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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

SUBMISSION OF CANADA¹

¹ Received on November 11, 1999.

SUBMISSION OF CANADA

Canada submitted a proposal to the first session of the Standing Committee in November 1998 (document SCCR/1/8)². Among other issues, that submission addressed transfer of rights / recognition of transfers.

That submission and the proposals below are intended to facilitate discussion. In making these proposals we are not indicating that we support any particular substantive right in the protocol/treaty. We are retaining the proposals on term of protection and applicable term from the November 1998 submission.

I. RECOGNITION OF TRANSFERS OF RIGHTS

The proposal on recognition of transfers in the November 1998 submission contained a large number of square brackets or options. We recommend that the following principles be adopted with respect to such a provision: (1) that the same rule on transfers apply to all performers in a particular audiovisual work; (2) that there be a requirement that the original consent to be in writing (although such written consent could be given indirectly on behalf of a performer, for example, by a union or the leader of a group); and (3) that the provision does not apply to moral rights. The November 1998 submission did not apply to moral rights but we have no objection to stating this explicitly in the protocol / treaty.

In its May 1999 proposal the International Federation of Actors (FIA) proposed that there be a linkage (or point of attachment) between the producer and the audiovisual work beyond the fact that the producer might be organizing or financing the production. We agree that there should be a linkage of some type between the nation making the declaration and the audiovisual work beyond the fact that the [author]/[producer]/[first owner of copyright] is from that country. We are currently examining what would be the appropriate linkage in light of the FIA proposal and other comments we have received.

The proposal above deals only with the recognition of transfers by operation of law. We believe that it is important that the final instrument also contain a provision on the recognition of transfers by contract. We are still discussing the appropriate wording of such a provision with interested parties in Canada and we welcome any comments which other delegations or representatives may have on this issue.

II. RIGHT OF BROADCASTING AND COMMUNICATION TO THE PUBLIC

We recommend that the following three alternatives be considered for the protocol/treaty:

1. that it remain silent on this right (i.e. the right would not be required under the protocol/treaty); or

² Also contained in the Comparative Table of Proposals (document SCCR/2/4).

2. that it provide a purely optional right based on the wording of Article 15 of the WIPO Performances and Phonograms Treaty; or
3. that it provide a right which could be asserted against the copyright owner of the audiovisual work but not against a broadcaster (unless the broadcaster was also the copyright owner). A provision of this type would give the performer a remedy against the copyright owner if the copyright owner authorized the broadcast or communication of the work without the consent of the performer and the performer had not waived that right.

III. APPLICATION IN TIME

1. The Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers provided for in this [Protocol] / [Treaty].
2. Notwithstanding paragraph (1), a Contracting Party may by notice given at the time of ratification or accession to this [Protocol] / [Treaty] state that it will limit the application of this [Protocol] / [Treaty] to [performances in] fixations or audiovisual works made after of the coming into force of this [Protocol] / [Treaty] in that Contracting Party.
3. [Application in time of moral rights provision]

IV. National Treatment

(This provision would probably be in the national treatment section.)

Notwithstanding paragraph X, if a Contracting Party grants protection to performances in fixations or audiovisual works made prior to the time of the coming into force of this [Protocol] / [Treaty] in that Contracting Party, it shall not be obliged to give such protection to performers who are nationals of Contracting Parties which have made a declaration under Article Y(2).

Note

“Paragraph X” means the relevant paragraph of the article on national treatment.

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