

INTERGOVERNMENTAL COPYRIGHT COMMITTEE

Thirteenth session of the Committee of the Universal Convention as revised in 1971 Paris 22-24 June 2005

COMITE INTERGOUVERNEMENTAL DU DROIT D'AUTEUR

Treizième session du Comité de la Convention universelle révisée en 1971 Paris 22-24 juin 2005

COMITÉ INTERGUBERNAMENTAL DE DERECHO DE AUTOR

Decimotercera reunión del Comité de la Convención Universal revisada en 1971 París 22-24 de junio de 2005

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## FINAL REPORT

### Introduction

1. The Intergovernmental Copyright Committee (hereinafter referred to as “the Committee”), set up by Article 11 of the Universal Copyright Convention as revised at Paris on 24 July 1971, held its 13th ordinary session at UNESCO Headquarters, Paris, from 22 to 24 June 2005, with Mr Mayer Gabay (Israel) as Chairperson.
2. The 18 Member States of the Committee were represented, namely: Algeria – Argentina – Austria – Cameroon – China – Croatia – Cuba – France – Greece – Guatemala – India – Israel – Japan – Morocco – Portugal – Russian Federation – Ukraine – United States of America.
3. The following 23 States Parties to the Universal Copyright Convention but not members of the Committee sent observers: Albania – Andorra – Brazil – Canada – Costa Rica – Czech Republic – Dominican Republic – Ecuador – Finland – Germany – Holy See – Italy – Lebanon – Mexico – Monaco – Paraguay – Peru – Republic of Korea – Republic of Moldova – Saudi Arabia – Slovakia – Switzerland – Venezuela.
4. The following 11 States not Parties to the Universal Copyright Convention were also represented: Bahrain – Benin – Egypt – Gabon – Indonesia – Kuwait – Madagascar – Myanmar – Sudan – Thailand – Turkey, as well as the Palestinian Authority.
5. The representatives of the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and of the Director-General of the World Intellectual Property Organization (WIPO) attended the meetings of the Committee in an advisory capacity.
6. The European Commission was represented by an observer. The representatives of the following four international non-governmental organizations also attended the meetings of the Committee as observers: International Literary and Artistic Association (ALAI), International Federation of the Phonographic Industry (IFPI), International Federation of Reproduction Rights Organisations (IFRRO), International Federation of Library Associations and Institutions (IFLA).
7. The list of participants is annexed to the final report.

## **Opening of the session**

8. The session of the Committee was opened by Mr Gabay, Chairperson of the Committee who stressed the continuing importance of the Universal Copyright Convention, regardless of the fact that more recent international copyright instruments had been adopted.

9. The Director-General of UNESCO, Mr Koïchiro Matsuura, welcomed the participants and stressed the importance that UNESCO attached to this 13th session of the Committee, which provided an opportunity to discuss the challenges in the field of copyright that the world was facing nowadays. He indicated that the meeting was taking place at a crucial moment, when issues relating to copyright protection were also discussed in the framework of the process of elaboration of a draft Convention on the protection of cultural contents and artistic expressions, as well as in the ongoing preparation process of the second phase of the World Summit on Information Society. He underlined that the items included in the agenda were of utmost significance for the international protection of copyright. With regard to UNESCO's approach to the challenging issues of the digital age and its activities in the copyright field, he emphasized the importance which the Organization attached to awareness-raising on copyright protection, as well as to the teaching of the subject at university level, to the prevention of piracy and fight against unauthorized exploitation of protected works as a key condition for encouraging creativity, cultural industries and sustainable development. After having pointed out the importance that UNESCO attached to reaffirming the need for equitable balance between the interests of rights-holders and the public interest, as well as to the development of a vibrant public domain, he wished the participants every success in their work and expressed his belief that the session would represent an important contribution towards finding the best answers to the challenges which technological developments have posed to the international copyright community and to governments, creators, users and the public at large.

The speech of the Director-General was made available to all delegates.

## **Adoption of the Agenda**

10. On the proposal of the Chairperson of the Committee, the Committee unanimously adopted the agenda contained in document IGC(1971)/XIII/1 Prov. Rev.

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

### **(i) Universal Copyright Convention – 1952 text**

11. The Secretariat informed the Committee that since its 12th ordinary session (20-22 June 2001) three States made a declaration according to which they considered themselves bound by the obligations arising from the 1952 text of the Convention: Albania, Serbia and Montenegro (succession) and Togo. The number of Member States Parties to the Convention, as at 18 March 2005, was 99.

### **(ii) Universal Copyright Convention – text revised in 1971**

12. The same States – Albania, Serbia and Montenegro and Togo, had notified the Director-General of UNESCO, of their adherence to the text of the Convention of 24 July 1971. Thus, the current number of States Parties is 64.

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

13. The Secretariat informed the Committee that, since its 12th session, the following 13 States had deposited their instruments of adherence to the Rome Convention: Andorra, Armenia, Belarus, Georgia, Israel, Kyrgyzstan, Portugal, Russian Federation, Serbia and Montenegro, Togo, Turkey, Ukraine and the United Arab Emirates. Those new accessions had brought the number of States Parties to the Convention, as at 18 March 2005, to 80.

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

14. The Secretariat informed the Committee that, since its 12th session, the following eight States had adhered and become Parties to the Convention: Albania, Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Serbia and Montenegro, and Togo. As at 18 March 2005, the number of States Parties to the Convention stood at 73.

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

15. The Secretariat also informed the Committee that, since its 12th session, four States had adhered to that Convention: Rwanda, Serbia and Montenegro and Singapore and Togo. By 18 March 2005, the States Parties to that Convention totaled 27.

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

16. No further State had adhered to that Convention. As of 18 March 2005, seven States had deposited their instrument of ratification, acceptance of accession, or declaration of succession to this Convention: Czech Republic, Ecuador, Egypt, India, Iraq, Peru and Slovakia. In accordance with its Article 13, this Convention would enter into force only with the deposit of the 10th instrument of ratification, acceptance or accession.

17. The Committee took note of all the information provided by the Secretariat. The Chairperson of the Committee stressed again the importance to adhere to the Universal Copyright Convention and encouraged the Secretariat to continue its efforts to promote it.

**Legal and technical assistance to States (document IGC(1971)/XIII/3)**

18. Introducing that document, the Secretariat provided information on the activities carried out since the 12th session of the Committee in June 2001. These included:

- (i) information and awareness-raising activities;
- (ii) teaching and training activities;
- (iii) studies and research;
- (iv) activities related to enforcement and management of rights;
- (v) legal and technical assistance provided on specific request by Member States.

19. With regard to the information and awareness-raising initiatives, an emphasis was placed on the new language versions and the new electronic format of the *Copyright Bulletin* in all six official UNESCO languages, available online and accessible free of charge. Since 2001, the online Chinese version and the Russian online edition had been published (in 2003 and the first quarter of 2004 respectively). The Arabic language version had been launched in 2004 directly as an electronic edition. Another useful online tool was the electronic Collection of National Copyright Laws, launched in 2003.

20. Special emphasis was placed on the teaching of copyright and neighbouring rights at university level. After the 12th session in June 2001, Copyright Chairs had been established in Georgia and China, and the procedure for establishing a Copyright Chair in Cameroon had just been finalized. The possibility of creating chairs in Egypt, Nigeria and Senegal was currently under discussion. The basic tool for teaching of copyright in the framework of the UNESCO Copyright Chairs programme, the Manual on Copyright and Neighbouring Rights, after its publications in Spanish, French and English, had been translated into Chinese in 2001, into Russian in 2002 and into Arabic in 2004. In 2004, UNESCO published the second volume of the Manual *Nuevos temas de derecho de autor y derechos conexos* (New Topics in the field of Copyright and Related Rights).

21. Among the research activities, a special focus was placed on the study undertaken by UNESCO in 2002, on the exceptions and limitations to copyright protection, particularly in the field of scientific research, education and culture, with a view, more specifically, to the striking of a fair balance between the general interest tasks of transmission of knowledge and protecting the legitimate rights of authors and other rights-holders.

22. Concerning the activities relating to enforcement and management of rights, special attention was paid to the Anti-Piracy Training for Trainers (APTT) project, developed in the framework of the Global Alliance for Cultural Diversity and designed as a training course for copyright enforcement officials from countries belonging to the same region or subregion. The implementation of the pilot project implemented in South-Eastern Europe had proved the efficiency of the concept and the multiplier effect of the project due to the follow-up national anti-piracy seminars organized by the participants of the regional workshop.

23. The Chairperson thanked the Secretariat for all the assistance provided to States, which was most useful for the appropriate protection of copyright and neighbouring rights. Nevertheless he pointed out that not all States had the facilities to easily access the digital format of the UNESCO *Copyright Bulletin* and suggested to the Secretariat to consider the renewal of a printed version, at least for the developing countries.

24. The delegate of Greece took the floor and drew attention to transnational piracy problems, welcoming the efforts of UNESCO in its fight against it. He indicated that Greece was interested in eradicating piracy in the region of South-Eastern Europe and would appreciate it if it could benefit from UNESCO experience and contacts in the countries of the region.

25. The delegate of Ukraine informed the Committee that Ukraine would be interested in taking part in UNESCO Anti-Piracy Training for Trainers (APTT). She underlined the difficulties of law enforcement in Ukraine and the need for training copyright enforcement officials, as well as training representatives of collective management organizations. She also informed the Committee of the country's current difficulties in collective management and, more specifically, of the problem of collection of fees for exploitation of protected subject matter. She asked the Committee to consider the elaboration of a mechanism assisting the transition of state or public collective management bodies into privately-owned ones. Public awareness raising and training were therefore of vital importance.

26. The delegate of Morocco thanked the Secretariat for its work and the quality of the documents. He asked for more information on the ongoing study concerning piracy in Africa. Further, he drew attention to the efforts of Morocco concerning the fight against piracy and presented the legislative and practical activities of Morocco in this regard, including a national awareness-raising and anti-piracy campaign, as well as the setting up of a National Commission for the fight against piracy and the elaboration of a plan of action and other appropriate initiatives involving all stakeholders. He encouraged the other States to take part in the prevention of piracy and invited the Secretariat to focus its efforts on anti-piracy.

27. The delegate of Benin thanked the Secretariat for its efforts and endorsed the comment of the Chair stressing the need for a printed version of the Copyright Bulletin. He stated that piracy was a very serious concern in West Africa and severe legal compulsory measures should be considered, as simple persuasion was not enough. The delegate encouraged furthermore the extension of the UNESCO anti-piracy training programme to Africa.

28. The representative of the Director-General of UNESCO thanked the Delegates for their comments and provided information concerning the contact persons concerning the APTT project. Further, the Secretariat pointed out that one of the reasons for no longer producing the printed format of the *Copyright Bulletin* had been budgetary. The advantage of the digital format was the possibility for simultaneous publication in six different languages, and its accessibility to a wider audience, free of charge. However, visits to the Bulletin's web page were carefully monitored. Should the statistics show that certain regions do not access the Bulletin as regularly as others, it could still be an option to be considered.

#### **Certain legal problems related to the making available of literary and artistic works and other protected subject matter through digital networks (document IGC(1971)/XIII/4)**

29. Introducing the study prepared by Dr Silke von Lewinsky for UNESCO, the Secretariat pointed out that it represented an overview of the main legal problems posed by the comparatively new phenomenon of peer-to-peer (P2P) file-sharing which represented a serious challenge to the efficient protection of copyright and related rights.

30. To facilitate the appraisal of the issues addressed in the paper, the study began with an introduction of the technical background of P2P. Further, it looked into the economic aspects of the file-sharing and the impact it had on the cultural industries, which, while important for appraising the dimension of the phenomenon and its potential harm, remained irrelevant for the legal analysis and for the justification of protection.

31. Further, the study made an analysis of the rights involved in file-sharing. From a legal point of view, three different acts had to be distinguished, even if they occurred in one economic context: the upload of a copy on a computer, which undoubtedly constituted reproduction in the meaning of international copyright law, the act of making available the copy to other file-sharers, which was covered by the exclusive right of "making available", as provided by the 1996 WIPO Treaties and the download of a copy by a user of the file-sharing system, which constituted also a form of reproduction.

32. Limitations and exceptions had been considered separately for the three above-mentioned acts, in a more general manner, as long as differences existed between national laws. The analysis of different hypotheses led to the conclusion that the upload copy and the making available of files in P2P networks would usually not be covered by a limitation or exception under national laws, while the download may be so where national law allows the application of private/personal use exemptions to such downloads.

33. Further, the study addressed the issue of liability beyond that of the primary infringer. It evoked the possible liability of providers of the software for file-sharing systems, as well as the contributory or vicarious liability of service providers. Liability rules were subject to national law and could not be dealt with comprehensively in the study, therefore only some examples were given.

34. The study also outlined the practical problems and main difficulties for enforcement of rights. These, among others, included the problem of accessing information about the identity of users, which was an indispensable condition for filing court cases. The issue was resolved in a different manner by national laws, of which examples were given.

35. Given the fact that the unauthorized use of protected works and other protected subject matter in P2P networks regularly constituted an infringement and that the enforcement of rights and strategies to diminish such illegal uses so far had not been sufficiently successful, different models to cope with these problems were being experimented or considered, both at practical and legislative levels.

36. From a practical perspective, new business models were continuously being developed. Legal online services had grown worldwide, but were still not sufficiently well developed to make consumers switch from illegal networks to authorized purchase of music and other files.

37. As to the discussed legislative models, different views had been expressed in academic literature and by different stakeholders, from legalizing P2P file-sharing by different forms of licences combined with statutory remunerations right to abolishing copyright in the digital environment. After analysing the proposed approaches, the study commented that: firstly, the proposals for establishing legal licences combined with statutory remuneration rights or levies might look attractive, but would hardly, if at all, comply with the three-step-test under international copyright law; secondly, voluntary collective licensing would certainly constitute a model in compliance with international law with the advantage of allowing legal uses against the payment of an equitable remuneration, which would be useful if the majority of repertoire was entrusted to collecting societies; thirdly, a mandatory collective administration of the relevant exclusive rights might constitute another model in compliance with international law; finally, the model of the so-called extended collective license in respect of the upload copy and the act of making available to the public, in combination with a legal license and statutory remuneration right in respect of the downloading, which would be considered a private copy, would have the advantage of being in compliance with international law, leaving the exclusive rights to right owners and regularly allowing P2P uses against payment.

38. The study concluded that, since there did not seem to exist only one ideal or easily workable solution among legislative models, and given the rapidity of factual developments, it might be wise to observe developments in the near future.

All the delegations which took the floor congratulated UNESCO for the quality of the study.

40. The delegate of Austria fully agreed with the conclusions that developments should be observed before taking legislative steps.

41. The delegate of France pointed out that this study brought out the culturally important role played by copyright and the necessity for authors to be able to benefit from efficient protection. She underlined the role of UNESCO as an essential link between copyright and creation of cultural heritage. Further, she informed the Committee that the French Council of Literary and Artistic Property was currently studying this question and was conducting consultations. She presented the

French Charter for the Development of Legal Provision of Online Music, Intellectual Property and the Control of Digital Piracy, signed between all key stakeholders in the copyright field in France.

42. The delegate of Guatemala stressed the importance of the Secretariat's efforts in the field of copyright, particularly of its training activities aiming to reduce the gap between industrialized and developing countries. The delegate raised the need to elaborate a study on users' rights and the necessity for users to rely on valuable, reliable and high-quality information.

43. The delegate of Portugal stressed the complexity of this highly technical field and agreed with the proposal of the author that developments should be observed. He raised the point as to whether or not mandatory collective management was in compliance with the international copyright rules.

44. The delegate of India shared the concerns regarding the legal complexities of the protection of copyright in the digital environment without affecting the legitimate aspirations of the society for access to knowledge and information, and specifically those in the public domain. Standard-setting at this stage of fast developing technology would prevent technological development in non-industrialized countries. In this regard, the flexibility of WIPO Internet Treaties was needed. The delegate noted that some countries had taken steps to place a measure of limited liability on the Internet Service Providers (ISP). He opposed the creation of any international obligation in this regard.

45. The delegate of Benin regretted that the study did not mention the broadcasting organizations and, in particular, radio, which were also important with regard to education, science and culture and which were not taken into account by the 1996 WIPO Treaties. Further, he added that the interests of consumers should also be taken into consideration, for a really effective collective administration of rights.

46. The delegate of the Palestinian Authority pointed out some paradoxes concerning copyright in the digital environment. He suggested that UNESCO carry out a legal and philosophical reflection on the concept and role of copyright.

47. The delegate of India recalled that UNESCO had adopted in 2003 a Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace containing provisions that took into account the interests of users. At his request, copies of the Recommendation were distributed to the participants.

48. The delegate of Morocco stressed the interconnection between file-sharing, applicable law and the piracy phenomenon in the digital environment. In order to properly solve the conflict of law and to reach a balance between the rights of authors and exceptions to protection, he found it necessary to establish clear-cut rules in order to serve as a legally acceptable international basis to help resolve all problems raised by the digital age.

49. The delegate of Mexico highlighted the importance of the updating of national and international laws and emphasized the promotion of collective management of rights to foster creativity.

50. The delegate of Algeria focused on the ethical aspect of the issue, wondering how best to strike the balance between the ongoing technological progress, on the one hand, and the established rules of copyright protection on the other. All developing countries wished to belong to the knowledge society; this was why they had to start by organizing important awareness-raising and training campaigns, taking into account the significance of the time factor to better realize the dimension of the online piracy phenomenon. Algeria had adopted legal enforcement measures,

organized information meetings on the subject, but it was evident that piracy went beyond its borders. This explained the necessity for an exchange of experiences between different countries.

51. The delegate of Venezuela attracted the attention of the Committee to his country's new constitution, which included authors' rights as an integral part of social rights. Concerns were also expressed about the restrictions which copyright might impose on users.

52. The delegate of China thanked the Secretariat for the assistance it gave to China and informed the Committee of the recent legal developments made in order to adapt copyright legislation to the digital environment. More specifically, the Chinese delegation emphasized the remarkable results achieved thanks to the adoption of new enforcement provisions and collective management rules.

53. The representative of the Director-General of the World Intellectual Property Organization (WIPO) informed the Committee about the state of works of updating the rights of broadcasting organizations, discussed currently by the WIPO Standing Committee on Copyright and Related Rights (SCCR). At its September 2004 session, the General Assembly requested the SCCR to accelerate its work on the protection of broadcasting organizations with a view to approving the convening of a diplomatic conference by the WIPO General Assembly in 2005. Regional consultations were being currently organized by the International Bureau, further to the request of the Member States. This issue would be placed on the agenda of WIPO General Assemblies in September-October 2005.

54. In response to the debate, the representative of the Director-General of UNESCO pointed out that UNESCO was equally committed to protecting the interests of creators and authors, as well as those of users, especially in the field of education, research and access to information.

55. In response to the question of Guatemala concerning users' rights, she explained that users had the right to receive reliable and authentic information. UNESCO had not carried out a study on literary and scientific information available on the web, but has dealt with child abuse on the Internet, a topic also related to consumer protection and freedom of information. Guidance to quality portals administered by well-known content providers seemed to be the best way to access quality information.

56. Concerning the request of Benin, she recalled that the issue of broadcasting organizations would be addressed at the forthcoming 19th session of the Intergovernmental Committee of the Rome Convention.

57. In response to the proposal of the Palestinian authority, she recalled that UNESCO could only act under the authority of the Committee, which had to provide guidelines for the activities to be developed in the copyright field.

#### **Applicable law in copyright infringement cases in the digital environment (document IGC (1971)/XIII/5)**

58. Introducing the study prepared by Professor André Lucas, the Secretariat pointed out that the issue of determining the law applicable to infringement cases in the digital environment had been raised during the 12th session of the Committee, while discussing the study on the role of service and access providers in digital transmission acts and their responsibility regarding copyright (IGC(1971)XII/4).

59. The Secretariat pointed out that the term *droit commun* of the French original draft had been translated by "general law", with the agreement of the author.

60. Before proceeding to analyse the specific difficulties raised by the digital environment in regard to conflict of laws in the field of copyright, the study outlined the general principles governing the determination of the applicable copyright law. Underlining the natural role of the law of the forum (*lex fori*) regarding procedural matters and provisional measures, the study gave consideration to two major controversies relating to the choice between the law of the *country of origin* and the law of the *country of protection*. The elements of this debate differed according to whether the arguments were grounded on conventional law or general law. As far as conventional law was concerned, the analysis of the Berne Convention (Art. 5.2), as well as the Universal Copyright Convention (Arts. II and IV.1) lead to the conclusion that the drafters of the instruments did formulate a general choice-of-law rule, designating the law of the *country of protection*.

61. As far as general private international law was concerned, i.e. domestic law perforce, the issue was more open. As national legislators had often not taken a stand on that issue, recourse had to be sought in case law, where national experiences differed; in some countries the law of the *country of protection* regulates all copyright matters, while in others the law of the *country of origin* is applied in regard to the existence and initial ownership of copyright, therefore in the latter, the law of the *country of protection* in this regard must only be questioned to determine what content was afforded protection. The study raised the point that the second approach led to dissociation of copyright and thus removed all consistency from the issue, as long as ownership of the right was in fact indissociable from its content.

62. Further, the study considered the issues related to the determination and scope of the law of the contract (*lex contractus*) and, given the specific difficulties that the subject matter raised in this regard, considered the role to be played by general law concerning the specific nature of the rights in question. Underlining the basic principle of freedom of contract, the study analysed the hypothesis where there had been no express or implicit choice of competent law by the contracting parties. In such cases the competent law might be determined by applying the principle of “characteristic performance”, established by the 1980 Rome Convention. The study concluded that, in the case of copyright, the characteristic performance might be presumed to be effected either by the assignee or the licensee, or by the person who assigns or licenses the right. The study gave preference to the latter approach because the characteristic performance should be determined in relation to the transfer of rights, and not in relation to the effects of the transfer.

63. With regard to the application of the outlined general principles to the digital environment, the study indicated that it revealed the key role to be played by the law of the contract, renewed the controversy about the law of the *country of origin* and, above all, raised the problem of localization of copyright infringement, crucial to the effectiveness of protection.

64. Regarding the law of the *country of origin*, the study argued that the traditional arguments, usually indicated by those who supported this approach, namely the connecting factor to a specific place which reflected the author’s wish to “naturalize” the work, failed when the work was communicated for the first time on digital networks. The reason was the very nature of the Internet as it could not be interpreted that publishing the work on the Internet with its undifferentiated audience, was a wish of the author to link the work to a specific country.

65. With regard to localization of copyright infringement, the study made a comparison with the problems that satellite transmission had raised, noting that differences existed in the degree and the nature of the problem. It stated that the main controversies were between those in favour of what was commonly known as the law of the *country of transmission* and those who argued for the application of what was commonly known as the laws of the *countries of reception*. Both theories rested on solid and well-balanced arguments, which meant that the choice had to be indeed a political one, in the broad sense.

66. As to the compromise solutions, several possibilities were considered. Among them was the solution of designating the law that was presumed to be the most appropriate, leaving it to the parties to rebut that presumption by demonstrating the existence of other connecting factors. Further, perhaps “jurisdictional localization”, which involved linking of legislative competence and jurisdictional competence, had not to be too readily ruled out. Another compromise solution would be to exclude the competence of *countries of reception* that were not “targeted” by the transmitter, which would be a response to the objection that it was impossible to require operators to comply with all the laws in the world. Finally, the study concluded that all these possibilities required further investigation.

67. The Committee took note of the various points raised by the study and the Chairperson invited the floor to intervene.

68. The delegate of France drew the attention of the Committee to the European Union’s work in progress concerning new regulations on non-contractual obligations (Rome II). Within this framework, France proposed to keep the principle expressed in Article 5.2 of the Berne Convention and to insert some *expressis verbis* clauses, inherent in the digital environment. Finally, the adoption of a safeguarding clause would be necessary to prevent the abuse of the choice of a law principle.

69. The delegate of Benin underlined the need for practical approaches to the matter of liability in the context of the digital environment. More precisely, the question as to whether or not service providers and users (*Internautes*) should be liable, was raised.

70. The delegate of Morocco, after recalling the difficulties of the States in renouncing their sovereignty for accepting international standards, indicated the need for harmonization between the different laws.

71. The Chairperson recalled that UNESCO’s competence in this field was to provide legal and technical assistance to the States and not to deal with harmonization issues. The UNESCO Secretariat took the opportunity to ask the Committee whether it would be appropriate to consider this issue as an urgent one or whether it could be postponed. The Chairperson stressed the urgent character of the issue.

### **The persistence of piracy: the consequences for creativity, for culture and for sustainable development (document IGC (1971)/XIII/6)**

72. The study prepared for UNESCO by Mr Darrell Panethiere, was presented by the author himself who made an outline of the background, structure and content of the document.

73. The study defined and analysed the piracy phenomenon as well as its consequences. It focused on its negative economic impact on the different cultural industries – music, book publishing, film, broadcasting – as well as on the detrimental effect to culture, creativity, the loss of job opportunities and the negative impact on society in general. In this light, the argument of a wider dissemination of protected works defended by pirates is nothing but illusive. Piracy, properly understood, derived entirely from a wilful determination not to respect authors’ rights in operating on a large and organized scale. Government policy makers, law enforcement officials and international organizations had focused on its elimination. While the full eradication of piracy might not be achievable, it was possible that its worst effects be limited or neutralized thanks to enforcement rules, but also to educational programmes and training seminars, which could raise the awareness of all the negative consequences of this persistent problem.

74. In its conclusion, the study emphasized the many improvements seen on different fronts, and the necessity that the issue stay at the forefront of policy goals.

75. The delegate of Ukraine informed the Committee about the recent legal developments of her country concerning the fight against piracy, providing details on the newly adopted technological measures in this regard in cooperation with IFPI. She also raised the question of considering folklore as an object of copyright protection in order to preserve the cultural intangible heritage.

76. The delegate of Morocco made the link between the presented study and the legal measures taken to fight piracy in Morocco. He wondered which could be the ideal *a posteriori* measures and what strategic measures could be suggested in the light of the present study.

77. The delegate of India congratulated UNESCO for the excellent paper. With the largest number of films produced anywhere in the world, India was also hit by cross-border piracy. However, India had committed itself to combat this and put in place a very strong anti-piracy law. India was committed to international cooperation in this regard.

78. The delegate of France noted that this complex issue required political will and the cooperation of all stakeholders. It was necessary to involve not only public authorities but also service providers that had to assist in fighting Internet piracy. To decrease the rate of Internet piracy, it was also important that the cultural industries improve their legal online offers of cultural products.

79. The delegate of Benin touched upon the legal aspects of piracy and noted that the persistence of piracy was the result of social factors, which tended to be put aside. Poverty in developing countries was one of these factors. No solid answer to the piracy problem had been found so far. He pointed out the necessity of a political choice based on an international decision.

80. The delegate of Paraguay said that piracy was a worldwide problem. Poverty was an explanation, but not a justification of piracy. He indicated that Paraguay had solid copyright legislation in conformity with WIPO treaties, although traditional piracy was still persisting. However, digital piracy was a new term.

81. The delegate of Croatia said that the study could help Member States in implementing measures to fight against piracy.

82. The delegate of Mexico stressed the link between protection of copyright and cultural diversity. He presented the measures taken at the national level by Mexico. Further, he stated that the piracy phenomenon had no borders, therefore national policies were not sufficient and strong international cooperation was needed.

83. The delegate of the Republic of Moldova underlined the importance of political will for the fight against piracy. The problem in the Republic of Moldova, as a small country, was that copyright holders were not present there, and therefore piracy could expand without any control on behalf of the rights-holders. UNESCO support could be of great help.

84. The delegate of the Palestinian Authority addressed a question to the author concerning the fact that the study focused more on the economic effects of piracy than those of creativity and culture. The solution to fight piracy could only come from the international community. He suggested that UNESCO initiate a collective reflection on the issue.

85. The delegate of Benin stated that pirate activities killed creativity. The real solution was to attack pirates through mobilization of the society. He pointed out the need to strengthen the legal measures, making them more repressive. Answers had to be found at the international level.

86. The delegate of the Russian Federation said that Internet piracy was very damaging to copyright holders because all users worldwide had access to pirated products. Recently the Russian Federation had launched a partnership between private and public sectors to fight against piracy. UNESCO's assistance could be very useful in the continuing efforts in this regard.

87. The delegate of Greece remarked that UNESCO could not solve the problem of piracy at the international level since pirates were criminals infringing different national laws at the same time. In his opinion, the problem could only be solved at national level. However, UNESCO could usefully contribute through training and capacity-building, providing a forum of awareness-raising, information exchange, preparation of appropriate tools, leaflets and similar products. The delegate pointed out three levels of collaboration at national level (collaboration between organizations, authorities, and members of the government), with UNESCO or WIPO acting as the international umbrella. The main task of UNESCO, apart from training, was to make progress in exchanging relevant information. To this end, he suggested the creation by UNESCO of a single website where everybody could make all piracy-related information available, including best practices in various countries.

88. The representative of IFPI stressed the need for exchanging more national experiences and information. She thanked UNESCO for the work done in enforcement, including training. The representative recalled the support of IFPI to UNESCO's activities in the field of copyright and enforcement.

89. The author of the study elaborated on the questions raised by the representatives of Morocco, Paraguay, the Republic of Moldova and the Palestinian Authority.

90. The representative of the Director-General of UNESCO thanked all the delegates for their valuable guidance and the author for his excellent study. Despite the efforts of governments, the private sector and international organizations, piracy was growing in many countries and in an increasing number of fields, instead of decreasing in all fields. She added that the social reasons were not only linked to poverty, but also to internationally organized crime, including abuse of immigrants. Facing other kinds of violence and crime, the tribunals often hesitated to impose tough penalties with regard to copyright infringements. She summarized the rich array of proposals put forward by the Committee, such as the creation by UNESCO of an observatory to monitor piracy issues and to serve as an online platform (clearing house) for exchange of information and best practices. In response to the needs, the possibility of organizing a global summit on piracy issues could eventually be also explored. Regarding cross-border piracy, she evoked possibilities of cooperation between UNESCO and Interpol, which already existed in other fields, such as stolen cultural goods.

91. The debate continued at the morning session of the second working day.

92. The delegate of China informed the Committee of the measures taken by her country to fight against piracy. She pointed out the serious negative effect of piracy on her the country's sustainable development. She said that piracy was a global issue. Therefore regional and international cooperation was needed. She further expressed the wish that UNESCO and WIPO jointly play an active role in providing guidance and assistance for efficient copyright enforcement, as well as assistance in training and exchange of experience.

93. The delegate of Cuba recalled that every state should develop its own measures against piracy, taking into account the national economic and social situation. However, international cooperation was essential in the fight against piracy. In her country awareness-raising broadcasting programmes had been developed.

94. The delegate of Sudan informed the Committee of the efforts undertaken in his country in the context of the fight against piracy. He asked for UNESCO's assistance on technical and methodological issues.

95. The delegate of Brazil informed the Committee of the measures taken so far by his Government, which included the setting up of a National Council for the Fight Against Piracy, under the Ministry of Justice. The delegate also stressed that flexibility had to remain the key word to let every country develop its legal framework and to promote access to knowledge and information. The suggestions made in the report on piracy should be examined separately to take into account the specificities of every country. Balance between rights of creators and public interest was at the basis of intellectual property protection, which should be regarded as a tool for development. The idea for an observatory, should it be retained, would have to be conceived taking fully into account the diversity of national and regional situations and avoiding the establishment of a unique standard.

96. The delegate of Ukraine stated that, in regard to the fight against piracy, there was a great need for exchanging experiences and information, including relevant court decisions. Therefore it would be timely to promote a new system facilitating such exchange. She supported the idea of establishing an observatory.

97. The delegate of Morocco strongly supported the setting up of an anti-piracy observatory and recommended the organization of international meetings on the fight against piracy, stating that Morocco would be willing to host such meetings. Training of enforcement officers on a continuous basis was highly needed.

98. The delegate of Algeria shared the previously raised suggestion concerning measures to be developed, taking into consideration the national specificities and the need for international cooperation. The time factor was a very important one. She also supported the proposal for setting up an observatory.

99. The delegate of Gabon called for a continuation of UNESCO and WIPO studies aiming at a better understanding of the financial losses due to piracy.

100. The delegate of the Palestinian Authority thanked UNESCO for its assistance and its active support for the publication of the study on the subject of copyright in the Palestinian territory. The study highlighted the specificities of the situation. In this regard, the delegate underlined that UNESCO's role was to initiate the process of harmonization and evoked the social and human dimensions of the problem, which had to be equally taken into account.

101. The representative of WIPO also considered coordination between UNESCO and WIPO to be fundamental, particularly in view of the work of the WIPO Intergovernmental Committee on Enforcement of Intellectual Property Rights. Efforts had to be coordinated and consultations had to be made in the preparatory stages, in order to avoid using resources and funds on overlapping activities.

102. The representative of the Director-General of UNESCO thanked all the participants for their interventions and for the initiatives proposed and ideas shared by them with regard to future

UNESCO action in this regard. He stressed that all nuances of the various proposals concerning the ideas of setting up an observatory, holding an international high-level event and other forms of exchange were duly noted by the Secretariat.

#### **Partial renewal of the Committee (document IGC(1971)/XIII/7 Rev.)**

103. The Secretariat reminded that the periodicity of ordinary sessions, as well as the length of the mandate of the Committee Members had been modified at the Committee's 12th session in 2001, and Rules 42 and 43 had been accordingly modified. The mandate of Members was six years before the modification, and 12 years according to the Rules of Procedure, currently in force. It was suggested to the Committee to deliberate whether to make a partial renewal of the Committee and replace the Members that had been elected in 1995, or to apply the modified 12-year rule and therefore not proceed to a partial renewal at this session.

104. The delegation of Greece argued that the only legal possibility was to apply the current Rule 42.

105. The Committee unanimously decided that it would make no partial renewal of the Members, elected in 1995, at this 13th session.

#### **Election of the Chairperson and Vice-Chairpersons**

106. After having deliberated on this item and taking into account the criteria of Article 11 of the UCC, the Committee Members decided to elect Mr Abdellah Ouadrhiri, delegate of Morocco, as Chairperson, and France and India as Vice-Chairpersons.

#### **Other business**

107. The Secretariat informed the Committee that it had received applications from three non-governmental organizations concerning obtaining observer status with the Committee, namely the International Federation of Reproduction Rights Organisations (IFRRO), the International Confederation of Music Publishers (ICMP) and Consumers International (CI). The Committee decided unanimously to grant them such status.

108. The Chairperson Mr Mayer Gabay proposed to the Committee, for its 14th session, to address the issue of competition and copyright.

109. The delegate of Greece suggested that the study should include, but not be limited to, the question of competition law and the copyright monopoly of collecting societies.

#### **Date and place of the next session**

110. The 14th session of the Committee will take place at the end of the first half of 2009 at UNESCO Headquarters.

#### **Adoption of the report**

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

#### **Closing of the session**

112. After the customary expression of thanks, the Chairperson declared the session closed.

INTERGOVERNMENTAL COPYRIGHT COMMITTEE  
Thirteenth session of the Committee of the Universal Convention as revised in 1971 Paris 22-24 June 2005

COMITE INTERGOUVERNEMENTAL DU DROIT D'AUTEUR  
Treizième session du Comité de la Convention universelle révisée en 1971 Paris 22-24 juin 2005

COMITÉ INTERGUBERNAMENTAL DE DERECHO DE AUTOR  
Decimotercera reunión del Comité de la Convención Universal revisada en 1971 París 22-24 de junio de 2005

МЕЖПРАВИТЕЛЬСТВЕННЫЙ КОМИТЕТ ПО АВТОРСКОМУ ПРАВУ  
Тринадцатая сессия Комитета Всемирной конвенции, пересмотренной в 1971 г. Париж 22-24 июня 2005 г.

اللجنة الدولية الحكومية لحقوق المؤلف  
الدورة الثالثة عشرة للجنة الاتفاقية العالمية المعدلة في 1971 ، باريس ، 22-24 حزيران/يونيو 2005

IGC(1971)XIII/8  
Annexe/Annex/Anexo

**LISTE DES PARTICIPANTS  
LIST OF PARTICIPANTS  
LISTA DE PARTICIPANTES**

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