

WIPO



CRNR/DC/34
ORIGINAL: English
DATE: December 11, 1996

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**DIPLOMATIC CONFERENCE
ON
CERTAIN COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS**

Geneva, December 2 to 20, 1996

SCOPE OF COVERAGE FOR AUDIOVISUAL PERFORMERS

proposed by the Delegation of the United States of America

The Delegation of the United States of America offers the following proposal to address the issue of protection for audiovisual performers in Draft Treaty N° 2.

Element One—Rights Granted

- (a) Select Alternative B in Articles 2(c), 2(h), 6, 7, 9, 11 and 21.
- (b) Select Alternative A in Article 10.
- (c) Delete Articles 5, 8 and 15.
- (d) Select Alternative D in Article 25.

Element Two—Transferability

Insert new Article 13*bis* that would read as follows:

Transferability of Rights

- (1) The exclusive rights provided under this Treaty shall be freely transferable.
- (2) Once a performer has consented to the fixation of his performance in an audiovisual fixation, he shall be presumed to have transferred all rights granted under this Treaty to the producer of the fixation, subject to contractual clauses to the contrary. Contracting Parties may provide that such presumptions are irrebutable.
- (3) In the absence of a determination by the parties as to the applicable law, a contract concerning rights granted under this Treaty shall be governed by the law of the Contracting Party most closely connected to the contract.

Element Three–Implementation

Each Contracting Party, including the United States, would have an obligation to provide the treaty rights to nationals of other Contracting Parties. Accordingly, the United States proposes inserting a new Article 26*bis* that would read as follows:

Implementation of Treaty Obligations

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, or, with respect to performers who are nationals of that Contracting Party or whose performance is fixed by a national of that Contracting Party, by the application of collective bargaining agreements where such agreements provide the equivalent of the protection required by this Treaty to a substantial majority of performers who are nationals of that Contracting Party.

Element Four–National Treatment

Replace existing Article 4 with the following text:

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties, in respect of the subject matter protected under this Treaty, the treatment it accords to its own nationals as well as the rights specially granted by this Treaty.
- (2) The obligation provided for in paragraph (1) shall not apply to the extent to which the other Contracting Party makes use of the reservations allowed under Articles 12(3) and 19(3) of this Treaty.

Related Amendments

1. Amend the first line of paragraph (2) of Article 3 (Beneficiaries of Protection) by substituting the word “include” for the word “be.”

2. Amend the definition of “performer” in Article 2 to add the following clause at the end: “but, with respect to audiovisual fixations, does not include background performers who do not speak words of scripted dialogue.”

[End of document]