

**WIPO**



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**

GENEVA

**DIPLOMATIC CONFERENCE  
ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES**

**Geneva, December 7 to 20, 2000**

SUMMARY MINUTES (PLENARY)

*prepared by the International Bureau*

*President:* Mr. Nguyen Gupine (Viet Nam)

*Secretary:* Mr. Shozo Uemura (WIPO)

*First Meeting*

*Thursday, December 7, 2000*

*Morning*

*Item 1 of the Agenda: Opening of the Conference by the Director General of WIPO*

1. Dr. IDRIS (Director General of WIPO) opened the Diplomatic Conference on the Protection of Audiovisual Performances and expressed optimism for its success. The successful adoption of an instrument for the protection of audiovisual performances was foremost important to performers. It would also have a major impact on the film, music and television industries. The main beneficiaries would be performers whose economic and moral rights would be protected, including at the international level. As part of its program for progressive development of copyright and related rights, WIPO hoped to establish a comprehensive system of protection which would respond to the challenges and opportunities of digital and network technologies.

*Item 2 of the Agenda: Consideration and Adoption of the Rules of Procedure*

2. Dr. IDRIS (Director General of WIPO) proposed two modifications to the Rules of Procedure as set out in document IAVP/DC/2. The words "documents shall constitute" in paragraph (1) of Rule 29, should be replaced with "documents IAVP/DC/3 and 4 shall constitute" for a precise reference to the documents, while Rule 13.2 should be amended to provide for 14 Members in the Drafting Committee instead of 11.

3. *The Diplomatic Conference adopted the Rules of Procedure with the two modifications proposed by the Director General.*

*Item 3 of the Agenda: Election of the President of the Conference*

4. Dr. IDRIS (Director General of WIPO) invited the delegation to turn to the next item of the Agenda, namely, the election of the President of the Conference.

5. Ms. BANYA (Uganda), speaking on behalf of the African Group, proposed Ambassador Nguyen Gupine of Viet Nam for the presidency of the Diplomatic Conference.

6. Mr. PETIT (France), speaking on behalf of Group B, of which France was the Coordinator, supported the proposal made by the delegate of Uganda on behalf of the African Group to elect Ambassador Nguyen Gupine of Viet Nam to the presidency of the Diplomatic Conference, as his competence, talent and impartiality were the best guarantees of the success of the Conference.

7. *The Diplomatic Conference elected unanimously and by acclamation, Ambassador Nguyen Gupine of Viet Nam as President.*

8. The PRESIDENT thanked the Delegates for the election and for their trust vested in him.

*Item 4 of the Agenda: Consideration and Adoption of the Agenda*

9. The PRESIDENT opened the floor for discussion on the Agenda as set out in document IAVP/DC/1. He noted that no delegation asked for the floor.

10. *The Diplomatic Conference adopted unanimously the Agenda.*

*Item 5 of the Agenda: Election of the Vice -Presidents of the Conference*

11. The PRESIDENT invited the delegations to turn to the next item of the Agenda, namely, the election of the Vice -Presidents of the Conference. He invited the Secretariat to provide the necessary information.

12. Mr. GURRY (WIPO Secretariat) presented the list of proposed Vice -Presidents: Mr. IMANOV of Azerbaijan, Mr. SHEN of China, Mr. KOP ČIĆ of Croatia, Mr. DICKINSON of the United States of America, Mr. PETIT of France, Ms. DALEY of Jamaica, Mr. WATANABE of Japan, Mr. ASEIN of Nigeria, Mr. CHOE of the Republic of Korea and Mr. TEYSERA ROUCO of Uruguay.

13. *The Diplomatic Conference elected unanimously Mr. IMANOV of Azerbaijan, Mr. SHEN of China, Mr. KOP ČIĆ of Croatia, Mr. DICKINSON of the United States of America, Mr. PETIT of France, Ms. DALEY of Jamaica, Mr. WATANABE of Japan, Mr. ASEIN of Nigeria, Mr. CHOE of the Republic of Korea and Mr. TEYSERA ROUCO of Uruguay as its Vice -Presidents.*

*Item 6 of the Agenda: Election of the Members of the Credentials Committee*

14. The PRESIDENT invited the delegations to turn to the next item of the Agenda, namely, the election of the Members of the Credentials Committee. He invited the Secretariat to provide the necessary information.

15. Mr. GURRY (WIPO Secretariat) read the list of proposed Delegations: Bulgaria, China, Costa Rica, Luxembourg, Malaysia, Morocco and Ukraine.

16. *The Diplomatic Conference approved the election of the Members of the Credentials Committee.*

*Item 7 of the Agenda: Election of the Members of the Drafting Committee*

17. The PRESIDENT invited the delegations to turn to the next item of the Agenda, namely, the election of the Members of the Drafting Committee. He invited the Secretariat to provide the necessary information.

18. Mr. GURRY (WIPO Secretariat) announced the list of proposed members: Algeria, Argentina, Australia, Belgium, Cameroon, China, France, Mexico, Morocco, the Russian Federation, Spain, the United Kingdom and the United States of America.

19. *The Diplomatic Conference elected unanimously Algeria, Argentina, Australia, Belgium, Cameroon, China, France, Mexico, Morocco, the Russian Federation, Spain, the United Kingdom and the United States of America as Members of the Drafting Committee.*

*Item 8 of the Agenda: Election of the Officers of the Credentials Committee, the Main Committees and Drafting Committee*

20. The PRESIDENT invited the delegation to turn to the next item of the Agenda, namely, the election of the office bearers of the various committees. He invited the Secretariat to provide the necessary information.

21. Mr. GURRY (WIPO Secretariat) announced the list of proposed Officers: Mr. GANTCHEV of Bulgaria as President of the Credentials Committee; Mr. RAJAREZA of Malaysia and Ms. DALEIDEN-DISTEFANO of Luxembourg as Vice -Presidents of the Credentials Committee; Mr. LIEDES of Finland as President of Main Committee I; Mr. RASHID SIDDIK of Egypt and Ms. PERALTA of the Philippines as Vice -Presidents of Main Committee I; Mr. SARMA of India as President of Main Committee II; Mr. KARKLINS of Latvia and Mr. HERMANSEN of Norway as Vice -Presidents of Main Committee II.

22. He suggested that the election of the officers of the Drafting Committee be deferred as consultations were still taking place.

23. *The Diplomatic Conference elected unanimously Mr. GANTCHEV of Bulgaria as President of the Credentials Committee; Mr. RAJAREZA of Malaysia and Ms. DALEIDEN-DISTEFANO of Luxembourg as Vice -Presidents of the Credentials Committee; Mr. LIEDES of Finland as President of Main Committee I; Mr. RASHID SIDDIK of Egypt and Ms. PERALTA of the Philippines as Vice -Presidents of Main Committee I; Mr. SARMA of India as President of Main Committee II; Mr. KARKLINS of Latvia and Mr. HERMANSEN of Norway as Vice -Presidents of Main Committee II.*

*Item 10 of the Agenda: Opening Declarations by Delegations and by Representatives of Observer Organizations*

24. The PRESIDENT opened the floor for opening declarations.

25. Ms. KUNADI (India) congratulated the President on his election, WIPO was at the forefront when it came to the protection of intellectual property rights in a digital environment. Issues relating to the rights of audiovisual performers were not to be looked at in isolation. An audiovisual work was not only made up of works and performances, but also to a large extent a result of the efforts of the producer. Audiovisual works involved significant investments, and thus clear -cut provisions on the ownership of rights were essential to promote the development and growth of the industry. At the same time, there was a need to ensure that performers were not deprived of their rights in relation to the new forms of exploitation of audiovisual fixations in a digital environment. The Copyright Act of her

country provided performers with rights in relation to their live performances, but these rights ceased to apply when a performer agreed to the incorporation of his or her performance in a cinematographic film. However, performers remained free to negotiate their remuneration prior to giving consent. Collective administration systems were important for the rights of audiovisual performers to be exercised, but such systems did not exist in most developing countries.

26. Mr. SIMANJUNTA (Indonesia) congratulated the President on his election. Performers' rights had to be strengthened because of globalization and the development of information and communication technologies. There was also a need to strike a balance between the rights of performers and those of other stakeholders in audiovisual works, in particular, the producers. The rules had also to be compatible with the existing legal systems of all countries. This would encourage broad participation, which was important for the instrument to be effective.

27. Ms. BANYA (Uganda), speaking on behalf of the African Group, congratulated the President on his election. Strengthening the rights of audiovisual performers was important to developing countries, including the least developed, particularly in relation to expressions of folklore. The Group hoped that the creation of an instrument for protection would curb exploitation and provide better remuneration for performers. During the 1996 Diplomatic Conference, the African Group had proposed that an instrument for the protection of audiovisual performances be concluded as soon as possible.

28. The instruments should constitute a protocol to the WIPO Performances and Phonograms Treaty (WPPT). The Group opted for Article (1) as proposed in the Basic Proposal, but was open to further discussion on Article 3(2). On the question of national treatment, the Group opted for Alternative C under Article 4. On the question of moral rights, the Group was convinced that the provisions under the WPPT were broad enough to protect the interests of performers. However, in the spirit of compromise, the Group could accept Article 5(2) with the deletion of the last sentence of that section. The Group accepted, in principle, the proposal on the right of broadcasting and communication to the public but was open to further discussion in the search for better alternatives. On the issue of the transfer of rights, the Group hoped that its proposal, Alternative C under Article 12, would help bridge the positions.

29. Mr. BENSALAM (Tunisia) congratulated the President and Vice-Presidents on their election, and said that the draft instruments submitted to the Conference for consideration were a reflection of the level of protection that WIPO and its Member States were endeavoring to afford authors and performers in an environment whose image was a medium in which culture could evolve and flourish. The protection of literary and artistic property was tied up with the different cultural policies of the Member States, which considered them an important incentive for creation, contributing as they did to the growth and viability of the main underlying activities. International rules were necessary to ensure the protection of works, and it was important to ensure the best balance between the various interests at stake, but without losing sight of the fact that the main aim of the legal instruments to be adopted in that area was the protection of creators.

30. His country was intent on honoring its commitments to WTO and the association agreement concluded with the European Union by revising its legislation and acceding to the Rome Convention and the WIPO Conventions on Copyright (WCT) and Performances and Phonograms (WPPT) of December 1996. The new instruments should be concluded in the

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31. Mr. ISHINO (Japan), congratulated the President on his election. Copyright protection systems were required to respond adequately to the development of digital technology and the proliferation of communication networks. Although the Internet Treaties were adopted in 1996, the issue of the protection of audiovisual performances was left to further consideration. The Basic Proposal proposed by Mr. Jukka Liedes and the Secretariat provided an excellent basis for discussions. The new instrument would be of vital importance to the global information society in the twenty-first century.

32. Mr. STOLL (European Community), speaking on behalf of the European Community and its Member States, stated that his Delegation had actively participated in the 1996 Diplomatic Conference which led to the adoption of the WCT and the WPPT. The protection of audiovisual performers had to be on an equal footing with sound performers and this was already provided within the legal framework of the European Community and its Member States. The proposed Directive on Copyright in the Information Society sought to reinforce the protection of performers of all categories, including audiovisual performers. Thus, it had anticipated a successful outcome to this Conference. His Delegation wished to reaffirm the importance of the protection of audiovisual performances, particularly in the digital environment. Solutions had to provide for a high level of protection with the necessary flexibility to be acceptable to all countries, but any unjustified differentiation on the basis of the nature of the performances should be avoided.

33. The legitimate claims of audiovisual performers for better protection should be balanced against the legitimate interests of others, and due account should be taken of the different legal traditions. The WPPT provided an important reference point which could be adapted for the protection of audiovisual performances. His Delegation disagreed with those who claimed that the key to the protocol was the rapid transfer of performers' rights to producers, or other provisions which were designed to safeguard the interests of producers rather than performers. The protocol concerned the protection of performers, balanced, against the legitimate interests of producers, and the future instruments should therefore include no provision on the transfer of rights.

### *Second Meeting*

*Thursday, December 7, 2000*

*Afternoon*

34. Mr. GANTCHEV (Bulgaria), speaking on behalf of the Central European and Baltic States, stated that the countries in his Group were among those who had strongly supported the convening of this Conference since 1996. Almost half of the countries that had ratified the WPPT were from that region. The group looked forward to an international instrument that would strike a balance between the rights of the various right holders and the interests of all users. He proposed that discussions on the specific form of the instrument be deferred until agreement was reached on the substantive issues.

35. Mr. RASHID SIDDIK (Egypt) supported the statement made by the Delegation of Uganda on behalf of the African Group. He believed that the new instruments should be strongly linked to the WPPT and should therefore be a protocol to the WPPT. The question

of the transfer of rights should be left to each country. The importance of the developing countries attached to the protection of traditional knowledge and folklore expressions should also be kept in mind.

36. Mr. BENFREHA (Algeria) subscribed to the statement made by Uganda on behalf of the African Group, and expressed his best wishes for the conclusion of an instrument governing audiovisual performances. He mentioned that his country had well established traditions in the field of copyright and related rights, and that it had in recent years embarked on the renovation of its framework of laws, and had acceded to the Berne Convention in 1998.

37. Mr. BLIZNETS (Russian Federation), speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries, stressed that the majority of the provisions in the Basic Proposal were acceptable to those countries in their current wording and reflected a reasonable balance of interest between all the parties involved. The Delegation of the region believed it would be necessary to pay particular attention to Articles 1, 4, 11, 12, 18 and 19. As far as the title of the document was concerned, they would need to defer the discussion until they had actually reached agreement on the substantive provisions of the Basic Proposal, in order to concentrate the efforts on the main and principal issues. The wording of Article 1 needed improvement and Article 12 raised some doubts in respect of its necessity. Alternatives E, F and G were not acceptable in the way they were currently worded.

38. Mrs. BELLODEKEMPER (Dominican Republic) said that her Group had an interest in ensuring an improvement in the level of appropriate protection given to audiovisual performances in the face of the fresh opportunities and challenges thrown up by new information and communication technology. Finally, she expressed thanks and pleasure at the fact that the present meeting was the first official one at which Portuguese was used as a working language.

39. Mr. SIMAS MAGALHÃES (Brazil) conveyed his gratitude for the decision enabling Lusophone delegates to speak in their own language. His country expected to take an active part in the discussions so as to adapt the rights of performers to the profound impact of new technology. The efforts made by the developing countries should be recognized and taken into account when drawing up new rules. Hopefully, deliberations related to national treatment, the rights of broadcasting and communication to the public as well as a transfer of rights would result in the establishment of a flexible, realistic and well-balanced instrument. Flexibility would be especially important for developing countries.

40. Mr. DICKINSON (United States of America) underlined that the purpose of the Conference was to build a consensus on a new international instrument that would enhance the protection of audiovisual performers. The contributors to movies for example, often came from many different countries and legal systems. Because of that diversity, there was a genuine concern how to ensure the transfer of economic rights from performers to producers. His Delegation was eager to resolve that issue, which would be critical to the success of the whole undertaking. Given the state of current technology, the audiovisual industry and the performers, in particular, were under threat from unauthorized digital manipulation of their images. Moral rights had become increasingly critical in the digital environment. However, certain modifications were part of the normal exploitation of a work, including modifications necessary for the use in different formats and markets. His country had ratified the WCT and the WPPT, and had implemented them by way of the Digital Millennium Copyright Act. It

already provided extensive protection to those vital creators, particularly in the increasingly economically important digital environment.

41. Mr. SHEN (China) stated that the ideas and opinions of performers, as workers in the artistic domain and major contributors in the audiovisual productions, should be reflected in the instrument. His Delegation believed that audiovisual performers needed to have a right to be recognized and protected, and the Basic Proposal was therefore acceptable.

42. Mr. HERMANSEN (Norway) stressed the importance his Delegation attached to the protection of performances in audiovisual productions in light of the technological changes and their consequences. Performers were crucial contributors to audiovisual productions, and that should be properly reflected in the international protection system, in line with the protection provided to sound performers under the WPPT. It would be difficult for his Delegation to support an international instrument, which automatically transferred the rights of performers to producers.

43. Mrs. PÂRVU (Romania) stated that under the 1996 law on copyright and related rights of her country, performers' rights were granted equally for aural and audiovisual performances. Her Delegation fully supported the opening statement made by the Delegation of Bulgaria, on behalf of the Central European and Baltic States, and believed that the work should lead toward the construction of an adequate and balanced protection system for audiovisual performances.

44. Mr. CRESWELL (Australia) said that, on the one hand, the new instruments should not stray too far from the pattern of the WPPT. On the other hand, performers' rights in audiovisual productions would be new to a number of countries, including Australia, and the proposed instrument therefore had to be flexible. It should be a Treaty and not a protocol to the WPPT, although it could have some linkage with the latter. His Delegation supported the Basic Proposal text on moral rights, the rental right, the rights of broadcasting and communication to the public and the application of the economic rights to existing performances as necessary variations and departures from the WPPT, whereas it supported the WPPT model for national treatment.

45. Mr. OUADRHIRI (Morocco) indicated that many professionals and trade unions in the field were expecting to have balanced protection for their cultural heritage, including the audiovisual production industries. His Delegation therefore expressed satisfaction with the Basic Proposal, and associated itself with the proposal made by the Delegation of Uganda on behalf of the African Group, including their preference for designating the instrument as a protocol.

46. Mr. OMOROV (Kyrgyzstan) indicated that his country had enacted a copyright law which provided for the protection of audiovisual performances, and had joined the Berne Convention as well as the WTO. His Delegation associated itself with the statement made by the Delegation of the Russian Federation on behalf of the region.

47. Mr. MAHINGILA (United Republic of Tanzania) fully supported the statement made by the Delegation of Uganda. The importance his country attached to the protection of audiovisual performances was evidenced by the inclusion of such protection in its Copyright and Neighboring Rights Act. He wished that an international instrument acceptable to all the stakeholders would be adopted successfully.



48. Ms. DASILVA (Angola) thanked WIPO for the adoption of Portuguese as a working language of the Conference. She supported the statement made by the Delegation of Uganda on behalf of the African Group, and offered full cooperation for the successful conclusion of the Conference.
49. Ms. GERVAIS (Canada) stated that a flexible solution for protecting performers should be sought, which would cover many forms of performances, and that such an approach was well reflected in the Basic Proposal. Her Delegation would oppose Alternative E, but individual countries should be entitled to have a provision on transfer of rights. A minimum of international harmonization on the question of voluntary transfers should be put in place, and therefore Alternative G could be a good starting point for discussions.
50. Ms. MOHAMED (Kenya) stated that the new instrument would enhance the protection of audiovisual performers, especially in Africa. Fixed performances were one of the modes through which cultural heritage was passed down to the next generation, and this was why her Delegation placed great importance on the protection of copyright. For the successful conclusion of the Conference, it looked forward to cooperating in a spirit of frankness and flexibility.
51. Mr. CHOE (Republic of Korea) attached due most importance to the implications of the application of the rights of broadcasting and communication to the public. Providing not only a right for secondary use of commercial audiovisual fixations, but rights of broadcasting and communication to the public in general, even if it might be subject to reservations, would have a serious impact on current business practices. It therefore seemed reasonable to leave it for the later stage of the harmonization process. A fair balance between musical performances and audiovisual performances had to be striven for. On national treatment, his Delegation preferred Alternative D to Alternative C. Finally, the number of States acceding to or ratifying the new instruments should be reasonable for its entry into force.
52. Mr. MYERS (ILO) declared that his organization had concerns about the proposed instrument with regard to the question of transfer of rights, as this could affect contractual relations between performers and their employers. Presumptions of transfer of rights could have a negative impact on contractual relations, bargaining and collective management of performers' rights; therefore, flexibility on this issue was needed. Effective representation, bargaining and social dialogue between workers, employers and governments were important elements in successful economic and social performance across all industries, including the audiovisual sector.
53. Mr. BOLME (FIA) stated that performers' work was integral to the internationalization of production and distribution of audiovisual performances, the development of digital technology, the huge reach of the Internet and the massive convergence of company ownership in the international media and entertainment sector. That work was a serious creative profession which deserved to be treated with the same respect as that of other creative contributors. Performers wanted to be able to negotiate with producers about the terms on which their creative work could be exploited now and in the future in the world-wide digital marketplace. In some countries, they had achieved protection through collective bargaining, through statutory rights or through a mix of the two systems. The instruments should allow these systems to co-exist and flourish together. Moral rights should be applied retrospectively to protect the integrity of performers and their images. The focus should be on performers, not on the producer whose economic strength was always greater than that of the individual performer and even that of the collective organizations of performers.

54. Mr. VINCENT (FIM) said that the new instruments should not affect or alter the protection established by the WPPT, whether at a strictly legal level or with respect to certain aspects of contractual relations.
55. Mr. MASUYAMA (CRIC), speaking on behalf of GEIDANKYO, supported the joint statement made by FIA and FIM. The rights of performers in the field of moral and economic rights had to be recognized broadly in respect of both sound and audiovisual performances.
56. Mr. PÉREZ SOLÍS (FILAIE) expressed concern at the lack of a reference in the Basic Proposal to audiovisual producers and to the contractual assignment or possible transfer of rights to them. With reference to the nature of the Treaty, his preference was ultimately for a Protocol that would retain some proximity to the WPPT and thereby conform to the mandate given by the Diplomatic Conference of December 1996. Finally, with regard to moral rights, he expressed his misgivings with respect to “normal exploitation” in view of the fact that it could offer the producer an infinite variety of attacks under the guise of “normal marketing,” which was insufficiently clarified.
57. Ms. MANALASTAS (ABU) said that fees paid by broadcasters fuelled the engine of investment which drove audiovisual creations. Even though Article 11 was an all-options provision, it could alter the well-established “one-stop shop” mechanism for licensing, and give audiovisual performers a higher level of protection than performers benefiting from the WPPT. Therefore, broadcasters expressed their opposition to the inclusion of Article 11 in the instrument.
58. Mr. SHAPIRO (IVF) stated that the Treaty was a chance to build bridges between legal systems for the benefit of not only performers but also the entire audiovisual sector and cultural diversity. The issue of transfer had to be addressed in the Treaty. Failure to address this vital issue would risk unravelling existing national rules on transfer and therefore could be a barrier to the ratification of the new instrument.
59. Ms. MARTIN -PRAT (IFPI) supported the adoption of new international rules to ensure the protection of performers when the performances were part of an audiovisual fixation. International rules in this area should be developed in a manner that allowed the continued commercial use of audiovisual productions. The new Treaty had to ensure legal certainty and should avoid hampering the use and licensing of audiovisual products now or in the future.
60. Mr. MANN (WBU) referred to the technique known as audio description by which additional sound channels were added to videos, films and television broadcasts in order to describe facial expressions, costumes, scenery or movements. It was essential that any international agreement on audiovisual rights would reflect that audio description did not constitute any infringement of the moral rights of performers or producers, and no constraint should exist on the development, production and distribution of audio described material. Blind and partially sighted people had the same rights as their fellow sighted citizens to access any published material at the same time and at no additional costs.
61. Mrs. LEPINE -KARNIK (FIAPF) expressed her support for the international harmonization of laws and practices on performers and audiovisual concerns. Producers were certain that such harmonized protection would serve the interests of the industry as a whole. FIAPF considered it necessary to incorporate in the Treaty a provision assuring producers of the transfer of economic rights in order to allow creators, performers, producers and distributors to continue to exercise their professions.

62. Mr. PARROT (ARTIS) said that the possibility of the new instrument having a lesser level of protection than the WPPT could not be contemplated. He wanted a Protocol adopted. The question of continuity of remuneration arose. Lump-sum repurchase practices were reliable to spread and cause performers to lose a measure of control. Collective management organizations should play a special part. He emphasized the importance of moral rights, and supported the position taken by the European Union regarding Article 12.

63. Mr. BLANC (AEPO) observed that at present there was no balance between the interests of performers and their oppositenumbers in the audiovisual industry. Such balance should be restored by giving performers rights at the international level. He preferred to have no provision on transfer in the new instrument. With regard to the right of broadcasting and communication to the public, the essential point was that of the real benefit to performers and the important role of collective management. He was in favor of a wording identical to that of the WPPT on moral rights. With regard to national treatment, a balanced solution such as that adopted in the WPPT should be found. He mentioned a number of difficulties regarding definitions.

*Third Meeting*

*Monday, December 11, 2000*

*Afternoon*

*Item 8 of the Agenda: Election of the Officers of the Drafting Committee*

64. At the invitation of the President, Mr. UEMURA (WIPO Secretariat) announced that, after consultations, the groups proposed Mr. Roger Knight of the United Kingdom as President, and Mr. Christophe Seuna of Cameroon and Mr. Roman O. Omorov of Kyrgyzstan as Vice-Presidents of the Drafting Committee.

65. *The Diplomatic Conference elected unanimously Mr. Roger Knight of the United Kingdom as President, and Mr. Christophe Seuna of Cameroon and Mr. Roman O. Omorov of Kyrgyzstan as Vice -Presidents of the Drafting Committee.*

*Item 9 of the Agenda: Consideration of the First Report of the Credentials Committee*

66. Mr. GANTCHEV (Bulgaria), speaking in his capacity as the Chairman of the Credentials Committee, presented the First Report of the Committee as contained in document IAVP/DC/6.

67. The PRESIDENT invited the delegations to make observations and comments.

68. Mr. AUER (Austria) pointed out that his Delegation had credentials without full powers, and therefore should be listed under 7(a)(ii), instead of 7(a)(i), which listed Member Delegations with credentials and full powers.

69. Mrs. SCHULZ (Germany) said that Germany should also be listed under 7(a)(ii), and not 7(a)(i). Even though their credentials had been signed by the Minister for Foreign Affairs, they only extended to signing the final act, not to full powers for signature of the instrument.

70. Mr. AHOKPA (Benin) said that Benin did not appear in paragraph (ii), although his country had conveyed a note verbal to the WIPO Secretariat designating its representative to the Diplomatic Conference.

71. Mrs. BERNALIBARRA (Venezuela) said that her Delegation had given notice, in a note verbal from the Permanent Mission to the United Nations, of the participation of a representative of her country in the Conference and yet there was no mention of the fact in item (ii) of page 3 of the documents submitted.

72. Mr. SAFIR (AFMA) stated that his organization was not listed as a Non-Governmental Organization and requested to be included in the Second Report.

73. The PRESIDENT indicated that all the suggestions made would be reflected in the Second Report of the Credentials Committee.

74. *The Diplomatic Conference adopted unanimously the First Report of the Credentials Committee, as contained in document IAVP/DC/6.*

75. The PRESIDENT adjourned the Plenary.

#### *Fourth Meeting*

*Wednesday, December 20, 2000*

#### *Morning*

76. The PRESIDENT opened the meeting and invited Mr. Lienes, Chairman of Main Committee I, to report on the state of deliberations in that Committee.

77. Mr. LIEDES provided an overview of the discussions that had taken place in Main Committee I. Work on the substantive clause had progressed extremely well in the early stages of the Diplomatic Conference and understandings had been established on the majority of articles. Later a working group had been established by Main Committee I to discuss the remaining issues. Further progress had been made within the working group and treaty language had been established on many provisions on the conditional understanding that a satisfactory solution would be found for all elements. However, certain elements required informal consultations before work could proceed any further. Discussions remained at the stage where a convergence of views was still not possible on certain elements. He thanked all delegations for their active participation and their willingness to work together.

78. The PRESIDENT noted that tremendous effort had been made by all the delegations, the Chairman of Main Committee I, the Director General of WIPO and his staff to promote consensus, particularly with regard to the more difficult issues. He invited the Director General to provide some guidance on the possible means to conclude the Diplomatic Conference.

79. Dr. IDRIS (Director General of WIPO) suggested four points relating to the conclusion of the Diplomatic Conference, based on the mandate given by the General Assembly of WIPO: (1) The Diplomatic Conference on the Protection of Audiovisual Performances met in Geneva from December 7 to 20, 2000; (2) the Conference made substantial progress towards reaching agreement on a set of provisions which could constitute the basis of a Treaty on the

protection of audiovisual performances; (3) the Conference was unable to reach consensus on certain specific areas; and (4) the Conference requested the Director General to report the results of the Conference to the meeting of the Assemblies of the Member States of WIPO in September 2001. He stressed that those points were proposed without prejudice to any suggestions or proposals that the Plenary might wish to make at that late stage. However, the Diplomatic Conference had to be concluded the same day on the basis of the mandate given by the General Assembly.

80. The PRESIDENT noted that substantial progress had been made as consensus had been achieved on most of the articles, and that should form the basis for further work. He opened the floor for discussion on the possible means to conclude the Diplomatic Conference.

81. Mr. BOSUM PRAH, speaking on behalf of the African Group, appealed to all delegations to engage in a last minute effort to achieve further progress in order for the Diplomatic Conference to conclude on a positive note.

82. Dr. IDRIS (Director General of WIPO) stated that the Secretariat was more than ready to provide the necessary support and assistance should delegations decide to continue their efforts for a successful outcome of the Diplomatic Conference.

83. Mr. GANTCHEV, speaking on behalf of the Group of Central European and Baltic States, felt that there was little to lose in convening a meeting of Main Committee I. It would also contribute to a better understanding of the issues that were discussed at the informal consultations the day before.

84. The PRESIDENT suggested that the Plenary session be adjourned to allow Main Committee I to meet.

85. Dr. IDRIS (Director General of WIPO) suggested that the Plenary be resumed at 4 p.m. at the latest in order for the Diplomatic Conference to conclude on time.

86. Mrs. BELLODEKEMPER (Dominican Republic) said that the Group of Latin American and Caribbean Countries had listened with the utmost interest to what had been said by the Group of African and Central European and Baltic States, and reaffirmed the willingness of the countries of the region to work towards the achievement of a good Treaty which would persuade the majority of States that it was right and necessary to accede to it.

87. Mr. STOLL (European Community) stated that this Delegation would continue its efforts for a successful outcome of the Diplomatic Conference.

88. Mr. RAJAREZA (Malaysia), speaking on behalf of the Group of Countries of Asia and the Pacific stated that the Group had demonstrated both cooperation and flexibility in the discussions of the working group. The working group had made substantial progress, and the Group would be willing to participate in the final effort to make further progress.

89. Mr. KEPLINGER (United States of America) stated that this Delegation appreciated the spirit of all delegations to continue working towards achieving good results. Although not much time was left, efforts could still be made towards achieving further progress.

90. Mr. BLIZNETS (Russian Federation) welcomed the proposal to make a final effort towards achieving further progress. His Delegation was willing to work as long as possible for a successful conclusion of the Diplomatic Conference.
91. Mr. SHEN (China) stated that his Delegation was willing to participate in the final efforts to make further progress.
92. Mr. GURRY (WIPO Secretariat) informed the meeting that two Reports of the Credentials Committee had just been circulated. The adoption of these Reports would be dealt with when the Plenary meeting resumed.
93. Mr. SARMA (India) stated that his Delegation was willing to participate in the final efforts to make further progress in order to conclude the Diplomatic Conference on a successful note. Although all previously expected results might not be achieved, at least it would be possible to state that the Diplomatic Conference had been able to reach an understanding on the need to improve the protection accorded to audiovisual performers.

*Fifth Meeting*

*Wednesday, December 20, 2000*

*Afternoon*

*Item 12 of the Agenda: Consideration of the Second Report of the Credentials Committee*

94. The PRESIDENT referred to the Second and Third reports of the Credentials Committee contained in documents IAVP/DC/27 and IAVP/DC/35, respectively. He proposed that the Conference adopt both Reports.
95. *The Conference adopted by consensus the Second and Third Report of the Credentials Committee, as contained in documents IAVP/DC/27 and IAVP/DC/35, respectively.*

*Item 13 of the Agenda: Adoption of the Instrument; Item 14 of the Agenda: Adoption of Any Recommendation, Resolution, Agreed Statement or Final Act*

96. The PRESIDENT read the Recommendation proposed by Main Committee I:
- “The Diplomatic Conference
- “(i) notes that a provisional agreement has been achieved on 19 Articles;
- “(ii) recommends to the Assemblies of Member States of WIPO, in their September 2001 session, that they reconvene the Diplomatic Conference for the purpose of reaching agreement on outstanding issues. ”
97. *The Diplomatic Conference adopted by consensus the Recommendation proposed by Main Committee I.*

*Item 15 of the Agenda: Closing Declarations by Delegations and by Representatives of Observer Organizations*

98. Mrs. PENAGOS (Colombia) referred to the great dismay felt by the community of performers having wasted the opportunity of experiencing an important, a historic moment, which in fact had been reduced to nothing more to a stage in a process of work, with effects contrary to what had been hoped. After eighty years of work, unperturbed by the failure of 1996, performers had taken part in the Committees of Experts and the Diplomatic Conference in the hope of achieving a minimum of recognition of their rights in order that thousands of their number throughout the world might derive benefit from what they produced through their work and creative genius. He mentioned that the century had started very badly, and wondered how the results of the Diplomatic Conference were going to be explained.

99. Mr. ZAFERA (Madagascar) took the floor on behalf of the African Group and regretted that the results achieved had not been up to expectations. He thanked the President of the Conference for the promptness and goodwill with which he had taken on such a responsibility, and the Chairman of Committee I for his competence and dedication. The African Group thanked Director General Dr. Kamil Idris; it expressed gratitude to the other regional groups for all their efforts, and pointed out that the African Group looked on the present negotiations as a foretaste of the success of the next Diplomatic Conference on the subject.

100. Mr. HAYASHI (Japan) extended his sincere appreciation to the officers of the Diplomatic Conference, especially to Mr. Liedes, President of Main Committee I. It was regrettable that the Diplomatic Conference could not adopt a new instrument to fulfil the urgent need for improving the protection of audiovisual performers. In the information society, performers' rights needed to be granted. Provisions on moral rights, economic rights, technological measures and rights management information constituted essential elements in the protection of performers which were agreed upon. He thought that the remaining issue about the transfer of rights could be settled with the same wisdom and spirit of compromise that had been shown at the Conference. He welcomed the Recommendation to the Assemblies of Member States that the Conference should be reconvened in due course.

101. Mrs. BELLODEKEMPER (Dominican Republic) said that the countries of Latin America and the Caribbean profoundly regretted that the great expectations held at the start of the Conference had not yet been fulfilled. She reaffirmed that the countries of the region were ready and willing to resume work whenever the Member States of WIPO considered the conditions to be right for consensus to be achieved on the approval of an international instrument of protection. She welcomed the prospect of the WIPO Assemblies reconvening a Diplomatic Conference on the issues still outstanding.

102. Mr. TROJAN (European Community) paid tribute to the Presidents of the Plenary and the Main Committees. The European Community and its Member States regretted that it had not been possible to conclude the Diplomatic Conference with an agreed Treaty but a provisional agreement had been reached on most of the issues. His Delegation had been confident that it would be feasible to conclude a protocol to the WIPO Performances and Phonograms Treaty of 1996 and to grant new rights to audiovisual performers throughout the world. Due to the underlying differences in concepts of quite a number of parties, the Conference had been unable to resolve one important remaining issue related to the law applicable to the rights of performers. Within the European Community, sound and

audiovisual performers were already treated on the same footing. That should also be the case on a world scale. Therefore, the European Community was determined to continue to work actively together with WIPO and all its Members around the world to find adequate solutions for all the issues at stake.

103. Mr. KEPLINGER (United States of America) said that his Delegation would continue in its commitment since it had been at the Diplomatic Conference, in sincerity, good faith, with goodwill and no hidden agenda to participate in the process of providing better protection for audiovisual performances. He thanked those who had helped that endeavor, including translators, WIPO staff, the Presidents of the Plenary and Main Committees. Special thanks were also given to Mr. Lieder and Mr. Walden. The development of the Internet would continue. The number of co-productions and international productions of audiovisual works would continue to grow and performers from all countries would be faced with the dangers of violation of their moral rights and infringement of their economic rights. Therefore, providing the protection that performers deserved in a balanced way would remain a challenge.

104. Mr. SHEN (China) thanked the Presidents of the Plenary and Main Committee I for their considerable patience and active role in the Conference. The progress made during the Conference should not be forgotten, and his Delegation would work with other delegations in continuous consultations with a view to achieving consensus in order to have a new instrument established to protect the rights of the performers and to promote the development of films.

105. Mr. GANTCHEV (Bulgaria) thanked all the countries from Central and Eastern Europe for their efforts and all the colleagues of Main Committee I for their flexibility and their good spirit of compromise. Special thanks were given to Mr. Lieder for his efforts to facilitate the Conference's work. His Group was disappointed because there was no message to give to the performers but it intended to continue contributing to the protection of performers.

106. Mr. RAJAREZA (Malaysia) said that in spite of the efforts of Mr. Lieder, to whom he gave special thanks, the Treaty had eluded the Conference again. The Diplomatic Conference had proved to be one of the toughest and most difficult negotiations in the history of WIPO. He welcomed the proposal to recommend to the next session of the Assemblies of Member States of WIPO to reconvene another Diplomatic Conference in the near future.

107. Mr. BLIZNETS (Russian Federation) joined the previous speakers in commending the enormous work carried out by the Presidents of the Main Committees and all delegations which had participated in the intense discussion of the Conference. There was sufficient prospect for making progress in the work in the near future in order to elaborate a new modern international legal instrument which would be beneficial to all WIPO Member States and to those in whose interest the new Treaty would come into effect.

108. Mr. HØBERG -PETERSEN (FIA) said that the hundreds and thousands of performers represented by the affiliates of his Organization of 17 Nations were disappointed that WIPO Member States had failed to finally conclude a Treaty to provide minimum international protection of their rights. The world's performers had demonstrated an exceptional willingness to ensure that the needs of producers, broadcasters and their audiences were accommodated in a compromise solution to allow widespread acceptance of the Treaty by Governments. The Conference had been a historical opportunity to reach that solution in the era of internationalized protection, technological changes and digitization. In that respect, he



appreciated the heroic efforts of the President of Main Committee I. He urged governments to ensure the convergence of interests amongst the stakeholders in order to complete a successful outcome as soon as possible. FIA for its part would continue to work with governments to achieve its reasonable and fair goal which was an international Treaty giving the performers the rights they needed and deserved.

109. Mr. VINCENT (FIM) thanked all those who had worked unceasingly on the question of the protection of performers. He noted that 19 was the number of Articles provisionally adopted by the Diplomatic Conference, and 19 was also the number of the adopted Article that required further consultation. He hoped that all the experts taking part in the present negotiations accepted the idea that performers needed genuine protection and were capable of exercising their rights themselves. The role of WIPO would be decisive for the future of the sector concerned.

110. Mr. MASUYAMA (CRIC) thanked Governments and WIPO staff for the great efforts to conclude the Treaty. He hoped that the international agreement for the protection of performers be widely ratified in the future as a greater contribution to promote the protection of the rights of performers.

111. Mr. LIEDES (Finland) said that the Conference had been in many senses a major effort. He expressed his thanks to the interpreters who demonstrated a fantastic tolerance as far as the working conditions were concerned. He also thanked all the members of the Secretariat, the whole staff of WIPO and its Director General.

112. The PRESIDENT noted that the Diplomatic Conference had come to the end. He thanked all the delegations and paid a tribute to Mr. Liedes' efforts for the success of the Conference. Finally, he thanked all the interpreters, the Secretariat and the Director General.

*Item 16 of the Agenda: Closing of the Conference by the President*

113. The PRESIDENT declared the Conference closed.

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