countries and developing countries (or, at least, many of the countries in the two groups) more or less differed.⁷ For example, I acted as the chairman of the Working Group on the interpretation and application of the Appendix of the Berne Convention (and the corresponding provisions of the Universal Copyright Convention administered by Unesco);⁸ of the Committee of Governmental Experts which adopted Model Provisions on the protection of expressions of folklore;⁹ – and, as part of the series of such meetings, also of the WIPO-Unesco Working Group which, in 1982, adopted Model Provisions for national laws on exceptions or limitations for the visually impaired.

During the sessions of the WIPO Standing Committee on Copyright and Related Rights (SCCR) dealing with the issues of such exceptions and limitations, which finally led to the convocation of the Diplomatic Conference to take place in Marrakesh in June 2013, references were made to the above-mentioned Model Provisions. It was a particular honor to me that the representatives of the World Blind Union (WBU) have expressed personally their recognition and appreciation of my role in the adoption of the Model Provisions. I also received a lot of questions and, for example,

⁵ Original footnote added: Sam Ricketson referred to this form of development in his well-known book on the Berne Convention: "In essence, 'guided development' appears to be the present policy of WIPO, whose activities in promoting study and discussions on problem areas have been of fundamental importance to international copyright protection in recent years. See Sam Ricketson: *Berne Convention for the Protection of Literary and Artistic Works: 1886-1986*." Kluwer, London, 1986, p. 919.

⁶ Mihály Ficsor: Guide to the Substantive Provisions of the Copyright and Related Rights Treaties Administered by WIPO, WIPO publication No. 891 (E), 2003, p. 10.

⁷ At that time, in the group structure of WIPO and Unesco, Hungary was part of the "Socialist" group of countries which usually had an intermediary position between industrialized countries and developing countries; this certainly contributed to my frequent election as chairman of these meetings.

⁸ See the Report of the WIPO-Unesco Working Group on the Formulation of Guidelines on the System of Translation and Reproduction Licenses for Developing Countries (Paris, December 6 to 10, 1982), WIPO's monthly review *Copyright*, April 1983 issue, pp. 123-138.

⁹ See the Report of the WIPO-Unesco Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore (Geneva, June 28 to July 2), WIPO's monthly review *Copyright*, October 1982 issue, pp. 278-284.

James Love (the representative of one of most active NGOs (Knowledge Economy International (KEI) in the promotion of the treaty in favor of the visually impaired) also prepared an interview, at the 24th session of the SCCR, about my role and the background of the Model Provisions and, with a reference published on KEI's website,¹⁰ has been uploaded it on the YouTube.¹¹

3) Below, extracts from the reports of the relevant WIPO-Unesco meetings are presented because it may be useful to recall what ideas and proposals were discussed and what solutions were outlined at that time on the exceptions and limitations in favor of handicapped people – in particular, for the visually impaired. These reports also show what role I *really* had in that process. Namely, not the role of the “creator of the Model Provisions” – as retrospectively it has been suggested recently by some people – but just acting as a catalyst in the adoption and the subsequent promotion of Model Provisions (which had to be thanked to the thorough preparatory work of the two Secretariats and to the support of the members of the Working Group and of the government delegations which participated in the subsequent session of the Executive Committee and noted with approval the Model Provisions.

Three of the documents of which extracts are presented below are reports of the sessions of the Executive Committee of the Berne Convention held in 1981 (which decided the convocation of the Working Group), in 1983 (which noted and assessed the Model Provisions) and in 1985 (which discussed possible follow-up activities). The fourth document is the report of the Working Group which, in 1982, adopted the Model Provisions reproduced in an annex to the report.

4) It seems necessary to describe briefly the reasons for which, in the above-mentioned “guided development period,” the “guidance” for national legislation was worked out mainly in joint WIPO-Unesco copyright meetings.

The Universal Copyright Convention (UCC) was adopted in 1952, and revised in 1971, under the aegis of Unesco at the initiative of those countries which were not members of the Berne Convention yet (many of those countries' legislation, at that time, was not in full accordance with the Convention), such as the United States and the majority of Latin American countries (which were members of a Pan-American copyright convention) or the Soviet Union which acceded later. The UCC was established as a “bridge” treaty between these countries and those which were already members of the Berne Union. The level of protection of copyright required by the UCC was lower than what was prescribed in the Berne Convention (and the UCC also allowed formalities as conditions of protection under certain conditions) in order to broaden the scope of possible contracting parties as much as possible. At the same time, a “suicide Appendix Declaration” was added to the UCC (linked to its Article XVII) which foresaw that the traffic on the UCC bridge to the Berne Convention may take place only in one direction – towards Berne. If a country reached the other side, the UCC was not applicable anymore in its relationship with other Berne countries. This was so since point (c) of the Appendix Declaration – as an integral part of the UCC – provided that “[t]he Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works

¹⁰ See http://keionline.org_sccr24videos.

¹¹ See http://www.youtube.com/watch?v=i8_-MMED_dE. (At the beginning of the interview, my name appears as “Mihaly Zoltan Fiscor.” I am accustomed to “Fiscor” since, in English, French, Spanish, German, Italian, etc., “sc” is the “logical” order, while “cs” – which, is pronounced in Hungarian the same way as, e.g. “ch” in English or Spanish – may seem just a “typographical error” and thus it is frequently “corrected” in this way. However, I do not have a “Zoltan” middle name. Probably, my name has been mixed up with the name of Mihály Zoltán Ficsor, who is the Vice President of the Hungarian Intellectual Property Office (HIPO) and acted, e.g., as the head of the Hungarian Delegation, at the Beijing Diplomatic Conference, last June adopted the BTAP.)

having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.”

In the 1970s and 1980s, while such key countries as the USA and the Soviet Union and the majority of the Latin American countries were not members of the Berne Union, it was the interest of WIPO – but, in a way also of the entire copyright community – that the development and application of the international copyright norms take place in a duly harmonized manner. This recognition led to the system of joint copyright meetings of the two organizations. Joint sessions of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the UCC were held, in general in every second year, and a number of joint subcommittees, committees of governmental experts, working groups, etc. were convened on current copyright issues. This system ceased to exist when, at the end of the 1980s and the beginning of the 1990s, the USA, the Russian Federation and other newly independent states transformed from former Soviet republics, China, many Latin American countries, etc, acceded to the Berne Convention and thus the UCC lost its relevance.

5) As mentioned above, first, extracts from the Berne-Union part of the report of the 1981 joint sessions of the two Committees are reproduced. The report reflects that there were proposals already at the two previous joint sessions in 1977 and 1979 to address the issues of exceptions and limitations for handicapped persons, but it was only at the said 1981 joint session that truly substantive discussions took place as a result of which also a Working Group was set up.

This is followed by the report of the Working Group held in 1982 which, under my chairmanship, concentrated on the exceptions and limitations for the visually impaired and adopted two sets of model provisions; one on outright exceptions and the other on limitations through compulsory licensing.

After this, the relevant parts of the reports of the two subsequent joint sessions of the two Committees held in 1983 and 1985 are presented. The first one considered and noted with approval the Model Provisions, and the second one discussed possible follow-up activities. (At the joint sessions of the Committee held in 1987, the issue was not on the agenda, and then dramatic decrease of the relevance of the UCC was accelerating, which led, at the end of the 1980s, to the abandoning of such regular WIPO-UCC copyright meetings.)

6) As it can be seen below (emphasis is added by underlining the relevant parts), there were several aspects of the discussions in that period which were similar to those which have characterized the recent preparatory work in the SCCR, although there were also certain differences in contrast with the SCCR process:

(i) Brazil which, since the very beginning, has been playing an important role in the preparatory work leading to the convocation of the Marrakesh Diplomatic Conference, also initiated the then WIPO-Unesco project to deal with the copyright status of handicapped – in particular visually impaired – persons.

(ii) The US was among the active promoters of providing appropriate exceptions and limitations of the visually impaired in that period too.

(iii) NGOs representing blind people – first the World Council for the Welfare of the Blind (WCWB) and then the World Blind Union (WBU) – actively participated also in those meetings (although not in such a decisive manner and enjoying such great support as the WBU now).

(iv) There was complete agreement in 1982 too that the exceptions or limitations for the visually impaired should be “subject to the obligations under the international conventions” (including the key obligation to respect the conditions of the “three-step test” which, at that

time, was still only provided for exceptions to and limitations of, the right of reproduction in Article 9(2) of the Berne Convention).

(v) The principle of a balanced approach – “a proper balance between the needs of handicapped persons and the legitimate interests of copyright owners” – was stressed also at that time.

(vi) In this connection, it was also emphasized that “the problem under consideration was of a social nature and that the authors and copyright owners should not be the only ones to bear the burden of this solution;” and that “the opinion according to which copyright as such is considered an obstacle for the handicapped was not the right approach to the problem, and that only some unnecessary obstacles... should be removed.”

(vii) There was agreement also in that period that the specific conditions and requirements of blind people in developing countries should be duly taken into account.

(viii) It was stressed also in the debates on the Model Provisions that, wherever it was possible, preference should be given to access granted by the owners of rights based on the “possibility of negotiation, either on an individual or on a collective basis;” and that commercial availability of accessible format copies – as put in the report: “the fact of a publisher of works for the handicapped having already undertaken publication” – would have to exclude the need for the application of exceptions or limitations.

(ix) As a basic principle, it was identified also at that time that the “appropriate guarantees should be provided in order to prevent” “that the copies of works intended for use by handicapped persons might also be used by the general public.”

I.

Berne Union

Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

Nineteenth Session (7th extraordinary)
(Geneva, November 30 to December 7, 1981)

Report

*prepared by the Secretariat and adopted by the Committee*¹²

Introduction

Opening of the session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the WIPO headquarters in Geneva from November 30 to December 7, 1981.
2. Fifteen of the Committee's 18 member States were represented: Australia, Bulgaria, Canada, Chile, Czechoslovakia, Finland, France, German Democratic Republic, India, Mexico, Senegal, Sri Lanka, Switzerland, Tunisia, Turkey (15).
3. The following member States of the Berne Union were represented by observers: Austria, Brazil, Denmark, Egypt, Germany (Federal Republic of), Greece, Holy See, Hungary, Israel, Italy, Japan, Lebanon, Libya, Madagascar, Netherlands, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Thailand, United Kingdom, Zaire, Zimbabwe (25).
4. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the following delegations, which were taking part in the session held

¹² Published in the February 1982 issue of WIPO's monthly *Copyright* review, pp. 65-77.

concurrently by the Intergovernmental Copyright Committee, also attended the Committee's meetings: Algeria, Andorra, Colombia, Cuba, El Salvador, Soviet Union, United States of America (7). In addition, the following States attended as observers: Byelorussian SSR, Cape Verde, Indonesia, Republic of Korea, Saint Vincent and the Grenadines, Saudi Arabia, Trinidad and Tobago, Uganda (8).

5. Five intergovernmental organizations and 19 international non-governmental organizations were represented by observers.

6. The list of participants is annexed to this report.

7. The session was opened by Dr. Arpad Bogsch, the Director General of WIPO, who welcomed all the participants in the sessions of the two Committees to WIPO's headquarters. He informed the delegates of the composition of the Executive Committee as it was elected by the Assembly and Conference of Representatives of the Berne Union at the recent meeting of the Governing Bodies of WIPO held in Geneva from November 16 to 24, 1981.

8. The representative of the Director-General of Unesco cordially thanked the Director General of WIPO for acting as host to the current session of the Intergovernmental Copyright Committee.

Part I: Items concerning the Committee alone

Election of officers

9. On a proposal by the delegation of India, seconded by the delegation of Australia, the Committee unanimously elected as Chairman Mr. NDéné NDiaye (Senegal), and as Vice-Chairmen Mr. André Kerever (France) and Mrs. Karin Götz (German Democratic Republic).

Adoption of the agenda

10. The agenda proposed in document B/EC/XIX/1.Rev. 1 was adopted.

Developments regarding the Paris Act (1971) of the Berne Convention

[...]

Legal and technical assistance to States including in establishing or strengthening the national infrastructure for copyright protection

[...]

Part II: Items concerning both the Committee and the Committee of the International Copyright Committee

[...]

Copyright problems faced by certain categories of the handicapped

Application of the Berne Convention and the Universal Copyright Convention to material specially intended for the blind. Examination of problems of those suffering from auditory handicaps

85. On a proposal by the Secretariats and in view of the similarity of the activities which could be undertaken to seek ways and means of fostering the free flow of works intended specially for handicapped persons, it was decided to examine documents B/EC/ XIX/12-IGC(1971)/IV/15 and B/EC/XIX/13-IGC (1971)/IV/16, concerning those suffering from visual handicaps and those suffering from auditory handicaps, respectively, together.

86. The Secretariats explained that the first discussions by the Committees on the matter of material intended for persons suffering from visual handicaps had taken place at their sessions in 1977, when the delegation of Brazil had raised the matter.

87. During their 1979 sessions, the Committees had noted a report drawn up on this subject by the World Council for the Welfare of the Blind (WCWB) and had requested their respective Secretariats to transmit the document to the States for their comments.

88. The comments received from 15 States and from the Panamanian Institute for Social Rehabilitation had been analyzed, on behalf of the Secretariats, by the Copyright Office of the United States of America.

89. The Committees were also informed that within the framework of the International Year of the Handicapped a number of activities in favor of such persons had been undertaken by the Unesco Secretariat.

90. An international seminar on "Data processing and Braille," organized in September 1981 at Toulouse by the College de France, the Paul Sabatier University and the Institute for Research into the Improvement of Working Conditions (IRACT), with the cooperation of Unesco, after having taken cognizance of a study drawn up by the Secretariat on access for blind persons or persons having visual or physical handicaps to works protected by copyright, requested that the Organization continue "the steps undertaken to facilitate access for handicapped persons to works protected by copyright" (resolution 4.4).

91. Furthermore, the Director-General of Unesco sent a letter to the member States of the Organization on June 19, 1981, stressing the irreplaceable part played for handicapped persons by printed material and audiovisual means and requesting their aid in securing that the owners of copyright in works in braille or in audiovisual material intended for handicapped persons assign the rights of reproduction, translation or adaptation to publishers in the developing countries on the most advantageous conditions possible.

92. The delegation of Brazil, after having listed the difficulties faced by handicapped persons wishing to have access to material needed to satisfy their educational and cultural needs, submitted to the Committees a number of suggestions for facilitating the circulation of such materials both nationally and internationally.

93. At national level, the delegation of Brazil drew the attention of the Committees to the possibility of using the exceptions provided in the international copyright conventions. The provisions already inserted in national laws could be given as large a distribution as possible, in order to make them better known, by Unesco and WIPO, in the hope that such transmission would encourage the responsible authorities in other countries to take appropriate legislative steps.

94. The delegation of Brazil also expressed the view that the Committees might ask their Secretariats to draft, for consideration by States, sample model legislation containing special provisions governing the access by handicapped persons to copyrighted works.

95. The delegation of Brazil wished to see the matter progress rapidly at the international level towards the working out of a licensing system specifically for handicapped persons, either within the framework of bilateral agreements or in the form of additional protocols to the international copyright conventions.

96. The delegation-of Australia informed the Committees that the Bill for the amendment of the Australian Copyright Act, which had been transmitted to the Secretariats in the course of the survey carried out on the subject, had been effectively adopted by the Australian Parliament and had come into force on August 1, 1981.

97. The delegation of the United States of America endorsed the suggestions of the delegation of Brazil, and further considered that a working group might usefully be entrusted with preparing a draft of model national legislation.

98. The delegation of the United States of America also stressed the importance of the task that would thereby be entrusted to the working group, which would consist among other things in identifying the type of material necessary for the different categories of handicapped persons, evaluating the implications of international instruments other than the international copyright conventions on the content of any

provisions that might be drafted, and the role that could be given to the collections available in libraries with a view to the free dissemination of material intended for handicapped persons.

99. The delegations of Algeria, Chile, India, Japan, the Netherlands, Sweden and the United Kingdom and the observers from Italy and Portugal considered that the work done by the Secretariats, with the assistance of the US Copyright Office, was extremely useful, and they endorsed the request made by the delegations of Brazil and of the United States of America, namely, that a working group be set up to consider all the problems relating to the free circulation of material protected by copyright that was specially intended for handicapped persons.

100. The delegation of the German Democratic Republic emphasized that the States should, above all, take measures for the handicapped so as to ensure their participation in social life and free access to protected material, without necessarily resorting to a working group.

101. The observer from the World Council for the Welfare of the Blind (WCWB) congratulated the Secretariats in its turn for the action they had taken in favor of handicapped persons since 1977.

102. After having noted with satisfaction that the survey carried out by the Secretariats had given very encouraging results, the observer from the WCWB stated that it was essential to look for a solution at both national and international levels to the problems that confronted handicapped persons with regard to access to the material they needed. In that connection she endorsed the proposals made by the delegations of Brazil and of the United States of America, at the same time calling the Committees' attention to the concepts of justice and equity that militated in favor of the involvement of handicapped persons in daily life and their participation in international cultural activities.

103. The observer from the International Publishers Association (IPA), for his part, said that his organization would get in touch with WCWB in order to draft a model request for granting rights which would take into consideration the practice of the publishing trade and for putting appropriate material at the disposal of the blind as expeditiously as possible.

104. In conclusion, the Committees recommended the setting up of a working group that would consider all the questions raised in the course of the discussion of the agenda item concerned and, on a proposal by their Chairman, they invited the WCWB and the IPA to form part of the group in an advisory capacity.

[...]

Part III. Other items concerning the Committee alone

Date and place of the next session to be held jointly with the Intergovernmental Copyright Committee

128. Participants were reminded that, since the present session was being held at the WIPO headquarters, the next session of the Committee at which joint meetings will be held with the Intergovernmental Copyright Committee should, as was customary, take place in 1983 at the headquarters of Unesco in Paris.

Adoption of the report

129. The Committee unanimously adopted Part I of this report under the chairmanship of Mrs. Karin Götz, Vice-Chairman, in the absence of the Chairman. The Committee also unanimously adopted Part II of this report under the chairmanship of Mr. Inam Rahman (India), elected as ad hoc Chairman for the adoption of this part in his capacity as ad hoc Chairman of the Intergovernmental Copyright Committee for the last two meetings of that Committee.

Closing of the session

130. After the usual thanks, the Vice-Chairman declared the session closed.

II.

Berne Union Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright

(Paris, October 25 to 27, 1982)

Report¹³

Introduction

1. The Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright met at Unesco House, Paris, from October 25 to 27, 1982.
2. The said Working Group (hereinafter referred to as "the Working Group") was convened jointly by the Director-General of Unesco and the Director General of WIPO in pursuance of the decision taken by the respective Governing Bodies of Unesco and WIPO and the recommendation made by the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their November-December 1981 sessions.
3. The purpose of the Working Group was to consider the possibility of using the exceptions provided in the international copyright conventions and prepare a sample model legislation containing special provisions governing the access by handicapped persons to the works protected by copyright.
4. Of the six experts who were invited in their personal capacity, four experts attended the meeting of the Working Group. Representatives of the International Publishers Association (IPA) and the World Council for the Welfare of the Blind (WCWB) also attended the meeting in an advisory capacity. Eight international non-governmental organizations were represented by observers. The list of participants appears as Annex II to this Report.
5. The working paper available to the Working Group was a study prepared, at the request of the Secretariat of Unesco and the International Bureau of WIPO, by Mrs. Wanda M. Noel (Canada) (document Unesco/WIPO/WGH/I/2).

Opening of the Meeting

6. The meeting was opened by Miss M.-C. Dock, Director, Copyright Division of Unesco, who welcomed the participants on behalf of the Director-General of Unesco and the Director General of WIPO.

Election of Chairman

7. As proposed by Mr. Y. Oyama and seconded by Mr. P. Salinas, Mr. M. Ficsor was unanimously elected as Chairman of the Working Group.

Consideration of the Study

8. Several participants expressed their appreciation for the study prepared by Mrs. W.M. Noel on the subject.
9. It was generally understood that the model provisions to be elaborated should reflect a proper balance between the needs of handicapped persons and the legitimate interests of copyright owners. In this connection, it was emphasized that the problem under consideration was of a social nature and that the authors and copyright owners should not be the only ones to bear the burden of its solution.

¹³ Published in the December 1982 issue of WIPO's monthly *Copyright* review, pp. 354-356.

10. It was also generally agreed that the opinion according to which copyright as such is considered an obstacle for the handicapped was not the right approach to the problem, and that only some unnecessary obstacles such as those of procedural nature should be removed.

11. The attention of the Working Group was drawn to the particular situation in developing countries, where the funds needed for assistance to handicapped persons might be insufficient, and where the time needed for obtaining the necessary permission from copyright owners might be longer than elsewhere.

12. Some representatives of international nongovernmental organizations expressed their concern about possible consequences of the adoption of a special system of legal licenses which would undermine the basic principle of the exclusive right of authors. They were in favor of a solution which would include the possibility of negotiation, either on an individual or on a collective basis.

13. Many participants expressed the fear that the copies of works intended for use by handicapped persons might also be used by the general public. In view of that, the Working Group took the position that appropriate guarantees should be provided in order to prevent such unauthorized use.

14. Another difficulty mentioned was the possibility of private copying, particularly in the case of audio-visual works, the market of which was being increasingly characterized by rental practices instead of sale. In this connection, reference was also made to technical devices making the copies intended for the handicapped not accessible to other persons.

15. Lastly, the Working Group took into consideration the important fact that the number of handicapped persons in each country was relatively small and therefore the market for materials intended for them limited. This fact seemed to the experts to fully justify the exceptions which are explained in the following paragraphs.

Elaboration of Model Provisions

16. Taking into account the views expressed by the participants, the Working Group decided to redraft the draft Model Provisions proposed in the study so as to deal separately with reproduction of published works in braille and with the reproduction in large print or by sound recording or the broadcasting by means of a radio-reading service for the needs of visually-handicapped persons. The redrafted model provisions are reproduced in Annex I to this Report.

17. As it was suggested in the study and agreed upon by the experts, Alternative A as redrafted provides for certain cases of free use of published works for the needs of visually-handicapped persons but the legislation on the matter is subject to the obligations of a given State under international copyright conventions. If such use is provided for under national legislation, two solutions may be previewed with regard to the persons or organizations rendering a work accessible to visually-handicapped persons: it may be either any person or organization or only those determined in corresponding regulations. It is expressly specified that the activity of such persons or organizations must not be gainful. The free reproduction in large print, sound recordings and broadcast by means of a radio-reading service is conditional also upon the decision of the competent authority, which should be determined in the regulations and upon appropriate guarantees that the work will be used only for the needs of visually-handicapped persons. These guarantees may include undertaking of practical or technical measures to exclude accessibility to the general public of the work thus used.

18. Although the experts were generally in favor of recommending Alternative A to be used by national legislation, they decided to provide also for Alternative B which relates to the same uses as mentioned in the preceding paragraph, but against payment of remuneration. The conditions under which such uses may be effected are virtually the same as in the above paragraph except that payment of remuneration must be in accordance with the procedure set out in the regulations. Such a procedure may be compulsory licensing where the amount of remuneration may be negotiated by the interested parties before a decision by a

competent authority is taken in this respect, or legal licensing where the amount of remuneration is established in the regulations or otherwise prescribed.

19. It is not excluded that some States might prefer to combine the two Alternatives in order, for example, to provide for free reproduction of works in braille and for non-voluntary licenses in respect of other uses.

20. As regards the making of captions for auditory handicapped in the case of films and other audiovisual works, the Working Group agreed with the statement made in the study referred to above that the making of such captions involved the right of adaptation. It therefore was of the opinion that it would be incompatible with both the national legislation of the majority of countries and the international copyright conventions to provide for any kind of exceptions or non-voluntary licensing in respect of such use.

21. The representative of one of the international non-governmental organizations raised the question whether the Model Provisions contained in Alternatives A and B should also be extended to the categories of otherwise physically handicapped persons who are unable to have access to protected works in the usual way. In the opinion of the Working Group this question was not covered by its terms of reference, although it recognized that such a problem did exist and therefore should be further considered.

Adoption of the Report and Closing of the Meeting

22. The Working Group unanimously adopted this Report.

23. After the usual thanks, the Chairman declared the meeting closed.

ANNEX I

Model Provisions Concerning the Access by Handicapped Persons to the Works Protected by Copyright

Alternative A

Article . . . (1) It shall be permitted, subject to the obligations under the international conventions, for any person or organization [as determined in the regulations], without the consent of the author and without payment of remuneration, to reproduce in braille any published work or authorized translation thereof for the purpose of rendering the work accessible to visually-handicapped persons, provided there is no motive of commercial gain.

(2) The competent authority [as determined in the regulations] may permit any person or organization [as determined in the regulations], without the consent of the author and without payment of remuneration, to reproduce in large print or by sound recording or to broadcast by means of a radio-reading service any published work or authorized translation thereof for the purpose and subject to the conditions determined in paragraph (1), if there are appropriate guarantees that the work will be used only for the needs of visually-handicapped persons.

Alternative B

Article. . . (1) It shall be permitted, subject to the obligations under the international conventions, for any person or organization [as determined in the regulations], against payment of remuneration [in accordance with the procedure set out in the regulations], to reproduce in braille any published work or authorized translation thereof for the purpose of rendering the work accessible to visually-handicapped persons, provided there is no motive of commercial gain.

(2) The competent authority [as determined in the regulations] may permit any person or organization [as determined in the regulations], against payment of remuneration [in accordance with the procedure set out in the regulations], to reproduce in large print or by sound recording or to broadcast by means of a radio-reading service any published work or authorized translation thereof for the purpose and subject to the conditions determined in paragraph (1), if there are appropriate guarantees that the work will be used only for the needs of visually-handicapped persons.

III.

Berne Union

Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

Twenty-Second Session (8th Extraordinary) (Geneva, December 12 to 16, 1983)

Report

*submitted by the Secretariat and adopted by the Committee*¹⁴

Introduction

Opening of the Session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the WIPO Headquarters in Geneva from December 12 to 16, 1983.
2. Sixteen of the Committee's 19 member States were represented: Australia, Benin, Canada, Chile, Costa Rica, Czechoslovakia, France, Hungary, India, Italy, Mexico, Switzerland, Tunisia, Turkey, United Kingdom, Zaire (16).
3. The following member States of the Berne Union were represented by observers: Argentina, Austria, Belgium, Brazil, Cameroon, Central African Republic, Egypt, Finland, Gabon, Germany (Federal Republic of), Greece, Holy See, Israel, Ivory Coast, Japan, Luxembourg, Madagascar, Netherlands, Niger, Norway, Pakistan, Philippines, Romania, Sweden, Thailand, Uruguay, Yugoslavia (27).
4. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the following delegations also attended as observers, as the meetings were held concurrently: Algeria, Angola, Burundi, China, Colombia, Dominican Republic, Iran (Islamic Republic of), Iraq, Jordan, Peru, Republic of Korea, Saudi Arabia, Soviet Union, Syria, Trinidad and Tobago, United States of America (16).
5. Five intergovernmental organizations and 21 international non-governmental organizations were represented by observers.
6. The list of participants is annexed to this Report.
7. The session was opened by Dr. Arpad Bogsch, Director General of WIPO, who welcomed all the participants to the sessions of the two Committees at WIPO's Headquarters. He informed the delegates that a new Executive Committee was elected by the Assembly and Conference of Representatives of the Berne Union at the recent meeting of the Governing Bodies of WIPO held in Geneva from September 26 to October 4, 1983.
8. The representative of the Director-General of Unesco thanked the Director General of WIPO for acting as host to the current session of the Intergovernmental Copyright Committee.

¹⁴ Published in the February 1984 issue of WIPO's monthly *Copyright* review, pp. 55-73.

Part I: Items concerning the Committee alone

Election of officers

9. On a proposal by the delegation of Australia, seconded by the delegation of the United Kingdom, the Committee unanimously elected as Chairman Mr. M Jelinek (Czechoslovakia), and as Vice-Chairmen Mr. Carlos Corales (Costa Rica) and Mr. Geraldo Aversa (Italy).

Adoption of the agenda

11. The agenda proposed in document B/EC/XXII/1.Rev. 2 was adopted.

Developments regarding the Paris Act (1971) of the Berne Convention

[...]

WIPO's Development Cooperation (1981 to 1983): Evaluation and Planning

[...]

Need for "National Chambers of Copyright" in Developing Countries

[...]

Part II: Items concerning both the Committee and the Committee of the International Copyright Committee

[...]

Model Provisions Concerning Access by Handicapped Persons to Works Protected by Copyright

86. Discussions were based on document B/EC/XXIII3-IGC(1971)/V/13.

87. The Chairman, after having recalled the conclusions of the previous session of the Committees on the subject, gave an account of the results achieved by the Working Group on Access by the Visually and Auditorily Handicapped to Material Reproducing Works Protected by Copyright, which met at Unesco headquarters from October 25 to 27, 1982.

88. After having noted the two solutions proposed by the Working Group, appearing in Alternatives A and B, the Chairman invited Mr. Ficsor, the delegate of Hungary, who had presided over the Working Group, to make comments on the results of its work. On that subject, the Chairman of the Working Group informed the members of the two Committees of his uneasiness concerning the conclusions reached by that meeting, and that he personally was not too satisfied with the Model Provisions adopted by it; this preferential treatment is a minimum and a more reserved attitude of representatives of authors would endanger the positive image of copyright and the public support for solving the fundamental problems of copyright protection.

89. A number of delegations and observers paid tribute to the results obtained by the Working Group thanks to the competence of its Chairman and members and the assistance of the Secretariats.

90. Referring to the declaration by the Chairman of the Working Group, the delegation of the United States of America agreed that owners of copyright should understand that the prerogatives conferred on them had to be accompanied by certain obligations if copyright were to retain its esteem in the eyes of the public, which is important to modernizing copyright laws.

91. A number of delegations and observers also drew the attention of the Committees to the humanitarian character and to the notions of justice, equity and social solidarity that militated in favor of the urgent integration of the handicapped in daily life and their participation in international cultural activity.

92. The great majority of the delegations that spoke considered that the Model Provisions, even if they did not cover all aspects of the problem (for instance the question of public performance and that of the freedom of dissemination of works in braille in the libraries of various countries), were a positive step towards assisting national legislators to become fully aware of the circumstances of handicapped persons and in effecting the adoption of provisions whereby they might be offered ready access to the materials that they needed.

93. The delegation of Brazil, considering that it was necessary for a wide range of solutions to be available to national legislators, expressed the wish that the Committees should not express a preference for either Alternative A or Alternative B. The non-voluntary license provided for in both cases was capable of preventing delays in the use of works by the blind. Of course the fullest and the least costly access had to be found, and in that respect Alternative A seemed the most appropriate. However, the delegation fully understood that Alternative B might suit the conceptions of certain countries better.

94. The delegation of Italy expressed the view that it would be desirable not to offer two Alternatives to national legislators, but rather to reorganize the contents of the two Alternatives in such a way as to offer a range of possibilities.

95. The delegation of Colombia, while considering Alternatives A and B to be the two extremes, expressed the wish that views might be reconciled in order that a single formula could be suggested to national legislators. It pointed out that there was no recognition of the moral rights of the author in either of the two Alternatives. By way of compromise it proposed the adoption of Alternative A as the rule (completed with the obligation to give the author prior notice and with the safeguarding of moral rights), and, as an exception, the author's right to oppose the reproduction of the work for well-founded reasons which would be specified in the law, including, for instance, the fact of a publisher of works for the handicapped having already undertaken publication.

96. The delegation of the Soviet Union and the observer from the WCWB declared themselves in favor of maintaining Alternative A alone, since providing for a non-voluntary, non-remunerated license was the only means capable of resolving the problem under consideration, notably in developing countries. The delegation of the Soviet Union provided information in that connection on the provisions of Soviet legislation under which any work could be reproduced for the benefit of the handicapped, the sole condition being that the name of the author and the source of the borrowed material be mentioned. In that respect, this delegation as also that of Colombia, informed the Committees of its concern over the absence of any recognition of the moral rights of the author in Alternatives A and B.

97. The delegations of Australia, Austria, Israel, the Netherlands and Norway, and the observer from CISAC, chose Alternative B, which provided for a non-voluntary license but with equitable remuneration, where exception to the legislation is deemed necessary

98. The delegations of Australia and Japan moreover informed the Committees of the legislative provisions in force in their countries with regard to the access of the handicapped to works protected by copyright. The delegation of Australia added that measures were at present under consideration regarding the possibility of using radio broadcasts for the handicapped without authorization from the holders of the rights.

99. With regard to the remuneration paid to the owner of the rights, the delegations of Finland and Norway said that in their countries it was the responsibility of the State.

100. The delegation of Norway emphasized the importance of maintenance of remuneration, even if this were only symbolic. The symbolic nature of the remuneration normally charged was also highlighted by the delegation of Austria.

101. The delegations of Finland, the Netherlands, the United Kingdom and the United States of America considered that exceptions to copyright were not necessary, as negotiations on a voluntary basis between the handicapped and the representatives of authors generally produced satisfactory solutions. Those

delegations emphasized the need to promote the conclusion of such agreements. The delegation of the United Kingdom preferred to have only that practice continue as it was rather than adopt the Model Provisions. The delegation of the United States of America, for its part, considered that, even if the exceptions provided for in Alternatives A and B were minor, they did not correspond to the principles underlying certain legislations. After having mentioned the activities carried out by the Department for the Handicapped of the Library of Congress, that delegation expressed the view that the problems facing the handicapped did not stem mainly from copyright but rather from a lack of financial means, ignorance of existing provisions and the absence of appropriate equipment. The problem, according to that delegation, was to find ways and means by which authors and publishers could afford optimum protection to the handicapped. In that connection the delegation drew the attention of the Committees to the importance of the role of libraries and to the necessity to facilitate sharing materials for the handicapped among libraries in developed and developing countries. The delegation of Japan pointed out that, beyond exceptions provided in the law, agreements on a collective basis between the parties concerned might be effective.

102. The delegation of Brazil proposed, as a means of settling the question at the international level, the drafting of model provisions for contractual agreements between authors and publishers.

103. The delegations of Austria, Brazil, Greece, Japan, the Netherlands, Norway, the Soviet Union and the United States of America, and also the observer from the WCWB, spoke in favor of the widest possible dissemination of the Model Provisions, in order that Governments might be made aware of the problems faced by the handicapped. The delegation of Japan suggested that, if that should prove necessary, a Committee of Governmental Experts should meet as a result of that dissemination.

104. All the delegations that took the floor indicated that the studies had related only to the visually handicapped, whereas those with auditory, motor and all other physical handicaps were faced with difficulties of access to intellectual works.

105. In that connection the delegations of Australia, Austria, Brazil, Canada, Finland, Hungary, the Netherlands and the United States of America considered it desirable to continue the studies in this field, broadening them to cover all categories of handicapped persons and referring them to all aspects of the problem.

106. In conclusion, the Committees emphasized the urgency and importance to the handicapped of the solution of the problems of access to intellectual, works. They noted the Model Provisions drawn up by the Working Group that met in 1982, and recommended to their respective Secretariats that they be submitted to States for comment. They also recommended to the Secretariats that they continue their work in this field, taking *inter alia* due account of the various aspects concerning the use of works by the handicapped (public performances, libraries, etc.) and of the different categories of handicapped persons. The negotiations between owners of copyright and the handicapped and also the possibility of entering into collective agreements should likewise be subjected to thorough study. The Committees finally decided to keep the question on their agendas, and asked their respective Secretariats to report to them on the subject at the 1985 sessions.

[...]

IV.

Berne Union Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

**Twenty-Fourth Session (9th Extraordinary)
(Paris, June 17 to 25, 1985)**

Report
*submitted by the Secretariat and adopted by the Committee*¹⁵

Introduction

Opening of the Session

1. The Executive Committee of the Berne Union (hereinafter referred to as "the Committee"), convened by the Director General of the World Intellectual Property Organization (WIPO), met in extraordinary session at the Unesco headquarters in Paris from June 17 to 25, 1985.
2. Sixteen of the Committee's 19 member States were represented: Australia, Benin, Bulgaria, Canada, Costa Rica, Czechoslovakia, France, Hungary, India, Italy, Mexico, Morocco, Senegal, Tunisia, Turkey, United Kingdom (16).
3. The following member States of the Berne Union were represented by observers: Austria, Brazil, Central African Republic, Congo, Denmark, Finland, German Democratic Republic, Germany (Federal Republic of), Guinea, Holy See, Israel, Japan, Netherlands, Norway, Philippines, Portugal, Spain, Sri Lanka, Sweden, Thailand, Uruguay (21).
4. As the Committee held joint meetings with the Intergovernmental Copyright Committee set up under the Universal Copyright Convention, the following delegations, which were taking part in the session held concurrently by the Intergovernmental Copyright Committee, also attended the Committee's meetings: Algeria, Colombia, Ecuador, Ghana, Guatemala, Kenya, Nigeria, Panama, Peru, Soviet] Union, United States of America (11). In addition, the following States attended as observers: Afghanistan, China, Jordan, Oman, Saudi Arabia (5).
5. The representatives of two specialized agencies] of the United Nations system of organizations attended the Committee's meetings. Four intergovernmental organizations and 17 international non-governmental organizations were represented as observers.
6. The list of participants is annexed to this report (Annex B).
7. The session of the Committee being held Unesco's headquarters, together with the session of the Intergovernmental Copyright Committee, the representative of the Director-General of Unesco welcomed all the participants.
8. The representative of the Director General of WIPO opened the session of the Committee also welcomed all the participants and thanked the representative of the Director-General, of Unesco for acting as host to the current session of the Committee.

¹⁵ Published in the September 1985 issue of WIPO's monthly *Copyright* review, pp. 276-293.

Part I: Items Concerning the Committee Alone

Election of an Ad Hoc Chairman

9. The representative of the Director General of WIPO informed the Committee that the Chairman or any of the two Vice-Chairmen who had been elected in the September/October 1984 session of the Committee were unable to chair the meetings; thus, the Committee had to elect an ad hoc Chairman.

10. On the proposal of the delegation of France, supported by the delegations of Congo, Guinea, Hungary, Italy, Morocco and Tunisia, the Committee unanimously elected Mr. M. Jelinek (Czechoslovakia) as *ad hoc* Chairman.

Adoption of the Agenda

11. The Agenda proposed in document B/EC/XXIV/1 was adopted.

[...]

Part II: Items concerning both the Committee and the Committee of the International Copyright Committee

[...]

Copyright Problems Arising from the Access by Handicapped Persons to Protected Works

86. Discussions were based on document P/EC/XXIV/10 - IGC(1971)/VI/11.

87. All delegations and all observers from international non-governmental organizations stressed the importance of this matter in the activities of the Secretariats. The delegations of Algeria and the Soviet Union, as well as two observers from international non-governmental organizations, called for investigation of ways and means of eliminating obstacles to access by handicapped persons to protected works so that existing inequalities between such persons and other users might be removed. One of these observers referred to the vital contribution made by the handicapped to modern society and remarked that many handicapped persons were themselves authors or artists.

88. The delegations of Australia, Bulgaria, Portugal, the Soviet Union, the United Kingdom and the United States of America described in broad outline the provisions in force in their countries, especially with regard to the blind. Access was frequently authorized on an unrestricted basis and free of charge. A licensing system sometimes existed as a means of securing access for handicapped persons establishing the rights of the interested parties. The delegation of the Soviet Union pointed out that unrestricted utilization, free of charge, was made subject to mention of the author's name and of the source of the material.

89. The delegation of the Federal Republic of Germany was of the opinion that measures which might be taken on behalf of handicapped persons lay outside the scope of copyright, and belonged to other fields, more particularly those coming within the competence of the State, such as, for example, fiscal measures.

90. The delegation of the United Kingdom argued that neither non-voluntary licensing nor the utilization of works free of charge was acceptable: what was important was to improve the procedures for negotiation between interested parties.

91. The delegation of Canada noted that an exemption in favor of handicapped persons had been considered most worthy in principle but that it had to be carefully drafted in such a way that it did not benefit unintended persons, especially in view of new technology such as cable diffusion. The Canadian proposal in that regard mentioned in the document under study had not as yet been passed into law and was subject to final policy consideration by the new Canadian Government.

92. The observer from an international non-governmental organization said that, in future, care should be taken to provide a clear definition of handicapped persons. This observer said that it would be desirable to draw up lists of specialized institutions so that the different parties might identify each other more easily. The delegation of the United States of America stressed the importance of international cooperation, especially between libraries. The delegation of the Soviet Union and the observer from an international non-governmental organization said that in no case should mention of the author's name and the source of the work used by the handicapped persons be omitted.

94. As regards international regulations, positions were divided. The delegations of Austria and the Soviet Union considered that in the first place the utilization of works by handicapped persons should be organized as part of copyright at the national level. The delegations of France and Morocco considered that it would be sufficient to encourage contractual arrangements; those problems were indeed regulated in France within a contractual framework since the societies of authors had all concluded agreements with the organizations representing the blind to ensure that the latter had broad access to culture. However, the observer from one international non-governmental organization pointed out that the problem had international implications since the interested parties might not all be nationals of a single country.

95. The delegations of Brazil, Guinea and Portugal were, however, particularly interested in an international instrument as a means of helping the developing countries to take domestic measures. The delegation of Guinea went so far as to state that the matter was sufficiently important to justify a revision of the international copyright conventions, even for the industrialized countries.

96. The Director of Unesco's Copyright Division called the attention of the members of the Committees to the Declaration on the Rights of Disabled Persons, adopted unanimously by the United Nations General Assembly in 1975, and to the definition of the term "disabled" contained therein. He also called attention to the existence of a Declaration on the Rights of Mentally Retarded Persons, pointing out, however, that neither of the texts referred to alluded to copyright. The Secretariats stated that different types of international instrument existed, some of which, such as the above-mentioned Declarations, did not have a binding character.

97. In conclusion, the Chairman said that work on the matter should be continued and expressed the view, in response to proposals by the delegations of Japan and the United States of America, that there might be grounds for envisaging another committee to define more accurately the concept of "handicapped" and to seek solutions to the problem. He pointed out that it would be advisable to begin by drawing up a questionnaire designed to determine the attitudes of States with regard to the preparation of an international instrument and with regard to the possible contents of such an instrument.

98. The delegation of the Federal Republic of Germany nevertheless reiterated its view that the question of access to works by handicapped persons was not a matter for copyright and that there was thus no reason to convene a committee for such a purpose.

[...]

Part III: Other Items Concerning the Committee Alone

Date and Place of the Next Extraordinary Session

170. Referring to the practice of the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of holding some of their meetings jointly and, in the absence of an invitation from a State, either at WIPO or Unesco Headquarters, the representative of the Director General of WIPO, noting that the current sessions had been held at Paris, invited the two Committees to hold their next joint sessions at WIPO Headquarters in Geneva in 1987.

171. As for the timing of those sessions, the attention of the Committees was drawn to the advisability of holding their sessions if possible before those of the respective Governing Bodies responsible for determining the programs and budgets of the Organizations that provided their Secretariats. Accordingly, it was proposed that the next sessions take place in May or June 1987.

172. The Committees left it to their Secretariats to fix the most appropriate date in accordance with their respective Rules of Procedure.

Adoption of the Report

173. The Executive Committee of the Berne Union unanimously adopted this report.

Closure of the Session

174. After the usual thanks, the Chairman declared the session closed.

ANNEX A

Draft Solemn Declaration [to be made on the occasion of the centenary of the Berne Convention]

ANNEX B

List of Participants (not reproduced).

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