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

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

COMPARATIVE TABLE OF PROPOSALS RECEIVED BY JUNE 3, 1998

*prepared by the International Bureau*

**Introductory note**

The Comparative Table of Proposals presented in the Annex of this document is an updated version of Annex II of document AP/CE/2/2. In addition to the contents of that first comparative table, the new comparative table takes also into account all submissions from WIPO Member States received after the deadline of January 15, 1998, namely from:

- the Republic of Korea (document AP/CE/2/3);
- the United States of America (documents AP/CE/2/4 and AP/CE/2/4 Corr.);
- Algeria, Burkina Faso, Cameroon, Ghana, Kenya, Malawi, Mali, Morocco, Namibia, Nigeria, Senegal, South Africa, Sudan, Togo and Zambia (hereinafter referred to as “Certain States of Africa” (document AP/CE/2/5));
- Argentina, Brazil, Colombia, Costa Rica, Cuba, Ecuador, Guyana, Jamaica, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela (hereinafter referred to as “Certain States of Latin America and the Caribbean” (document AP/CE/2/6)).

The new Comparative Table of Proposals does not contain any more the individual proposals from Argentina, Colombia and Ghana (see document AP/CE/2/2), as these countries have later joined the common proposals contained in document AP/CE/2/5 and AP/CE/2/6, respectively.

[The Comparative Table of Proposals is limited to proposals for a Protocol or a Treaty. Therefore, it does not contain other suggestions or elements of information, as were submitted by Australia and Japan (document AP/CE/2/2), but also, in conjunction with their proposals, by the Republic of Korea (document AP/CE/2/3) and Certain States of Latin America and the Caribbean (document AP/CE/2/6)].

[Annex follows]

ANNEX  
page i

COMPARATIVE TABLE OF THE PROPOSALS RECEIVED FROM WIPO MEMBER  
STATES AND THE EUROPEAN COMMUNITY

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## **I. Title**

### CERTAIN STATES OF AFRICA

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

### CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

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

### EUROPEAN COMMUNITY AND ITS MEMBER STATES

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

### UNITED STATES OF AMERICA

Substantive Provisions of a Treaty for the Protection of Performers in Audiovisual Works.

## **II. Preamble**

### CERTAIN STATES OF AFRICA

*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:*

## CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

### 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:

## EUROPEAN COMMUNITY AND ITS MEMBER STATES

### 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 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;

Have agreed as follows:

## UNITED STATES OF AMERICA

### *The Contracting Parties,*

*Noting* that the development and convergence of new information and communication technologies will allow for a rapid growth of audiovisual services and that this will increase the opportunities for performing artists to exploit their performances;

*Recognizing* the great importance of ensuring an adequate level of protection for these performances, in particular when they are exploited in the new digital environment;

*Recognizing* that the WIPO Performances and Phonograms Treaty (WPPT) does not cover the rights of performers in the audiovisual fixations of their performances, but that many provisions of the WPPT can be used or adapted as the basis for a new treaty protecting performers with respect to their audiovisual performances;

*Have agreed as follows:*

### **III. Relation to other conventions and treaties; relation to copyright**

#### **CERTAIN STATES OF AFRICA**

##### **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.

#### **CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN**

##### **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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 1**

**Relation to Other Conventions**

- (1) This Treaty constitutes a Protocol to the WIPO Performances and Phonograms Treaty done in Geneva, 20 December 1996 (hereinafter the “WIPO Treaty”).
- (2) Nothing in this Protocol shall derogate from existing obligations that Contracting Parties have to each other under the WIPO Treaty.
- (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 provisions of this protocol may be interpreted as prejudicing such protection.

UNITED STATES OF AMERICA

**Article 1**

**Relation to Other Conventions**

- (1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961.
- (2) Protection granted under this Treaty shall leave intact and shall 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.
- (3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under any other treaties.



## **IV. Definitions**

### **CERTAIN STATES OF AFRICA**

#### **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.

### **CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN**

#### **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.

### **EUROPEAN COMMUNITY AND ITS MEMBER STATES**

#### **Article 2**

##### **Definitions**

(1) The Contracting Parties shall apply, *mutatis mutandis*, the definitions set out in Article 2 paragraphs (a), (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.

UNITED STATES OF AMERICA

## **Article 2**

### **Definitions**

For the purposes of this Treaty:

(a) “performers” are 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, but not including extra performers or background performers;

(b) “fixation” means the embodiment of images, or of images and sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(c) “broadcasting” means the transmission by wireless means for public reception of images, or of images and sounds, or the representations thereof; such transmission by satellite is also “broadcasting;” transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(d) “communication to the public” means the transmission to the public by any medium, otherwise than by broadcasting, of the images, or the sounds and images, or the representations thereof, comprised in an unfixed performance or in a fixed performance;

(e) an “audiovisual work” is a work consisting of a series of related images that are intended to be shown by the use of a device, together with any accompanying sounds.

## **V. Beneficiaries of protection**

CERTAIN STATES OF AFRICA

## **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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 3**

**Beneficiaries of protection under this protocol**

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

UNITED STATES OF AMERICA

**Article 3**

**Beneficiaries of Protection**

- (1) Contracting Parties shall accord the protection provided under this Treaty to performers of other Contracting Parties as defined in paragraph (2) of this Article.
- (2) Performers of other Contracting Parties shall be understood to be performers who meet any of the following conditions:
  - (a) those performers who are nationals of another Contracting Party and whose performance is unfixed or is fixed in an audiovisual work;
  - (b) those performers whose unfixed performance takes place on the territory of another Contracting Party;
  - (c) those performers whose performance is first fixed in an audiovisual work on the territory of another Contracting Party.

## **VI. National treatment**

### **CERTAIN STATES OF AFRICA**

#### **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.

### **EUROPEAN COMMUNITY AND ITS MEMBER STATES**

#### **Article 6**

##### **Application of certain substantive provisions of the WIPO Treaty**

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Articles 4 (National Treatment) ... of the WIPO Treaty.

### **REPUBLIC OF KOREA**

5. Concerning the right to remuneration for broadcasting and communication to the public of fixed performances, reservation on national treatment should be permitted in this protocol in the manner as provided in the WPPT.

### **UNITED STATES OF AMERICA**

#### **Article 4**

##### **National Treatment**

With respect to performances for which they are protected under this Treaty as provided in Article 3, performers shall enjoy, in other Contracting Parties, the treatment that the laws of such parties do now or may hereafter grant to their own nationals, as well as the rights specifically granted by this Treaty.

## **VII. Formalities; independence from protection in country of origin**

### CERTAIN STATES OF AFRICA

#### **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... 20 (Formalities)... of the WPPT.

### CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

#### **Formalities**

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

### EUROPEAN COMMUNITY AND ITS MEMBER STATES

#### **Article 6**

##### **Application of certain substantive provisions of the WIPO Treaty**

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Articles... 20 (Formalities)... of the WIPO Treaty.

### UNITED STATES OF AMERICA

#### **Article 17**

#### **Formalities**

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

## **VIII. Moral rights of performers**

### **CERTAIN STATES OF AFRICA**

#### **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.

### **CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN**

#### **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.

## EUROPEAN COMMUNITY AND ITS MEMBER STATES

### Article 4

#### **Rights of performers in their unfixed audiovisual 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 the WIPO Treaty to performers as regards their live aural performances, namely the rights provided under Article 5 (Moral Rights)<sup>1</sup>...

### Article 5

#### **Rights of performers in audiovisual fixations of their performances**

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 the WIPO Treaty to performers as regards the use of their performances fixed in phonograms, namely the rights provided under Articles 5 (Moral Rights),<sup>1</sup>... of the WIPO Treaty.

## UNITED STATES OF AMERICA

### Article 5

#### **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 or her live performances or performances fixed in an audiovisual work, have the right to claim to be identified as the performer of such 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 or her performance that would be seriously prejudicial to the performer's reputation, where such modification is not

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<sup>1</sup> (Footnote contained in the proposal:) The scope and manner of the application of moral rights protection to audiovisual performers requires further consideration.

part of the normal exploitation of an audiovisual work by the producer of the work or its successors in interest, pursuant to the exercise of rights of authorization acquired by the producer in the performance.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after the said performer's death, be maintained, at least until the expiry of the rights of authorization set forth in Articles 6 through 10, 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 the performer's 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.

(4) The "normal exploitation of an audiovisual work" shall include the use of new or changed technology, media, formats and/or methods of distribution, dissemination, making available or communication to the public. A performer shall give reasonable consideration to the interests of the other performers in and creative authors of an audiovisual work when exercising the above described rights with respect to such work.

## **IX. Rights of performers in their unfixed performances<sup>2</sup>**

CERTAIN STATES OF AFRICA

### **Article 6**

#### **Right of Fixation of Unfixed Performances**

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

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

#### **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.

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<sup>2</sup> See also explanations No. 1 and 2 in the submission by Japan (document AP/CE/2/2, Annex I).



EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 4**

**Rights of performers in their unfixed audiovisual 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 the WIPO Treaty to performers as regards their live aural performances, namely the rights provided under Article... 6 (Economic rights of Performers in their unfixed performances).

REPUBLIC OF KOREA

3. Performers shall enjoy the following exclusive rights of authorizing their unfixed audiovisual performances:

- (a) fixation;
- (b) broadcasting and communication to the public.

UNITED STATES OF AMERICA

**Article 6**

**Economic Rights of Performers in their Unfixed Performances**

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast or a publicly communicated performance; and
- (ii) the fixation of their unfixed performances.

## **X. Rights of performers in audiovisual fixations**

### **1. Right of reproduction**

CERTAIN STATES OF AFRICA

#### **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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

##### **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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

#### **Article 5**

##### **Rights of performers in audiovisual fixations of their performances**

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 the WIPO Treaty to performers as regards the use of their performances fixed in phonograms, namely the rights provided under Articles...7 (Right of Reproduction)... of the WIPO Treaty.

REPUBLIC OF KOREA

4. Performers shall enjoy the following rights of their fixed audiovisual performances:
  - (a) the exclusive right to authorize the reproduction;

UNITED STATES OF AMERICA

**Article 7**

**Right of Reproduction**

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

**2. Right of distribution**

CERTAIN STATES OF AFRICA

**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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 5**

**Rights of performers in audiovisual fixations of their performances**

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 the WIPO Treaty to performers as regards the use of their performances fixed in phonograms, namely the rights provided under Articles... 8 (Right of Distribution)... of the WIPO Treaty.

UNITED STATES OF AMERICA

**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 their fixed performances through sale or other transfer of ownership.

(2) Nothing in this Treaty 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.

**3. Right of rental**

CERTAIN STATES OF AFRICA

**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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 5**

**Rights of performers in audiovisual fixations of their performances**

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 the WIPO Treaty to performers as regards the use of their performances fixed in phonograms, namely the rights provided under Articles... 9 (Right of Rental)... of the WIPO Treaty.

**4. Right of making available**

CERTAIN STATES OF AFRICA

**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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 5**

**Rights of performers in audiovisual fixations of their performances**

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 the WIPO Treaty to performers as regards the use of their performances fixed in phonograms, namely the rights provided under Articles... 10 (Right of Making Available of Fixed Performances)... of the WIPO Treaty.

REPUBLIC OF KOREA

4. Performers shall enjoy the following rights of their fixed audiovisual performances:

(b) the exclusive right of making available to the public, equivalent to the right given in the WPPT;

UNITED STATES OF AMERICA

**Article 9**

**Right of Making Available**

Performers shall enjoy the exclusive right of authorizing the making available to the public of their fixed 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.

**5. Right of broadcasting and communication to the public**

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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 11bis(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.]

REPUBLIC OF KOREA

4. Performers shall enjoy the following rights of their fixed audiovisual performances:

(c) the right to remuneration for broadcasting and communication to the public.

5. Concerning the right to remuneration for broadcasting and communication to the public of fixed performances, reservation on national treatment should be permitted in this protocol in the manner as provided in the WPPT.

UNITED STATES OF AMERICA

### **Article 10**

#### **Right of Broadcasting and Communication to the Public**

(1) Except for conditions on the exercise of the right that would be permissible for audiovisual works under Article 11*bis* of the Berne Convention for the Protection of Literary and Artistic Works, performers shall enjoy the exclusive right of authorizing, as regards their performances fixed in audiovisual works, the broadcasting and communication to the public of such performances, except where such a performance is already a broadcast or a publicly communicated performance.

(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will limit the right set forth in paragraph (1) to a right to remuneration only.

### **XI. Limitations and exceptions**

CERTAIN STATES OF AFRICA

### **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)... of the WPPT.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

#### **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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 6**

**Application of certain substantive provisions of the WIPO Treaty**

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

UNITED STATES OF AMERICA

**Article 12**

**Limitations and Exceptions**

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer.

**XII. Contractual arrangements concerning rights of performers**

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.]



UNITED STATES OF AMERICA

**Article 11**

**Transfer of rights**

Once a performer has consented to the fixation of his or her performance in an audiovisual work, he or she shall be deemed to have transferred all exclusive rights of authorization granted under this Treaty with respect to that particular audiovisual work to the producer of that work and its successors in interest, subject to written contractual clauses to the contrary. The foregoing sentence shall not apply to any rights of remuneration a performer may have under the law of any Contracting Party, nor shall it require a Contracting Party to establish any such rights of remuneration.

**XIII. Duration of economic rights of performers<sup>3</sup>**

CERTAIN STATES OF AFRICA

**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... 17 (Term of Protection),... of the WPPT.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

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<sup>3</sup> For duration of moral rights, see part VIII of this table.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 6**

**Application of certain substantive provisions of the WIPO Treaty**

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Articles... 17 (Term of Protection)... of the WIPO Treaty.

UNITED STATES OF AMERICA

**Article 13**

**Term of Protection**

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

**XIV. Obligations concerning technological measures**

CERTAIN STATES OF AFRICA

**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... 18 (Obligations concerning Technological Measures),... of the WPPT.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 6**

**Application of certain substantive provisions of the WIPO Treaty**

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

REPUBLIC OF KOREA

6. We are also in favor of the provisions on the obligations concerning technological measures and rights management information included in the Protocol as those provided for in the WPPT.

UNITED STATES OF AMERICA

**Article 15**

**Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or their transferees in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances, that are not authorized by the performers or that are not permitted by law.

**XV. Obligations concerning rights management information**

CERTAIN STATES OF AFRICA

**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... 19 (Obligations concerning the Rights Management Information),... of the WPPT.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 6**

**Application of certain substantive provisions of the WIPO Treaty**

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Articles... 19 (Obligations concerning Rights Management Information)... of the WIPO Treaty.

REPUBLIC OF KOREA

6. We are also in favor of the provisions on the obligations concerning technological measures and rights management information included in the Protocol as those provided for in the WPPT.

UNITED STATES OF AMERICA

**Article 16**

**Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of fixed performances knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information that identifies the performer, the performance of the performer, or the owner of any right in the performance, or information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is

attached to a copy of a fixed performance or appears in connection with the broadcast, public communication, or making available to the public of a fixed performance.

## **XVI. Reservations**

### CERTAIN STATES OF AFRICA

#### **Article 11**

##### **Reservations**

No reservations to this Protocol shall be permitted.

### CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

##### **Reservations**

No reservations to this Protocol shall be permitted.

### EUROPEAN COMMUNITY AND ITS MEMBER STATES

#### **Article 7**

##### **Reservations**

No reservations to this Protocol shall be permitted.

### UNITED STATES OF AMERICA

#### **Article 18**

##### **Reservations**

Subject to the provisions of Article 10(2), no reservations to this Treaty shall be permitted.

## **XVII. Application in Time<sup>4</sup>**

### **CERTAIN STATES OF AFRICA**

#### **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... 22 (Application in Time)... of the WPPT.

### **CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN**

#### **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.

### **EUROPEAN COMMUNITY AND ITS MEMBER STATES**

#### **Article 6**

##### **Application of certain substantive provisions of the WIPO Treaty**

The Contracting Parties shall apply, *mutatis mutandis*, in respect of protection granted under this Protocol, the provisions of Articles... 22 (Application in Time)... of the WIPO Treaty.

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<sup>4</sup> See also explanation No. 3 of the submission by Japan (document AP/CE/2/2, Annex I).

UNITED STATES OF AMERICA

**Article 19**

**Application in Time**

- (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers provided for in this Treaty.
- (2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances that occurred after the entry into force of this Treaty for that Party.

**XVIII. Provisions on enforcement of rights**

CERTAIN STATES OF AFRICA

**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... 23 (Provisions on Enforcement of Rights) of the WPPT.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

**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.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

**Article 6**

**Application of certain substantive provisions of the WIPO Treaty**

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

UNITED STATES OF AMERICA

**Article 20**

**Provisions on Enforcement of Rights**

- (1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- (2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

**XIX. Implementation**

UNITED STATES OF AMERICA

**Article 14**

**Implementation**

Each Contracting Party may determine the means by which it will give effect to the provisions of this Treaty, including by means of the grant of a copyright or other related right.

**XX. Administrative and final clauses**

CERTAIN STATES OF AFRICA

**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 (Depository) of the WPPT shall apply, *mutatis mutandis*.

## **CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN**

### **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 (Depository) of the WIPO Treaty shall apply, *mutatis mutandis*.

## EUROPEAN COMMUNITY AND ITS MEMBER STATES

### **Article 8**

#### **Application of certain administrative provisions**

The Contracting Parties shall have an Assembly. This Assembly shall be the same as the one created by the WIPO Treaty and its functioning shall be governed, *mutatis mutandis*, by Article 24 of the WIPO Treaty.

### **Article 9**

#### **Eligibility for becoming party to the Treaty**

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

### **Article 10**

#### **Signature of the Protocol**

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

### **Article 11**

#### **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 5 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

### **Article 12**

#### **Final clause**

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 (Depository) of the WIPO Treaty shall apply, *mutatis mutandis*.

[End of Annex and of document]