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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Second Session
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ITEM 4 OF THE AGENDA: PROTECTION OF AUDIOVISUAL PERFORMANCES
REPORT ON THE REGIONAL CONSULTATION MEETING FOR LATIN AMERICAN
AND CARIBBEAN COUNTRIES*
GENEVA, 6 NOVEMBER 1998

submitted on behalf of Argentina, Brazil, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guyana, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela

* Received on 16 February 1999.

REPORT ON THE REGIONAL CONSULTATION MEETING FOR LATIN AMERICAN AND CARIBBEAN COUNTRIES ON A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES AND OTHER NEW INTERNATIONAL PROVISIONS CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY

Geneva, 6 November 1998

A Regional Consultation Meeting of Latin American and Caribbean Countries on a Protocol Concerning Audiovisual Performances and Other New International Provisions on Intellectual Property took place in Geneva, Switzerland, on 6 November 1998. The meeting was presided over by the Delegates of Argentina and Mexico (Dr. Hilda Retondo, Mr. Arturo Hernández Basave and Mr. Fernando Serrano Migallón).

The discussions were based on documents AP/CE/2/2, AP/CE/2/4, AP/CE/2/4 Corr. and AP/CE/2/6, presented by WIPO.

Consensus was reached on the following points:

I. TITLE

Protocol to the WIPO Performances and Phonograms Treaty Concerning Audiovisual Performances.

II. PREAMBLE

The Contracting Parties,

Wishing to ensure an adequate level of protection for performances in audiovisual works, owing to the fact that the development and convergence of new information and communication technology will bring about a rapid broadening of the range of audiovisual services and also an increase in the opportunities for performers to exploit their performances;

Referring to the Resolution Concerning Audiovisual Performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on 20 December 1996;

Have agreed as follows:

III. RELATION TO OTHER CONVENTIONS; RELATION TO COPYRIGHT

1. This instrument constitutes a Protocol to the WIPO Performances and Phonograms Treaty done in Geneva on 20 December 1996 (hereinafter “the WIPO Treaty”).
2. No provision of this Protocol shall detract from the mutual obligations of Contracting Parties under the International Convention for the Protection of Performers, Producers of

Phonograms and Broadcasting Organizations, done at Rome on 26 October 1961 (hereinafter “the Rome Convention”).

3. The protection granted under this Protocol shall leave intact and in no way affect the protection of copyright in literary and artistic works. Consequently no provision of this Treaty may be interpreted as prejudicing such protection.

4. This Protocol shall have no connection with, and shall not prejudice any right or obligation under, any treaty other than the WIPO Treaty.

IV. DEFINITIONS

1. The Contracting Parties shall apply, *mutatis mutandis*, the definitions set out in Article 2 (a), (e), (f) and (g) of the WIPO Treaty in connection with the protection granted under this Protocol.

2. For the purposes of this Protocol, “audiovisual fixation” means the embodiment of images, whether or not accompanied by sound, or the representation thereof, from which they can be perceived, reproduced or communicated by means of a device.

3. For the purposes of this Protocol, “performers” means all actors, singers, musicians, dancers or other persons who interpret a role, sing, recite, declaim or in any way perform literary or artistic works or expressions of folklore, with the exception of extras [, the definition of the latter term being left to the legislation of each Contracting Party].

V. BENEFICIARIES OF PROTECTION

The Contracting Parties shall accord the protection provided under this Protocol:

- (a) to performers who are nationals of other Contracting Parties;
- (b) to performers who are not nationals of any of the Contracting Parties but are ordinarily resident in one of them, who shall be treated as nationals of the Contracting Party concerned.

VI. NATIONAL TREATMENT

Each Contracting Party shall accord to the nationals of other Contracting Parties the same treatment as it accords to its own nationals with respect to the rights specifically granted in this Protocol.

VII. FORMALITIES

The enjoyment and exercise of the rights provided for in this Protocol shall not be subject to any formality.

VIII. Moral Rights of Performers

1. Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live audiovisual performances, with or without sounds, or performances included in audiovisual fixations, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, provided that the audiovisual producer may abridge, condense, edit or dub the work, but without thereby distorting the performance of the performer.
2. The rights granted to the performer in accordance with the foregoing paragraph shall, after his death, be maintained, at least until the expiry of his economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of those rights will, after his death, cease to be maintained.
3. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

IX. ECONOMIC RIGHTS OF PERFORMERS IN THEIR UNFIXED PERFORMANCES

Performers shall enjoy the exclusive right to authorize the following in relation to their unfixed performances:

- (i) broadcasting and communication to the public of their unfixed performances, except where the performance constitutes a broadcast performance in itself;
- (ii) fixation of their unfixed performances.

X. ECONOMIC RIGHTS OF PERFORMERS CONCERNING AUDIOVISUAL FIXATIONS

1. Right of reproduction

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

2. Right of distribution

(a) Performers shall enjoy the exclusive right to authorize the making available to the public, through sale or other transfer of ownership, of the original and copies of their

performances incorporated in audiovisual fixations.

(b) Nothing in this Protocol shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (a) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.

3. Right of rental

(a) Performers shall enjoy the exclusive right to authorize the commercial rental to the public of copies of their audiovisual fixations.

(b) Paragraph (a) shall not be applicable in the case of an audiovisual work except where the said commercial rental has given rise to widespread copying thereof which considerably detracts from the performer's exclusive rights of reproduction.

4. Right of making available

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

5. Right of broadcasting and communication to the public

No agreement having been reached, the discussions continue.

The Delegation of Brazil proposes omitting all provisions on the right of broadcasting or communication to the public.

XI. LIMITATIONS AND EXCEPTIONS

1. The Contracting Parties may, in their national legislation, provide for the same kinds of limitation or exception with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of the copyright in literary and artistic works.

2. The Contracting Parties shall confine any limitation on or exception to rights provided for in this Protocol to certain special cases that do not conflict with a normal exploitation of the audiovisual fixations or unreasonably prejudice the legitimate interests of the performer or of the audiovisual producer.

XII. Contractual Arrangements Concerning the Rights of Performers

Where a performer authorizes the inclusion of his performance in an audiovisual fixation, the Contracting Parties shall apply, *mutatis mutandis*, the provisions of Article 14bis(2)(b) of the Berne Convention, it being understood that the said provisions shall likewise be applicable to those of item 3 of Article X of this Protocol.

The Delegation of Brazil proposes omitting all provisions on contractual arrangements concerning the rights of performers in relation to broadcasting or communication to the public.

XIII. TERM OF PROTECTION OF THE ECONOMIC RIGHTS OF PERFORMERS

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

XIV. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

The Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers in connection with the exercise of their rights under this Protocol and which restrict acts, in respect of their performances, that are not authorized by the performers concerned or permitted by law.

XV. OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Protocol:

(i) removing or altering any electronic rights management information without authority;

(ii) distributing, importing for distribution, broadcasting, communicating or otherwise making available to the public, without authority, performances, copies of performances incorporated in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority.

2. As used in this Article, “rights management information” means information that identifies the performer, his performance, the audiovisual producer or the audiovisual work, or information about the terms and conditions governing the use of the performance of the audiovisual work, and any numbers or codes that represent such information, when any of those items of information is attached to a copy of a fixed performance or appears in connection with the communication or making available to the public of a performance incorporated in an audiovisual fixation.

XVI. Reservations

GRULAC will pronounce on this matter after the articles concerning the various rights have been put in final form.

The Delegation of Brazil will propose reservations should the Protocol contain provisions on entitlement to equitable remuneration.

XVII. APPLICATION IN TIME

1. The Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of the performers provided for in this Protocol.
2. This Protocol shall not detract from the rights acquired in any Contracting Party prior to the date of entry into force of this Protocol in that Party.

XVIII. PROVISIONS ON ENFORCEMENT OF RIGHTS

1. The Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Protocol.
2. The Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Protocol, including expeditious remedies to prevent infringement and remedies that constitute a deterrent to further infringements.

XIX. ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES

1. Assembly

The Contracting Parties shall have an Assembly. That Assembly shall be the same as the one created by the WIPO Treaty.

2. Eligibility to Become Party to the Protocol

Any party to the WIPO Treaty may become party to this Protocol.

3. Signature of the Protocol

This Protocol shall be open for signature until by any Member State of WIPO and by the European Community.

4. Entry into Force of the Protocol

This Protocol shall enter into force, following the date of entry into force of the WIPO Treaty, three months after 20 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

5. 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), 31 (Denunciation of the Treaty), 32 (Languages of the Treaty) and 33 (Depositary) of the WIPO Treaty shall apply *mutatis mutandis* to this Protocol.

Note: The Delegation of Brazil maintains that the expression “performances incorporated in audiovisual fixations” should be replaced by “audiovisual fixations” in all articles in which the former expression appears. The proposal is going through a consultation process within GRULAC.

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