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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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Geneva, November 2 to 10, 1998

AGENDA ITEM 5: PROTECTION OF AUDIOVISUAL PERFORMANCES

SUBMISSION BY CANADA*

Document prepared by the International Bureau

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EXPLANATORY NOTE

Transfer of Rights

At the June 1998 meeting of the WIPO Committee of Experts on a Protocol Concerning Audiovisual Performances, the Canadian delegation made a verbal proposal concerning a possible transfer of rights provision. A number of representatives at the meeting expressed an interest in seeing a written version of that proposal. In response to those requests, we are submitting this text as a means of promoting further discussion of this issue.

Canada would be opposed to any provision that required countries to amend their domestic legislation to create a deemed or presumed transfer of rights with respect to performers in audiovisual works made by nationals of that country. However, we would be open to considering a provision which required countries to recognize such transfers made in other Contracting Parties. In order to recognize such a transfer, it would be essential that it be done by a voluntary contract or, if done by operation of law, that the performer have the right to opt out of it.

Throughout this proposed text we have used the term “[author]/[producer]/[first owner of copyright]”. The main reason for this is that the Canadian *Copyright Act* is completely silent on the substantive rights of the producer of an audiovisual work. If there is a provision in the final instrument which requires Contracting Parties to recognize such transfers which occurred in other Contracting Parties, it would be inappropriate to limit it to one type of transferee.

PROPOSAL

I. Transfer of Rights

Option A

At the time of ratifying or acceding to this [Protocol]/[Treaty] or at any subsequent time a Contracting Party may declare by an instrument deposited with the Director General that once a performer [who is a national of [that]/[any] Contracting Party]/[regardless of nationality] has consented to the fixation of his or her performance in an audiovisual work by a national of that Contracting Party, he or she shall be deemed to have transferred all exclusive rights of authorization granted under this [Protocol]/[Treaty] with respect to that particular audiovisual work to the [author]/[producer]/[first owner of copyright] of that work [provided such [author]/[producer]/[first owner of copyright] is a national of a Contracting Party] and [his, hers or] its successors in interest subject to any written [contractual [clause]/[provision]]/[agreement] to the contrary. The foregoing sentence shall not apply to any rights of remuneration a performer may have under the law of any Contracting Party, nor shall it require a Contracting Party to establish any such rights of remuneration.

Where a Contracting Party makes such a declaration it shall apply [and be binding] in all other Contracting Parties of this [Protocol]/[Treaty].

For purposes of this article the term “an audiovisual work by a national of that Contracting Party” means an audiovisual work where the [author]/[producer]/[first owner of copyright] is a national of the Contracting Party which made the declaration [regardless of the place of fixation or publication of the audiovisual work].

[[For purposes of this article] “producer” shall include both individuals and legal entities [and the identity of the producer shall be determined by the law of the Contracting Party which made the declaration]].

A declaration made under this article may be revoked at any time.

Optional

Where a declaration under this article is made subsequent to the time of a Contracting Party ratifying or acceding to this [Protocol]/[Treaty], it shall apply effective January 1 of the year immediately following the date of deposit.

Option B

No transfer of rights provision.

II. Term of Protection

Option C

The term of protection to be granted to performers under this [Protocol]/[Treaty] shall last, at least, until the end of a period of 50 years from the end of the year in which the performance was fixed.

Option D

The term of protection to be granted to performers under this [Protocol]/[Treaty] shall last until the end of the term of protection of the audiovisual work in which it is fixed.

Option D.1

[Notwithstanding [Option D] no act done with respect to the audio portion of an audiovisual work shall be an infringement of any rights under this [Protocol]/[Treaty] if that act occurred more than 50 years after the end of the year in which the performance was fixed.]

III. Applicable Term

The term shall be governed by the legislation of the Contracting Party where protection is claimed; however, unless the legislation of that Contracting Party otherwise provides, the term shall not exceed the term fixed in the Contracting Party of the performer's nationality.

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