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

**INTERGOVERNMENTAL COMMITTEE
Nineteenth Ordinary Session**

(Paris, 27 – 28 June 2005)

Item 8 of the provisional agenda:

THE FUTURE OF THE ROME CONVENTION

**REPORT ON CURRENT INTERNATIONAL ACTIVITIES CONCERNING THE
PROTECTION OF RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND
BROADCASTING ORGANISATIONS**

Memorandum prepared by the Secretariat

1. At its Eighteenth Ordinary Session, on June 27 and 28, 2001, the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), in the following referred to as the Intergovernmental Committee, decided that the Agenda of the nineteenth session of the Intergovernmental Committee, in 2005, should include an item on the future of the Rome Convention, taking account of developments that would have taken place in the interim (Document ILO/UNESCO/WIPO/ICR.18/7, paragraph 46). The purpose of the present memorandum is to give an overview of those developments.

The protection of audiovisual performances

2. The World Intellectual Property Organization (WIPO) organized in Geneva from December 7 to 20, 2000, the Diplomatic Conference on the Protection of Audiovisual Performances. The Diplomatic Conference achieved a provisional agreement on 19 articles of a Draft WIPO Audiovisual Performances Treaty. On one provision, however, the Diplomatic Conference did not succeed in reaching agreement, that is, Article 12 on ownership and transfer of rights.

3. Before closing, the Diplomatic Conference adopted the following Recommendation:

« The Diplomatic Conference

- “ (i) notes that a provisional agreement has been achieved on 19 Articles;
- “ (ii) recommends to the Assemblies of Member States of WIPO, in their September 2001 session, that they reconvene the Diplomatic Conference for the purpose of reaching agreement on outstanding issues.” (Document IAVP/DC/36, paragraph 96.)

4. The issue was on the Agenda of the Twenty Seventh Session of the WIPO General Assembly from September 24 to October 3, 2001. The Chairman of the WIPO General Assembly, noting the various positions of delegations whose views had been made known, concluded that there was consensus that the protection of audiovisual performances was a very important issue, and it was a matter of concern that it had not been possible to reach an agreement overcoming the differences. He appealed to all parties to continue their contacts and discussions in order to overcome those differences, and requested the International Bureau to render its assistance, where appropriate. He proposed that parties inform the Standing Committee on Copyright and Related Rights on any progress in the discussions, and that the issue be retained on the Agenda for the session of the General Assembly in September 2002. The General Assembly noted the Chairman's conclusion, reached under his own responsibility, and decided that the issue would remain on the agenda of the next session of the General Assembly in 2002 and that the Chairman would report to the General Assembly on any progress that had been made (Document A/36/15, paragraphs 182 and 186).

5. At the twenty-eighth Session of the WIPO General Assembly from September 23 to October 1, 2002, the issue was again on the Agenda. The Director General of WIPO informed the Assembly that following the conclusion of the Chairman, officials of the International Bureau had been in informal contact with interested parties and stakeholders on different occasions over the past twelve months. No significant change in the positions had been identified by the International Bureau. Furthermore, as far as the International Bureau had been informed, certain contacts among the interested parties themselves had also taken place, but had also not led to any change in positions. However, the International Bureau had noted a continuing recognition among the parties concerned regarding the importance of the issue and its timely resolution.

6. In view of the importance of the protection of audiovisual performances, the continued interest in the issue and the risk of losing momentum, the Director General proposed that the International Bureau should assess the situation in the coming months with a view to possibly calling an *ad hoc* informal meeting in 2003. Such a meeting would be called after consultations with the regional group coordinators on the timing, duration and other modalities and would be for the purpose of having informal exchanges on the remaining differences and possible ways of resolving them. The meeting would be open to all Member States and interested intergovernmental and non-governmental organizations.

7. Finally, the Director General proposed that the issue of the Diplomatic Conference on the Protection of Audiovisual Performances would remain on the Agenda of the WIPO General Assembly in its session in September 2003. (Document WO/GA/28/5. paragraphs 3 to 5.)

8. The Chair of the General Assembly concluded that there had been a practically unanimous support for the process proposed by the Director General to resume the work that could lead to the reconvening of the Diplomatic Conference. Everyone had underlined the importance of the subject and the importance of arriving, to the extent possible, at an international agreement on the matter. All delegations had expressed the will to see progress on the issue. The proposal set forth in document WO/GA/28/5 was a working method and procedure rather than of formal structures. He therefore proposed the following be decided upon:

- (i) the Director General and the International Bureau would conduct informal consultations in the first quarter of 2003 with all interested parties to explore the possibilities of convening the informal meeting;
- (ii) if those consultations proved to be successful, that an *ad hoc* informal meeting working group would be convened with the participation of all interested Member States and intergovernmental and non-governmental organizations to discuss exhaustively and in full transparency the renewal of the dialogue on protection of audiovisual performances;
- (iii) a report would be made to the next session of the General Assembly. Furthermore, the issue would remain on the agenda of the General Assembly.

9. The General Assembly unanimously adopted the decision set forth by the Chair in the above paragraph. (Document WO/GA/28/7, paragraphs 41 and 42.)

10. At the Thirtieth Session of the WIPO General Assembly, from September 22 to October 1, 2003, the Director General informed the Assembly that, in accordance with the decision, consultations had taken place with the Member States through the regional group coordinators in Geneva, under the chairmanship of the Chairman of the General Assembly. Following the consultations, dates for the *ad hoc* informal meeting had been fixed from June 18 to 20, 2003. However, as the documentation to be submitted to the informal *ad hoc* meeting could not be ready in time due to technical reasons, the Secretariat proposed, that the meeting take place on November 6 and 7, 2003. (Document WO/GA/30/3, paragraphs 2 and 3.)

11. As decided, the *Ad hoc* Informal Meeting on the Protection of Audiovisual Performances was held at the headquarters of WIPO on November 6 and 7, 2003. The meeting was chaired by the Chairman of the WIPO General Assembly, and included an information session where four speakers were invited to talk about their personal experiences in performing, in creating, and producing audiovisual works. The Secretariat provided a series of studies to facilitate discussions. These included a survey of national legislative protection of audiovisual performances, a study on rules on transfer of rights in audiovisual performances and related aspects of private international law, and two studies on audiovisual performers' contracts and remuneration in selected countries. At the Informal Meeting, numerous delegations and representatives of intergovernmental and non-governmental organizations expressed their interest in further progress on the relevant outstanding issues.

12. Since the *Ad hoc* Informal Meeting took place, the Director General has been 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. The consultations are taking place in a positive and constructive spirit. (Document WO/GA/31/4, paragraphs 3 and 4). The WIPO General Assembly, at its thirty-first Session from September 27 to October 5, 2004, noted the information contained in document WO/GA/31/4 (presented above) and decided that the issue of the protection of audiovisual performances should remain on the agenda of the General Assembly for its sessions in 2005. (Document WO/GA/31/15, paragraph 38.)

The protection of the rights of broadcasting organizations

13. 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.

14. 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.

15. The eleventh session of the SCCR that took place from June 7 to 9, 2004, adopted the following recommendation to be conveyed to the meeting of the WIPO General Assembly at the fortieth session of the Assemblies of the Member States of WIPO, which took place from September 27 to October 5, 2004:

“Considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee;

having had an exchange of views and information regarding the protection of non-original databases,

agrees on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly is recommended to consider, beginning at its September/October session in 2004, the possibility of convening, at an appropriate time, a diplomatic conference on the protection of broadcasting organizations;

2. Twelfth Session of the Standing Committee

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the Consolidated Text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004;

3. Assessment of the Progress of the Work

at its Twelfth Session the discussions of the Standing Committee would be based on the revised consolidated text and the Committee would assess the progress of the work. In the light of those discussions and that assessment, the Committee would recommend the dates, and the necessary preparatory steps for a possible diplomatic conference including the possibility that the Chairman prepares a basic proposal for this conference;

4. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, and the recommendations of the Standing Committee, the International Bureau shall organize regional consultation meetings where appropriate and at the request of the relevant regional groups. The International Bureau shall also organize consultations meetings at the location of the diplomatic conference immediately before its commencement.

[...]” (Document WO/GA/31/7, paragraphs 1 to 3.)

16. The General Assembly noted the contents of document WO/GA/31/7 (presented above), and requested the SCCR to accelerate its work on the protection of broadcasting organizations with a view to approving the convening of a diplomatic conference by the WIPO General Assembly in 2005. (Document WO/GA/31/15, paragraph 56.)

17. At the subsequent Twelfth Session of the Standing Committee on Copyright and Related Rights, the Chairman of the Committee concluded as follows:

“A. BROADCASTING ORGANIZATIONS

1. *Documents to be prepared*

- a second revised version of the Consolidated Text will be prepared by the Chairman of the present session of the Standing Committee;
- a working paper on alternative non-mandatory solutions to the protection of webcasting organizations, including simulcasting organizations, will be prepared to accompany the second revised version;

2. *Regional and other informal consultations*

- regional consultations and other types of informal consultation meetings will be organized by the International Bureau, as requested by the Member States;

3. *Thirteenth Session of the Standing Committee*

- the next session of the Standing Committee will take into account the progress made in the regional consultations and other types of informal consultation meetings;
- the Committee will, in light of the results of the regional consultations and other types of informal consultations, consider the second revised version of the Consolidated Text, and examine the working paper on alternative solutions on the protection of webcasting organizations.

[...]” (Document SCCR/12/4, paragraph 275.)

18. Regional consultation meetings are being organized to take place during the months of May and June, 2005. The issue is on the Agenda of the Thirty Second Session of the WIPO General Assembly, which will take place from September 26 to October 5, 2005.

19. 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]