

WIPO



CRNR/DC/54
ORIGINAL: English
DATE: December 12, 1996

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

Geneva, December 2 to 20, 1996

AMENDMENT TO ARTICLES 2, 7, 10, 12, 14, 17, 19 AND 21 OF DRAFT TREATY N° 2

proposed by the Delegation of Australia

The Delegation of Australia proposes that Article 2 be amended as follows:

- (1) substitute “any” for “appropriate” in paragraph (c);
- (2) omit paragraph (f);
- (3) substitute “such” for the words “by satellite” (second occurring) in paragraph (g).

The Delegation of Australia proposes that Articles 7 and 14 be amended as follows:

inserting at the beginning of paragraph (1) the words, “Subject to paragraph (2);”
and
replacing paragraph (2) with the following paragraph:

“Paragraph (1) shall not apply to indirect or temporary reproductions that have the sole purpose of making a [fixed performance / phonogram] perceptible or which are of a purely transient or incidental character as part of a technical process.”

The Delegation of Australia proposes that Articles 10 and 17 be amended by inserting in paragraph (1) the word “commercial” before “rental.”

The Delegation of Australia proposes that Articles 12 and 19 be merged into a single article to be located in Chapter IV and to read as follows, the new wording being shown in bold underlined and the words proposed to be omitted from the Basic Proposal being contained within square brackets and italicized:

“(1) **Performers and producers of phonograms** shall enjoy a right to a single equitable remuneration for the direct or indirect use of phonograms [*published for commercial purposes or reproductions of such phonograms*] for broadcasting and for any communication to the public.

(2) Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration. In the absence of either national legislation or an agreement between the performer and the producer of a phonogram, the performer and the producer of the phonogram shall equally share the single equitable remuneration between them.

(3) Any Contracting Party may, [*subject to the provisions of paragraph (4),*] in a notification deposited with the Director-General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all. In availing itself of this possibility, any Contracting Party may apply the provisions of Article 16.1(a)(iv) of the Rome Convention *mutatis mutandis*.

(4) [*The provisions of paragraph (3) do not apply to any broadcasting or any communication by wire or wireless means which can only be received on the basis of subscription and against payment of a fee.*]

Article 21 of Draft Treaty N° 2

(1) 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 computed from the end of the year in which the

Alternative A: musical performance **was** fixed in a phonogram

Alternative B: performance **was** fixed in any medium

[was published, and in case of unpublished fixed performances, from the end of the year in which the performance took place.]

(2) The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which *[the phonogram was published, and in case of unpublished phonograms, from the end of the year in which]* the fixation was made.

[End of document]