

# WIPO



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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

SUBMISSION BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES<sup>1</sup>

*prepared by the International Bureau*

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<sup>1</sup> Received on February 28, 1999.

## FURTHER SUBMISSION BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES ON A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES

### I. TRANSFER OF RIGHTS

1. During the last session of the Standing Committee on Copyright and Related Rights (SCCR), that took place in Geneva from 2 to 10 November 1998, the question of the transfer of rights was discussed at length. The representative of the European Community took the floor to reiterate the Community position on this point, i.e. that the protocol that is currently being discussed should target first of all the improvement of the protection of performers, and not of producers; consequently, it should leave sufficient flexibility to Contracting Parties in order to allow contractual practices established in this sector to continue, once the principles of the instrument have been implemented at national level.

2. The European Community and its Member States cannot support an international provision that would make mandatory for Contracting Parties, as foreseen by some proposals, the introduction of a provision on transfer of rights in their national legislation. In fact, it would imply in many countries major changes in contractual practices, which in different degrees are already subject to presumption of transfer. This adaptation would no doubt be controversial, and could disturb well-established and sometimes delicate balances.

3. Consequently, the European Community and its Member States still propose that the protocol discussed should leave the Contracting Parties the widest flexibility in their own domestic regulation, including the possibility to introduce and/or maintain provisions on transfer of rights, according to their legal traditions and national considerations. In a spirit of clarity, Contracting Parties should agree that it will be a matter for legislation in the Contracting Parties whether or not to provide for a transfer of rights and to determine its nature and scope.

### II. BROADCASTING AND COMMUNICATION TO THE PUBLIC RIGHTS

4. The right of broadcasting and communication to the public also gave rise to a lively debate during the last SCCR. On this occasion the representative of the European Community took the floor to explain that the Community position does not propose at this stage broadcasting and communication to public rights for performers in their fixed audiovisual performances. In fact, at the present stage, such a right does not form part of the "acquis communautaire."<sup>2</sup> However, in the spirit of preserving the parallel with the WIPO Performances and Phonograms Treaty (WPPT), which underlies the Community proposal, he declared that the European Community was not in principle opposed to the granting of such a right, but before proposing it, wished to analyse both the possible economic effects of such a

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<sup>2</sup> Directive 92/100 on the rental and lending right and on certain rights related to copyright in the field of intellectual property and directive 93/83 regarding the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

right and different solutions in order not to subvert existing balances between different actors of the market. Indeed, prior to any final conclusion on the nature and scope of such a right, it will be necessary to have regard to its possible economic effects taking account of the overall shape of the future protocol and in particular of the national treatment obligations enshrined therein.

5. If such a right were to be granted, at first sight the application *mutatis mutandis* of Article 15 of the WPPT seems difficult, as the assimilation of “phonograms published for commercial purposes” to “fixed performances, published for commercial purposes” (for instance videotapes), would greatly limit the scope of the right, given that it is rare, nowadays, for broadcasts of an audiovisual fixation, as opposed to phonograms, to take place on the basis of a carrier available on the market.

6. The European Community and its Member States consider therefore that, if such a right would prove to be necessary, it would be essential to envisage different drafting.

7. One possibility could be, on the basis of the mechanism foreseen by Article 15 of the WPPT, to adapt it to the specificity of the audiovisual sector so as to give performers the assurance of at least an equitable remuneration for the direct or indirect use of audiovisual fixations for broadcasting or for any communication to the public. The management of any right, to which the reservations provided for in Article 15(3) could be applied *mutatis mutandis*, could be entrusted to a collecting society.

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