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

**Geneva, September 15, 16 and 19, 1997**

EXISTING NATIONAL AND REGIONAL LEGISLATION CONCERNING  
AUDIOVISUAL PERFORMANCES

*Memorandum prepared by the International Bureau*

## I. INTRODUCTION

1. The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions which took place in Geneva from December 2 to 20, 1996, on its last day, adopted the WIPO Performances and Phonograms Treaty (WPPT).

2. Among the documents of the Conference had been a “Basic Proposal for the Substantive Provisions of a Treaty for the Protection of the Rights of Performers and Producers of Phonograms to be considered by the Diplomatic Conference” (document CRNR/DC/5) as well as a number of relating amendment proposals submitted by Delegations in the course of the Conference. Under some of these documents, or at least under some of the alternatives included in them, the coverage of the rights of performers would have extended to audiovisual performances, the WPPT, however, with the exception of some rights related to unfixed performances, does not cover audiovisual performances.

3. The Conference addressed this issue in a Resolution concerning Audiovisual Performances (document CRNR/DC/99), adopted on its last day with the following text:

“The Delegations participating in the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions in Geneva,

“*Noting* that the development of technologies will allow for a rapid growth of audiovisual services and that this will increase the opportunities for performing artists to exploit their audiovisual performances that will be transmitted by these services;

“*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, and that sound and audiovisual performances are increasingly related;

“*Stressing* the urgent need to agree on new norms for the adequate legal international protection of audiovisual performances;

“*Regretting* that, in spite of the efforts of most Delegations, the WIPO Performances and Phonograms Treaty does not cover the rights of performers in the audiovisual fixations of their performance;

“*Call* for the convocation of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on the schedule of the preparatory work on a protocol to the WIPO Performances and Phonograms Treaty, concerning audiovisual performances, with a view to the adoption of such a protocol not later than in 1998.”

4. The Resolution (and a Recommendation concerning Databases also adopted in the Diplomatic Conference) was discussed at the thirtieth series of meetings of the Governing Bodies of WIPO, namely the General Assembly of WIPO, the WIPO Coordination Committee and the Assembly of the Berne Union, in Geneva, on March 20 and 21, 1997.

5. The Governing Bodies took, *inter alia*, the following decisions (document AB/XXX/4, paragraph 20):

“(i) A Committee of Experts on the protocol concerning audiovisual performances will be convened for September 15 and 16, 1997, and an Information Meeting concerning intellectual property in databases will be convened for September 17 and 18, 1997. September 19, 1997, will be reserved for the adoption of the reports of both the Committee of Experts and the Information Meeting.

“(ii) The International Bureau will, separately for each of the two subjects, prepare a document on the existing national and regional laws and regulations. Furthermore, the International Bureau will invite the Governments of the Member States of WIPO and the *European Community* by circular to communicate to it in writing information on the *de facto* situation, particularly contractual practices, existing in their respective countries, as well as any statistics.”

6. The present document examines the existing and regional legislation in the WIPO Member States, of *Cartagena Agreement* and of the *European Community*, with the exception of a few countries where the laws or recent amendments were not available at the International Bureau in any of the working languages of WIPO at the time when the document was prepared. Since the existing international norms may—and in many cases do—have direct or indirect relevance for national and regional legislation, those norms are also reviewed briefly. The information received in answer to the above-mentioned circular is included in a separate document.

## II. SCOPE OF THE WPPT AND SCOPE OF THIS MEMORANDUM

7. The presentation of national and regional laws and regulations in this memorandum should correspond to the foreseeable coverage of performers' rights in a possible protocol to the WPPT. A protocol to the WPPT concerning audiovisual performances would only have to deal with aspects other than those already resolved in the WPPT. It seems therefore useful to recall to what extent these rights are already covered in the WPPT. For this purpose, it is appropriate to distinguish between moral rights, economic rights in live performances and economic rights in fixed performances.

(a) Article 5 of the WPPT grants performers moral rights, as regards live aural performances or performances fixed in phonograms.

(b) Article 6 of the WPPT grants performers exclusive economic rights in their live performances in respect of broadcasting and communication to the public. This right extends to both aural and audiovisual performances. The same Article also grants an exclusive right of authorizing “fixation” of unfixed performances, but Article 2(c) of the WPPT defines “fixations” as only meaning “the embodiment of sounds, or of the representation thereof.”

(c) As far as performers' economic rights in their fixed performances are concerned, the WPPT covers performances fixed in phonograms only (see Articles 7 to 10 and Article 15).

8. Consequently, the remaining subjects of a possible protocol to the WPPT concerning audiovisual performances appear to be:

(a) moral rights of performers as regards their live audiovisual performances and the audiovisual fixations of their performances;

(b) economic rights of performers in respect of the act of audiovisual fixation of their unfixed performances; and

(c) economic rights of performers in respect of uses of audiovisual fixations of their performances.

9. Each of these three distinctive areas of protection are covered, in the following presentation of national and regional legislations, by a separate chapter.

10. The legislations of the following countries are not mentioned in the following chapters, as they do not contain any provisions on intellectual property protection of performers: *Algeria\**, *Andorra*, *Angola*, *Bahamas*, *Benin*, *Burkina Faso*, *Burundi*, *Central African Republic*, *Côte d'Ivoire*, *Cuba*, *Cyprus*, *Egypt*, *Gambia*, *Georgia*, *Guatemala*, *Guyana*, *Haiti*, *Liberia*, *Libya*, *Luxembourg*, *Mali*, *Mauritius*, *Monaco*, *Morocco*, *Nicaragua*, *Saint Kitts and Nevis*, *San Marino*, *Senegal*, *Sierra Leone*, *Sudan*, *Suriname*, *Tajikistan*, *Tunisia*, *Turkmenistan*, *Uganda*, *United Republic of Tanzania* and *Zimbabwe*.

### III. MORAL RIGHTS OF PERFORMERS AS REGARDS THEIR LIVE AUDIOVISUAL PERFORMANCES AND AUDIOVISUAL FIXATIONS OF THEIR PERFORMANCES

#### A. International norms

11. There is no provision at the international level on moral rights of performers, other than in Article 5 of the WPPT.

#### B. Regional legislation

12. Decision 351–Common Provisions on Copyright and Neighboring Rights–of the *Cartagena Agreement* (to which *Bolivia*, *Colombia*, *Ecuador*, *Peru* and *Venezuela* are

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\* The International Bureau has been informed by the Algerian authorities that a new Copyright Act containing provisions on the protection of performers has been enacted and will enter into force next year.

parties), recognizes moral rights to performers in respect of their performances and it does not make a distinction between live aural performances and live audiovisual performances, nor between performances fixed in phonograms and audiovisual fixations of performances.

13. The legislation of the *European Community* does not contain provisions on moral rights of performers.

C. National legislation

14. The national laws of the following countries contain no provisions on moral rights of performers in respect of any kind of performance or fixation of a performance: *Australia, Barbados, Canada, Congo, Democratic Republic of the Congo, Gabon, Ghana, Indonesia, India, Iraq, Ireland, Israel, Jamaica, Japan, Jordan, Kenya, Lesotho, Liechtenstein, Malawi, Malta, Namibia, Niger, Nigeria, New Zealand, Republic of Korea, Rwanda, Thailand, Saint Lucia, Saint Vincent and the Grenadines, South Africa, Switzerland, Togo, Trinidad and Tobago, United Kingdom, United States of America and Zambia.*

15. Those national laws which recognize moral rights to performers, in general, do not make a distinction between live aural performances and live audiovisual performances, nor between performances fixed on phonograms and audiovisual fixations of performances. This approach is followed by the national laws of *Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cameroon, China, Costa Rica, Croatia, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Germany, Greece, Honduras, Iceland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Madagascar, Mexico, Netherlands, Norway, Panama, Paraguay, Philippines, Poland, Portugal, the Republic of Moldova, Romania, the Russian Federation, Slovenia, Spain, Sweden, Turkey, Ukraine, Uruguay, Uzbekistan and Yugoslavia.*

16. It is recalled that, within this group of legislations, the content of the protection of moral rights of performers varies to some extent from one legislation to another.

17. In the national laws of certain other countries, the following specifications as to the protection of moral rights in respect of audiovisual performances can be noted:

– In *Argentina*, the principal performer of a “musical and/or literary work” has the right to have his name mentioned when his performance is broadcast or transmitted, and on the phonogram incorporating his performance. This protection does not extend to audiovisual fixations, but it seems to cover the audiovisual dissemination of the live performance of a “musical and/or literary work.” On the other hand, the performer of a “musical and/or literary work” has the right to oppose the dissemination of his performance on the basis of a reproduction which would cause serious or unjustified prejudice to his artistic interests. In this respect, audiovisual fixations seem to be included.

– In *Brazil*, the publisher of a phonogram is obliged to indicate the name of the performer whose performance is incorporated in the phonogram, subject to contractual

arrangements to the contrary. (This provision does not apply to “non-verbal” performances or to performances for advertising purposes.) In the case of this country, performers do not enjoy, in respect of their performances incorporated in audiovisual fixations, moral (or economic) rights.

– In *Chile*, while performers, in general, do not enjoy moral rights, the producer of a cinematographic work has the obligation to record the names of the principal performers on the film.

– In *Guinea*, the principal performers have the right to have their names mentioned in connection with live performances and any public transmissions thereof as well as on phonograms. This right does not extend to audiovisual fixations, while the right of performers to be protected against any distortion is granted without such restriction.

#### IV. ECONOMIC RIGHTS OF PERFORMERS IN RESPECT OF THE AUDIOVISUAL FIXATION OF THEIR UNFIXED PERFORMANCES

##### A. International norms

18. Article 7.1.(b) of the *Rome Convention* (the “International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations” (1961)) provides for performers the possibility of preventing the fixation, without their consent, of their unfixed performances, without making a distinction between aural fixation and audiovisual fixation of live performances.

19. Article 14.1 of the *TRIPS Agreement* (“Agreement on Trade-Related Aspects of Intellectual Property Rights” (1994)) also provides for performers the possibility of preventing the fixation of their unfixed performances but it reduces the scope of this right to fixation on phonograms.

##### B. Regional legislation

20. Decision 351 of the *Cartagena Agreement* and Council Directive 92/100/EC of the *European Community* on rental right and lending right and on certain rights related to copyright in the field of intellectual property grant performers the right to prevent and/or authorize the fixation of their unfixed performances irrespective of whether the performance is aural or audiovisual and whether the fixation is limited to sounds or is audiovisual.

##### C. National legislation

21. National laws that protect performers rights at all, in most cases also grant performers the right to prevent and/or authorize the fixation of their unfixed performances irrespective of whether the performance is aural or audiovisual and whether the fixation is limited to sounds or is audiovisual. This applies in addition to the national laws of the Member States of the

above-mentioned regional organizations (except the laws of *Luxembourg* and *Portugal*), also to the national laws of *Armenia, Australia, Barbados, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, Cameroon, China, Chile, Congo, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Dominican Republic, El Salvador, Estonia, Gabon, Guinea, Honduras, Hungary, Iceland, Israel, Jamaica, Japan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Liechtenstein, Lithuania, Madagascar, Malawi, Malta, Mexico, Namibia, Niger, Nigeria, New Zealand, Panama, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Slovenia, South Africa, Switzerland, Thailand, The Russian Federation, Trinidad and Tobago, Togo, Turkey, Ukraine, Uzbekistan, Yugoslavia* and *Zambia*.

22. The following national laws do not grant such a broad fixation right:

– In *Argentina*, the fixation of a performance (“interpretation”) of a musical work on a carrier requires prior consent of the principal performer(s). As this provision is contained in a regulation entitled “Intellectual property in phonographic reproductions,” it seems that it is confined to fixations of sounds.

– In *Brazil*, the fixation right of performers is also limited to the fixation in sound recordings.

– In *Portugal*, the consent of the performer to broadcast his live performance implies authorization of its fixation and of broadcasting and reproduction of the fixed performance, unless otherwise agreed. (The performer retains an unwaivable right to remuneration for such additional uses).

– In the *United States of America*, the right of the performer to authorize a fixation of the sounds or sounds and images of his performance is limited to live musical performances.

## V. ECONOMIC RIGHTS OF PERFORMERS IN AUDIOVISUAL FIXATIONS OF THEIR PERFORMANCES

### A. International norms

23. As far as reproduction is concerned, under Article 7.1.(c) of the *Rome Convention*, performers have the right “to prevent” the reproduction of a fixation of their performances:

- if the original fixation was made without their consent;
- if the reproduction is made for purposes different from those for which the performers gave their consent;

– if the original fixation was made in accordance with the provisions of Article 15 (on exceptions and limitations), and the reproduction is made for purposes different from those referred to in those provisions.

24. The Convention provides that, if performers have consented to broadcasting, it is a matter for national legislation of the Contracting States to regulate the protection against the reproduction of a fixation made for broadcasting purposes (Article 7.2.(1)). The Convention also leaves it to the legislation of the Contracting States to rule on the use of fixations made for broadcasting purposes (Article 7.2.(2)).

25. The Convention does not provide, in favor of performers, for further rights to authorize or to prevent exploitation of fixed performances, and Article 12 of the Convention providing a single equitable remuneration to performers, to producers, or to both, for certain “secondary” uses, only covers phonograms. The rights of performers are subject to certain limitations under Article 15 of the Convention, in particular as regards private use, use of short excerpts in connection with the reporting of current events and as regards ephemeral fixation by a broadcasting organization for its own broadcast as well as use for the sole purpose of teaching or scientific research. Further limitations are allowed paralleling those which Contracting States provide for with regard to the protection of authors rights.

26. However, the right of performers to prevent the reproduction of audiovisual fixations of their performances is subject to the provision of Article 19 which provides that, “once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, Article 7 [which includes the above-referred provisions on the rights of performers], shall have no further application.” As a result of that so-called “cut-off provision,” performers lose all protection in audiovisual fixations which are made with their consent.

27. The *TRIPS Agreement* (Article 14.1) only provides for performers rights in fixations on phonograms.

#### B. Regional legislation

28. Decision 351 of the *Cartagena Agreement* grants performers the right to authorize the reproduction of fixations of their performances and further provides that the Member States may set limits on this right in the cases allowed by the Rome Convention. (However, several Member States of the Agreement grant a more favorable protection to performers).

29. The relevant directive of the *European Community* is dealt with under the title “National legislation,” below. The reason for this is double: first, the national laws of the Member States of the European Community cannot be appropriately described separately, and, second, because, it also seems necessary to indicate the differences existing in some Member States in relation to that directive.



### C. National legislation

30. The relevant provisions of national laws are described, below, in a way that those laws which follow more or less the same approach are grouped together. Unless it is otherwise specified, the provisions discussed extend to both sound fixations and audiovisual fixations.

#### Protection limited to fixations of live musical performances

31. In the *United States of America*, performers enjoy the exclusive rights of reproduction, distribution and rental in respect of fixations of the sounds or sounds and images of their live musical performances. For any transfer of these rights, written form with signature of the rights owner is required. This recent legislation contains no definition of the notion of “live musical performance.” However, the relevant section is titled: “Unauthorized fixation and trafficking in sound recordings and music videos.”

#### Exclusive rights limited to certain uses of an audiovisual fixation made without the performer’s consent

32. In *Namibia, Niger and South Africa*, performers enjoy the exclusive right of reproduction, under the condition that the performance was fixed without their consent.

33. In the *Republic of Korea*, performers enjoy, in the case where their stage performance has been recorded without their consent, the exclusive right to broadcast such recording.

34. In *Trinidad and Tobago*, performers are granted an exclusive right of broadcasting, communication by cable and public performance, if the fixation used for these acts has been made without their consent.

#### Protection confined to certain remuneration rights

35. In *Argentina*, performers enjoy a right to remuneration for the recording of their performances on any medium capable of being used for sound or visual reproduction. A remuneration is also due for the broadcasting or retransmission of the performance. This provision seems to include the exploitation of audiovisual fixations.

36. In *China*, performers enjoy a right in respect of reproduction as well as commercial distribution of fixations of their performances (sound and video recordings). While it is not clear whether the performer has a right to authorize these acts, he is at least entitled to a right to remuneration to be paid by the producer of the sound or video recording.

37. In *Paraguay and Uruguay*, performers are granted a remuneration right for broadcasting or reproduction of their performance. The laws provide for a mechanism to establish the amount of the remuneration in case where no agreement is reached.

Protection equal or near to the minimum level of protection under the Rome Convention

38. In the following countries, national laws correspond to the minimum level of protection prescribed by the Rome Convention: *Canada, Colombia, Dominican Republic, Guinea, India, Ireland and Rwanda*. This includes the application of the “cut-off” provision quoted in paragraph 26, above.

39. Some other national laws also apply the cut-off provision, but they, at the same time, grant rights somewhat more extensively.

40. In *Belarus, Kazakstan, Kyrgyzstan, the Republic of Moldova and the Russian Federation*, a broadcasting right and a cable transmission right are granted, where the original fixation was made for non-commercial purposes, as well as a remuneration right for private copying.

41. In *Congo*, besides the reproduction right, as regards fixations made without consent or authorized for other purposes, a broadcasting right is also granted, as regards the same kinds of fixations. Both of these rights are cut off in the case mentioned in Article 19 of the Rome Convention.

42. In *Hungary*, the operation of the cut-off provision does not extend to a remuneration right for private copying (levy on recording material) and to a remuneration right for simultaneous retransmission of a broadcast or an original cable program.

43. In *Japan*, in addition to the reproduction right, a performer has the right to authorize broadcasting and original wire transmission if these acts are based on a fixation made without consent of the performer.

44. In *Latvia*, in addition to a right to broadcast or other communication to the public, a right of fixation made for commercial purposes is granted, but is also subject to the cut-off provision for which, in this case, a signed contract with the film producer is required.

45. In *Mexico*, the reproduction right as such is not confined to the cases mentioned in Article 7.1.(c) of the Rome Convention.

46. In *Barbados and Saint Vincent and the Grenadines*, broad exclusive rights of reproduction and of broadcasting are cut-off where the performer consents in writing to the broadcaster to make an audiovisual work of the performance.

Protection of rights similar to those granted by the Rome Convention, but without cut-off provision and partly with somewhat wider rights

47. The national laws of the following countries provide for a reproduction right as under the Rome Convention, but without a cut-off provision: *Democratic Republic of the Congo, Israel, New Zealand, Peru, Philippines and Thailand*. In *Australia*, performers are protected

in addition against distribution, importation, broadcasting and public performance of recordings made without their consent.

48. In *Ecuador*, in addition to an exclusive reproduction right, rights to remuneration are granted for broadcasting, cable retransmission and reproduction for private use.

49. In *Estonia*, in addition to an exclusive right of reproduction, performers have the exclusive right to use the sounds and images of their performances separately, when they have been originally fixed together and form an integral whole, as well as a right to remuneration for private copying.

50. In *Gabon*, performers, in addition to the reproduction right, enjoy a remuneration right for private copying (blank tape levy).

51. In *Iceland*, the reproduction right is not subject to the conditions mentioned in Article 7.1.(c) of the Rome Convention, and in addition performers enjoy a right to remuneration for private use (blank tape levy).

52. In *Jamaica* and *Saint Lucia*, performers enjoy exclusive rights in respect of any use made without their consent as well as in respect of the adaptation of their fixed performances.

53. In *Kenya*, performers also enjoy the right of broadcasting if made from an unauthorized fixation.

54. In *Malawi*, broadcasters enjoy exclusive broadcasting and cable distribution rights, regarding fixations made under the limitations of the law, as well as equitable remuneration for broadcasting and cable distribution of fixations made by broadcasters.

55. In *Zambia*, performers are granted the reproduction right in respect of recordings made with or without their consent and the rights of distribution, rental and importation in respect of unauthorized recordings.

Wider scale of exclusive rights granted in audiovisual fixations irrespective of whether made with or without the consent of the performer, without a cut-off provision

56. The following legislations are part of this category: the above-mentioned directive of the *European Community*, the national laws of the Member States of that Community, except those of *Ireland, Luxembourg* and *Portugal*, and the national laws of *Armenia, Bolivia, Bosnia and Herzegovina, Bulgaria, Cameroon, Chile, Costa Rica, Croatia, Czech Republic, El Salvador, Ghana, Honduras, Italy, Liechtenstein, Lithuania, Madagascar, Malta, Nigeria, Norway, Panama, Poland, Romania, Slovenia, Switzerland, Turkey, Ukraine, Venezuela, Uzbekistan* and *Yugoslavia*.

57. All of the above-mentioned legislations provide for a reproduction right and a distribution right, except the national laws of the following countries which do not expressly provide for a distribution right: *Bolivia, Chile, El Salvador, Nigeria, Panama* and *Turkey*.

58. The following legislations mentioned in paragraph 56 provide for an exclusive rental right: the directive of the *European Community*, the national laws of the Member States of the Community, except those of *Ireland, Luxembourg and Portugal*, as well as the national laws of *Bolivia, Bulgaria, Costa Rica, Honduras, Liechtenstein, Madagascar, Norway, Poland, Romania, Slovenia, Turkey and Venezuela*. (It is understood that a number of national laws provide for a rental right in respect of phonograms only; these are not enumerated here). In *Switzerland*, the rental right, with regard to both phonograms and videograms, is reduced to a right to remuneration, exercised through mandatory collective administration.

Exclusive rights of communication to the public, broadcasting and distribution by cable of audiovisual fixations

59. Among the national laws mentioned in paragraph 56, a broad exclusive right of communication to the public is granted in *Belgium, Bolivia, Bulgaria, Cameroon, Costa Rica, Czech Republic, Denmark, France, Honduras, Lithuania, Madagascar, Malta, Netherlands, Poland, Romania, Sweden and Uzbekistan*. In *Sweden and Denmark*, the right of communication to the public is part of the right of making a performance available to the public.

60. In *Germany*, the exclusive right in this area is confined to broadcasting of unpublished recordings.

61. In *Chile*, a right of broadcasting and rebroadcasting is granted.

62. In *Nigeria*, the exclusive right covers broadcasting, inclusion in cable programs and public performance.

63. In *Panama, El Salvador and Venezuela*, the right of communication to the public is limited to recordings published for non-commercial purposes.

64. In *Bolivia, Costa Rica and Honduras*, “any other use” of a performance is also covered by an exclusive right of the performer. In *France and Madagascar*, the exclusive right also covers any separate use of the sounds or images of the performance, where the performance has been fixed as regards both sounds and images.

65. The right of communication to the public is reduced to a right to remuneration in the following cases:

– In *Belgium*, in case of broadcasting of the audiovisual fixation as well as in case of its communication in a public place, on condition that the performance is not used in an entertainment and that no entrance fee is charged to the public to enjoy the communication.

– In *Costa Rica*, in case of broadcasting or other communication to the public of a videogram published for commercial purposes, performers enjoy a right to participate in the producer’s remuneration.

- In the *Czech Republic, Turkey and Greece*, the remuneration right covers any broadcasting of an audiovisual fixation containing the performance.
- In *Spain*, any communication to the public of a recording is covered by a remuneration right.
- In *Bosnia and Herzegovina, Croatia and Yugoslavia*, the remuneration right extends to communication to the public other than broadcasting.
- In *Germany*, such a right applies to broadcasting of a published recording as well as to any other communication to the public of a recording, whether published or not.
- In *Madagascar*, a right to equitable remuneration is granted for use of published videograms in non-dramatic public performances, in broadcasting and simultaneous and unchanged cable retransmission.
- In *Poland*, the right to remuneration extends to any broadcasting of published recordings other than “fiction films.”
- In *Switzerland*, such a right covers broadcasting, rebroadcasting, public reception and presentation of a videogram.
- In *Uzbekistan*, the right to remuneration applies to broadcasting of recordings published for commercial purposes.

66. It is to be noted that, in a number of national laws of the category mentioned in paragraph 56, as well as under the relevant directive of the *European Community*, a remuneration right for communication to the public or for broadcasting of a fixed performance is also granted, but limited either to any fixations of sounds or to phonograms published for commercial purposes.

Presumptions of transfer of rights from the performer to the producer of the audiovisual fixation, accompanied or not by provisions securing the remuneration of the performer in case of transfer

67. Under the directive of the *European Community*, when a contract concerning a film production is concluded, the transfer of the rental right to the producer is presumed, subject to contractual clauses to the contrary (rebuttable presumption of transfer). In case of transfer, the performer retains an unwaivable right to equitable remuneration for a rental.

68. As an alternative, the directive permits Member States to provide that the signing of a film production contract by the performer has a mandatory effect of authorizing the rental, subject to the condition that the contract also provides for an equitable remuneration of the performer in case of rental of copies.

69. While the choice between these alternatives is free, Member States are not allowed to apply a cut-off provision as under Article 19 of the Rome Convention.

70. Most Member States of the European Community have chosen the first alternative. One group among those Member States (*Austria, Denmark, Finland, Spain and the United Kingdom*) has implemented the rebuttable presumption of transfer of the rental right only, without extension to any other rights. *Liechtenstein* and *Norway*, linked to the European Community by the European Economic Area Agreement, apply to the same system.

71. The second group of European Community Member States, namely, *Belgium, Germany, Greece and Italy*, but also—outside the European Community—*Bulgaria, Poland, Slovenia and Ukraine*, provide for a rebuttable presumption of transfer of all exclusive rights of the performer, as regards the exploitation of performances included in cinematographic works.

72. In *Sweden*, a transfer of the right to record the performance on a film includes the right to make the recorded performance available to the public, through the film, in cinemas, on television or otherwise.

73. In the *Netherlands*, an employer is entitled to exploit the rights of a performer (in respect of all kinds of performances and recordings) where this has been agreed between the parties or derives from the nature of the employment agreement concluded between them.

74. No provision on any kind of presumption of transfer can be found in the legislations of *Armenia, Bosnia and Herzegovina, Croatia, Ghana, Malta, Madagascar, Switzerland, Turkey and Uzbekistan*.

75. Among the national laws mentioned so far, the following provide for a right to equitable remuneration in the case of transfer of the rental right to the producer:

– The law of *Austria* provides for an equitable share of the performer in the remuneration which the film producer obtains for authorizing the rental of copies.

– In *Belgium*, in case of audiovisual productions other than in a non-cultural field or for advertising, performers are entitled to separate remuneration for each exploitation mode.

– In *Germany* and *Spain*, performers retain, after transfer of the rental right, an unwaivable right to equitable remuneration for the rental of copies, which is exercised by mandatory collective administration; the remuneration has to be paid by the rental outlets.

– According to the law of *Greece*, performers retain, even after transfer of rights, a right to remuneration for each exploitation act, in particular an unwaivable right to equitable remuneration for rental.

– In *Italy*, after transfer of the rental right, performers retain the right to a fair remuneration for rental contracts concluded by the producer.

– In the *Netherlands*, where an employer, according to the rule quoted above, is entitled to exploit the right of the performer, he shall owe to the performer equitable remuneration for each form of exploitation.

– In the *United Kingdom*, the performer who has transferred his rental right to the producer retains the right to equitable remuneration for the rental. This right may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf. The equitable remuneration is payable by the producer or any successor in title.

76. Two further national laws provide remuneration rights for performers: The Copyright Act of *Malta* provides that performers have the right to obtain an equitable remuneration for the rental of a cinematographic film; this apparently applies in the case of the contractual transfer of the rental right of the performer to the producer. According to the Copyright Act of *Turkey*, performers may transfer their rights to the producer “against equitable remuneration.”

77. The second alternative provided for in the directive of the *European Community* is chosen by the law of *France*, which, firstly, provides that the signing of a contract between a performer and a producer for the making of an audiovisual work implies the transfer of the exclusive rights to the producer, and, secondly, prescribes that such contract shall lay down separate remuneration for each mode of exploitation of the work, failing which the amount of remuneration shall be determined in accordance with collective agreements existing in the relevant sector. Furthermore, the responsible minister is empowered to make existing collective agreements compulsory for all parties concerned. This model seems to have been followed by *Cameroon*, while the law of *Madagascar*, containing no rule on whether and in which way a transfer of rights is produced, provides that contracts must be written and signed by both parties and must specify a distinct remuneration for each mode of exploitation and that, otherwise, the remuneration will be fixed according to the fees laid down in the respective comparable collective agreements.

#### Remuneration for private copying

78. Among the national laws mentioned in paragraph 56, the following provide, in favor of performers, for a right to remuneration for private copying through a levy system whereby, in all cases, at least blank recording carriers (blank tapes or cassettes) are charged and, in some cases also the recording equipment: *Austria, Belgium, Bulgaria, Cameroon, Czech Republic, Denmark, France, Germany, Italy, Netherlands, Nigeria, Poland, Romania, Slovenia, Spain, Switzerland, Ukraine* and *Uzbekistan*. (As indicated in paragraphs 40, 42 and 48 to 51, in the laws of *Hungary, Ecuador, Estonia, Gabon* and *Iceland*, there is also such a right to remuneration).

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