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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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AGENDA ITEM 4: PROTECTION OF AUDIOVISUAL PERFORMANCES

PROPOSAL BY INDIA *

Document prepared by the International Bureau

* Received on April 27, 1999.

**PROPOSAL FOR A WIPO AUDIOVISUAL
PERFORMANCES TREATY
(Substantive Provisions Only)**

PREAMBLE

The Contracting Parties

Desiring to develop and maintain the protection of the rights of performers in audiovisual fixations in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of audiovisual performances,

Recognizing the need to maintain a balance between the rights of performers in their audiovisual fixations and the larger public interest, particularly education, research and access to information,

Recognizing the fact that the WIPO Performances and Phonograms Treaty (WPPT) has not extended the protection to performers of audiovisual fixations and considering the special features of audiovisual fixations,

Have agreed as follows

**Article 1
Relation to Other Conventions**

(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the WPPT.

(2) Protection granted under this Treaty shall leave intact and shall 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.

(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligation under, any other treaties.

Article 2 Definitions

For the purposes of this Treaty:

(a) “performers” are 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 but does not include performers whose performances are casual or incidental in nature such as extras;

(b) “audiovisual fixation” means the embodiment of moving images or of the representation thereof, with or without sound, from which they can be perceived, reproduced or communicated through a device;

(c) “broadcasting” means the transmission by wireless means for public reception of images or of images and sounds or of the representations there of, such transmission by satellite is also broadcasting;

(d) “communication to the public” of an audiovisual performance means the transmission to the public by any medium, otherwise than by broadcasting, of the audiovisual fixation in any medium or of the unfixed performance;

(e) “producer” means the person or the legal entity, who or which takes the initiative and has the responsibility for the first audiovisual fixation.

Article 3 Beneficiaries of Protection under this Treaty

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

Article 4 National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, the same treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

Article 5 Moral Rights of Performers

(1) Independently of a performer’s economic rights, and even after the transfer of those rights, the performer shall, as regards his fixed or unfixed audiovisual performance, have

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

(b) the right to object to any distortion, mutilation or other modification of his performance which would be prejudicial to his reputation, provided that a modification considered necessary by the producer of the audiovisual fixation for the normal exploitation of such fixation through any medium shall not be deemed to be prejudicial to the reputation of the performer.

(2) 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.

Article 6

Economic Rights of the Performers in their Unfixed Performances

Performers shall enjoy the exclusive right of authorizing, as regards their audiovisual performances:

- (1) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (2) 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 of audiovisual fixations of their performances in any manner or form.

Article 8

Right of Distribution

(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of audiovisual fixations of their performances through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) 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.

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 even after the distribution of them by, or pursuant to, authorization by the performer.

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 members of the public may access them from a place and at a time individually chosen by them.

Article 11
Transfer of Rights

(1) In the absence of any contract to the contrary, once the performer has by written agreement consented to the audiovisual fixation of the performance, he shall not object to the enjoyment by the producer of the exclusive rights of authorization specifically granted to the performer under his Treaty in respect of such fixation, for the purpose for which such fixation was made.

(2) It is for the legislation of the Contracting Parties to determine the manner of enforcement of this provision.

Article 12
Limitations and Exceptions

(1) Contracting Parties may, in their regional legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers with regard to audiovisual fixations of their performances as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the audiovisual fixation and do not unreasonably prejudice the legitimate interests of the performer.

Article 13
Term of Protection

The term of protection to be granted to the performers under this Treaty shall last, at least, until the end of the period of fifty years computed from the end of the year in which the audiovisual fixation was made.

Article 14
Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by the performers or their legal representatives or assignees of their rights in connection with the exercise of the

rights conferred by this Treaty and that restrict acts, in respect of their performances, which are not authorized by the performers or which are not permitted by law.

Article 15

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 Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, or copies of fixed performances knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the audiovisual performer, the performance of the performer, or the owner of any right in the performance, or the information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or appears in connection with the broadcast, communication or making available of a fixed performance to the public.

Article 16

Formalities

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

Article 17

Reservations

No reservations to this Treaty shall be permitted.

Article 18

Application in Time

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers provided for in this Treaty.

(2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to audiovisual performances which occurred after the entry into force of this Treaty for that party.

Article 19
Provision on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) 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 Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

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