

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Fourth Session**  
**Geneva, April 11, 12 and 14, 2000**

**SUBMISSION ON BEHALF OF THE EUROPEAN COMMUNITY  
AND ITS MEMBER STATES ON THE PROTECTION OF PERFORMERS' RIGHTS  
IN THEIR AUDIOVISUAL PERFORMANCES**

*Submitted by the European Community and its Members States<sup>1</sup>*

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<sup>1</sup> Received on February 4, 2000.

SUBMISSION ON BEHALF OF THE EUROPEAN COMMUNITY  
AND ITS MEMBER STATES ON THE PROTECTION OF PERFORMERS' RIGHTS  
IN THEIR AUDIOVISUAL PERFORMANCES

1. In view of the forthcoming discussions on the protection of performers' rights in their audiovisual performances that will take place in the next extraordinary session of the WIPO Standing Committee on Copyright and Related Rights (SCCR), the European Community and its Member States wish to reiterate their commitment to the protection of audiovisual performances, as expressed already in previous submissions, notably WIPO documents AP/CE/I/3 Add., AP/CE/2/2, SCCR/1/4, SCCR/2/3 and SCCR/2/4.

2. Separate views and positions have accompanied the discussions on this issue for years. These diverging views were already reflected in the basic proposal for a treaty on the protection of performances and phonogram producers tabled in the course of the preparation for the Diplomatic Conference that took place in December 1996.

3. The European Community and its Member States have always held the view that an international treaty for the protection of performers should cover all performances – both sound and audiovisual. This view has been shared by numerous countries and regions. Unfortunately it was not possible to achieve this result in the framework of the 1996 Diplomatic Conference that adopted the WIPO Performances and Phonograms Treaty (WPPT). The alternative option, according to which audio-visual performances were not to be covered by the WPPT, prevailed—to the deep regret of the European Community and its Member States, as well as many other countries and regions.

4. As a result, at the end of the Diplomatic Conference, the European Community and its Member States fully supported the unanimously adopted Resolution that called for the adoption of an Audiovisual Protocol before the end of 1998.

5. The European Community and its Member States continue to be of the view that the protection of audiovisual performances should be updated and modernised. The reasoning for this position has been explained on numerous occasions but is worth repeating. In our view, the Protocol has three main objectives, which are very similar to the objectives of the WPPT:

- We have to update and to strengthen the level of protection accorded by the Rome Convention for both sound and audiovisual performers' rights. Consequently, the content and scope of the rights for audiovisual performers in the Protocol should be similar to the protection sound performers enjoy under the WPPT. While the differences should not be neglected, any unjustified discrimination between these two groups of performers should be avoided.
- When doing so, the Protocol does not have to be overly complex nor should it call into question existing traditions. The consensus enshrined in the WPPT should be taken as a basis. This implies that discussions should not, without a clearly demonstrated need to do so, focus on introducing new rules, which may be alien to existing domestic and international frameworks, such as on the transfer of rights or national treatment.

Simplicity and flexibility of the Protocol will in our view pave the way to success, to common understanding and to its widespread acceptance.

- Finally, the principal objective of the Protocol is to improve and update the protection of audiovisual performers – and not the protection of audiovisual producers. The Protocol is designed to improve performers' rights rather than to reduce them or to take them away for the benefit of producers.

6. The European Community and its Member States believe that we have sufficient common ground for these objectives if the Rome Convention (that has been ratified, as of now, by more than 60 countries), the WPPT and the Resolution mentioned above are taken as starting points. Moreover, and in view of the discussions over the last years, our perspectives are now clearer than ever. All relevant issues in fact appear to be on the table, they have been discussed and the views are known.

7. As already stated during the last session of the SCCR, in the view of the European Community and its Member States, four years after the adoption of the WPPT and of the Resolution, the time has come to decide on how to successfully conclude our negotiations. During the next extraordinary session of the SCCR we will have to take a decision on the direction we take.

8. When doing so we should be guided by:

- The objectives of the negotiations, which have been described above, and to which the European Community and its Member States attach great importance;
- A constructive approach, that would bear in mind the credibility of the SCCR. It seems difficult to accept that agreement on updating the protection of other rightholders covered by the Rome Convention is possible, but not on the protection of audiovisual performers;
- The desire to accommodate the different traditions regarding the treatment of audiovisual performers without imposing choices on the international community.

9. On the basis of these objectives, this constructive approach and these guidelines, the European Community and its Member States are ready to move ahead, together with like-minded delegations, and to proceed towards a successful Diplomatic Conference in December 2000.

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