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

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

REPORT OF THE REGIONAL CONSULTATION MEETING FOR LATIN AMERICA
AND THE CARIBBEAN, HELD IN QUITO FROM MAY 4 TO 6, 1998*

*submitted on behalf of Argentina, Brazil, Colombia, Costa Rica, Cuba, Ecuador, Guyana,
Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela*

* This report was received on June 3, 1998.

REPORT ON THE REGIONAL CONSULTATION MEETING
FOR LATIN AMERICAN AND CARIBBEAN COUNTRIES
ON A PROTOCOL CONCERNING AUDIOVISUAL PERFORMANCES AND OTHER
NEW INTERNATIONAL NORMS CONCERNING
THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Quito, May 4 to 6, 1998

In the city of Quito, Ecuador, from May 4 to 6, 1998, the Regional Consultation Meeting of Latin American and Caribbean Countries on a Protocol concerning Audiovisual Performances and Other New International Norms concerning the Protection of Copyright and Related Rights took place. Dr. Carlos Játiva (Ecuador) was elected Chairman and Ms. Dianne Daley (Jamaica) was elected Vice-Chairman of the Consultation Meeting. The list of participants is attached.

The discussions were based on documents AP/CE/2/2 and AP/CE/2/3, prepared by WIPO, and on the proposal presented by Peru.

Consensus was reached on the following points:

I. Title

Protocol to the WIPO Performances and Phonograms Treaty concerning Audiovisual Performances.

II. Preamble

The Contracting Parties

Noting that the WIPO Performances and Phonograms Treaty does not cover the rights of performers in the audiovisual fixation of their unfixed performances, nor the exploitation of 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;

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

Have agreed as follows:

III. Relation to other Conventions; Relation with copyright

1. This treaty constitutes a Protocol to the WIPO Performances and Phonograms Treaty done in Geneva on December 20, 1996 (hereinafter “the WIPO Treaty”).
2. No provision of this Protocol shall detract from the mutual obligations of Contracting Parties under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961 (“the Rome Convention”).
3. The protection granted under this Protocol shall leave intact and in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.
4. This Protocol shall have no connection with, and shall not prejudice any right or obligation under, any treaty other than the WIPO Treaty.

IV. Definitions

1. The Contracting Parties shall apply, *mutatis mutandis*, the definitions set out in Article 2 paragraphs (a), (e), (f) and (g) of the WIPO Treaty in connection with the protection granted under this Protocol.
2. For the purposes of this Protocol, “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.
3. There was consensus that the definition of the term “performer” should not extend to persons whose contributions to a performance cannot be identified individually, such as the so-called extras.

V. Beneficiaries of protection

The Contracting Parties shall accord the protection provided under this Protocol:

- a) to the performers who are nationals of other Contracting Parties, and/or
- b) in case where a performance is fixed in another Contracting Party.

VI. National treatment

The issue is left for further consultations during the June 1998 session of the Committee of Experts.

VII. Formalities

The enjoyment and exercise of the rights provided for in this Protocol shall not be subject to any formality.

VIII. Moral rights of performers

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live audiovisual performances, with or without sounds, or performances included in audiovisual fixations, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance [, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, on the understanding, however, that the producer of the audiovisual fixation may make modifications necessary to facilitate the normal exploitations of the fixations].

(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 persons 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, or accession to, this Treaty, 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.

Note: In paragraph (1), the phrase included in square brackets will be subject of further consultations.

IX. Economic rights of performers in their unfixed performances

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards their unfixed audiovisual performances, whether or not accompanied by sound, the same rights as those granted under Article 6 (Economic rights of performers in their unfixed performances) of the WIPO Treaty.

X. Economic rights of performers concerning audiovisual fixations

1. Right of reproduction

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the use of audiovisual fixations of their performances, the same rights as those granted under Article 7 (Right of reproduction) of the WIPO Treaty.

2. Right of distribution

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the use of audiovisual fixations of their performances, the same rights as those granted under Article 8 (Right of distribution) of the WIPO Treaty.

3. Right of rental

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the use of audiovisual fixations of their performances, the same rights as those granted under Article 9 (Right of rental) of the WIPO Treaty.

4. Right of making available

The Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the use of audiovisual fixations of their performances, the same rights as those granted under Article 10 (Right of making available of fixed performances) of the WIPO Treaty.

5. Right of broadcasting and communication to the public

Performers shall enjoy the exclusive rights of authorizing the broadcasting and other communication to the public of their performances fixed in audiovisual fixations.

In respect of broadcasting of audiovisual fixations, the Contracting Parties may apply *mutatis mutandis*, the provision of Article 11*bis*(2) of the Berne Convention.

The Delegation of Brazil declared that, with respect to point 5, it was not in the position to express its opinion, since, in its country, there were still consultations in preparation of the June 8 to 12, 1998, session of the Committee of Experts.

The Delegation of Uruguay declared that, with respect to the entire contents of title X, it was not in a position to express its opinion, since, in its country, there were still consultations in preparation of the June 8 to 12, 1998, session of the Committee of Experts.

XI. Limitations and exceptions

The Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 16 (Limitations and exceptions) of the WIPO Treaty.

XII. Contractual arrangements concerning the rights of performers

In the case where a performer authorizes the inclusion of his performance in an audiovisual fixation, the Contracting Parties shall apply, *mutatis mutandis*, the provision of Article 14*bis*(2)(b) of the Berne Convention.

The Delegation of Brazil declared that, with respect to the entire contents of title XII, it was not in the position to express its opinion, since, in its country, there were still consultations in preparation of the June 8 to 12, 1998, session of the Committee of Experts.

XIII. Term of protection

The term of protection to be granted under this Protocol shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

XIV. Obligations concerning technological measures

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Article 18 (Obligations concerning technological measures) of the WIPO Treaty.

XV. Obligations concerning rights management information

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Article 19 (Obligations concerning rights management information) of the WIPO Treaty.

XVI. Reservations

No reservations to this Protocol shall be permitted.

XVII. Application in time

1. The Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of the performers provided for in this Protocol.
2. This Protocol shall not detract from the rights acquired in any Contracting Party prior to the date of entry into force of this Protocol in that Party.
3. A Contracting Party shall not be obliged to apply the provisions of this Protocol to performances given, or to audiovisual fixations made, prior to its entry into force in that Party.

XVIII. Provisions on enforcement of rights

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Article 23 (Enforcement of rights) of the WIPO Treaty.

XIX. Administrative provisions and final clauses

1. Assembly

The Contracting Parties shall have an Assembly. This Assembly shall be the same as the one created by the WIPO Treaty.

2. Eligibility for becoming party to the Protocol

Any party to the WIPO Treaty may become party to this Protocol.

3. Signature of the Protocol

This Protocol shall be open for signature until..... by any Member State of WIPO and by the European Community.

4. Entry into force of the Protocol

This Protocol shall enter into force, following the date of entry into force of the WIPO Treaty, three months after 20 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

5. Final clauses

The provisions of Articles 25 (International Bureau), 27 (Rights and obligations under the Treaty), 30 (Effective date of becoming party of the Treaty), 31 (Denunciation of the Treaty), 32 (Languages of the Treaty) and 33 (Depositary) of the WIPO Treaty shall apply, *mutatis mutandis*.

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