

## **Standing Committee on Copyright and Related Rights**

**Twenty-First Session**

**Geneva, November 8 to 12, 2010**

Comments on the draft legal text on the Protection of Audiovisual Performances

*Document submitted by Mexico*

1. In a note dated September 21, 2010, the Secretariat received comments from Mexico regarding the draft legal text on the protection of audiovisual performances.
2. The comments are annexed to this document.

[Annex follows]

Comments made by the National Copyright Institute (INDAUTOR) on the draft legal text, which will be discussed in the round of informal consultations on the protection of audiovisual performances of the Standing Committee on Copyright and Related Rights (SCCR), which will be held in Geneva on October 4 and 5, 2010:

“...Article 12, regarding the transfer of rights, of the Basic Proposal remained pending for resolution at the Diplomatic Conference of 2000.

The issue, which needs to be resolved, is how to achieve an adequate balance between meeting producers’ needs for essential trade security to distribute and exploit audiovisual fixations and the goal of strengthening the international legal framework for the protection of performers’ rights, while maintaining negotiating capacity.

In the framework of the SCCR, various delegations were in favor of holding negotiations regarding the protection of audiovisual performances on the basis of the 19 articles provisionally agreed at the Diplomatic Conference of 2000.

Mexico, for its part, has urged the Committee to continue discussions on this subject, paying particular attention to Article 12 of the Basic Proposal, regarding the transfer of rights – an issue which, as has been mentioned above, was not resolved at the Diplomatic Conference of 2000 – so that the process for holding a Diplomatic Conference is based on the progress made to date, that is to say, the 19 articles provisionally agreed at the said Conference.

Article 12 of the Basic Proposal contains four alternatives regarding the transfer of rights.

Mexico supports alternative E but proposes that the following paragraph be added to the end of the aforementioned article: *In the event of the absence of contractual clauses, users who use such material carriers for profit-making purposes shall make the corresponding payment.*

Thus, Mexico proposes that Article 12 of the WIPO draft on audiovisual performances should read as follows:

*Article 12*

*Transfer*

*“Once a performer has consented to the incorporation of his performance in an audiovisual fixation, he shall be deemed to have transferred all exclusive rights of authorization provided for in this Treaty with respect to that particular fixation to its producer, subject to written contractual clauses to the contrary. In the event of the absence of contractual clauses, users who use such material carriers for profit-making purposes shall make the corresponding payment.”*

Mexico considers that this proposal covers both the exclusive rights to authorization and the application of the right to remuneration payable to performers.”

[End of Annex and of document]