

# WIPO



SCCR/3/5

ORIGINAL: English

DATE: August 24, 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;  
PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS**

*Document submitted by the United Republic of Tanzania\**

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\* Received on August 23, 1999.

## I. PROTECTION OF AUDIOVISUAL PERFORMANCES

The competent office in the United Republic of Tanzania, in matters relating to copyright, in cooperation with the Tanzania Broadcasting Commission, organized and held a stakeholders get-together-meeting on June 15, 1999, to deliberate on two agenda items, currently under deliberation by the WIPO Standing Committee on Copyright and Related Rights, namely:

- (a) the Protection of Audiovisual Performances,
- (b) the Protection of the Rights of Broadcasting Organizations.

The purpose was, first, to sensitize the stakeholders on those issues and, second, to take stock of the stakeholders' views on those issues, to be used as country inputs in African Group consultations and where necessary, as country inputs for the country proposals to the WIPO Standing Committee on Copyright and Related Rights.

### NATIONAL LEGISLATION

1. In the Copyright and Neighboring Rights Act No. 7 of Tanzania, there are general provisions which protect all performers generally. However, under section 3(3)(c) of that Act, protection of audiovisual performances is available if the performance is in a fixed form, and the producer is a national of the United Republic of Tanzania.

Audiovisual performances is also one of the works under Section 5(2)(f) in which copyright subsists and hence qualify for copyright protection under the Act.

2. Section 15(2) of the Tanzania Copyright and Neighboring Rights Act provides for copyright ownership in respect of audiovisual works.

### PROPOSALS

With the mandate of stakeholders, it is proposed:

- (a) that the new international instrument should be a protocol to the WIPO Performances and Phonograms Treaty (WPPT);
- (b) that the definition of performers in the WPPT should apply *mutatis mutandis* to the corresponding definition in the proposed protocol;
- (c) that the Contracting Parties should accord protection to performers who are nationals and those who have habitual residence in the contracting county;
- (d) that a performer should, as regards to his performance, whether fixed or embodied in an audiovisual fixation, have the right:
  - (i) to be identified as the performer of that work, and

(ii) to object to any distortion of his performance that would be prejudicial to his reputation.

These rights should be valid even after the transfer of ownership of the copyright.

(e) That the performers enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of audiovisual fixations of their performances. However, if commercial rental has led to widespread copying of the works which materially impairs the exclusive right or reproduction, then Contracting Parties shall have an obligation to intervene.

(f) That each Contracting Party should accord to the nationals and persons who have habitual residence in the contracting party's country, the same treatment as it accords to its own nationals and habitual residents.

(g) That the performers should enjoy the exclusive right of authorizing the making available to the public of the original and copies of the audiovisual fixations of their performances through sale or other transfer of ownership.

However, nothing in the proposed protocol should affect the freedom of the Contracting Parties in determining the conditions, if any, under which the exhaustion of the right stated above, applies after the first sale or other transfer or ownership of the original or a copy of the fixed performance with authorization of the performer.

## II. PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

The competent office in the United Republic of Tanzania, in matters relating to Copyrights, in cooperation with the Tanzania Broadcasting Commission, held a stakeholders get together consultative meeting, on June 15, 1999, to deliberate on two agenda items which are currently under deliberation by the WIPO Standing Committee on Copyright and Related Rights, namely:

- (a) the Protection of the Rights of Broadcasting Organizations,
- (b) the Protection of the Rights of Audiovisual Performances.

The purpose of the meeting, was, first, for the officers of the competent office, to take stock of the views of the stakeholders and use such views as inputs for the country proposals in the group consultations and also as inputs to country proposals on the ongoing deliberation by the WIPO Standing Committee on Copyright and Related Rights; second, to sensitize the stakeholders on those issues.

## NATIONAL LEGISLATION

– The national Copyright and Neighboring Rights Act No. 7 of 1999 recognizes the rights of broadcasting organizations.

– Under Section 34(1) of that Act, a broadcasting organization has exclusive rights to carry out or to authorize any of the following:

- (a) the rebroadcasting of its broadcast,
- (b) the communication to the public of its broadcast,
- (c) the fixation of its broadcast,
- (d) the reproduction of a fixation of its broadcast.

– Subsection (2) of that section provides for the commencement and the span of the protection period. The protection commences immediately when the broadcasting takes place, and remains valid until the end of the fiftieth year, following the year in which the broadcast takes place.

However, Section 35 limits the protection of such rights when the subject matter of protection is used for the following purposes:

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (b) reproduction solely for scientific research;
- (c) reproduction solely for the purpose of face to face teaching activities except for performances and phonograms which have been published as teaching materials;
- (d) limitation of protection under Section 7(b) of the Act which limits protection of news of the day published, broadcast or publicly communicated by any other means.

## PROPOSALS

1. The United Republic of Tanzania subscribes to and supports the views of the African Group, expressed by the elected spokesperson of that group, unless, on specific issues, it is otherwise expressly signified.

2. Representing the views of the stakeholders in the broadcasting industry, the United Republic of Tanzania supports all the efforts that are directed towards reviewing, with a view to modernizing and improving the current legal protection of the rights of broadcasting organizations, at an international level. The Rome Convention needs to be re-examined to take into account the rapid technological developments in the broadcasting industry.

3. The United Republic of Tanzania makes the following proposals:
- that the envisaged international instrument for the protection of the rights of broadcasting organizations should be an independent treaty;
  - that the instrument should clearly define the following terms:
    - broadcasting by satellite,
    - cable retransmission,
    - terrestrial broadcasting,
    - encrypted satellite signals,
    - program-carrying signals,
    - digital networks.
  - That the proposed instrument should address clearly the following issues:
    - the balance of rights between broadcasters and the owners of broadcast contents, in cable retransmission;
    - the balance of all rights owners involved, i.e. the broadcasters, authors, performers, producers of phonograms and cable operators;
    - the nature of the rights accorded. It is proposed that they should not be absolute and should have clearly spelt exceptions and limitations.

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