

WIPO



SCCR/2/4

ORIGINAL: English/French/Spanish

DATE: March 11, 1999

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Second Session
Geneva, May 4 to 11, 1999

AGENDA ITEM 4: PROTECTION OF AUDIOVISUAL PERFORMANCES

COMPARATIVE TABLE OF PROPOSALS RECEIVED BY FEBRUARY 28, 1999

prepared by the International Bureau

Introductory note

The Standing Committee on Copyright and Related Rights (SCCR), in its first session, recommended, as regards the protection of audiovisual performances, that the International Bureau prepare a comparative table of the proposals submitted by Governments and the European Community as of February 28, 1999, including any revised proposal received before that date.

This comparative table is contained in the Annex. It is based on the following documents:

- SCCR/1/4, containing submissions received after the second session of the former Committee of Experts (June 1998) and by September 30, 1998.
- AP/CE/2/5, containing the proposal from Algeria, Burkina Faso, Cameroon, Ghana, Kenya, Malawi, Mali, Morocco, Namibia, Nigeria, Senegal, South Africa, Sudan, Togo and Zambia (referred to in the Annex as “Certain States of Africa”).
- SCCR/1/5, containing the Report on the Regional Consultation Meeting for Asia and the Pacific, held in Shanghai, from October 14 to 16, 1998 (referred to in the Annex as “Certain States of Asia and the Pacific”).
- SCCR/1/8, containing a submission by Canada.
- AP/CE/2/2 and SCCR/2/3, containing submissions received from the European Community and its Member States.
- SCCR/2/2, containing the Report on the Regional Consultation Meeting for Countries of Latin America and the Caribbean, held in Geneva, in November 6, 1998 (referred to in the Annex as “Certain States of Latin America and the Caribbean”).
- AP/CE/2/3, containing the proposal by the Republic of Korea.

The presentation follows the same organization and titling of subject matters, as used in the Comparative Table prepared for the second session of the Committee of Experts (document AP/CE/2/7), but without the former chapter “XIX. Implementation”.

[Annex follows]

ANNEX

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

CONTENTS

	<u>page</u>
I. Title	1
II. Preamble	1
III. Relation to other conventions and treaties; relation to copyright	3
IV. Definitions	5
V. Beneficiaries of protection	7
VI. National treatment	8
VII. Formalities; independence from protection in country of origin	10
VIII. Moral rights of performers	11
IX. Rights of performers in their unfixed performances	13
X. Rights of performers in audiovisual fixations	15
1. Right of reproduction	15
2. Right of distribution	16
3. Right of rental	18
4. Right of making available	19
5. Right of broadcasting and communication to the public	20
XI. Limitations and exceptions	22
XII. Contractual arrangements concerning rights of performers	24
XIII. Duration of economic rights of performers	26

XIV. Obligations concerning technological measures	28
XV. Obligations concerning rights management information	29
XVI. Reservations	31
XVII. Application in time	32
XVIII. Provisions on enforcement of rights	33
XIX. Administrative and final clauses	35

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.

JAPAN

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,

Wishing to ensure an adequate level of protection for performances in audiovisual works, owing to the fact that the development and convergence of new information and communication technology will bring about a rapid broadening of the range of audiovisual services and also an increase in the opportunities for performers to exploit their 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:

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

III. Relation to Other Conventions; Relation to Copyright

- (1) This instrument 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 (hereinafter “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.

JAPAN

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 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization done in Rome, October 26, 1961.
- (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 as prejudicing such protection.
- (4) This Protocol shall not prejudice any rights and obligations under any other treaties.

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

IV. Definitions

(1) The Contracting Parties shall apply, *mutatis mutandis*, the definitions set out in Article 2 (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 images, whether or not accompanied by sound, or the representation thereof, from which they can be perceived, reproduced or communicated by means of a device.

(3) For the purposes of this Protocol, “performers” means all actors, singers, musicians, dancers or other persons who interpret a role, sing, recite, declaim or in any way perform literary or artistic works or expressions of folklore, with the exception of extras [, the definition of the latter term being left to the legislation of each Contracting Party].

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.

JAPAN

Article 2
Definitions

(1) Contracting Parties shall apply, *mutatis mutandis*, the definitions set out in paragraphs (a), (f) and (g) of Article 2 of the WPPT 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 of 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 ancillary performers considered such by professional practice;

(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 impart an impression of motion and 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 ASIA AND THE PACIFIC

9. The protection granted to performers under the Protocol should be restricted to nationals of Contracting Parties to the instrument.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

V. Beneficiaries of Protection

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

- (a) to performers who are nationals of other Contracting Parties;
- (b) to performers who are not nationals of any of the Contracting Parties but are ordinarily resident in one of them, who shall be treated as nationals of the Contracting Party concerned.

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.

JAPAN

Article 3 Beneficiaries of Protection under this Protocol

Contracting Parties shall accord the protection granted under this Protocol to the 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.
- (3) Performers who are not nationals of one of the Contracting Parties but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that 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.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

VI. National Treatment

Each Contracting Party shall accord to the nationals of other Contracting Parties the same treatment as it accords to its own nationals with respect to the rights specifically granted in this Protocol.

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.

JAPAN

Article 4
National Treatment

(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to exclusive rights specifically granted in this Protocol, and to the right to equitable remuneration provided for in Article 10 of this Protocol.

(2) Notwithstanding the provisions of paragraph (1), any Contracting Party may, as regards performers who are nationals of another Contracting Party, limit the protection provided for in Article 10 to the extent to which, and to the term for which, the latter Contracting Party grants protection to performers who are nationals of the former Contracting Party.

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 ASIA AND THE PACIFIC

17. Follow the WPPT approach in relation to these areas.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

VII. Formalities

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

JAPAN

Article 5 Formalities

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 20 (Formalities) of the WPPT.

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 16
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 institution 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 ASIA AND THE PACIFIC

11. Moral rights need to be qualified to allow for development in technology and to facilitate commercial exploitation of films by producers.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

VIII. Moral Rights of Performers

(1) Independently of the 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, provided that the audiovisual producer may abridge, condense, edit or dub the work, but without thereby distorting the performance of the performer.

(2) The rights granted to the performer in accordance with the foregoing paragraph shall, after his death, be maintained, at least until the expiry of his 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 those 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.

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)¹...

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),¹... of the WIPO Treaty.

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

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 fixation, 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. Modifications consistent with the normal exploitation of an audiovisual work undertaken by the producer of the work or the producer's successors in interest, pursuant to the exercise of rights of authorization acquired by the producer in the performance, shall not be considered seriously prejudicial to the performer's reputation.

(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 the work, the writers of scenarios, dialogues or musical works created for the work, and the principal director of the work when seeking to exercise the above described rights with respect to such work.

IX. RIGHTS OF PERFORMERS IN THEIR UNFIXED PERFORMANCES

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 ASIA AND THE PACIFIC

13. The principles adopted in the WIPO Performances and Phonograms Treaty, ..., should be followed in relation to these rights.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

IX. Economic Rights of Performers in their Unfixed Performances

Performers shall enjoy the exclusive right to authorize the following in relation to their unfixed performances:

- (i) broadcasting and communication to the public of their unfixed performances, except where the performance constitutes a broadcast performance in itself;
- (ii) fixation of their unfixed performances.

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).

JAPAN

Article 7
Economic Rights of Performers in their Unfixed Performances

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 provided for in Article 6 (Economic Rights of Performers in their Unfixed Performances) of the WPPT.

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 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 ASIA AND THE PACIFIC

13. The principles adopted in the WIPO Performances and Phonograms Treaty, including those incorporated in the Agreed Statements reproduced in the footnotes to the WPPT, should be followed in relation to these rights.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

1. Right of reproduction

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

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.

JAPAN

Article 8
Economic Rights of Performers in their Performances fixed
in Audiovisual Fixations

(1) Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the exploitation of their performances fixed in audiovisual fixations, the same rights as those provided for in Articles 7 (Right of Reproduction)... of the WPPT.

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 ASIA AND THE PACIFIC

13. The principles adopted in the WIPO Performances and Phonograms Treaty, including those incorporated in the Agreed Statements reproduced in the footnotes to the WPPT, should be followed in relation to these rights.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

2. Right of distribution

(i) Performers shall enjoy the exclusive right to authorize the making available to the public, through sale or other transfer of ownership, of the original and copies of their performances incorporated in audiovisual fixations.

(ii) 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.

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.

JAPAN

Article 8 Economic Rights of Performers in their Performances fixed in Audiovisual Fixations

(1) Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the exploitation of their performances fixed in audiovisual fixations, the same rights as those provided for in Articles ... 8 (Right of Distribution) ... of the WPPT.

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

3. Right of rental

(1) Performers shall enjoy the exclusive right to authorize the commercial rental to the public of copies of their audiovisual fixations.

(2) Paragraph (1) shall not be applicable in the case of an audiovisual work except where the said commercial rental has given rise to widespread copying thereof which considerably detracts from the performer's exclusive rights of reproduction.

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.

JAPAN

Article 8
Economic Rights of Performers in their Performances fixed
in Audiovisual Fixations

...

(2) Contracting Parties shall accord to performers the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations, even after distribution of them by or pursuant to authorization by the performer. A Contracting Party shall be excepted from this obligation unless such rental has led to widespread copying of such performances fixed in audiovisual fixations which is materially impairing the exclusive right of reproduction conferred in that Contracting Party on performers and their successors in title.

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 ASIA AND THE PACIFIC

13. The principles adopted in the WIPO Performances and Phonograms Treaty, including those incorporated in the Agreed Statements reproduced in the footnotes to the WPPT, should be followed in relation to these rights.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

4. Right of making available

Performers shall enjoy the exclusive right to authorize the making available to the public of their performances incorporated in audiovisual fixations, 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.

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.

JAPAN

Article 8
**Economic Rights of Performers in their Performances fixed
in Audiovisual Fixations**

(1) Contracting Parties shall accord, *mutatis mutandis*, to performers, as regards the exploitation of their performances fixed in audiovisual fixations, the same rights as those provided for in Articles ... 10 (Right of Making Available of Fixed Performances) of the WPPT.

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 ASIA AND THE PACIFIC

15. Article 15(3) of the WPPT would be a better option to follow.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

5. Right of broadcasting and communication to the public

No agreement having been reached, the discussions continue.

The Delegation of Brazil proposes omitting all provisions on the right of broadcasting or communication to the public.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

II. Broadcasting and communication to the public rights

“...prior to any final conclusion on the nature and scope of such a right, it will be necessary to have regard to its possible economic effects taking account of the overall shape of the future protocol and in particular of the National Treatment obligations enshrined therein.

If such a right were to be granted, at first sight the application *mutatis mutandis* of Article 15 of the WPPT seems difficult, as the assimilation of “phonograms published for commercial purposes” to “fixed performances, published for commercial purposes” (for instance videotapes), would greatly limit the scope of the right, given that it is rare, nowadays, for broadcasts of an audiovisual fixation, as opposed to phonograms, to take place on the basis of a carrier available on the market.

The European Community and its Member States consider therefore that, if such a right would prove to be necessary, it would be essential to envisage different drafting.

One possibility could be, on the basis of the mechanism foreseen by Article 15 of the WPPT, to adapt it to the specificity of the audiovisual sector so as to give performers the assurance of at least an equitable remuneration for the direct or indirect use of audiovisual fixations for broadcasting or for any communication to the public. The management of any right, to which the reservations provided for in Article 15 (3) could be applied *mutatis mutandis*, could be entrusted to a collecting society.”

JAPAN

Article 10 Right to Remuneration of Performers in their Performances fixed in Audiovisual Fixations

Contracting Parties may establish in their national legislation the right to equitable remuneration of performers for the exploitation of their performances fixed in audiovisual fixations.

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

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 performance.

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 ASIA AND THE PACIFIC

17. Follow the WPPT approach in relation to these areas.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

XI. Limitations and Exceptions

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

(2) The Contracting Parties shall confine any limitation on or exception to rights provided for in this Protocol to certain special cases that do not conflict with a normal exploitation of the audiovisual fixations or unreasonably prejudice the legitimate interests of the performer or of the audiovisual producer.

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.

JAPAN

Article 11
Limitations and Exceptions

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 WPPT.

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

CANADA

Transfer of Rights

Option A

At the time of ratifying or acceding to this [Protocol]/[Treaty] or at any subsequent time a Contracting Party may declare by an instrument deposited with the Director General that once a performer [who is a national of [that]/[any] Contracting Party]/[regardless of nationality] has consented to the fixation of his or her performance in an audiovisual work by a national of that Contracting Party, he or she shall be deemed to have transferred all exclusive rights of authorization granted under this [Protocol]/[Treaty] with respect to that particular audiovisual work to the [author]/[producer]/[first owner of copyright] of that work [provided such [author]/[producer]/[first owner of copyright] is a national of a Contracting Party] and [his, hers or] its successors in interest subject to any written [contractual [clause]/[provision]]/[agreement] 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.

Where a Contracting Party makes such a declaration it shall apply [and be binding] in all other Contracting Parties of this [Protocol]/[Treaty].

For purposes of this article the term “an audiovisual work by a national of that Contracting Party” means an audiovisual work where the [author]/[producer]/[first owner of copyright] is a national of the Contracting Party which made the declaration [regardless of the place of fixation or publication of the audiovisual work].

[[For purposes of this article] “producer” shall include both individuals and legal entities [and the identity of the producer shall be determined by the law of the Contracting Party which made the declaration]].

A declaration made under this article may be revoked at any time.

Optional

Where a declaration under this article is made subsequent to the time of a Contracting Party ratifying or acceding to this [Protocol]/[Treaty], it shall apply effective January 1 of the year immediately following the date of deposit.

Option B

No transfer of rights provision.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

XII. Contractual Arrangements Concerning the Rights of Performers

Where a performer authorizes the inclusion of his performance in an audiovisual fixation, the Contracting Parties shall apply, *mutatis mutandis*, the provisions of Article 14bis(2)(b) of the Berne Convention, it being understood that the said provisions shall likewise be applicable to those of item 3 of Article X of this Protocol.

The Delegation of Brazil proposes omitting all provisions on contractual arrangements concerning the rights of performers in relation to broadcasting or communication to the public.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

I. Transfer of rights

...The European Community and its Member States cannot support an international provision that would make mandatory for Contracting Parties, as foreseen by some proposals, the introduction of a provision on transfer of rights in their national legislation. In fact, it would imply in many countries major changes in contractual practices, which in different degrees are already subject to presumption of transfer. This adaptation would no doubt be controversial, and could well disturb well-established and sometimes delicate balances.

Consequently, the European Community and its Member States still propose that the protocol discussed should leave the Contracting Parties the widest flexibility in their own domestic regulation, including the possibility to introduce and/or maintain provisions on transfer of rights, according to their legal traditions and national considerations. In a spirit of clarity, Contracting Parties should agree that it will be a matter for legislation in the Contracting Parties whether or not to provide for a transfer of rights and to determine its nature and scope.

JAPAN

Article 9
Contractual Arrangements

(1) A performer who has undertaken to bring contributions to the making of an audiovisual fixation of his performance may not, in the absence of any contrary or special contract, object to the reproduction, distribution, rental and making available of his performance fixed in the audiovisual fixation.

(2) Notwithstanding the provisions of Article 4(1), any Contracting Party may, as regards performers who are nationals of such Contracting Party, establish national legislation which does not contain rules providing for the application of paragraph (1). Such Contracting Party shall notify the Director General of WIPO by means of a written declaration, which will be immediately communicated by him to all the other parties of this Protocol.

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 PERFORMERS²

CANADA

I. Term of Protection

Option A

The term of protection to be granted to performers under this [Protocol]/[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.

Option B

The term of protection to be granted to performers under this [Protocol]/[Treaty] shall last until the end of the term of protection of the audiovisual work in which it is fixed.

Option B.1

[Notwithstanding [Option B] no act done with respect to the audio portion of an audiovisual work shall be an infringement of any rights under this [Protocol]/[Treaty] if that act occurred more than 50 years after the end of the year in which the performance was fixed.]

II. Applicable Term

The term shall be governed by the legislation of the Contracting Party where protection is claimed; however, unless the legislation of that Contracting Party otherwise provides, the term shall not exceed the term fixed in the Contracting Party of the performer's nationality.

² For duration of moral rights, see part VIII of this table.

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

XIII. Term of Protection of the Economic Rights of Performers

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

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.

JAPAN

Article 12
Term of Protection

Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 17 (Term of Protection) (1) of the WPPT.

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 ASIA AND THE PACIFIC

17. Follow the WPPT approach in relation to these areas.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

XIV. Obligations Concerning Technological Measures

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

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.

JAPAN

Article 13

Obligations concerning Technological Measures

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

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 14
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 ASIA AND THE PACIFIC

17. Follow the WPPT approach in relation to these areas.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

XV. 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 Protocol:

(i) removing or altering any electronic rights management information without authority;

(ii) distributing, importing for distribution, broadcasting, communicating or otherwise making available to the public, without authority, performances, copies of performances incorporated in audiovisual fixations 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, his performance, the audiovisual producer or the audiovisual work, or information about the terms and conditions governing the use of the performance of the audiovisual work, and any numbers or codes that represent such information, when any of those items of information is attached to a copy of a fixed performance or appears in connection with the communication or making available to the public of a performance incorporated in an audiovisual fixation.

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.

JAPAN

Article 14 **Obligations concerning Rights Management Information**

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

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 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

XVI. Reservations

GRULAC will pronounce on this matter after the articles concerning the various rights have been put in final form.

The Delegation of Brazil will propose reservations should the Protocol contain provisions on entitlement to equitable remuneration.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

Article 7 Reservations

No reservations to this Protocol shall be permitted.

JAPAN

**Article 15
Reservations**

Subject to the provisions of Article 4(2) and Article 9(2), no reservations to this Protocol shall be permitted.

UNITED STATES OF AMERICA

**Article 17
Reservations**

No reservations to this Treaty shall be permitted.

XVII. APPLICATION IN TIME

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 ASIA AND THE PACIFIC

17. Follow the WPPT approach in relation to these areas.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

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.

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.

JAPAN

Article 16
Application in Time

- (1) Contracting Parties shall apply, *mutatis mutandis*, in respect of the protection granted under this Protocol, the provisions of Article 22 (Application in Time) (1) of the WPPT.
- (2) The provisions of paragraph (1) do not apply to the right to equitable remuneration of performers provided for in Article 10 of this Protocol.

UNITED STATES OF AMERICA

Article 18
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

XVIII. Provisions on Enforcement of Rights

(1) The Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Protocol.

(2) The 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 Protocol, including expeditious remedies to prevent infringement and remedies that constitute a deterrent to further infringements.

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.

JAPAN

Article 17

Enforcement of Rights

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

UNITED STATES OF AMERICA

Article 19

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

CERTAIN STATES OF ASIA AND THE PACIFIC

20. The number of instruments of ratification or accession required for entry into force of the Protocol should be the same as the WPPT, i.e., 30 instruments.

CERTAIN STATES OF LATIN AMERICA AND THE CARIBBEAN

1. Assembly

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

2. Eligibility to Become 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*.

Note: The Delegation of Brazil maintains that the expression “performances incorporated in audiovisual fixations” should be replaced by “audiovisual fixations” in all articles in which the former expression appears. The proposal is going through a consultation process within GRULAC.

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*.

JAPAN

Article 18
Assembly

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

Article 19
Eligibility for Becoming Party to the Protocol

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

Article 20
Signature of the Protocol

This Protocol shall be open for signature until by any party to the WPPT.

Article 21
Entry into Force of the Protocol

This Protocol shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 22
Final Clauses

The provisions of Article 25 (International Bureau), 27 (Rights and Obligations under 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*.

[End of Annex and of document]