

ANNEX D
MISCELLANEOUS

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ANNEX D – 1

REQUEST FOR THE ESTABLISHMENT OF THE PANEL
BY THE UNITED STATES

**WORLD TRADE
ORGANIZATION**

WT/DS362/7
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(07-3501)

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**CHINA - MEASURES AFFECTING THE PROTECTION AND ENFORCEMENT
OF INTELLECTUAL PROPERTY RIGHTS**

Request for the Establishment of a Panel by the United States

The following communication, dated 13 August 2007, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 10 April 2007, the United States requested consultations with the Government of the People's Republic of China pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article 64 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") (to the extent that Article 64 corresponds to Article XXII of the General Agreement on Tariffs and Trade 1994) with respect to certain measures pertaining to the protection and enforcement of intellectual property rights in China.¹ The United States held consultations with China on 7-8 June 2007. Those consultations provided some helpful clarifications but unfortunately did not resolve the dispute.

I. Thresholds for criminal procedures and penalties

The United States considers that China has not provided for criminal procedures and penalties to be applied in cases of willful trademark counterfeiting or copyright piracy on a commercial scale that fail to meet certain thresholds. China has established these thresholds through the following measures:

- (1) the Criminal Law of the People's Republic of China (adopted at the Second Session of the Fifth National People's Congress on 1 July 1979 and revised at the Fifth Session of the Eighth National People's Congress on 14 March 1997) ("Criminal Law"), in particular Articles 213, 214, 215, 217, 218, and 220;

¹ WT/DS362/1.

- (2) the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (adopted at the 1331st Session of the Judicial Committee of the Supreme People's Court on 2 November 2004 and the 28th Session of the Tenth Procuratorial Committee of the Supreme People's Procuratorate on 11 November 2004 and to be effective as of 22 December 2004) ("the December 2004 Judicial Interpretation"); and
- (3) the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (II) (adopted on 4 April 2007, at the 1422nd Session of the Judicial Committee of the Supreme People's Court and the 75th Session of the Tenth Procuratorial Committee of the Supreme People's Procuratorate, and to be effective on 5 April 2007) ("the April 2007 Judicial Interpretation");

as well as any amendments, related measures,² or implementing measures.

Articles 213, 214, and 215 of the Criminal Law describe certain acts of trademark counterfeiting that may be subject to criminal procedures and penalties. However, under Article 213, criminal procedures and penalties are available only "if the circumstances are serious" or "if the circumstances are especially serious." Under Article 214, criminal procedures and penalties are available only "if the amount of sales [of commodities bearing counterfeit registered trademarks] is relatively large" or "if the amount of sales is huge." Under Article 215, criminal procedures and penalties are available only "if the circumstances are serious" or "if the circumstances are especially serious."

Articles 217 and 218 of the Criminal Law describe certain acts of copyright piracy that may be subject to criminal procedures and penalties. However, under Article 217, criminal procedures and penalties are available only "if the amount of illegal gains is relatively large, or if there are other serious circumstances" or "if the amount of illegal gains is huge or if there are other especially serious circumstances." Under Article 218, criminal procedures and penalties are available only "if the amount of illegal gains is huge."

Article 220 of the Criminal Law provides for the availability of procedures and penalties when the crimes described in Articles 213 through 219 are committed by a "unit," as opposed to by natural persons.

The Criminal Law does not contain definitions for the thresholds "serious," "especially serious," "relatively large," and "huge" as used in the above-referenced articles. However, the December 2004 Judicial Interpretation and the April 2007 Judicial Interpretation do contain such definitions, which use thresholds that are stated as minimum "illegal business volumes" (stated in terms of minimum values of products produced, stored, transported or sold), minimum "illegal gains", or minimum numbers of "illegal copies".

Acts of trademark counterfeiting and copyright piracy that fail to meet the statutory and judicial interpretation thresholds described above thus are not subject to Articles 213, 214, 215, 217, 218, and 220 of the Criminal Law.

² Such other related measures include the Explanation on Certain Questions Related to the Concrete Application of Law in Hearing Cases of Crimes of Illegal Publication, Fa Se (1998) No. 30 (adopted by the Adjudication Committee of the Supreme People's Court at its 1032nd meeting on 11 December 1998, effective as of 23 December 1998) and the Prosecution Guidelines for Criminal Cases Jointly Issued by the Supreme People's Procuratorate and the Ministry of Public Safety (18 April 2001).

Consequently, it appears that, as a result of the thresholds described above, there are cases of willful trademark counterfeiting and copyright piracy on a commercial scale in which China has not provided for criminal procedures and penalties to be applied. It also appears that, as a result of the thresholds described above, there are cases of willful trademark counterfeiting and copyright piracy on a commercial scale for which the remedies of imprisonment and/or monetary fine sufficient to provide a deterrent are not available in China. Furthermore, it appears that, as a result of the thresholds described above, China fails to ensure that enforcement procedures as specified in Part III of the TRIPS Agreement are available under its law so as to permit effective action against any act of willful trademark counterfeiting or copyright piracy on a commercial scale.

China's measures thus appear to be inconsistent with China's obligations under Articles 61 and 41.1 of the TRIPS Agreement.

II. Disposal of goods confiscated by Customs Authorities that infringe Intellectual Property Rights

The United States considers that China's measures for disposing of confiscated goods that infringe intellectual property rights appear to be inconsistent with China's obligations under the TRIPS Agreement. In this regard, the measures at issue are:

- (1) the Regulations of the People's Republic of China for Customs Protection of Intellectual Property Rights (adopted at the 30th Ordinary Meeting of the State Council on 26 November 2003, published by the State Council on 2 December 2003, and effective from 1 March 2004) ("Customs IPR Regulations"), in particular Chapter 4 thereof;
- (2) the Implementing Measures of Customs of the People's Republic of China for the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights (adopted at an Administration Affairs Meeting of the General Administration of Customs on 22 April 2004, issued by the General Administration of Customs with Order No. 114 on 25 May 2004, and effective from 1 July 2004) ("Customs IPR Implementing Measures"), in particular Chapter 5 thereof; and
- (3) General Administration of Customs Announcement No. 16 (2 April 2007);

as well as any amendments, related measures,³ or implementing measures.

Article 27 of the Customs IPR Regulations and Article 30 of the Customs IPR Implementing Measures set forth a hierarchy of requirements for the disposal of goods that infringe intellectual property rights and that are confiscated by Chinese customs authorities. Under that hierarchy, the Chinese customs authorities are required to give priority to disposal options that allow such goods to enter the channels of commerce (for instance, through auctioning the goods after removing their infringing features). Only if the infringing features cannot be removed must the goods be destroyed.

The release of infringing goods into the channels of commerce under the circumstances set forth in the measures at issue appears not to constitute destruction or disposal of infringing goods in accordance with the principles set out in Article 46 of the TRIPS Agreement. Consequently, the requirement in the measures at issue that Chinese customs authorities release infringing goods into the

³ Such other related measures include the Law of the People's Republic of China on Administrative Penalty (adopted at the Fourth Session of the Eighth National People's Congress on 17 March 1996, promulgated by Order No. 63 of the President of the People's Republic of China on 17 March 1996, and effective as of 1 October 1996) and in particular Article 53 thereof.

channels of commerce under the circumstances set forth in those measures appears to mean that Chinese customs authorities lack the authority to order destruction or disposal of infringing goods in accordance with the principles set out in Article 46 of the TRIPS Agreement. The measures at issue therefore appear to be inconsistent with China's obligations under Article 59 of the TRIPS Agreement.

III. Denial of copyright and related rights protection and enforcement to works that have not been authorized for publication or distribution within China

The United States considers that China appears to be acting inconsistently with its obligations under the TRIPS Agreement by denying the protection of its Copyright Law to creative works of authorship (and, to the extent Article 4 of the Copyright Law applies to them, sound recordings and performances) that have not been authorized for, or are otherwise prohibited from, publication or distribution within China. In this regard, the measures at issue are:

- (1) the Copyright Law,⁴ in particular Article 4;
- (2) the Criminal Law; the Regulations on the Administration of Publishing Industry; the Regulations on the Administration of Broadcasting; the Regulations on the Administration of Audiovisual Products; the Regulations on the Administration of Films; and the Regulations on the Administration of Telecommunication;⁵
- (3) the Regulations on Administration of the Films Industry⁶;
- (4) the Administrative Regulations on Audiovisual Products⁷;
- (5) the Administrative Regulation on Publishing⁸;
- (6) the Administrative Regulations on Electronic Publications⁹;
- (7) the Measures for the Administration of Import of Audio and Video Products¹⁰;
- (8) the Procedures for Examination and Approval for Publishing Finished Electronic Publication Items Licensed by a Foreign Copyright Owner¹¹;

⁴ Adopted at the 15th Session of the Standing Committee of the Seventh National People's Congress on 7 September 1990, and amended according to the Decision on the Revision of the Copyright Law of the People's Republic of China, adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001. See *Main Dedicated Intellectual Property Laws and Regulations Notified under Article 63.2 of the Agreement: China*, IP/N/1/CHN/C/1, circulated 8 July 2002.

⁵ As noted by China in reply to a question in *Review of Legislation: China*, IP/Q/CHN/1, circulated 10 December 2002, section V.A.3.

⁶ State Council Order No. 342, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

⁷ State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

⁸ State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

⁹ Order No. 11 of the General Administration of Press and Publication (30 December 1997).

¹⁰ Decree No. 23 of the Ministry of Culture and the General Administration of Customs (17 April 2002).

¹¹ General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Decision on Establishing Administrative Licensing for Items Necessary to be Maintained for Administrative Examination and Approval by the State Council [State Council Order No. 412]).

- (9) the Procedures for Examination and Approval of Importation of Finished Electronic Publication Items by Electronic Publication Importation Entities¹²;
- (10) the Procedures for Recording of Imported Publications¹³;
- (11) the Interim Regulations on Internet Culture Administration¹⁴; and
- (12) the Several Opinions on the Development and Regulation of Network Music¹⁵;

as well as any amendments, related measures, or implementing measures.

Article 5(1) of the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (the "Berne Convention") provides that foreign authors of protected works shall enjoy all the rights granted to domestic authors, as well as all the rights specially granted by the Berne Convention.¹⁶ Moreover, these rights may not be made subject to any formality (Berne Convention Article 5(2)). Article 9.1 of the TRIPS Agreement requires all WTO Members, *inter alia*, to comply with Articles 1 through 21 of the Berne Convention.¹⁷

China's Copyright Law provides the legal basis for copyright protection within China of the works of Chinese and foreign authors, and it provides an array of rights to such authors (e.g., rights of reproduction, translation, and adaptation). In addition, the Copyright Law provides specific statutory protections to performers, producers of sound recordings, and broadcasting organizations. However, the first sentence of Article 4 of the Copyright Law provides as follows: "Works the publication or distribution of which is prohibited by law shall not be protected by this Law." Therefore, authors of works whose publication or distribution in China is prohibited (such as those works whose publication or distribution has not been authorized in China¹⁸) appear not to enjoy the protection specially granted by the Berne Convention in respect of those works (and, it appears, may never enjoy such protection if the work is not authorized, or is not authorized for distribution or publication in the form as submitted for review). By causing this denial of copyright protection, Article 4 of the Copyright Law appears to be inconsistent with China's obligations under Article 9.1 of the TRIPS Agreement. In addition, the copyright rights of authors of works whose publication or distribution is required to undergo pre-publication or pre-distribution review appear to be subject to the formality of successful conclusion of such review. By subjecting copyright protection to this formality, Article 4 of the Copyright Law appears to be inconsistent with China's obligations under Article 9.1 of the TRIPS Agreement.

¹² General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Decision on Establishing Administrative Licensing for Items Necessary to be Maintained for Administrative Examination and Approval by the State Council [State Council Order No. 412]).

¹³ General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Article 45 of the Administration Regulations on Publication [State Council Order No. 343]).

¹⁴ Promulgated in Order No. 27 of the Ministry of Culture (10 May 2003), amended by Order No. 32 of the Ministry of Culture (1 July 2004).

¹⁵ Ministry of Culture (20 November 2006).

¹⁶ The rights specially granted by the Berne Convention include, *inter alia*, the right of reproduction (Berne Convention Article 9(1)), the right of adaptation (Berne Convention Article 12), and the right of translation (Berne Convention Article 8).

¹⁷ However, WTO Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6*bis* of the Berne Convention or of the rights derived therefrom.

¹⁸ See, e.g., the Regulations on Administration of the Films Industry, articles 24 and 42, and the Administrative Regulations on Electronic Publications, articles 58-59 and 72.

In addition, Article 14 of the TRIPS Agreement requires China to give performers, *inter alia*, the possibility of preventing certain acts, and to give producers of phonograms (sound recordings) the right to authorize or prohibit the direct or indirect reproduction of their sound recordings (collectively, the "related rights"). To the extent that Article 4 of the Copyright Law also denies protection of related rights with respect to performances (or their fixations) or sound recordings, the publication or distribution of which has not been authorized or is otherwise prohibited in China, Article 4 of the Copyright Law appears to be inconsistent with China's obligations under Article 14 of the TRIPS Agreement.

Furthermore, it appears that the measures at issue establish different pre-distribution and pre-authorization review processes for Chinese nationals' works, performances (or their fixations) and sound recordings than for foreign nationals' works, performances (or their fixations) and sound recordings.¹⁹ These different processes, taken together with Article 4 of the Copyright Law, appear to result in earlier and otherwise more favorable protection and enforcement of copyright rights for Chinese authors' works than for foreign authors' works. Further, to the extent Article 4 applies with respect to related rights, these different processes, taken together with Article 4 of the Copyright Law, appear to result in earlier and otherwise more favorable protection and enforcement of related rights for Chinese performers' performances (or their fixations) and Chinese producers' sound recordings than for foreign performers' performances (or their fixations) and foreign producers' sound recordings. The measures at issue therefore appear to be inconsistent with China's obligations under Article 3.1 of the TRIPS Agreement, which provides that, subject to certain exceptions and qualifications, each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property. Additionally, because Article 4 of the Copyright Law, in conjunction with the nationality-dependent pre-authorization and pre-distribution review processes established by the other measures at issue, causes foreign authors of works whose publication or distribution has not been authorized or is otherwise prohibited not to enjoy the rights granted to Chinese authors, the measures at issue appear to be inconsistent with China's obligations under Article 9.1 of the TRIPS Agreement (with respect at least to China's obligations under that article of the TRIPS Agreement to comply with Articles 5(1) and 5(2) of the Berne Convention).

In addition, Article 4 of China's Copyright Law, both independently and in conjunction with the other measures at issue, appears to make it impossible to enforce copyrights (and, to the extent covered by Article 4, related rights) with respect to works, performances or sound recordings whose publication or distribution in China has not been authorized or is otherwise prohibited. It therefore appears that, as a result of the measures at issue, China fails to ensure that enforcement procedures as specified in Part III of the TRIPS Agreement are available under its law so as to permit effective action against infringements (including expeditious remedies to prevent infringement) of those copyrights and related rights in such circumstances, and that China does not provide for criminal procedures and penalties to be applied in certain cases of copyright piracy. The measures at issue thus appear to be inconsistent with China's obligations under Articles 41.1 and 61 of the TRIPS Agreement.

* * * * *

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU, that the Dispute Settlement Body establish a panel to examine these matters, with the standard terms of reference as set out in Article 7.1 of the DSU.

¹⁹ See, e.g., the Administrative Regulations on Audiovisual Products, articles 16, 28 and 36, and the Administrative Regulations on Electronic Publications, articles 28, 33, and 58-59.

ANNEX D-2

**LETTER DATED 21 APRIL 2008
FROM THE PANEL TO THE INTERNATIONAL BUREAU OF WIPO**

At its meeting on 25 September 2007, the WTO Dispute Settlement Body established the Panel on *China – Measures affecting the Protection and Enforcement of Intellectual Property Rights* pursuant to the request by the United States in document WT/DS362/7 (please see the attached document), in accordance with Article 6 of the Dispute Settlement Understanding. On 13 December 2007, a Panel was composed to examine this complaint (please see the attached document WT/DS362/8).

Certain provisions of the Berne Convention for the Protection of Literary and Artistic Works have been raised in these proceedings as relevant to the interpretation of China's obligations under the TRIPS Agreement. Given that the International Bureau of WIPO is responsible for the administration of that Convention, the purpose of this letter is to request, on behalf of the Panel, the assistance of the International Bureau of WIPO in the form of any factual information available to it relevant to the interpretation of the provisions in question, in particular as reflected in the materials of diplomatic conferences and subsequent developments in the framework of the Berne Union.

The specific provisions of the Berne Convention in regard to which the Panel would seek this assistance at this stage are:

- Article 5 of the Paris Act of 1971 of the Berne Convention, in particular:
 - paragraph (1) regarding the provision that "Authors shall enjoy, in respect of works for which they are protected under this Convention, ... the rights specially granted by this Convention."; and
 - paragraph (2) regarding the provision that "The enjoyment and the exercise of these rights shall not be subject to any formality;"; and
- Article 17 of the Paris Act of 1971 of the Berne Convention, in particular as regards its relationship to Article 5.

It would facilitate the work of the Panel if such information could be made available by Thursday, 15 May 2008.

ANNEX D-3

**REPLY FROM THE INTERNATIONAL BUREAU OF WIPO
DATED 6 JUNE 2008**

Thank you for your letter of April 21, 2008, addressed to Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO), requesting the assistance of the International Bureau in providing information available on the provisions of the Berne Convention (1971) relevant to the interpretation of Articles 5 and 17, in particular as reflected in the materials of diplomatic conferences and subsequent developments in the framework of the Berne Union.

I am pleased to attach to this letter a Note concerning your request. We are at your disposal for any further information or advice.

NOTE

on Certain Provisions of the Berne Convention
raised by the World Trade Organization

1. This Note contains the observations of the International Bureau of the World Intellectual Property Organization (WIPO) in response to a request made by Mr. Adrian Macey, Chair, Panel on China - Measures affecting the Protection and Enforcement on Intellectual Property Rights pursuant to the request by the United States in document WT/DS36217, in a letter of April 21, 2008, addressed to Dr. Kamil Idris, Director General of WIPO.

2. The requested information., related to the dispute in the above-mentioned Panel under the WTO Dispute Settlement Body, is the following:

"Any factual information available to the International Bureau on the provisions of the Berne Convention (1971) relevant to the interpretation of the provisions in question, in particular as reflected in the materials of diplomatic conferences and subsequent developments in the framework of the Berne Union:

regarding Article 5 of the Paris Act of 1971 of the Berne Convention,
in particular:

- paragraph (1) regarding the provision that "Authors shall enjoy, in respect of works for which they are protected under this Convention, ... the rights specially granted by this Convention, and
- paragraph (2) regarding the provision that "The enjoyment and the exercise of these rights shall not be subject to any formality"

Article 17 of the Paris Act of 1971 of the Berne Convention, in particular as regards its relationship to Article 5."

3. The information contained in this Note has been obtained from the analysis of the proceedings of the following Conferences of the Berne Convention, in chronological order:

- The Diplomatic Conference of 1884: International Conference for the Protection of Authors' Rights held in Berne, from September 8 to 19, 1884
- The Diplomatic Conference of 1885: Second International Conference for the Protection of Literary and Artistic Works, held in Berne, from September 7 to 18, 1885
- The Diplomatic Conference of 1886 (Berne Act): Third International conference for the Protection of Literary and Artistic Works, held in Berne, from September 6 to 9, 1886
- The Diplomatic Conference of 1896 (Paris Act): Diplomatic Conference held in Paris, from April 15 to May 4, 1896
- The Diplomatic Conference of 1908 (Berlin Act): Diplomatic Conference held in Berlin, from October 14 to November 14, 1908
- Additional Protocol of 1914 (Berne Protocol): Additional Protocol to the Convention signed in Berne without a conference of revision
- The Diplomatic Conference of 1928 (Rome Act): Diplomatic Conference held in Rome, from May 7 to June 2, 1928
- The Diplomatic Conference of 1948 (Brussels Act): Diplomatic Conference held in Brussels from June 5 to 26, 1948

- The Diplomatic Conference of 1967 (Stockholm Act): Intellectual Property Conference held in Stockholm, from June 11 to July 14, 1967
- The Diplomatic Conference of 1971 (Paris Act): Diplomatic Conference for the Revision of the Berne Convention held in Paris, from July 5 to 24, 1971

4. The preparation of this Note has been partly based on the review of official proceedings, and partly solely based on the indexes. The official proceedings of the above Conferences do not contain indexes by Article, except for the 1967 Stockholm Conference.

5. The 1914 Additional Protocol to the Convention and the 1971 Paris Conference did not refer or amend Articles 5 and 17. No information from those proceedings is included in this Note.

6. Other materials related to subsequent developments of the Berne Union, such as the period of so-called "guided development"¹ from 1967 to 1991 and a general review of the implementation of the treaty provisions in all national laws of Berne Union Member States, have not been analyzed for this Note. Those cover a vast amount of material which is not available in a systematic and detailed indexed form. Any selection of material considered relevant to the above specific provisions will invariably imply risks of interpretations which would be incompatible with the neutral status of WIPO in relation to the above-mentioned dispute. The International Bureau is, however, prepared to furnish any non-confidential material in its possession which is specified in such a way that it can be identified without the need for the International Bureau to make any interpretations of the substantive provisions of the Berne Convention.

Article 5, paragraph (1) (Rights guaranteed) and paragraph (2) (No formalities)

7. The protection on rights guaranteed under Article 5(1) with two separate elements: i) the national treatment and ii) the rights specially granted by the Convention was included in the Berlin Act as Article 4, and did not undergo major changes in the subsequent revisions.

8. The wording of the provision regarding the formality-free rule of protection in now Article 5(2) has not changed since the Berlin Act (then Article 4(2)). Issues on the compliance of formalities were discussed from the Diplomatic Conference of 1884.

9. Annex I to this Note contains the following excerpts of the International Conference of 1884, regarding Article 2:

- (a) Excerpts of the program proposed by the Swiss Federal Council²,
- (b) Excerpts of discussions of Second Session (President Numa Droz)³,
- (c) Excerpts of discussions of Fifth Session (President Numa Droz)⁴,
- (d) Excerpts of the Draft Convention for the creation of a General Union for the authors' rights protection⁵.

¹ A term used by Sam Ricketson in: "The Berne Convention, for the Protection of Literary and Artistic Works," Centre for Commercial Law Studies, Kluwer, 1987, p. 919

² Source: Actes de la Conference International pour la Protection des CEuvres Litteraires et Artistiques reunie it Berne du 8 au 19 de septembre 1884 (in the following referred to as "Actes 1884"), p. 11

³ Source: Actes 1884, pp. 27 and 30

⁴ Source: Actes 1884, pp. 39 to 43

⁵ Source: Actes 1884, pp. 77 and 78

10. Annex II to this Note contains the following excerpts of the Second International Conference of 1885, regarding Article 2:

- (a) Excerpts of discussions of Second Session (President Numa Droz)⁶,
- (b) Excerpts of discussions of Third Session (President Numa Droz)⁷,
- (c) Excerpts of the Report of the Commission (president Numa Droz)⁸,
- (d) Excerpts of the adopted text by the Conference⁹.

11. Annex III to this Note contains the following excerpts of the Third International Conference of 1886, related to Article 2:

- (a) Text of Article 2 of the Convention¹⁰.

12. Annex IV to this Note contains the following excerpts of the Records of the Conference of the 1896 Paris Act of the Convention, related to Article 2:

- (a) Proposal of modification of the French Administration¹¹,
- (b) Excerpts of wishes (vœux) related to the provisions of the Convention¹²,
- (c) Excerpts of wishes (vœux) related to internal legislation¹³,
- (d) Excerpts of discussions in Second Session (President M. C. de Freycinet)¹⁴,
- (e) Excerpt of the Table of proposals, counter proposals and amendments submitted to the Conference¹⁵,
- (f) Excerpts of discussions in Third Session (President M. C. de Freycinet)¹⁶,
- (g) Excerpts of proposals adopted by the Commission and presented to the Conference in its session¹⁷,
- (h) Excerpts of the Report presented on behalf of the Commission by the French Delegation¹⁸,

⁶ Source: Actes de la 2me Conference International pour la Protection des CEuvres Litteraires et Artistiques reunie it Berne du 7 au 18 de septembre] 885 (in the following referred to as "Actes 1885"), pp. 19 to 21

⁷ Source: Actes 1885, pp. 25 to 28

⁸ Source: Actes 1885, pp. 39 and 42

⁹ Source: Actes 1885, pp. 73 and 74

¹⁰ Source: Actes de la 3me Conference International pour la Protection des CEuvres Litteraires et Artistiques reunie 11 Berne du 6 au 9 de septembre 1886 (in the following referred to as "Actes 1886"), pp. 27, 30 and 32

¹¹ Source: Actes de la conference reunie it Paris du 15 avril au 4 mai 1896 (in the following referred to as "Actes 1896"), pp. 35, 36 and 37

¹² Source: Actes 1896, pp. 53 and 54

¹³ Source: Actes 1896, p. 75

¹⁴ Source: Actes 1896, pp. 103, 111 and 112

¹⁵ Source: Actes 1896, p. 121

¹⁶ Source: Actes 1896, pp. 127 to 132

¹⁷ Source: Actes 1896, pp. 153 and 157

- (j) Excerpts of the adopted Act¹⁹,
- (k) Interpretative declaration²⁰.

13. Annex V to this Note contains the following excerpts from the Records of the Conference of the 1908 Berlin Act of the Convention:

- (a) Excerpts of proposals of modification of Article 2²¹,
- (b) Excerpts of the provisional text of the Convention²²,
- (c) Excerpts of wishes (vreaux) related to Article 2 of the Convention²³,
- (d) Excerpts of wishes (vreaux) related to internal legislation²⁴,
- (e) Excerpts of the discussions of the Second Session (President Dr. Von Studt). Presentation of the proposal of the Government of Gennany, made by Dr. Osterrieth²⁵,
- (f) Excerpts of the discussions of the Second Session (President Dr. Von Studt). Presentation of the proposal of the Government of Gennany, made by Professor, Dr. Rothlisberger²⁶,
- (g) Excerpt of the Table of proposals, counter proposals and amendments submitted to the Conference²⁷,
- (h) Exposition of Motives of new modifications presented by the Belgian Delegation²⁸,
- (i) Excerpts of the discussions of the Third Session (President Dr. Von Studt)²⁹,
- (j) Excerpts of the annexes of discussions in Third Session. Report presented to the Conference by the Commission, regarding Article 4 (Mr. Louis Renault)³⁰,
- (k) Excerpts of the draft of the Revision of the Convention regarding Article 4³¹,
- (l) Excerpt of the Table of proposals, counter proposals and amendments submitted to the Commission³²,

¹⁸ Source: Actes 1896, pp. 160 to 164

¹⁹ Source: Actes 1896, pp. 217 and 220

²⁰ Source: Actes 1896, p. 225

²¹ Source: Actes de la conference reunie it Berlin du 14 octobre au 14 novem bre 1908 (in the following referred to as "Actes 1908"), pp. 55 to 57

²² Source: Actes 1908, pp. 71 and 72

²³ Source: Actes 1908, pp. 81 to 83

²⁴ Source: Actes 1908, pp. 104 and 105

²⁵ Source: Actes 1908, pp. 157, 160, 161 and 169

²⁶ Source: Actes 1908, pp. 177 and 178

²⁷ Source: Actes 1908, pp. 184 and 185

²⁸ Source: Actes 1908, pp. 192 to 199

²⁹ Source: Actes 1908, pp. 209 and 214

³⁰ Source: Actes 1908, pp. 225, 240 and 241

³¹ Source: Actes 1908, pp. 278 and 279

³² Source: Actes 1908, pp. 283 and 284

- (m) Excerpts of the adopted Act regarding Article 4³³.

14. Annex VI to this Note contains the following excerpts from the Records of the Conference of the 1928 Rome Act of the Convention, regarding Article 4, first and second indents:

- (a) Excerpts of wishes (vieux) related to specific provisions of the Convention³⁴,
- (b) Excerpts of wishes (vieux) non-related to specific provisions of the Convention³⁵,
- (c) Excerpts from the Program of the Conference³⁶,
- (d) Excerpts of proposals, counter-proposals and observations of the British Administration³⁷
- (e) Excerpts of proposals, counter-proposals and observations of the French Administration³⁸,
- (f) Excerpts of proposals, counter-proposals and observations of the Norwegian Administration³⁹,
- (g) Excerpts of the Summary of proposals and discussions⁴⁰,
- (h) Excerpts of Second Plenary session⁴¹,
- (i) Excerpts of the adopted Act⁴².

15. Annex VII to this Note contains the following excerpts from the Records of the Conference of the 1948 Brussels Act of the Convention, relevant to Article 4, paragraphs (1) and (2):

- (a) Excerpt of the adoption of the text of the Act⁴³,
- (b) Excerpts from the General Report (presented by Mr. Marcel Plaisant, Rapporteur-General)⁴⁴,
- (c) Excerpts of the preparatory works and group debates⁴⁵,
- (d) Excerpts of wishes (vieux) expressed by various congresses and meetings between 1927 and 1935, relating to Article 4⁴⁶,

³³ Source: Actes 1908, pp. 311 and 315

³⁴ Source: Actes de la conference reunie a Rome du 7 mai au 2 juin 1928 (in the following referred to as "Actes 1928"), pp. 30 and 40

³⁵ Source: Actes 1928, pp. 41 and 45

³⁶ Source: Actes 1928, pp. 61, 67 and 68

³⁷ Source: Actes 1928, pp. 87, 91 and 92

³⁸ Source: Actes 1928, p. 99

³⁹ Source: Actes 1928, p. 111

⁴⁰ Source: Actes 1928, pp. 221, 233 and 234

⁴¹ Source: Actes 1928, pp. 285 and 290

⁴² Source: Actes 1928, pp. 329 and 337

⁴³ Source: Documents de la conference reunie it Bruxelles du 5 au 26 juin 1948 (in the following referred to as "Documents 1948"), p. 81

⁴⁴ Source: Documents 1948, pp. 93 and 96

⁴⁵ Source: Documents 1948, pp. 133, 170 to 172, and 178

- (e) Excerpts of wishes (vreaux) expressed by various congresses and meetings between 1927 and 1935, non-related to specific provisions of the Convention⁴⁷,
- (f) Excerpts of wishes (vreaux) expressed by various congresses and meetings between 1927 and 1935, concerning certain countries⁴⁸,
- (g) Excerpts of the adopted Act⁴⁹.

16. Annex VIII to this Note contains the following excerpts from the Records of the Conference of the 1967 Stockholm Act of the Convention, relevant to Article 5 paragraphs 1 and 2:

- (a) Basic proposal (Sweden and BIRPI) regarding Article 4, paragraphs (1) and (3), S/1⁵⁰,
- (b) Observations on basic proposals by the Government of Switzerland, regarding Article 4(1)⁵¹,
- (c) Observations on basic proposals by the Secretariat, regarding Article 4, paragraphs (1) and (3)⁵²,
- (d) Proposal from the Chairman of Main Committee I, regarding Article 5, paragraph (1) and (2)⁵³,
- (e) Proposal from the Government of Switzerland, regarding Article 4, paragraphs (1) and (5)⁵⁴,
- (f) Proposal from the Secretariat to the Drafting Committee⁵⁵,
- (g) Proposal from the Government of Brazil, regarding Article 4(1)⁵⁶,
- (h) Proposal from the Secretariat, after discussion with the Drafting Committee, regarding Article 5, paragraph (1) and (2)⁵⁷,
- (i) Draft Report of Main Committee I⁵⁸,
- (j) Excerpt from the final text of Report of Main Committee I (Rapporteur Svante Bergstrom)⁵⁹,
- (k) Excerpts of the Summary Minutes of Main Committee I⁶⁰;

⁴⁶ Source: Documents 1948, p. 438

⁴⁷ Source: Documents 1948, p. 475

⁴⁸ Source: Documents 1948, p. 482

⁴⁹ Source: Documents 1948, pp. 530 to 533

⁵⁰ Source: Records of the Intellectual Property Conference of Stockholm, June 11 to July 14, 1967 (in the following referred to as "Records 1967"), document S/1, pp. 71,90, 92, and 151

⁵¹ Source: Records 1967, document S/17, pp. 662 and 664

⁵² Source: Records 1967, document S/18, p. 667

⁵³ Source: Records 1967, document S/44, p. 687

⁵⁴ Source: Records 1967, document S/63 p. 690

⁵⁵ Source; Records 1967, document S/187, pp. 708 and 709

⁵⁶ Source: Records 1967, document S/21 0, p. 704

⁵⁷ Source: Records 1967, document S/241-Annex, pp. 721 and 723

⁵⁸ Source: Records 1967, document S/271, p. 739

⁵⁹ Source: Records 1967, p. 1131; paragraphs 11, 18 to 31, p. 1133f

- (l) Excerpts of the Summary Minutes of the Plenary of the Berne Union regarding Article 5⁶¹,
- (m) Text in Stockholm Act, regarding Article 5, paragraphs (1) and (2)⁶².

Article 17 (Possibility of Control of Circulation, Presentation and Exhibition of Works)

17. This provision was included since the inception of the Berne Convention, and has remained unchanged since the Berne Act, except for minor wording changes and renumbering (becoming Article 10, 13 or 14).

18. Annex IX to this Note contains the following excerpts of the International Conference of 1884, regarding Article 14:

- (a) Excerpts of discussions of Fifth Session (president Numa Droz)⁶³,
- (b) Excerpts of the Draft Convention for the creation of a General Union for the authors' rights protection⁶⁴,

19. Annex X to this Note contains the following excerpts of the Second International Conference of 1885:

- (a) Excerpts of discussions of Fourth Session, related to Article 14 (President Numa Droz)⁶⁵,
- (b) Excerpts of the Report of the Commission, related to Article 13 (Article 14 of the Draft) (President Numa Droz)⁶⁶,
- (c) Excerpts of the adopted text by the Conference, regarding Article 13⁶⁷,

20. Annex XI to this Note contains the following excerpts of the Third International Conference of 1886, related to Article 13:

- (a) Text of Article 13 of the Convention⁶⁸.

21. Annex XII to this Note contains the following excerpts of the Records of the Conference of the 1896 Paris Act of the Convention, related to Article 13:

- (a) Excerpts of discussions in Second Session (President M. C. de Freycinet)⁶⁹;

⁶⁰ Source; Records 1967, paragraphs 468.2 to 464 (on the organization of the work of Main Committee I) p. 837f; paragraphs 485 to 489 (on criterion of nationality), p. 839; paragraphs 594 to 606.1, 630.1 to 641, 698 to 707 (criteria of eligibility) p. 847f

⁶¹ Source: Records 1967, paragraph 93, p. 804

⁶² Source: Records 1967, p. 1287 and 1290

⁶³ Source: Actes 1884, pp. 39 and 58

⁶⁴ Source: Actes 1884, pp. 77, 80 and 81

⁶⁵ Source: Actes 1885, pp. 33 and 35

⁶⁶ Source: Actes 1885, pp. 39, 40, 51

⁶⁷ Source: Actes 1885, pp. 73 and 77

⁶⁸ Source: Actes 1886, pp. 27 and 33

⁶⁹ Source: Actes 1896, pp. 91 and 117

- (b) Excerpts of proposals adopted by the Commission and presented to the Conference in its session⁷⁰.

22. Annex XIII to this Note contains the following excerpts from the Records of the Conference of the 1908 Berlin Act of the Convention:

- (a) Excerpts of proposals of modification regarding Article 13⁷¹,
- (b) Excerpts of the provisional text of the Convention, regarding Article 10⁷²,
- (c) Excerpts of the discussions of the Third Session, regarding Articles 14 to 24 (President Dr. Von Studt)⁷³,
- (d) Excerpts of the annexes of discussions in Third Session. Report presented to the Conference by the Commission, regarding Article 17 (Mr. Louis Renault)⁷⁴,
- (e) Excerpts of the adopted Act, regarding Article 17⁷⁵.

23. Annex XIV to this Note contains the following excerpts from the Records of the Conference of the 1928 Rome Act of the Convention:

- (a) Excerpts of proposals, counter-proposals and observations of the British Administration, relevant to Article 17⁷⁶;
- (b) Excerpts of the Summary of proposals and discussions regarding Articles II, 11*bis* and 17⁷⁷,
- (c) Excerpts of the adopted Act, regarding Article 17⁷⁸.

24. Annex XV to this Note contains the following excerpts from the Records of the Conference of the 1948 Brussels Act of the Convention, relevant to Article 17:

- (a) Excerpt of the adoption of the text of the Act⁷⁹,
- (b) Excerpts from the General Report (presented by Mr. Marcel Plaisant, Rapporteur-General)⁸⁰,
- (c) Excerpts of the preparatory works and group debates⁸¹,
- (d) Excerpts of the adopted Act⁸².

⁷⁰ Source: Actes 1896, pp. 153 and 155

⁷¹ Source: Actes 1908, pp. 55, 62 and 63

⁷² Source: Actes 1908, pp. 71 and 74

⁷³ Source: Actes 1908, pp. 209 and 217

⁷⁴ Source: Actes 1908, pp. 225 and 267

⁷⁵ Source: Actes 1908, pp. 311 and 319

⁷⁶ Source: Actes 1928, pp. 91 and 94

⁷⁷ Source: Actes 1928, pp. 221, 254 to 261, and 270

⁷⁸ Source: Actes 1928, pp. 329 and 342

⁷⁹ Source: Documents 1948, pp. 81 and 82

⁸⁰ Source: Documents 1948, pp. 93 and 105

⁸¹ Source: Documents 1948, pp. 133 and 376

⁸² Source: Documents 1948, pp. 530 and 531, 544 and 545

25. Annex XVI to this Note contains the following excerpts from the Records of the Conference of the 1967 Stockholm Act of the Convention, relevant to Article 17:

- (a) Basic proposal (Sweden and BIRPI), S/1⁸³,
- (b) Observations on basic proposals by the Government of United Kingdom⁸⁴,
- (c) Proposal from the Government of United Kingdom concerning Article 17⁸⁵,
- (d) Proposal from the Government of Australia concerning Article 17⁸⁶,
- (e) Proposal from the Government of Israel concerning Article 17⁸⁷,
- (f) Proposal from the Government of Italy concerning Article 17⁸⁸,
- (g) Proposal from the Secretariat to the Drafting Committee concerning Article 17⁸⁹,
- (h) Report of the Drafting Committee to Main Committee I⁹⁰,
- (i) Draft Report of Main Committee I⁹¹,
- (j) Approved text of Main Committees I, II, and IV⁹²,
- (k) Excerpt from the final text of Report of Main Committee I (Rapporteur Svante Bergstrom) relating to Article 17⁹³,
- (l) Excerpts of the Summary Minutes of Main Committee I⁹⁴,
- (m) Excerpts of the Summary Minutes of the Plenary of the Berne Union⁹⁵,
- (n) Text of Article 17 in Stockholm Act⁹⁶.

[End of Note. Annexes follow]

⁸³ Source: Records 1967, document S/1, pp. 148 and 149, 160 and 161

⁸⁴ Source: Records 1967, documents S/13, p. 631; S/18, p. 673

⁸⁵ Source: Records 1967, document S/171, p. 704

⁸⁶ Source: Records 1967, document S/215 p. 715

⁸⁷ Source: Records 1967, document S/223, p. 716

⁸⁸ Source: Records 1967, document S/226, p. 716

⁸⁹ Source: Records 1967, document S/241, pp. 721 and 722

⁹⁰ Source: Records 1967, document S/269, pp. 734 and 735

⁹¹ Source: Records 1967, Document S/271, pp. 739 to 746

⁹² Source: Records 1967, Document S/278, p. 752

⁹³ Source: Records 1967, p 1131; paragraphs 257 to 263, pp. 1173 to 1175

⁹⁴ Source: Records 1967, paragraphs 1385.1 to 1388.2, 1428.1 to 1439 (on the limitation on exhibition of works) p. 907f; paragraphs 1389.1 to 1395, 1407 to 1427 (abuse of monopoly position) p. 908f; paragraphs 1722 to 1727 (discussion on the texts proposed by the Drafting Committee) p. 929; and paragraphs 1878 to 1896 (examination of the report of Main Committee I) p. 937 and 938.

⁹⁵ Source: Records 1967, paragraphs 125.1 to 132, p. 806

⁹⁶ Source: Records 1967, pp. 1287 and 1298