

WIPO



SCCR/1/5

ORIGINAL: English

DATE: October 26, 1998

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

First Session

Geneva, November 2 to 10, 1998

AGENDA ITEM 5: PROTECTION OF AUDIOVISUAL PERFORMANCES

REPORT OF THE REGIONAL CONSULTATION MEETING FOR ASIA AND THE
PACIFIC, HELD IN SHANGHAI, FROM OCTOBER 14 TO 16, 1998

Document prepared by the International Bureau

**REPORT OF THE WIPO REGIONAL CONSULTATION MEETING FOR ASIA
AND THE PACIFIC CONCERNING A PROTOCOL ON
AUDIOVISUAL PERFORMANCES AND RELATED ISSUES,
SHANGHAI (OCTOBER 14 TO 16, 1998)***

1. The WIPO Regional Consultation Meeting for Asia and the Pacific concerning a Protocol on Audiovisual Performances and Related Issues was held in Shanghai, People's Republic of China, from October 14 to 16, 1998.
2. The following countries participated in the Meeting: Bangladesh, Brunei Darussalam, Fiji, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Republic of Korea, Singapore, Sri Lanka, Thailand and the People's Republic of China.
3. Mr. S. Tiwari from Singapore was elected as the Chairman of the Meeting. Mr. Zheng Cheng-si from the People's Republic of China and Mr. Asaduzzaman Bhuiyan from Bangladesh were elected as Vice-Chairmen.
4. The discussion was based on the WIPO documents SCCR/1/2 (Organizational and Procedural Matters and Overview of Substantive Issues), AP/CE/2/7 (Comparative Table of the Proposals received from WIPO Member States and the European Community), SCCR/1/4 (Protection of Audiovisual Performances—Submissions received from Member States of WIPO).

PROTECTION OF AUDIOVISUAL PERFORMANCES

5. Three points were agreed upon as an overview to the discussions. First, it was felt that the special industry practices in the film industries in the developing countries may differ. Second, these countries needed to further develop the administration of copyright and related rights. Third, it was necessary to have a properly developed collective administration system in the countries to enable performers to benefit from the new rights.
6. The Meeting considered the relevant documents listed above. In this connection, the Meeting also studied a new proposal by Japan, a revised proposal by the United States of America and a general summary (provided by the WIPO representative) of the amended proposal of the GRULAC.
7. Representatives from the United States and Japan made a presentation of their proposals; the European Community drew attention to the salient points of its existing proposal. Australia offered certain clarifications to enable a better understanding of the various proposals.

* This report was submitted to the International Bureau on behalf of the States mentioned in paragraph 2.

Definitions

8. The Meeting exchanged views on the desirability or otherwise of having a specific exclusion of certain categories of performers or to follow the formulation in Article 2 of the WPPT and leave it to national legislation to provide the necessary exclusions based on the criterion of creativity. In this connection, views were also expressed whether the amended suggestion of the United States was ambiguous. The Meeting agreed to study the issue further.

Beneficiaries of protection

9. The Meeting generally felt that the protection granted to performers under the Protocol should be restricted to nationals of Contracting Parties to the instrument.

National Treatment

10. There was a useful discussion on the question of national treatment and the possible approaches. It was felt that the issue also tied up with the substantive provisions. This being the case, the Meeting decided to defer the question, pending further development of the substantive provisions of the Protocol.

Moral Rights of Performers

11. There was an extensive discussion of the issue. The Meeting agreed that moral rights needed to be qualified to allow for development in technology and to facilitate commercial exploitation of films by producers.

12. Misgivings were expressed about the use of the word “seriously” in the revised Article 5 of the US Proposal. The Meeting agreed to discuss the question of the scope of the qualification further domestically before finalizing its position.

Economic Rights of Performers in their Unfixed Performances and in relation to Fixed Performances (Right of Reproduction, Right of Distribution and Right of Making Available)

13. The Meeting agreed that the principles adopted in the WIPO Performances and Phonograms Treaty, including those incorporated in the Agreed Statements reproduced in the footnotes to the WPPT, should be followed in relation to these rights.

Right of Rental

14. The Meeting felt that a case had not been made out, at this stage, for a right of rental for audiovisual performances. However, the Meeting remained open to further consideration of the issue.

Right of Broadcasting and Communication to the Public

15. The Meeting explored the various options to deal with the issue: (a) not to have such a right in view of the fact that the Berne Convention had provided this right to authors of cinematographic works (which would generally be exercised by producers) and as providing them such a right would give an even stronger protection than that provided to authors; (b) to follow Article 15 of the WPPT; or (c) to follow Article 10 of the revised US proposal. In light of the flexibility provided under Article 15(3) of the WPPT, the Meeting felt that this would be a better option to follow.

Transfer of Rights/Contractual Arrangements

16. The Meeting considered the differing practice in the film industry of the larger film-producing countries. The Meeting considered Article 9 of the Japanese proposal, Article 11 of the US proposal and a suggestion whether the issue could be dealt with by reference to Article 14bis of the Berne Convention. Members were not entirely clear as to the operation of the Japanese proposal. It was agreed to study the issue further in the light of discussions that will take place in Geneva in November 98.

Limitations and Exceptions, Obligations concerning Technological Measures, Obligations concerning Rights Management Information, Provisions on Enforcement of Rights and Formalities

17. The Meeting agreed to follow the WPPT approach in relation to these areas.

Application in Time

18. The difficulties of retroactive application were referred to. Some members were not in favor of applying Article 18 of the Berne Convention. The Meeting felt that the issue should be looked into further.

Reservations

19. It was felt that the position on reservations was best considered after the substantive provisions of the Protocol had been agreed upon.

Entry into Force

20. The Meeting felt that the number of instruments of ratification or accession required for entry into force of the Protocol should be the same as the WPPT, i.e., 30 instruments.

Position on any new Proposals

21. Participating countries reserved their right to examine afresh the matters dealt with in the event that new proposals may be presented in the future.

22. As the host country of the Meeting, the People's Republic of China appreciates the efforts taken by the countries of the Asian and the Pacific Group in this Meeting. It can go along with the positions of the Group indicated above and will continue to study further those unsettled questions.

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