

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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**COMMITTEE OF EXPERTS
ON A PROTOCOL
CONCERNING AUDIOVISUAL PERFORMANCES**

**Second Session
Geneva, June 8 to 12, 1998**

PROPOSAL FROM ALGERIA, BURKINA FASO, CAMEROON, GHANA, KENYA,
MALAWI, MALI, MOROCCO, NAMIBIA, NIGERIA, SENEGAL, SOUTH AFRICA,
SUDAN, TOGO AND ZAMBIA*

* This proposal was received on May 22, 1998.

**PROTOCOL TO THE WIPO PERFORMANCES AND PHONOGRAMS TREATY,
CONCERNING AUDIOVISUAL PERFORMANCES**

The Contracting Parties,

Wishing to ensure an adequate level of protection for audiovisual performances, especially in the digital environment;

Noting that the WIPO Performances and Phonograms Treaty does not cover the moral or economic rights of performers in the audiovisual fixation of their unfixed performances, nor these rights in their audiovisually fixed performances;

Referring to the resolution concerning audiovisual performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996;

Have agreed as follows:

Article 1

Relation to Other Conventions

- (1) This Treaty constitutes a protocol to the WIPO Performances and Phonograms Treaty (hereinafter the “WPPT”).
- (2) Nothing in this Protocol shall derogate from existing obligations that Contracting Parties have to each other under the WPPT.
- (3) Protection granted under this Protocol shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Protocol may be interpreted to prejudice such protection.

Article 2

Definitions

For the purposes of this Protocol:

- (a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works, or expressions of folklore;

(b) “audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sound, or the representations thereof, from which they can be perceived, reproduced, or communicated through a device.

Article 3

Beneficiaries of Protection under this Protocol

The Contracting Parties shall accord the protection granted under this Protocol to performers who are nationals of other Contracting Parties.

Article 4

National Treatment

(1) Each Contracting Party shall accord to nationals of other Contracting Parties, in respect of the subject matter protected under this Protocol:

- (a) the rights specifically granted by this Protocol; and
- (b) such additional rights as it accords to its own nationals.

(2) A Contracting Party shall be entitled, in respect of nationals of any other Contracting Party, to limit the protection provided for in subparagraph (b) of paragraph (1) to the extent to which, and to the term for which, the latter Contracting Party grants such rights to the nationals of the former Contracting Party.

Article 5

Moral Rights of Performers

(1) Independently of a performer’s economic rights, and even after the transfer of those rights, a performer shall, as regards his performances, whether live or embodied in audiovisual fixations, have the right:

(a) to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and

(b) to object to any distortion, mutilation, or other modification of his performances that would be prejudicial to his reputation.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the person or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of this Protocol, does not provide for protection after the death of the performer of

all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 6

Right of Fixation of Unfixed Performances

Performers shall enjoy the exclusive right of authorizing the audiovisual fixation of their unfixed performances.

Article 7

Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction, in any manner or form, of audiovisual fixations of their performances.

Article 8

Right of Distribution

(1) Performers shall 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.

(2) Nothing in this Protocol shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.

Article 9

Right of Rental

Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of the audiovisual fixations of their performances. Contracting Parties are exempt from this obligation unless the commercial rental has led to widespread copying of the works which materially impairs the exclusive right of reproduction.

Article 10

Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of audiovisual fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 11

Reservations

No reservations to this Protocol shall be permitted.

Article 12

Application of Certain Substantive Provisions of the WPPT

The Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Articles 16 (Limitations and Exceptions), 17 (Term of Protection), 18 (Obligations concerning Technological Measures), 19 (Obligations concerning the Rights Management Information), 20 (Formalities), 22 (Application in Time) and 23 (Provisions on Enforcement of Rights) of the WPPT.

Article 13

Assembly

- (1) The Contracting Parties shall have an Assembly.
- (2) This Assembly shall be the same as the one created by the WPPT. Its functioning shall be governed, *mutatis mutandis*, by Article 24 of the WPPT.

Article 14

Eligibility for Becoming Party to the Protocol

Any party to the WPPT may become party to this Protocol.

Article 15

Signature of the Protocol

This Protocol shall be open for signature until ... by any party eligible under Article 14.

Article 16

Final Clauses

The provisions of Articles 25 (International Bureau), 27 (Rights and Obligations under the Treaty), 29 (Entry into Force of the Treaty), 30 (Effective Date of Becoming Party to the Treaty), 31 (Denunciation of the Treaty), 32 (Languages of the Treaty) and 33 (Depositary) of the WPPT shall apply, *mutatis mutandis*.

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