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

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

PROPOSAL FROM THE UNITED STATES OF AMERICA *

* This proposal was received on May 18, 1998.

SUBSTANTIVE PROVISIONS OF A TREATY FOR THE PROTECTION OF PERFORMERS IN AUDIOVISUAL WORKS

Preamble

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:

CHAPTER I GENERAL PROVISIONS

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.

Article 2

Definitions

For the purposes of this Treaty:

(a) “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, but not including extra performers or background performers;

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

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

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

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

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.

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.

CHAPTER II RIGHTS OF PERFORMERS

Article 5

Moral Rights of Performers

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his or her live performances or performances fixed in an audiovisual work, have the right to claim to be identified as the performer of such performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation, or other modification of his or her performance that would be seriously prejudicial to the performer's reputation, where such modification is not part of the normal exploitation of an audiovisual work by the producer of the work or its successors in interest, pursuant to the exercise of rights of authorization acquired by the producer in the performance.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after the said performer's death, be maintained, at least until the expiry of the rights of authorization set forth in Articles 6 through 10, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph, may provide that some of these rights will, after the performer's death, cease to be maintained.

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

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

Article 6

Economic Rights of Performers in their Unfixed Performances

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

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

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.

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.

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.

Article 10

Right of Broadcasting and Communication to the Public

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

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

CHAPTER III ADDITIONAL PROVISIONS

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 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.

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.

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.

Article 14

Implementation

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

Article 15

Obligations concerning Technological Measures

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

Article 16

Obligations concerning Rights Management Information

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

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

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

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

Article 17

Formalities

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

Article 18

Reservations

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

Article 19

Application in Time

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

Article 20

Provisions on Enforcement of Rights

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

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