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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Second Session
Geneva, May 4 to 11, 1999

AGENDA ITEM 4: PROTECTION OF AUDIOVISUAL PERFORMANCES

PROPOSAL BY SENEGAL*

prepared by the International Bureau

* Received on May 5, 1999.

PROPOSALS SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF SENEGAL ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES

In its capacity as a member of the African Group, the Government of the Republic of Senegal has participated in all the consultations held within that Group and is, therefore, one of the countries that has drawn up the document constituting the proposals of certain African countries filed with the International Bureau.

With respect to the rights to be afforded performers in their audiovisual performances with respect to broadcasting and communication to the public, the Government of the Republic of Senegal reserves its right to pronounce following the consultation meeting of the Group of African countries scheduled for the month of May 1999.

Having given that clarification, the present aim, in accordance with the contents of the circular letter drafted by the International Bureau on February 2, 1999, is to submit the following proposals, confirming the equal importance it affords to performances whether sound or audiovisual, and proposes the following:

I. TITLE

Protocol to the Performances and Phonograms Treaty concerning Audiovisual Performances.

II. PREAMBLE

The Contracting Parties:

Wishing to ensure an adequate level of protection for audiovisual performances, especially in the digital environment;

Noting that the WIPO Performances and Phonograms Treaty does not cover the moral or economic rights of performers in the audiovisual fixation of their unfixed performances, nor these rights in their audiovisually fixed performances;

Referring to the resolution concerning audiovisual performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996;

Have agreed as follows:

Article 1

This Treaty constitutes a Protocol to the WIPO Performances and Phonograms Treaty.

Nothing in this Protocol shall derogate from existing obligations that Contracting Parties have to each other under the WIPO Performances and Phonograms Treaty.

The protection thus granted under this Protocol shall leave intact and shall in no way affect the protection of copyright in literary and artistic works.

Consequently, no provision of this Protocol may be interpreted to prejudice such protection.

Article 2 **Definitions**

The Contracting Parties shall apply, *mutatis mutandis*, the definitions reproduced in Article 2(f) and (g) of the WIPO Performances and Phonograms Treaty in connection with the protection granted under this Protocol.

For the purposes of this Protocol:

– “performers” means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works or expressions of folklore.

– “audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sound, or the representations thereof, from which they can be perceived, reproduced or communicated through a device.

Article 3 **Beneficiaries of Protection Under this Protocol**

The Contracting Parties shall accord the protection provided under this Protocol to performers who are nationals of other Contracting Parties.

Article 4 **National Treatment**

Each Contracting Party shall be required to accord to nationals other Contracting Parties, in respect of the subject matter protected under this Protocol:

- (a) the rights specifically granted by this Protocol and
- (b) such additional rights as it accords to its own nationals.

However, a Contracting Party shall be entitled, in respect of nationals of any other Contracting Party, to limit the protection provided for in subparagraph (b) to the extent to which and to the term for which the latter Contracting Party grants such rights to the nationals of the former Contracting Party.

Article 5

Moral Rights

Independently of a performer's economic rights, and even after the transfer of those rights, a performer shall, as regards his performances, whether live or embodied in audiovisual fixations, have the right:

(a) to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance and

(b) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

The rights granted to a performer in accordance with the foregoing provisions shall, after his death, be maintained, at least until the expiry of the economic rights and shall be exercisable by the persons or institutions authorized by national legislation.

However, those Contracting Parties whose legislation, at the moment of their ratification of this Protocol or of their accession hereto, does not provide for protection after the death of the performer of all the rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

The means of redress for safeguarding the rights thus granted shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 6

Right of Fixation of Unfixed Performances

Performers shall enjoy the exclusive right of authorizing the audiovisual fixation of their unfixed performances.

Article 7

Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction, in any manner or form, of audiovisual fixations of their performances.

Article 8

Right of Distribution

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the use of audiovisual fixations of their performances, the same rights as those granted under Article 8 of the WIPO Performances and Phonograms Treaty.

Article 9
Right of Rental

Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of the audiovisual fixations of their performances.

Contracting Parties shall be exempt from this obligation unless the commercial rental has led to widespread copying of the works which materially impairs the exclusive right of reproduction.

Article 10
Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of audiovisual fixations of their performances, by wire or wireless means, in such a way that the public may access them from a place and at a time individually chosen by them.

Article 11
Application of Certain Substantive Provisions of the WIPO Performances and Phonograms Treaty

The Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 16 (Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty.

Article 12
Term of Protection of the Economic Rights of Performers

The Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 17 (Term of Protection) of the WIPO Performances and Phonograms Treaty.

Article 13
Obligations Concerning Technological Measures

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 18 (Obligations Concerning Technological Measures) of the WIPO Performances and Phonograms Treaty.

Article 14
Obligations Concerning Rights Management Information

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 19 (Obligations Concerning Rights Management Information) of the WIPO Performances and Phonograms Treaty.

Article 15
Reservations

No reservation to this Protocol shall be permitted.

Article 16
Application in Time

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 22 (Application in Time) of the WIPO Performances and Phonograms Treaty.

Article 17
Provisions on Enforcement of Rights

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 23 (Enforcement of Rights) of the WIPO Performances and Phonograms Treaty.

Article 18
Assembly

The Contracting Parties shall have an Assembly. That Assembly shall be the same as the one created by the Performances and Phonograms Treaty and its functioning shall be governed, *mutatis mutandis*, by Article 24 of that Treaty.

Article 19
Eligibility for Becoming Party to the Protocol

Any party to the Performances and Phonograms Treaty may become party to this Protocol.

Article 20
Signature of the Protocol

This Protocol shall be open for signature until ... by any party eligible under Article 19.

Article 21
Final Clauses

The provisions of Articles 25 (International Bureau), 27 (Rights and Obligations under the Treaty), 30 (Effective Date of Becoming Party to the Treaty), 32 (Languages of the Treaty) and 33 (Depositary) of the WIPO Performances and Phonograms Treaty shall apply, *mutatis mutandis*.

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