

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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**COMMITTEE OF EXPERTS
ON A PROTOCOL
CONCERNING AUDIOVISUAL PERFORMANCES**

Geneva, September 15, 16 and 19, 1997

INFORMATION RECEIVED FROM MEMBER STATES OF WIPO
CONCERNING AUDIOVISUAL PERFORMANCES

Memorandum prepared by the International Bureau

I. INTRODUCTION

1. The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions which took place in Geneva from December 2 to 20, 1996, on its last day, adopted the WIPO Performances and Phonograms Treaty (WPPT).

2. Among the documents of the Conference had been a “Basic Proposal for the Substantive Provisions of a Treaty for the Protection of the Rights of Performers and Producers of Phonograms to be considered by the Diplomatic Conference” (document CRNR/DC/5) as well as a number of relating amendment proposals submitted by Delegations in the course of the Conference. Under some of those documents, or under some of the alternatives included in them, the coverage of the rights of performers would have extended to audiovisual performances; the WPPT, however, with the exception of some rights related to unfixed performances, does not cover audiovisual performances.

3. The Conference addressed this issue in a Resolution concerning Audiovisual Performances (document CRNR/DC/99), adopted on its last day with the following text:

“The Delegations participating in the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions in Geneva,

“*Noting* that the development of technologies will allow for a rapid growth of audiovisual services and that this will increase the opportunities for performing artists to exploit their audiovisual performances that will be transmitted by these services;

“*Recognizing* the great importance of ensuring an adequate level of protection for these performances, in particular when they are exploited in the new digital environment, and that sound and audiovisual performances are increasingly related;

“*Stressing* the urgent need to agree on new norms for the adequate legal international protection of audiovisual performances;

“*Regretting* that, in spite of the efforts of most Delegations, the WIPO Performances and Phonograms Treaty does not cover the rights of performers in the audiovisual fixations of their performance;

“*Call* for the convocation of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on the schedule of the preparatory work on a protocol to the WIPO Performances and Phonograms Treaty, concerning audiovisual performances, with a view to the adoption of such a protocol not later than in 1998.”

4. The Resolution (along with the Recommendation concerning Databases also adopted in the Diplomatic Conference) was discussed at the thirtieth series of meetings of the Governing Bodies of WIPO, namely the General Assembly of WIPO, the WIPO Coordination Committee and the Assembly of the Berne Union, in Geneva, on March 20 and 21, 1997.

5. The Governing Bodies took, *inter alia*, the following decisions (document AB/XXX/4, paragraph 20):

“(i) A Committee of Experts on the protocol concerning audiovisual performances will be convened for September 15 and 16, 1997, and an Information Meeting concerning intellectual property in databases will be convened for September 17 and 18, 1997. September 19, 1997, will be reserved for the adoption of the reports of both the Committee of Experts and the Information Meeting.

“(ii) The International Bureau will, separately for each of the two subjects, prepare a document on the existing national and regional laws and regulations. Furthermore, the International Bureau will invite the Governments of the Member States of WIPO and the European Community by circular to communicate to it in writing information on the *de facto* situation, particularly contractual practices, existing in their respective countries, as well as any statistics.”

6. In harmony with the second part of item (ii) of the above-quoted decisions, the Director General, in a circular dated April 1, 1997, invited the Governments of the Member States of WIPO and the European Community, to communicate to the International Bureau the information mentioned in the said item, by May 31, 1997.

7. By the above-mentioned deadline, the International Bureau had received information from the Governments of the following countries: *China, Israel, Kyrgyzstan, Mexico, Norway, Republic of Moldova, Switzerland and Uruguay*. That information—as regards audiovisual performances—is summarized in the following paragraphs, whereas the full text of the relevant parts of the countries’ contributions is included in the Annex to this document. Information received after the above-mentioned deadline will be made available later.

II. GENERAL INFORMATION ON THE *DE FACTO* SITUATION

8. Each of the responses received from the Governments mentioned in the preceding paragraph refers to the existing national legislation of the country concerned. The responses received from *China* and *Mexico* contain the text of the relevant provisions of the national laws (and those responses do not contain any further information), while the responses received from *Israel, Kyrgyzstan, Norway, Republic of Moldova, Switzerland and Uruguay* sum up the relevant norms. That information is reproduced in the Annex and is also reflected in document AP/CE/I/2 on “Existing National and Regional Legislation concerning Audiovisual Performances.”

III. CONTRACTUAL PRACTICES

9. According to item (ii) of the decisions quoted in paragraph 5, above, the information requested on the *de facto* situation was to cover particularly contractual practices. Five of the eight above-mentioned responses contain information on such practices.

10. The response received from *Israel* refers to the general freedom of the parties concerned to conclude contracts in harmony with the provisions of the law.

11. The information received from *Kyrgyzstan*, in this respect, states that no applications for registration of contracts of performers of audiovisual works have been filed.

12. The response received from *Norway* states that no information is available on contractual practices between performers and e.g., producers of films, and it adds that, according to the legal tradition of the country, there is no statutory regulation concerning the transfer of rights from employees to employers in that field.

13. The response received from the *Republic of Moldova*, in addition to a description of the statutory provisions concerning minimum remuneration to be paid to performers, outlines the collective management system for performers' rights, and deals particularly with the problems relating to the distribution of remuneration.

14. The information received from *Uruguay* refers to some general aspects of the contractual practice and the related jurisprudence, particularly as far as television programs (both broadcast and cable distributed) are concerned. It also mentions that the payments due to performers for their audiovisual performances are collected by a collective management society. In international relations, that society applies the so-called type-B contracts, under which the societies do not transfer payments to each other; the payments received for the members of the other (foreign) societies are also used (distributed or utilized for collective purposes) by the society having collected the payments within the country of collection.

IV. STATISTICS

15. In harmony with the relevant part of item (ii) of the decisions quoted in paragraph 5, above, information was requested also on statistics concerning audiovisual fixations; however, none of the responses covered by this document contains any statistics.

[Annex follows]

ANNEX

RESPONSES RECEIVED FROM MEMBER STATES OF WIPO

(see paragraph 7 of the document)

CHINA

I. Definitions of performance, performer and producer of video recordings

Article 5(2) of the Implementing Regulations of the Copyright Law of the People's Republic of China (hereinafter referred to as "the Implementing Regulations"): performance is the public presentation of a work by performing music or drama, reciting a poem, or doing similar acts, through vocal sound, facial movements and body movements, directly or with the aid of technical devices.

Article 6 of Implementing Regulations: (6) producer of video recordings refers to a person who makes video recordings; (7) performer refers to an actor or any other person who performs literary and artistic works.

II. Provisions concerning the protection of performers and producers of sound recordings and video recordings

The Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law")

Article 28. Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have obtained, pursuant to this Law, the right to exploit the copyright of others, shall not infringe the author's rights of authorship, alteration or integrity, or their right to remuneration.

Article 36. A performer shall, in relation to his performance, enjoy the right

- (1) to claim performership;
- (2) to protect the image inherent in his performance from distortion;
- (3) to authorize others to make live broadcasts;
- (4) to authorize others to make sound recordings and video recordings for commercial purposes, and to receive remuneration therefor.

Article 38. When producing a sound recording or video recording the producer shall conclude a contract with, and pay remuneration to, the performers.

Article 39. A producer of sound recordings or video recordings shall have the right to authorize others to reproduce and distribute such sound recordings or video recordings and the right to obtain remuneration therefor. The term of protection of such rights shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of the recording.

A producer of sound recordings and video recordings who is authorized to reproduce and distribute a sound recording or video recording shall also pay remuneration to the copyright owner and to the performer as prescribed by regulations.

Article 42. A radio station or television station shall, in respect of a program produced by it, enjoy the right ...

(3) to authorize others to reproduce and distribute the radio or television program, and to receive remuneration therefor.

The term of protection of the rights specified in the preceding paragraph shall be fifty years, expiring on December 31 of the fiftieth year after the first broadcasting of the program.

A producer of sound recordings or video recordings who is authorized to reproduce and distribute a radio or television program shall also pay remuneration to the copyright owner and to the performer as prescribed by regulations.

Article 45. Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances:

(7) broadcasting a live performance without the consent of the performer.

Article 46. Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances, and may, in addition, be subjected by a copyright administration department to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine:

(4) reproducing and publishing a sound recording or video recording of a performance without the consent of the performer.

(Moreover, limitations on rights provided under Article 22 of the Copyright Law shall apply to performers and producers of sound recordings and video recordings.)

Implementing Regulations

Article 44. No time limit shall be set on the term of protection in relation to the rights provided for in Article 36(1) and (2) of the Law.

In the case of the term of protection in relation to the right to remuneration which the performer enjoy by virtue of the second paragraph of Article 39 and the third paragraph of Article 42 of the Law, the first paragraph of Article 39 and the second paragraph of Article 42 of the Law shall apply.

Article 46. Performance by foreign performers taking place in the territory of China shall be protected by the Law.

ISRAEL

1. Contractual practices concerning ... the protection of performers in the field of audiovisual performances

In general parties are free to contract as they see fit taking due note, where relevant, of the provisions set out in the Performers' and Broadcasters' Rights Law, the Copyright Law and Ordinance and the Contracts Law.

2. Statistics

To the best of [our] knowledge no statistics are maintained by any governmental institution.

KYRGYZSTAN

Information with respect to the protection of performers in the field of audiovisual performances: On February 20, 1997, the Government of the Kyrgyz Republic approved "The Provisional Regulations on Copyright and Neighboring Rights." Performers of audiovisual works enjoy their rights in accordance with the Part VIII of the Regulations and on the basis of contracts regulate legal relations with authors and producers of audiovisual works.

Unfortunately, no applications for registration of such contracts have been filed so far with Kyrgyzpatent.

MEXICO

[The text of the relevant provisions of the Federal Law on Copyright
(published on December 24, 1996), included in the response:]

TITLE III

Transfer of Economic Rights

CHAPTER I

General Provisions

Article 30. The owner of the economic rights may freely, subject to the provisions of this Law, transfer his economic rights or grant exclusive or non-exclusive licenses for use.

Any transfer of economic rights shall be for consideration and temporary. In the absence of agreement on the amount of remuneration or the procedure for setting it, or on the time limits for the payment thereof, the competent courts shall decide.

Acts, agreements and contracts by which economic rights are transferred and licenses granted shall invariably be concluded in writing, failing which they shall be null and void as of right.

Article 31. Any transfer of economic rights shall provide for the grant to the author or to the owner of the economic rights, as the case may be, a proportional share in the proceeds from the exploitation concerned, or a predetermined, fixed amount of remuneration. That right shall be unrenounceable.

Article 32. The acts, agreements and contracts by which economic rights are transferred shall be entered in the Public Copyright Register in order to be binding on third parties.

Article 33. In the absence of any express provision, any transfer of economic rights shall be deemed to be for a term of five years. A term of more than 15 years may only be agreed upon in exceptional cases where dictated by the nature of the work or the scale of the required investment.

Article 34. Future production may only be the subject of a contract in the case of a specific work the characteristics of which have to be laid down in the said contract. The global transfer of future works shall be null and void, as shall any provisions whereby the author undertakes not to create any works.

Article 35. Any license affording exclusive rights shall be expressly granted as such and shall give the licensee, where not otherwise agreed, the right to exploit the work to the exclusion of any other person, and also the right to grant non-exclusive authorizations to third parties.

Article 36. The license affording exclusive rights shall oblige the licensee to take whatever action is necessary for the licensed exploitation to be effective, depending on the nature of the work and the customs and practices prevailing in the professional, industrial or commercial activity concerned.

Article 37. Acts, agreements and contracts concerning economic rights that are executed before a notary, public broker or any authenticating official and are entered in the Public Copyright Register, shall be considered properly executed.

Article 38. Copyright shall not be conditional on the ownership of the physical object in which the work is embodied. Unless expressly agreed otherwise, the disposal by the author or his successor in title of the material medium containing a work shall not constitute transfer to the acquirer of any of the economic rights in the said work.

Article 39. Authorization to broadcast a protected work by radio, television or any other similar medium shall not include the right to rebroadcast it or exploit it.

Article 40. The owners of authors' economic rights and neighboring rights may claim compensatory remuneration for any copying or reproduction done without their permission and not covered by any of the limitations provided for in Articles 148 and 151 of this Law.

Article 41. Economic rights may not be either attached or pledged, but the benefits and products derived from the exercise thereof may be so used.
[...]

CHAPTER IV

Stage Performance Contract

Article 61. Under a stage performance contract the author or owner of the economic rights, as the case may be, grants to a natural person or legal entity, known as the impresario, the right to perform a literary, musical, literary-musical, dramatic or dramatico-musical, work, a work of dance or a mimed or choreographic work in public against monetary compensation, while the impresario undertakes to effect the performance on the agreed conditions and in accordance with the provisions of this Law.

The contract shall specify whether or not the rights granted are exclusive, and where appropriate the conditions and characteristics of direction or performance.

Article 62. Where the period during which the work is to be performed to the public is not specified in the stage performance contract, it shall be understood to be one year.

Article 63. The impresario shall be under the following obligations:

- (i) to ensure public performance on the agreed conditions;
- (ii) to guarantee access to the performance free of charge to the author, the owner of the economic rights or their representatives;

(iii) to pay the agreed remuneration to the owner of the economic rights.

Article 64. Unless otherwise agreed, the stage performance contract signed between the author and the impresario shall authorize the latter to perform the work throughout the territory of the Mexican Republic.

Article 65. The provisions on publishing contracts for literary works shall apply to stage performance contracts in so far as they are not at variance with the provisions of this Chapter.

CHAPTER V

Broadcasting Contract

Article 66. Under a broadcasting contract the author or owner of the economic rights, as the case may be, authorizes a broadcasting organization to broadcast a work.

The provisions applicable to the broadcasts of such organizations shall apply as appropriate to those effected by cable, optic fiber, electromagnetic waves, satellite or any other comparable medium that serves for the remote communication to the public of protected works.

Article 67. The provisions on publishing contracts for literary works shall apply to broadcasting contracts in so far as they are not at variance with the provisions of this Chapter.

CHAPTER VI

Audiovisual Production Contract

Article 68. Under an audiovisual production contract, the authors or owners of the economic rights, as the case may be, grant the producer exclusive ownership of the economic rights of reproduction, distribution, communication to the public and subtitling of the audiovisual works, unless otherwise agreed. The foregoing shall not apply to musical works.

Article 69. Where an author's contribution is not completed for reasons of force majeure, the producer may use the part already completed, subject to respect for the rights of the said author in that part, including the right of anonymity, and without prejudice to any indemnification that might be appropriate.

Article 70. The effects of the production contract shall lapse as of right if the making of the audiovisual work does not start within the period specified by the parties or for reasons of force majeure.

Article 71. The audiovisual work shall be considered completed when the final version has been achieved in accordance with the agreement between the director or maker on the one hand and the producer on the other.

Article 72. The provisions on publishing contracts for literary works shall apply to audiovisual production contracts in so far as they are not at variance with the provisions of this Chapter.

CHAPTER VII

Advertising Contracts

Article 73. Advertising contracts are those whose purpose is the exploitation of literary or artistic works for promotional or identification purposes in advertising or commercial announcements in any medium of communication.

Article 74. Advertising or commercial announcements may be disseminated for a period not exceeding six months following the first communication. After that time limit communication shall be for payment for each additional period of six months, even if it is effected only for fractions of such a period, with a minimum payment of at least that originally contracted for. After three years have elapsed following the first communication, use shall require the permission of the authors of the work used and the owners of the neighboring rights therein.

Article 75. In the case of advertising in printed media, the contract shall specify the physical medium or media in which the work is to be reproduced and, in the case of pamphlets or media other than periodical publications, the number of copies constituting the print-run. There shall be an express agreement for every additional print-run.

Article 76. The provisions on publishing contracts for literary works or musical works and those on audiovisual production contracts shall apply to advertising contracts in so far as they are not at variance with the provisions of this Chapter.
[...]

TITLE IV

Protection of Copyright

[...]

CHAPTER III

Cinematographic and Audiovisual Works

Article 94. Audiovisual works means those expressed as a sequence of associated images, with or without incorporated sound, that are made perceptible by mechanical means and produce an impression of movement.

Article 95. Without prejudice to the rights of the authors of the works adapted for or included in it, the audiovisual work shall be protected as an original work.

Article 96. The owners of economic rights may use their contributions to the audiovisual work for exploitation in their own right, provided that the normal exploitation of the said work is not thereby prejudiced.

Article 97. The following are the authors of an audiovisual work:

- (i) the director or maker;
- (ii) the authors of the plot, adaptation, screenplay or dialogue;
- (iii) the authors of the musical compositions;
- (iv) the photographer;
- (v) the authors of cartoons and animated pictures.

Unless otherwise agreed, the producer shall be considered the owner of the economic rights in the whole work.

Article 98. The producer of the audiovisual work is the person, whether natural person or legal entity, who takes the initiative for the making of a work, coordinates it and assumes responsibility for it, or who sponsors it.

Article 99. Unless otherwise agreed, the contract concluded between the author or the owners of the economic rights, as the case may be, and the producer shall not imply unlimited, exclusive assignment to the latter of the economic rights in the audiovisual work.

Once the authors of owners of economic rights have undertaken to make their contributions to the making of the audiovisual work, they may not object to the reproduction, distribution, public performance, cable distribution, broadcasting, communication to the public or subtitling and dubbing of the texts of the said work.

Without prejudice to the rights of the authors, the producer may perform all such acts as are necessary for the exploitation of the audiovisual work.

Article 100. The provisions contained in this Chapter shall apply as appropriate to broadcast works.
[...]

TITLE V

Neighboring Rights

CHAPTER I

General Provisions

Article 115. The protection provided for in this Title shall leave intact and in no way affect the protection of the copyright in literary and artistic works. Consequently, none of the provisions of this Title may be interpreted in a manner that detracts from that protection.

CHAPTER II

Performers

Article 116. Performer means the actor, narrator, speaker, singer, musician, dancer or any other person who performs a literary or artistic work or an expression of folklore or who engages in a similar activity, even though he may have no preexisting text to guide his performance. Extras and understudies are not included in this definition.

Article 117. The performer has the right to have his name associated with his performances, and also to object to any distortion or mutilation of his performance or other adverse act in relation to it that might damage his prestige or reputation.

Article 118. Performers have the right to object to:

- (i) the communication of their performances to the public;
- (ii) the fixing of their performances in a physical medium;
- (iii) the reproduction of such a fixation of their performances.

The above rights shall be considered exhausted once the performer has authorized the incorporation of his performance in a visual, sound or audiovisual fixation.

Article 119. Performers who collectively participate in one and the same performance, like musical groups, choirs, orchestras or ballet or theater companies, shall designate a representative from among themselves for the exercise of the right of opposition referred to in the foregoing Article.

In the absence of such designation, it shall be presumed that the leader of the group or company is acting as representative.

Article 120. Performance contracts shall specify the times, periods, remuneration and other terms and procedures associated with the fixing, reproduction and communication to the public of the said performance.

Article 121. Unless otherwise agreed, the conclusion of a contract between a performer and a producer of audiovisual works with a view to the production of an audiovisual work shall include the right to fix and reproduce the performer's performances and communicate them to the public. The foregoing does not include the right to use the sounds and the images fixed in the audiovisual work separately, unless agreed otherwise.

Article 122. The duration of the protection granted to performers shall be 50 years counted from:

- (i) the first fixing of the performance of a phonogram;
- (ii) the first performance of works not recorded on phonograms;
- (iii) the first transmission by radio, television or other medium.

[...]

CHAPTER IV

Producers of Phonograms

Article 129. A phonogram is any fixation exclusively of the sounds of a performance or other sounds, or digital representations thereof.

Article 130. A producer of phonograms is a person, whether natural person or legal entity, who first fixes the sounds of a performance or other sounds, or a digital representation thereof, and is responsible for the manufacture, production and publication of phonograms.

Article 131. Producers of phonograms have the right to authorize or prohibit:

- (i) the direct or indirect reproduction of all or part of their phonograms, and also the direct or indirect exploitation thereof;
- (ii) the importation of copies of phonograms made without their authorization;
- (iii) the distribution to the public of the original and every copy of the phonogram by sale or other means, including distribution by means of signals or broadcasts;
- (iv) the adaptation or transformation of the phonogram;
- (v) the commercial rental of the original phonogram or a copy thereof, even after it has been sold, provided that the authors or owners of the economic rights have not reserved it for themselves.

Article 132. Phonograms shall display the circled P symbol accompanied by a mention of the year of first publication.

Failure to meet the above requirements shall not cause the producer of the phonogram to lose his rights, but makes him liable to the sanctions provided for by law.

Producers of phonograms shall notify collective administration organizations of the particulars on the labels of their products and on the master copies that are exported, with a mention of the country in each case.

Article 133. Once the phonogram has been lawfully brought into any commercial circuit, neither the owner of the economic rights nor the performers nor the phonogram producers may object to its direct communication to the public, provided that the persons using it for profit-making purposes make the corresponding payment to them.

Article 134. The protection referred to in this Chapter shall be for 50 years following the first fixation of the sounds on the phonogram.

CHAPTER V

Producers of Videograms

Article 135. A videogram shall be taken to mean the fixation of related images, with or without incorporated sound, that give an impression of movement, or a digital representation

of such images, taken from an audiovisual work or the performance of another work or of an expression of folklore, and also other images of the same kind, with or without sound.

Article 136. The producer of videograms is the person, whether natural person or legal entity, who first fixes related images, with or without incorporated sound, that give an impression of movement, or a digital representation of such images, whether constituting or not constituting an audiovisual work.

Article 137. The producer shall enjoy with respect to his videograms the right to authorize or prohibit their reproduction, distribution and communication to the public.

Article 138. The term of the rights provided for in this Chapter shall be 50 years from the first fixing of the images on the videogram.

CHAPTER VI

Broadcasting Organizations

Article 139. For the purposes of this Law, an entity holding a concession or license that is capable of emitting sound or visual signals or both that may be received by a public of more than one person shall be considered a broadcasting organization.

Article 140. Broadcasting or transmission means the communication of works, sounds or sounds and images by means of electromagnetic waves, cable, optic fiber or other comparable media. The concept of broadcasting likewise includes the sending of signals from a terrestrial station towards a satellite for subsequent broadcasting.

Article 141. Retransmission is the simultaneous transmission by one broadcasting organization of a broadcast from another such organization.

Article 142. An ephemeral recording is a recording made by a broadcasting organization where, for technical or scheduling reasons, and for the purposes of a single subsequent broadcast, it has to record or fix, in its own studios, the image, sound or both of musical selections of parts thereof, working papers, lectures or scientific studies, literary, dramatic, choreographic and dramatico-musical works, computer programs and, generally, any work suitable for broadcasting.

Article 143. Signals may be:

- (i) in terms of their accessibility to the public:
 - (a) coded, enciphered or encrypted: those that have been altered with a view to being received and decrypted solely and exclusively by those who have previously acquired that right from the broadcasting organization that emitted them;

- (b) free: those that may be received by means of any apparatus suitable for receiving the signals;
- (ii) in terms of their time of emission:
 - (a) direct: those that carry live programs or events;
 - (b) deferred: those that carry prerecorded programs or events.

Article 144. Broadcasting organizations have the right to authorize or prohibit the following in relation to their broadcasts:

- (i) retransmission;
- (ii) deferred transmission;
- (iii) simultaneous or deferred distribution by cable or any other system;
- (iv) fixation in a material medium;
- (v) reproduction of fixations;
- (vi) communication to the public by any means and in any form for direct profit-making purposes.

Article 145. That person shall be liable for damages and prejudice who, without the permission of the lawful distributor of the signal:

- (i) decrypts a coded program-carrying satellite signal;
- (ii) receives and distributes a coded program-carrying satellite signal that has been unlawfully decrypted;
- (iii) participates or assists in the manufacture, importation, sale or rental of, or in the performance of any act serving to supply, a device or system that substantially aids in the decrypting of a coded program-carrying satellite signal.

Article 146. The rights of broadcasting organizations referred to in this Chapter shall have a term of 25 years as from the first original broadcasting or transmission of the program.

NORWAY

According to the Norwegian copyright act (12 May 1961 No. 2), section 42, a performer enjoys a right to authorize the fixation of his/her performance. The performer further enjoys a right to authorize reproduction of copies of such a fixation, including audiovisual fixations, as well as a distribution right. The distribution right is exhausted after the first sale of a copy of the audiovisual fixation within the EEA-area. This means that there is regional exhaustion of the distribution right regarding copies of audiovisual fixations of performances. However, there is no exhaustion of the rental right. When a performer has consented to the incorporation of his performance in an audiovisual fixation, there is a statutory presumption for such a consent to include the transfer of his rental right.

We do not possess any relevant information on the contractual practices between performers and e.g. producers of films... According to our legislative tradition, we do not have

statutory regulations of the transfer of rights from employee to employer in such situations. These questions are governed by traditional contractual principles...

As regards statistics, we are not quite sure of the nature of information requested. To our knowledge, there are no official, national statistics on e.g. remuneration levels, contractual practices or other information on the exercise of rights in audiovisual performances.

REPUBLIC OF MOLDOVA

The rights of performers are protected by the Law on Copyright and Neighboring Rights which is effective in the Republic of Moldova from the day of its publication (March 2, 1995). Under Article 27, a performer has the right to use his performance in any form, including the right to receive remuneration for every kind of use of the performance.

We shall touch upon the question dealing with the protection of the performance included into the audiovisual work. In the narrow meaning of the word, an audiovisual work (Art.12, Law of the RM) means film. The rights of the role performers (economic rights) are not protected. In the broad meaning of the word, an audiovisual work means any “work which consists of a number of interconnected images (with sound accompaniment or without it) creating an impression of movement, and which can be perceived by means of hearing or sight” (Art.3 of the Law). Those are videograms and TV programs which contain, as a rule, a great number of performances.

The legislation of the Republic of Moldova protects the performances of the works of “small forms,” including those fixed in the material carriers of audio and video. Article 3 of the Decree of the Parliament of the Republic of Moldova, entitled “On Entering into force of the Law on Copyright and Neighboring Rights” (No. 294-XIII of November 21, 1994), specifies the application procedure for Article 33 of the Law (validity term of the neighboring rights): “The rights of the authors of the earlier created audiovisual works, performers whose performances were fixed in phonograms as well as producers of phonograms and broadcasting organizations shall be protected during the period of time left till the expiration of 50 years computed from the day of their first lawful publication or till the expiration of 50 years computed from the day of their creation if they have not been published.”

The Decree No. 713 of the Government of the Republic of Moldova, dated October 23, 1995, entitled “On Authors’ Remuneration for the Use of the Copyright and Neighboring Rights in the Republic of Moldova” sets up the minimum tariff rates of authors’ remuneration for the use of phonograms and videograms. Due to the fact that before contracts did not envisage the payment of authors’ fee to the performers for the use of the fixed works, the following system of the distribution of royalties, established by the Law (Art. 20, par. 4) is applied: authors-40%, performers-30% and producers of phonograms (videograms)-30%. The absolute majority of the producers of new phonograms and videograms confirm, when registering new fixations in the Agency [the State Copyright Agency of the Republic of Moldova], such approach to the distribution of royalties for the use of the copyright and neighboring rights.

On TV, one minute of the broadcasting time is recognized as a measurement unit. Unfortunately, the quality of the program is not yet taken into consideration when determining the amount of the authors' remuneration. The Decree of the Government established the minimum tariff rates of the authors' fee for the use of phonograms (videograms) during 60 minutes—two minimum wages earned in the Republic as of the day of the use (at present time it makes 36 leus or 8 dollars).

The Agency is authorized for the collective management of the economic rights. It has concluded agreements with authors and performers (over 1 200 people) and grant licenses for the use of the fixed performances which are registered in the Agency. The problem of distribution of royalties for the performers, members of performing collective bodies, turned out to be the most difficult. Besides the individual contracts with every performer, the Agency signed contracts with 17 professional performing collective bodies. The collective bodies appointed their representatives, and the Agency opened them accounts in saving banks and transfers to these accounts the remuneration due to the said bodies. The representatives of the collective bodies draft payrolls, receive from the bank and pay royalties, and return the payrolls to the accounting service of the Agency. On one hand, it is a form to control that the royalties do reach the performers, and, on the other, the Agency is entitled, if necessary, to issue certificates to the social security authorities to determine the amount of pensions and other benefits.

The brief experience in payment of ... remuneration to performers stimulated the performers of the "big forms" works to demand the revision of their status in respect of the use of the fixed performances. We think that the International Bureau will also take these opinions into consideration when preparing proposals concerning modernization of the performers' rights protection system. In this context the phrase "fixed in phonograms" in Article 7 of the WIPO Performances and Phonograms Treaty would be closer to the aspirations of the performers in the wording "fixed in any means." The same applies to Art. 8, par.1; Art. 9, par.1 and Art. 10 of the above-said WIPO Treaty.

SWITZERLAND

The Swiss Law on Copyright and Neighboring Rights (LDA) entered into force on July 1, 1993. In the field of neighboring rights, it protects performers, producers of phonograms and videograms and broadcasting organizations in both the audiovisual and the audio field. As these rights were introduced quite recently, their implementation is still in its early stages, and we do not have any statistics.

URUGUAY

Protection of Performers in Relation to Audiovisual Performances

Contractual practices recognize this protection in the form of current contracts with public and cable television.

There is no express provision from the legal point of view, but in fact, thanks to some favorable case law in cassation appeals, protection is also recognized in the hotel trade, derived from the general principles of law enshrined in the Copyright Law and the Civil and Procedural Law.

In practice, a number of users who make use of public or cable television, even without a contract, provide protection (such as restaurants, bars, shopping centers, etc.).

Performers involved in audiovisual performances receive from their collecting society, the Uruguayan Performers' Society, royalties that are collected and distributed according to the system approved by that body. Distribution takes place only among national performers where type B contracts exist with associated societies, which do not provide for cash refunds between them.

There are no official statistics.

[End of Annex and of document]