

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

**COMMITTEE OF EXPERTS
ON A PROTOCOL
CONCERNING AUDIOVISUAL PERFORMANCES**

Geneva, September 15, 16 and 19, 1997

REPORT

adopted by the Committee

I. INTRODUCTION

1. In pursuance of the decision taken by the Governing Bodies of the World Intellectual Property Organization (WIPO) and the Unions administered by WIPO at the thirtieth Series of Meetings in Geneva, on March 20 and 21, 1997 (see document AB/XXX/4, items 3 and 4), the Director General of WIPO convened a Committee of Experts on a Protocol concerning Audiovisual Performances (hereinafter referred to as "the Committee") at the headquarters of WIPO, in Geneva, on September 15, 16 and 19, 1997.

2. Experts of the following 91 States and one intergovernmental organization, members of the Committee, attended the meeting: Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, Eritrea, Estonia, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kazakstan, Kenya, Kyrgyzstan,

Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, and the Commission of the European Communities.

3. Representatives of the following five intergovernmental organizations attended the meeting in observer capacity: International Labour Organization (ILO), International Telecommunication Union (ITU), Agency for Cultural and Technical Cooperation (AGECOP), Organization of African Unity (OAU), and World Trade Organization (WTO).

4. Representatives of the following 38 non-governmental organizations attended the meeting in observer capacity: Agence pour la protection des programmes (APP), American Bar Association (ABA), American Federation of Television and Radio Artists (AFTRA), American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), Association of European Performers' Organisations (AEPO), Association for the International Collective Management of Audiovisual Works (AGICOA), Caribbean Broadcasting Union (CBU), Comité "Actores, Intérpretes" (CSAI), Conseil francophone de la chanson (CFC), Copyright Research and Information Center (CRIC), European Broadcasting Union (EBU), European Project-Digital Video Broadcasting (DVB), Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE), Ibero-Latin-American Federation of Performers (FILAIE), Information Industry Association (IIA), Information Technology Association of America (ITAA), Interamerican Copyright Institute (IIDA), International Affiliation of Writers Guilds (IAWG), International Alliance of Orchestra Associations (IAOA), International Association of Broadcasting (IAB), International Bar Association (IBA), International Confederation of Societies of Authors and Composers (CISAC), International Council of Scientific Unions (ICSU), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Intellectual Property Alliance (IIPA), International Publishers Association (IPA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Performing Arts Employers Associations League Europe (PEARLE), Union of Industrial and Employers' Confederations of Europe (UNICE), Union of National Radio and Television Organizations of Africa (URTNA) and World Federation of Music Schools (WFMS).

5. The list of participants is attached to this report.

II. OPENING OF THE MEETING

6. A representative of the International Bureau of WIPO welcomed the participants and opened the meeting.

III. ELECTION OF OFFICERS

7. Mr. Jukka Liedes (Finland) was unanimously elected Chairman, and Mrs. Hilda Retondo (Argentina) and Mr. Shen Rengan (China) were unanimously elected Vice-Chairmen of the Committee.

IV. EXAMINATION OF QUESTIONS RELATED TO A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES

8. Discussions were based on the memoranda prepared by the International Bureau of WIPO, in accordance with the decision mentioned in paragraph 1, entitled:

- Existing national and regional legislation concerning audiovisual performances (document AP/CE/I/2); and
- Information received from Member States of WIPO and from the European Community concerning audiovisual performances (documents AP/CE/I/3 and 3 Add.).

9. The Secretariat noted the interventions made and recorded on tape. The statements made during the debate are reflected in the Annex to this report.*

10. The Chairman summarized the general discussion in the following way: The discussion had been very useful. Many delegations had expressed regret that protection of performers with respect to audiovisual performances was not included in the WIPO Performances and Phonograms Treaty (WPPT). All delegations had reaffirmed that the work on a Protocol addressing this issue should continue in the framework of WIPO. Specific aspects that delegations had mentioned were, in particular: the possible scope of the protection, the specific rights to be granted to performers, the aspect of moral as well as of economic rights, the objective of obtaining protection for performers as much in parallel as possible with the protection of authors, the desire to do away with discrimination of audiovisual performers in respect of their legal protection. On the other hand, it had also been pointed out that the Berne Convention contained specific rules on cinematographic works. The need for a flexible treaty had been underlined, namely that it should be adapted to divergent concepts in national legislations and to the realities, i.e., contractual practices, collective bargaining and collective management of rights. Further elements mentioned had been the principle of national

* The Annex will be sent separately for written approval and distributed later.

treatment and the issues of transferability of rights and applicable law. A pragmatic approach had been felt suitable. To take the WPPT as a starting point, would simplify the further debate. The Protocol should be of a complementary nature, in relation to the WPPT. The appropriate maxim for the forthcoming negotiations should be: compromise *and* commitment.

11. The Chairman noted that the memoranda prepared by the International Bureau for the current meeting had been useful. As far as amendments or additions to the memoranda requested by some delegations were concerned, it was agreed that the Secretariat would duly reflect their contents in the annex to this report mentioned in paragraph 9.

V. FUTURE WORK

12. The Committee adopted the following decision:

(i) the second session of the Committee should take place in the period of May-June 1998, but not later than during the week starting June 8, 1998; it is recommended that the Governing Bodies of WIPO take a decision about the dates of the second session during their September-October 1997 series of meetings;

(ii) the International Bureau should invite the Governments of WIPO Member States and the European Community to submit by January 15, 1998, proposals, preferably in treaty language, concerning a protocol to the WIPO Performances and Phonograms Treaty on audiovisual performances;

(iii) the International Bureau should distribute the proposals, together with comparative tables, if appropriate, by the end of February 1998, to those invited to the second session of the Committee who should be the same as those invited to the first session;

(iv) regional consultation meetings should be organized by WIPO in consultation with the representatives of the regional groups in March-April 1998; it is recommended that the Governing Bodies of WIPO take a decision about the financing of the participation of the representatives of the regional groups, during the September-October 1997 series of meetings of the Governing Bodies.

13. The Delegation of Côte d'Ivoire, on behalf of the African Group, the Delegation of Ecuador, on behalf of the Group of Latin American and the Caribbean countries, and the Delegation of Singapore, on behalf of the Asian Group, and supported by the Delegation of China, underlined the need for financial support by WIPO for the participation of representatives of countries from these regional groups in the regional consultation meetings. Those Delegations referred to the way in which participation in the regional consultation meetings, that had been held in the autumn of 1996 in preparation of the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions (December 1996), had been financially supported by WIPO, and indicated that the number of participants financed for each of those regions should be similar.

14. The Delegation of the Russian Federation requested that a consultation meeting be organized by WIPO also for those Member States of WIPO which are members of the Commonwealth of Independent States and that WIPO lend its financial support to participation of representatives of those States, except the Russian Federation.

VI. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

15. The present report was unanimously adopted by the Committee.

16. The Chairman closed the meeting.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. DÉLÉGATIONS MEMBRES/MEMBER DELEGATIONS

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

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Coenraad Johannes VISSER, Professor of Law, Department of Mercantile Law, University of South Africa, Pretoria

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Anissa BOUABDALLAH (Mme), conseiller, Mission permanente, Genève

ALLEMAGNE/GERMANY

Volker SCHÖFISCH, Head of Section, Federal Ministry of Justice, Bonn

Jörg-Eckhard DÖRDELMANN, Head of Section, Supervision of Collecting Societies, German Patent Office, Munich

ANGOLA

Mário de AZEVEDO CONSTANTINO, deuxième secrétaire, Mission permanente, Genève

Damião João António PINTO BAPTISTA, directeur, Direction nationale des spectacles et du droit d'auteur, Ministère de la culture, Luanda

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ARMÉNIE/ARMENIA

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AUSTRALIE/AUSTRALIA

Christopher Colin CRESWELL, Assistant Secretary, Intellectual Property Branch, Attorney-General's Department, Canberra

AUTRICHE/AUSTRIA

Günter AUER, Director, Federal Ministry of Justice, Vienna

AZERBAÏDJAN/AZERBAIJAN

Kiamran Soltan IMANOV, Chairman, Copyright Agency of the Azerbaijani Republic, Baku

BÉLARUS/BELARUS

Stanislau SUDARIKAU, Chairman, Committee on Copyright and Neighboring Rights, Ministry of Justice, Minsk

BELGIQUE/BELGIUM

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BOLIVIE/BOLIVIA

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BRÉSIL/BRAZIL

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SLOVAQUIE/SLOVAKIA

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SOUDAN/SUDAN

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TUNISIE/TUNISIA

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URUGUAY

Carlos TEYSERA ROUCO, Presidente, Consejo de Derecho de Autor, Ministerio de
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Jörg REINBOTHE, Head of Unit, Directorate General XV Internal Market and Financial
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Jonathon Inigo STOODLEY, Counselor, Permanent Delegation, Geneva

Egidio GUERRERI, Administrator, Directorate General XV Internal Market and Financial
Services, Brussels

Keith MELLOR, Principal Administrator, General Secretariat, Council of the European Union,
Brussels

Günter WILMS, Administrator, Directorate General XIII Telecommunications and
Information Market, Luxembourg

Paul-Victor PRESTEL, Expert, Permanent Mission, Geneva

II. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/INTERNATIONAL
LABOUR ORGANIZATION (ILO)

Linda WIRTH-DOMINICÉ (Ms.), Specialist, Media, Culture and Graphical Industries,
Geneva

UNION INTERNATIONALE DES TÉLÉCOMMUNICATIONS (UIT)/INTERNATIONAL
TELECOMMUNICATION UNION (ITU)

Arnaud GUILLOT, Legal Officer, Geneva

AGENCE DE COOPÉRATION CULTURELLE ET TECHNIQUE (ACCT)/AGENCY FOR CULTURAL AND TECHNICAL COOPERATION (AGECOP)

Xavier MICHEL, directeur du Bureau de liaison, Genève

Yolande PASEA (Mme), responsable de Projets de coopération, Bureau de liaison, Genève

ORGANISATION DE L'UNITÉ AFRICAINE (OUA)/ORGANIZATION OF AFRICAN UNITY (OAU)

Venant WEGE-NZOMWITA, Deputy Permanent Observer, Geneva

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Hannu WAGER, Counselor, Geneva

III. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Agence pour la protection des programmes (APP)

Stéphane GUERRY (conseiller, INTERDEPOSIT), Genève

American Bar Association (ABA)

Ralph OMAN (Chairman, International Copyright Committee, Intellectual Property Law Section), Washington, D.C.

Association américaine de marketing cinématographique (AFMA)/American Film Marketing Association (AFMA)

Lawrence SAFIR (Vice-Chairman), Harrow

Lorin BRENNAN (Legal Counsel), Los Angeles

Association de gestion internationale collective des oeuvres audiovisuelles (AGICOA)/Association for the International Collective Management of Audiovisual Works (AGICOA)

Florence BERG (Mlle) (juriste), Genève

Association des organisations européennes d'artistes interprètes (AEPO)/Association of European Performers' Organisations (AEPO)

Xavier BLANC (secrétaire général), Bruxelles
Raimo VIKSTRÖM (President), Helsinki

Association des télévisions commerciales européennes (ACT)/Association of Commercial Television in Europe (ACT)

Tom RIVERS (Legal Adviser), London

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB)

Andrés LERENA (Presidente, Comité Permanente de Derechos de Autor), Montevideo
Martín MASSINI EZCURRA (Director Ejecutivo, Asociación de Teleradiodifusoras Argentinas (ATA)), Buenos Aires

Association internationale du barreau (IBA)/International Bar Association (IBA)

Yves SIEGRIST (membre), Genève

Comité "Actores, Intérpretes" (CSAI)

Juan Luis SANZ POLANCO (Presidente (AISGE)), Madrid
Julian GRIMAU MUÑOZ (Director General (AISGE)), Madrid
Abel MARTÍN VILLAREJO (Asesor Jurídico, Abogado), Madrid

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)

Antonio DELGADO PORRAS (Presidente, Comisión Jurídica y de Legislación), Madrid
Ralph OMAN (Advisor Law Section), Washington, D.C.

Conseil francophone de la chanson (CFC)

Serge PROVENÇAL (directeur général), Montréal

Conseil international des unions scientifiques (CIUS)/International Council of Scientific Unions (ICSU)

Jérôme H. REICHMAN (Professor of Law, School of Law, Vanderbilt University), Nashville

Copyright Research and Information Center (CRIC)

Shinji MATSUMOTO (Executive Director (GEIDANKYO), Member of the International Cooperation Committee, Japan Council of Performers' Organization), Tokyo
Kotau FURUKAWA (Secretary General, Japan Actors Union), Tokyo

Kaori NAKAYAMA (Ms.) (Interpreter (GEIDANKYO), Japan Council of Performers' Organization),
Tokyo
Yukifusa OYAMA (Member, International Cooperation Committee), Tokyo

European Project-Digital Video Broadcasting (DVB)

Carter ELTZROTH (Chairman, Intellectual Property Rights Module), Geneva

Fédération américaine des artistes de télévision et de radio (AFTRA)/American Federation of
Television and Radio Artists (AFTRA)

Shelby SCOTT (Ms.) (President), New York

Bruce A. YORK (National Executive Director), New York

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ)/Ibero-Latin-
American Federation of Performers (FILAIÉ)

Luis COBOS PAVON (Presidente), Madrid

Miguel PÉREZ SOLÍS (Asesor Jurídico), Madrid

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of
the Phonographic Industry (IFPI)

Lewis FLACKS (Director, Legal Affairs), London

Olivia REGNIER (Ms.) (Legal Adviser, European Office), Brussels

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)

Katherine SAND (Ms.) (General Secretary), London

Sallie WEAVER (Ms.) (Executive Administrator, Screen Actors Guild), New York

Tomas BOLME (President), London

Bjørn HØBERG-PETERSEN (Legal Adviser, Danish Actors' Association), Copenhagen

Xavier TIMMEL (Syndicat français des artistes-interprètes (SFA)), Paris

Liv BJØRGUM (Mrs.) (Vice-President (FIA); President, Norsk Balletsforbund), Oslo

Fédération internationale des associations de distributeurs de films (FIAD)/International
Federation of Associations of Film Distributors (FIAD)

Gilbert GRÉGOIRE (président), Paris

Fédération internationale des associations de producteurs de films (FIAPF)/International
Federation of Film Producers Associations (FIAPF)

André CHAUBEAU (directeur général), Paris

Valérie LEPINE-KARNIK (Mme) (adjoine au directeur général), Paris

Alexandra SILVESTRO (Ms.) (Director, Legal Affairs, Time Warner Europe), Brussels

David SWEENEY (General Counsel), Brussels

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)

John MORTON (President), Longfield
Shinji MATSUMOTO (Vice-President; Executive Director (GEIDANKYO)), Tokyo
Jean VINCENT (secrétaire général), Paris
Gerardo JUARA (Member, SADEM), Buenos Aires
Martin JAIME (Member, SADEM), Buenos Aires

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO)

Tarja KOSKINEN-OLSSON (Mrs.) (Chairman), Helsinki

Fédération mondiale des écoles de musique (FMEM)/World Federation of Music Schools (WFMS)

Bernard GILLER (président), Genève
Nicole GUY (Mme) (secrétaire général), Genève

Groupement européen représentant les organismes de gestion collective des droits des artistes interprètes ou exécutants (ARTIS GEIE)

Luis COBOS (President), Madrid
François PARROT (secrétaire général), Paris
Isabelle PROST (Mme) (représentante permanente), Bruxelles
Pierre NOGUIER (directeur juridique), Paris

Information Industry Association (IIA)

Daniel DUNCAN (Vice President, Government relations), Washington, D.C.

Information Technology Association of America (ITAA)

Marc PEARL (General Counsel, Vice-President), Arlington

Institut interaméricain de droit d'auteur (IIDA)/Interamerican Copyright Institute (IIDA)

Ricardo ANTEQUERA PARILLI (Secretario General), Caracas

Institut Max-Planck de droit étranger et international en matière de brevets, de droit d'auteur et de la concurrence (MPI)/Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI)

Gisbert HOHAGEN (Member), Munich

International Affiliation of Writers Guilds (IAWG)

Owen John MORGAN (Solicitor, Department of Commercial Law, University of Auckland), Auckland

International Alliance of Orchestra Associations (IAOA)

Anne-Marie BALET (Mme) (Union des théâtres suisses (UTS); secrétaire générale de l'Union des théâtres romands), Lausanne

International Intellectual Property Alliance (IIPA)

Fritz ATTAWAY (Member), Washington, D.C.

Performing Arts Employers Associations League Europe (PEARLE)

Anne-Marie BALET (Mme) (membre), Lausanne

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU)

Mitsuo MORIYA (Tokyo Broadcasting System), Tokyo

Hisashi HUYGA (Tokyo Broadcasting System), Tokyo

Tatsuro ITO (Copyright Management Office, Fuji Television Network Inc.), Tokyo

Satoko IMAGAWA (Mrs.) (Copyright Management Office, Fuji Television Network Inc.),
Tokyo

Hideo TAKAHASHI (Associate Director, Contract and Copyright Department, TV Asahi),
Tokyo

Yasuyuki MATSUMURA (Copyright and Contract Control Division, NAB Japan)

Honoo TAJIMA (Deputy Director, Program Code and Copyright Division, National
Association of Commercial Broadcasters in Japan), Tokyo

Union des confédérations de l'industrie et des employeurs d'Europe (UNICE)/Union of
Industrial and Employers' Confederations of Europe (UNICE)

Bente WALDSTRÖM (Mrs.) (Corporate Counsel), Billund

Union des radiodiffusions des Caraïbes (CBU)/Caribbean Broadcasting Union (CBU)

Victor Anthony FERNANDES (President), St. Michael

Patrick COZIER (Secretary General), St. Michael

Pat CHELTENHAM (Legal Advisor), Bridgetown

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National
Radio and Television Organizations of Africa (URTNA)

Madjiguène DIOUF-MBENGUE (Mme) (conseiller juridique), Dakar

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU)

Maira BURNETT (Ms.) (Legal Adviser, Department of Legal Affairs), Geneva

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Joseph Alexis KOUTCHOUMOW (secrétaire général), Genève

IV. BUREAU INTERNATIONAL DE
L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Arpad BOGSCH, directeur général/Director General

Mihály FICSOR, sous-directeur général/Assistant Director General

Kurt KEMPER, directeur-conseiller/Director-Advisor

Jørgen BLOMQVIST, chef, Section du droit d'auteur (législations nationales)/Head,
Copyright (National Legislation) Section

Patrick MASOUYÉ, chef, Section du droit d'auteur (projets spéciaux et planification)/Head,
Copyright (Special Projects and Planning) Section

Boris KOKIN, juriste principal, Section du droit d'auteur (législations nationales)/Senior Legal
Officer, Copyright (National Legislation) Section

Christine HUBLIN (Mlle), juriste, Section du droit d'auteur (législations nationales)/Legal
Officer, Copyright (National Legislation) Section

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