

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**

GENEVA

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

**Geneva, December 2 to 20, 1996**

DRAFT AGREED STATEMENTS CONCERNING TREATY No. 2

*submitted by Main Committee I  
to the Conference, meeting in Plenary*

### **Concerning Article 1**

It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.

It is further understood that nothing in Article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

### **Concerning Article 2(b)**

It is understood that the definition of phonogram provided in Article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

### **Concerning Articles 2(e), 8, 9, 12, and 13**

As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

### **Concerning Article 3**

It is understood that the reference in Articles 5(a) and 16(a)(iv) of the Rome Convention to “national of another Contracting State” will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

### **Concerning Article 15**

It is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusivity to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

**Concerning Article 15**

It is understood that Article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

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