

**WIPO**



**SCCR/3/3**

**ORIGINAL:** English

**DATE:** July 30, 1999

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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**STANDING COMMITTEE ON COPYRIGHT  
AND RELATED RIGHTS**

**Third Session  
Geneva, November 16 to 20, 1999**

AGENDA ITEM 4: PROTECTION OF AUDIOVISUAL PERFORMANCES

SUPPLEMENTARY EXPLANATION ON JAPAN'S PROPOSAL FOR A PROTOCOL TO  
THE WIPO PERFORMANCES AND PHONOGRAMS TREATY CONCERNING  
AUDIOVISUAL PERFORMANCES

*submitted by Japan<sup>1</sup>*

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<sup>1</sup> Received on July 26, 1999.

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THE WIPO PERFORMANCES AND PHONOGRAMS TREATY CONCERNING  
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The Government of Japan hereby submits supplementary explanation on Japan's proposal,<sup>2</sup> focusing on points concerning the right of broadcasting and communication to the public, national treatment and contractual arrangements/transfer of rights.

I. BACKGROUND

1. As Japan has reiterated in the deliberations at the Standing Committee on Copyright and Related Rights (SCCR), Japan submitted a proposal which could present a flexible framework as an alternative for Contracting Parties, aiming at contributing to WIPO's efforts to realize international harmonization in this field. Japan expects that such a framework could lead up to a compromise bridging different positions and proposals.

II. NATIONAL TREATMENT AND CONTRACTUAL ARRANGEMENTS/TRANSFER OF RIGHTS

2. According to Japan's proposal, some exclusive rights (that is, right of reproduction, right of distribution, right of rental and right of making available), shall be granted as regards fixed performances (Article 8(1)(2)). These exclusive rights, however, cannot be exercised as regards performances which have been fixed in audiovisual fixations with the consent of the performer. The rights are exercisable by the performer only upon contrary or special contract (Article 9(1)).

3. In this regard, Japan proposed to make an exception to this rule so that the Contracting Parties, including those which have already granted exclusive rights (exercisable without any contrary or special contract), may grant such exclusive rights to performers that are their nationals without according national treatment to performers of other Contracting Parties (Article 9(2)). Thus, according to Article 9(2), Japan's proposal also permits Contracting Parties to be exempted from "national treatment."

III. RIGHT OF BROADCASTING AND COMMUNICATION TO THE PUBLIC

4. According to Japan's proposal, although an exclusive right of broadcasting and communication to the public is not granted to performers, remuneration rights can be introduced to cover such acts as broadcasting and communication to the public (Article 10).

5. Japan wishes to clarify that the establishment of remuneration rights is not obligatory and that the content of such rights can be determined at the discretion of each Contracting Party. However, once a particular Contracting Party grants such remuneration rights to

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<sup>2</sup> As contained in documents SCCR/1/4 and SCCR/2/4.

performers that are its nationals, national treatment should be accorded to performers as regards nationals of other Contracting Parties on a reciprocal basis (Article 4(1)(2)).

6. Even though Article 10 of Japan's proposal is classified into category "5. Right of broadcasting and communication to the public" in the Comparative Table prepared by the International Bureau (SCCR/2/4), Japan's proposal on remuneration rights is not limited to the cases concerning the right of broadcasting and communication to the public.

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