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**WIPO – Geneva**

**ILO/UNESCO/WIPO/ICR.20/6**

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**INTERNATIONAL CONVENTION FOR THE PROTECTION  
OF PERFORMERS, PRODUCERS OF PHONOGRAMS  
AND BROADCASTING ORGANIZATIONS  
(ROME CONVENTION, 1961)**

**INTERGOVERNMENTAL COMMITTEE  
Twentieth Ordinary Session**

**Geneva, September 7 to 9, 2009**

**THE FUTURE OF THE ROME CONVENTION**

(Report on current international activities concerning the protection of rights  
of performers, producers of phonograms and broadcasting organizations)

*Memorandum prepared by the Secretariat*

1. The purpose of the present memorandum is to give an overview of the developments which have taken place regarding the international protection of the rights of performers, producers of phonograms and broadcasting organizations since the nineteenth session of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) in 2005. For reading convenience, the memorandum also summarizes certain earlier developments described in the document for the nineteenth session of the Intergovernmental Committee (document ILO/UNESCO/WIPO/ICR.19/6).

### *The protection of audiovisual performances*

2. The Diplomatic Conference on the Protection of Audiovisual Performances (December 7 to 20, 2000) achieved provisional agreement on 19 articles of a Draft WIPO Audiovisual Performances Treaty, but did not succeed in reaching agreement on Article 12 on ownership and transfer of rights, and recommended reconvening the Diplomatic Conference for the purpose of reaching agreement on outstanding issues

3. Since then, the issue has been on the agendas of all subsequent annual sessions of the WIPO General Assembly, where numerous governments have expressed their commitment to the continuation of the process with the aim of establishing an international protection of audiovisual performers, but where it has also been made clear that the disagreements regarding transfer of rights persist. The Director General of WIPO has held informal consultations with stakeholders and governments trying to identify possible ways forward. Since the 19th Session of the IGC took place, the Director General of WIPO has continued conducting informal consultations among Member States and key stakeholders in the private sector, in order to identify ways and means for making progress on outstanding issues. At its annual session in 2006, the WIPO General Assembly noted the intention of the Director General to organize national and/or regional seminars in order to promote developments on the issue, both at the levels of national legislation and international consensus-building. A similar decision was taken at the 2007 session of the general Assembly.

4. Since the 2006 General Assembly first approved this initiative, a number of regional and national Seminars have taken place, and others are scheduled to take place in 2009. As was recognized by the 2007 WIPO General Assembly “(i)n preparing these events the WIPO Secretariat has followed a flexible and balanced approach to the protection of performers at the national level, in such practical areas as contractual relations and collective bargaining, the exercise and transfer of rights and remuneration systems”. The General Assembly also decided that “(i)n order to further promote the development of mechanisms for the protection of audiovisual performers, both at the levels of national legislation and international consensus-building, the WIPO Secretariat will continue to organize regional and national seminars on the issue”.

5. The sixteenth session of the Standing Committee on Copyright and Related Rights (SCCR), which took place in Geneva in March 2008, discussed the issue of the protection of audiovisual performances. On that occasion the Secretariat was requested to prepare a factual document summarizing the outcome of the national and regional Seminars organized in accordance with the request of the General Assembly and a stocktaking of positions of members of the SCCR. That document, (document SCCR/17/3) was the basis for discussions at the seventeenth session of the SCCR in November 2008, where the Committee reaffirmed its commitment to work on developing the international protection of performers concerning their audiovisual performances, and stressed the importance of the exchange of information and informal consultations with the aim of finding a way forward. The Committee encouraged the Secretariat to continue to organize seminars at the regional and national level, in order to allow extensive exchange of information, also for the purpose of developing protection of audiovisual performances on the national level and to collect information and possible proposals on outstanding issues. Finally, it decided that the matter will be maintained on the agenda of the next session of the SCCR. At the eighteenth session of the SCCR held in Geneva in May 2009, the Committee encouraged the Secretariat to continue organising those regional and national seminars. The Committee reaffirmed its commitment to work on developing the international protection of performances in audiovisual media. The Secretariat was requested to prepare a background document on the main questions and positions, and organize, in Geneva, informal and open-ended consultations among all members of the Committee on possible solutions to the prevailing deadlock. The eighteenth session of the SCCR decided that the protection of audiovisual performances will be maintained on the Agenda of the nineteenth session of the SCCR.

*The protection of the rights of broadcasting organizations*

6. The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) adopted in 1996 and the subsequent entry into force of those Treaties on March 6 and May 20, 2002, respectively, represented a major step forwards in the updating of international copyright and related rights law to the realities of the information society. However, these two Treaties concluded in 1996 did not address the issue concerning the protection of broadcasting organizations.

7. The updating of the related rights of broadcasting organizations in response to digital and other new technologies and the growing use of the Internet has been discussed by the Standing Committee on Copyright and Related Rights (SCCR) since that Committee was established in 1997.

8. The twelfth session of the Standing Committee on Copyright and Related Rights continued working towards preparing a diplomatic conference. Regional consultation meetings took place in 2005 and at the 2005 session of the WIPO General Assembly it was decided that two additional meetings of the SCCR would be scheduled to accelerate discussions on the main working document (SCCR/12/2 Rev.2) and a separate working paper (SCCR/12/5 Prov.). Those meetings should aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organizations in order to enable the 2006

WIPO General Assembly to recommend the convening of a Diplomatic Conference in December 2006, or at an appropriate date in 2007.<sup>1</sup>

9. At the fourteenth session of the SCCR in May 2006, Member States requested that an additional session should be organized before the 2006 session of the WIPO General Assembly with the aim to agreeing and finalizing a basic proposal for a treaty on the protection of the rights of broadcasting organizations, in order to enable the 2006 General Assembly to recommend the convening of a diplomatic conference in December 2006, or at an appropriate date in 2007.

10. A revised version of the draft basic proposal was prepared for the fifteenth session of the SCCR (document SCCR/15/2 rev.) which took place in September 2006. The SCCR recommended that a diplomatic conference on the protection of the rights of broadcasting organizations be convened in July – August 2007 with the objective to negotiate and conclude a WIPO treaty on the protection of broadcasting and cablecasting organizations in the traditional sense.<sup>2</sup>

11. The WIPO General Assembly, which met later in the same month, approved the convening of a diplomatic conference on the protection of the rights of broadcasting organizations under the condition that two special sessions of the SCCR would be convened to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the diplomatic conference a revised basic proposal. If no such agreement would be achieved, all further discussions would be based on the draft basic proposal, prepared for the sixteenth session of the SCCR (document SCCR/15/2).

12. At the end of its Second Special Session, which took place in June 2007, the SCCR concluded that in the informal discussions it had become evident that, during the session, it would not be possible to reach the agreement required for preparing a revised basic proposal to submit to a diplomatic conference, as mandated by the General Assembly. Instead, the Committee recommended that the General Assembly: take note of the current status of the work in the SCCR on the protection of broadcasting organizations and cablecasting organizations; acknowledge that progress was made in the process towards better understanding of the positions of the various stakeholders; recognize the good faith efforts of all participants and stakeholder organizations throughout the process; express the wish that all the parties continue to strive to achieve an agreement on the objectives, specific scope and object of protection, as mandated by the General Assembly; and decide that the subject of broadcasting organizations and cablecasting organizations be retained on the agenda of the SCCR for its regular sessions and consider convening of a diplomatic conference only after agreement on objectives, specific scope and object of protection has been achieved.<sup>3</sup> At its subsequent annual session in September – October 2007 the WIPO General Assembly agreed with those recommendations.<sup>4</sup>

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<sup>1</sup> Document WO/GA/32/13, paragraph 85

<sup>2</sup> Document SCCR/15/6, paragraph 132

<sup>3</sup> Document SCCR/S2/5, paragraph 146

<sup>4</sup> Document WO/GA/34/16, paragraph 228

13. Subsequently, the issue has been on the agenda of the sixteenth, seventeenth and eighteenth sessions of the SCCR. At the sixteenth session, in March 2008, the Committee noted that the delegations who took the floor expressed their support in continuing the work on the item in consonance with the mandate of the General Assembly, and many delegations showed their interest towards the conclusion of a treaty. It decided that the Chair would prepare an informal paper, based on the mandate of the General Assembly, rendering his understanding of the main positions and divergences, to be dealt with in the seventeenth session of the SCCR, where the matter would be maintained on the Agenda.<sup>5</sup> At that session in November 2008 the Committee decided to continue its work on the item in consonance with the mandate of the General Assembly. A number of delegations showed their interest in the conclusion of a treaty. The Committee reaffirmed the decision of the General Assembly but took no decision regarding various possible options for the future work, presented in the Chair's paper. The Committee requested the Secretariat to convene an information meeting on the current conditions of the broadcasting environment with special reference to developing countries and least developed countries during the next session of the SCCR.

14. At the eighteenth session of the Standing Committee held in Geneva in May 2009, the Committee expressed its appreciation to the Secretariat for organizing an information session on the prevailing developments in broadcasting. The Secretariat was requested to commission a study on the socio-economic dimension of the unauthorized use of signals, including the impact of the lack of access on the one hand and the need for an effective protection for broadcasters, on the other hand, with the aim to be available for discussion at the twentieth session of the SCCR. The Committee further reaffirmed its willingness to continue its work on the protection of broadcasting organizations on a signal-based approach, according to the mandate of the 2007 General Assembly. The Secretariat was requested to organize regional and national seminars upon the request of Member States or regional groups on the objectives, specific scope and object of protection of a possible draft treaty. The protection of broadcasting organizations will be maintained on the Agenda of the nineteenth session of the SCCR.

*15. The Intergovernmental Committee is invited to note the information given above, and to decide on any future activities relating to the Rome Convention that it might consider appropriate.*

[End of memorandum]

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<sup>5</sup> Document SCCR/16/3, paragraph 269