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WIPO

WORLD INTELLECTUAL PROPERTY ORGANIZATION

UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

GENEVA

BIRPI

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENERAL ASSEMBLY

First Ordinary Session
Geneva, September 21 to 29, 1970

APPROVAL OF MEASURES CONCERNING THE ADMINISTRATION OF CERTAIN INTERNATIONAL AGREEMENTS

Report by the Director of BIRPI

SUMMARY

This document deals with measures concerning the participation of WIPO in the administration of certain international agreements designed to promote the protection of intellectual property, that is to say the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded at Rome in 1961, and the Convention for the Protection of New Varieties of Plants, concluded at Paris in 1961.

Provisions adopted at Stockholm

1. Article 4(iii) of the Convention Establishing the World Intellectual Property Organization (WIPO) provides that the Organization, through its appropriate organs and subject to the competence of each of the Unions, "may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property."

2. Article 6(2)(v) of the WIPO Convention provides that the General Assembly of WIPO shall "approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii)" of the Convention.

International agreements concerned

3. The international agreements in question are, at this date, two in number:

(i) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded at Rome on October 26, 1961, hereinafter called "the Neighboring Rights Convention";

(ii) the Convention for the Protection of New Varieties of Plants, concluded at Paris on December 2, 1961, hereinafter called "the UPOV Convention".

The Neighboring Rights Convention

4. This international instrument was adopted at the conclusion of a diplomatic Conference, held at Rome in 1961, which had been convened jointly by BIRPI, the International Labour Organization and Unesco. It entered into force on May 18, 1964.

5. Article 32 of the Neighboring Rights Convention establishes an Intergovernmental Committee to study questions concerning the application and operation of the Convention and to prepare for its possible revision. The Secretariat of the Committee is constituted by "officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the

Directors-General and the Director thereof" (Article 32(5) of the Convention). The meetings of the Intergovernmental Committee are held successively at the headquarters of the ILO, of Unesco and of the Bureau of the Berne Union (Article 32(6) of the Convention).

6. Article 29(1) of the Neighboring Rights Convention provides that revision conferences shall be convened by the Director of the Bureau of the Berne Union and the Directors-General of the ILO and of Unesco.

7. It is to be noted that to become party to the Neighboring Rights Convention a State must be a member of the Berne Union or party to the Universal Copyright Convention (Article 24(2) of the Convention).

8. As a result of these provisions, BIRPI (as the Bureau of the Berne Union) has, since 1961, assumed jointly with the two other organizations (ILO and Unesco) the administration of the Neighboring Rights Convention.

9. Article 24(1)(a) of the Stockholm Act of the Berne Convention provides that "the administrative tasks with respect to the Union shall be performed by the International Bureau" (of WIPO), "which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property."

10. It is not necessary to consider modifying the existing tripartite administration of the Neighboring Rights Convention. It is proposed that, in the name of the Bureau of the Berne Union, the International Bureau of WIPO should participate in the administration of the Convention.

11. The said Convention meets the condition written into Article 4(iii) of the WIPO Convention ("any other international agreement designed to promote the protection of intellectual property") since it regulates the protection at the international level of one category of the rights expressly mentioned in the WIPO Convention. Article 2 v(iii) includes, in the definition of the expression "intellectual property", rights relating to "performances of performing artists, phonograms and broadcasts," which are currently called neighboring rights (to copyright).

12. The General Assembly of WIPO is invited to approve the participation of WIPO in the administration of the Neighboring Rights Convention and to authorize the Director General of WIPO to inform all concerned that any reference in the said Convention to the Director of the International Union for the Protection of Literary and Artistic Works should be understood as a reference to the Director General of WIPO.

The UPOV Convention

13. This international instrument was adopted at the conclusion of a diplomatic Conference held at Paris in 1961. It entered into force on August 10, 1968.

14. Article 25 of the UPOV Convention provides that "The procedures for technical and administrative cooperation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property shall be determined by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned."

15. In accordance with these provisions a draft of the necessary rules was prepared on the basis of a plan approved by the Interunion Coordination Committee of BIRPI at its fifth session (1967). The draft itself was submitted to the said Committee at its seventh session (1969).

16. For its part, the Council of UPOV, meeting in Geneva in October 1969, decided unanimously to authorize its President to inform the Swiss Government that it approved the draft rules.

17. Finally, having thus been notified of the approval of UPOV and of the Unions administered by BIRPI, the Swiss Federal Council, on October 21, 1969, adopted an "arrêté" determining the procedures for technical and administrative cooperation between UPOV and the Unions administered by BIRPI. The text of this "arrêté" is reproduced as an annex to this document. The Swiss Federal Council also appointed the Director of BIRPI (Professor G.H.C. Bodenhausen) to be the Secretary General of UPOV.

18. In summary, it is provided that the seat of UPOV shall be established at the headquarters of BIRPI, in Geneva, and that the present Director of BIRPI or any person who may hold this post in the future shall assume the functions of Secretary General of UPOV. In addition, the post of Vice Secretary General is created; subject to the responsibilities of the Secretary General, the latter shall direct the activities of the "Plant Varieties Department" of the Office and shall be responsible for all questions relating to the substance of the UPOV Convention and for all activities concerning international cooperation in the field of the protection of new varieties of plants. BIRPI, on its side, shall be responsible for the organization of administrative services on an equal footing with the other Unions which it administers. Its expenses shall be reimbursed by UPOV.

19. The UPOV Convention meets the condition written into Article 4(iii) of the WIPO Convention ("any other international agreement designed to promote the protection of intellectual property") since its purpose is to regulate protection at the international level of creators' rights in the field of new varieties of plants, which are included in the category of rights mentioned in Article 2(viii) of the WIPO Convention ("all other rights resulting from intellectual activity").

20. Consequently, it is within the competence of the new organization WIPO, inasmuch as it is a continuation of BIRPI, to participate in the administration of the UPOV Convention under the same conditions and according to the same procedures as those specified in the "arrêté" adopted by the Swiss Federal Council. To achieve this, it is proposed that the Director General of WIPO, in the event of approval by the General Assembly of WIPO, should place before the Council of UPOV an amendment of the text promulgated by the Swiss Federal Council, to the effect that in the application of the said text references to BIRPI and to the Director of BIRPI should be considered as references to WIPO and the Director General of WIPO respectively. In the event of approval of this amendment by the Council of UPOV, it will be transmitted to the Swiss Federal Council with a view to steps being taken by the latter in application of Article 25 of the UPOV Convention.

21. The General Assembly of WIPO is invited to approve participation by WIPO in the administration of the UPOV Convention in accordance with the procedures indicated above.

/Annex follows/

Rules concerning the procedures for technical and administrative cooperation between the Union for the Protection of New Plant Varieties and the Unions administered by the United International Bureaux for the Protection of Intellectual Property approved by the Swiss Federal Council on October 21, 1969

THE FEDERAL COUNCIL

Having regard to the Convention for the Protection of New Varieties of Plants, signed in Paris on December 2, 1961 (hereinafter called "the Convention") providing for the establishment of an Office of the International Union for the Protection of New Plant Varieties (hereinafter called "UPOV") and placing it under the high authority of the Swiss Confederation,

Having regard to Article 1(3) of the Convention providing that the seat of UPOV and its permanent organs shall be at Geneva,

Having regard to Article 23(3) of the Convention providing that the Secretary General of the Office of UPOV and the higher officials shall be appointed, on a proposal by the Council of UPOV, by the Government of the Swiss Confederation, which shall determine the terms of their employment,

Having regard to Article 25 of the Convention providing that the procedures for technical and administrative cooperation between UPOV and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary and Artistic Property - also known as the United International Bureaux for the Protection of Intellectual Property (hereinafter called "BIRPI") - shall be determined by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned,

Having received the agreement of UPOV through the agency of the President of the Council of UPOV,

Having received the agreement of the Unions administered by BIRPI through the agency of the Director of BIRPI,

Noting that, in application of Article 21(g) of the Convention, the Council of UPOV has decided to propose to the Government of the Swiss Confederation that the person who is

currently Director of BIRPI and any person who is, in the future, Director of BIRPI, shall be appointed Secretary General of the Bureau of UPOV,

Noting that, in application of Article 20(2) of the Convention, the Council of UPOV has, after consulting the Government of the Swiss Confederation, adopted the administrative and financial regulations of UPOV and that BIRPI has given its agreement to these rules,

acting on a proposal by the Federal Political Department

adopts

the following Rules:

Article 1
Seat of UPOV

The seat of UPOV shall be established in Geneva with BIRPI.

Article 2
Secretary General of UPOV

The person who is at the present time Director of BIRPI or any person who is, in the future, Director of BIRPI, shall be the Secretary General of the Bureau of UPOV (hereinafter known as "the Secretary General").

Article 3
Vice Secretary General of UPOV

1) There shall be established a post of Vice Secretary General.

2) Notwithstanding the hierarchical subordination of the Vice Secretary General to the Secretary General, the Vice Secretary General shall have the right:

(a) to be present at all the meetings of the Council of UPOV,

(b) to report directly to the Council of UPOV whenever he is in disagreement with any act, plan or proposal of the Secretary General.

Article 4

Plant Varieties Department

1) A Plant Varieties Department shall be established within the Bureau of UPOV which shall be responsible for all questions relating to the substance of the Convention for the Protection of New Varieties of Plants and for all activities concerning international cooperation in the field of the protection of new varieties of plants.

2) Subject to the responsibilities of the Secretary General, the said Department shall be under the direction of the Vice Secretary General.

Article 5

Appointments and Dismissals

1) The Council of UPOV, before making proposals regarding the appointment of an official of senior grade of the Bureau of UPOV, and the Swiss Government, before proceeding with his appointment, shall hear the opinion of the Secretary General and of the Vice Secretary General.

2) The same shall apply before terminating the employment of an official of senior grade.

3) "Official of senior grade" shall be taken to mean any official whose post is classified P/4 and above.

Article 6

Remuneration

1) The Secretary General shall receive a salary whose annual amount shall be fixed by the Council in agreement with the Swiss Government, as a proportion of his salary as Director of BIRPI.

2) The post of Vice Secretary General shall be classified as grade D/1, at a point on the scale to be determined having regard to the experience of the person appointed.

3) The posts of the other officials of senior grade shall be classified P/5 or P/4 in accordance with the procedure laid down in the Staff Regulations and Rules.

Article 7

Administrative Services

1) BIRPI shall satisfy the requirements of the Bureau of UPOV as regards:

(a) the premises, their upkeep (cleaning, heating, lighting) and their furnishing and equipment (furniture, office machinery, telephones),

(b) financial administration (internal audit, depositing and disbursement of funds, etc.),

(c) postage and documents (typing, reproduction, incoming and outgoing post, registering service, etc.),

(d) the organization of meetings (rooms, interpreters, sound recording) as well as the organization of travel (tickets, hotel accommodation, etc.),

(e) the purchase of material, equipment and office furniture,

(f) the translation of documents,

(g) publications (printing, distribution, sales, subscriptions),

(h) the personnel service,

(i) any other service which may be agreed between UPOV and BIRPI.

2) The requirements of UPOV shall be met on a basis of strict equality with the requirements of the other Unions administered by BIRPI.

Article 8

Indemnification of BIRPI

1) UPOV shall indemnify BIRPI in respect of any service rendered to UPOV by virtue of Article 7 above and in respect of any expenditure that it may incur on behalf of UPOV.

2) The value of any service and of any expenditure by BIRPI affecting both UPOV and one or several of the Unions administered by BIRPI shall be shared in proportion to the relative interest

of each of the Unions. The indemnification owed by UPOV to BIRPI shall correspond to the proportion of UPOV's interest in the said service or the said expenditure.

3) The details of the evaluation of services and expenses shall be established by the Council of UPOV, the competent organs of BIRPI and the Government of the Swiss Confederation.

Article 9

Independence of the Office of UPOV

Without prejudice to the application of Article 7 above, the Office of UPOV shall exercise its functions in complete independence of BIRPI.

Article 10

Termination of Cooperation

1) The cooperation defined in these Rules may be declared at an end by one or other of the parties by means of a written notification addressed to the Head of the Federal Political Department by the Chairman of the Council of UPOV or by the Director of BIRPI. Such notification may but need not give reasons. It may not be made before January 1, 1972. It shall take effect on December 31 of the year during which the notification is made if it is made during the first three months of the year, whereas it shall take effect on December 31 of the year following the year during which the notification is made if it is made during the last nine months of the year.

2) All cooperation between BIRPI and UPOV, including its Office shall automatically be terminated on the day when the person who is Director of BIRPI is no longer also Secretary General of UPOV, whether because the post of Secretary General has been filled by another person, or because the post of Secretary General is no longer filled. It shall nevertheless be understood that if the post of Director is temporarily vacant, the person fulfilling the functions of Director ad interim of BIRPI shall automatically also perform the functions of Secretary General ad interim of UPOV.

Article 11

Application, Modification and Abrogation of the Rules

The Federal Council, in its capacity as Supervisory Authority for the Unions in question, shall supervise the application of these Rules. It may modify or abrogate them in agreement with UPOV and BIRPI.

/Translation from French/

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