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WIPO/CR/KYI/09/3
ORIGINAL: English
DATE: June 2009

STATE DEPARTMENT OF
INTELLECTUAL PROPERTY

WORLD INTELLECTUAL
PROPERTY ORGANIZATION

WIPO SUB-REGIONAL SEMINAR ON THE PROTECTION OF WORKS AND PERFORMANCES IN THE AUDIOVISUAL SECTOR

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the State Department of Intellectual Property (SDIP)
of the Ministry of Education and Science of Ukraine

Kyiv, June 22 and 23, 2009

THE INTERNATIONAL PROTECTION OF PERFORMERS. THE ROLE OF WIPO

prepared by the International Bureau of WIPO

I. INTRODUCTION

A. The Current Status at the International and National Levels[1]

1. The international protection of audiovisual performances is clearly recognized by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), although limited to live performances. However, it seems less amply documented whether such protection in relation to live performances is granted under the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) and the WIPO Phonograms and Performances Treaty (WPPT). In this respect, the Rome Convention grants rights to prevent audiovisual broadcasting, communication to the public and fixation of live performances, and rights to prevent reproduction of performances which are incorporated in a visual or audiovisual fixation without consent of the performers (Article 7.1).

2. An important provision in this regard is article 19 of the Rome Convention, concerning the non applicability of the economic rights in fixed performances once a performer has consented to incorporation of her live performance in an audiovisual fixation. As a consequence of this cut off – provision all fixed audiovisual performances are deprived of international protection.

3. However, as revealed by the 2005 WIPO Survey on National Protection of Audiovisual Performances, a considerable number of countries provide a certain degree of protection to fixed audiovisual performances. This protection is often structured as neighboring or related rights, that is, intellectual property rights modeled after copyright for the benefit of relevant players in the process of creation and dissemination of creativity. Neighboring rights traditionally extend to performers, phonogram producers and broadcasting organizations. The protection of performances can also be articulated also by means of collective bargaining and individual contracts. This system applies to some of the largest audiovisual industries, with huge number of actors, such as the USA. Trade unions (SAG: Screen Actors Guild) negotiate with producers associations (MPAA: Motion Picture Association of America) not only labor conditions but notably the compensation for different uses of the audiovisual performances. This compensation adopts at least two different forms; namely, lump sum payments in advance, which take place up- front when the contract is signed or the consent is given to the fixation of the performance; and residuals, which are payments proportional to the intensity of use of the performance in different media, such as open TV broadcast, cable broadcast, DVD sales, Internet streaming and downloading, etc.

4. Both neighboring rights systems and systems based on collective bargaining often have legal mechanisms in place to ensure that the audiovisual producer can undertake without obstacle the exploitation of rights in the performance both at national and international level. Under the work-for-hire system in the US the rights are vested in human creators, but are regarded, under the law, as immediately assigned to the producer once the agreement is given to take part in the film by contributors such as actors, script writers or film directors. Under the "presumption of transfer" the human creators are also the original owners of rights, with a

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1 "Parts of this presentation represent an adaptation of the WIPO Guide to the Copyright and Related Rights Treaties Administered by WIPO, written by Mihaly Ficsor and published by WIPO in 2003, ISBN 92- 805 1200-2"

presumption, however, that, when they contribute to a cinematographic production, they transfer their rights to the producer (such a presumption, however, may be rebutted in some jurisdictions, being irrebuttable in others). In other countries there is no specific regulation of the transfer of rights from the performer to the producer and the matter is left to contractual freedom of the parties involved.

5. The advantages found in the protection of audiovisual performances at national and international level are often related to the need to articulate the cinematographic and audiovisual sector by providing compensation and incentives to one of its main players; namely actors and actresses in cinema, TV and video. Secondly the convergence of media results in an increasing use of music associated with images. While the first music videos date from the 1980s the increasing prevalence of audiovisual images in music consumption has extended beyond open TV broadcasts, moving to pay TV in specialized channels such as MTV, thereon to DVDs (jointly sold with CDs or on their own) and finally to the Internet, including in the mobile environment. Protection of audiovisual performances is often seen as the safer means to ensure full protection in different jurisdictions of music videos where a music performance undergoes audiovisual fixation.

II. THE NEGOTIATIONS ON THE INTERNATIONAL PROTECTION FOR AUDIOVISUAL PERFORMANCES

A. The 1996 WIPO Diplomatic Conference

6. The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, which took place from December 2 to December 20, 1996, represented a serious attempt to overcome the exclusion of audiovisual performances from the international standard of protection as represented by the Rome Convention. Long before the negotiators of the Rome Convention debated the issue and finally excluded protection by means of the above mentioned cut off provision.

7. During the discussions leading to the 1996 Diplomatic Conference some countries preferred to focus on sound performances while others were ready to also consider the protection of audiovisual performances. It became clear from these deliberations that it would not be possible to present as basis for the negotiations a proposal that would reasonably satisfy the interests of the advocates on each side of this issue. Accordingly, the proposed Treaty presented each position as an alternative. In each instance, Alternative A contained a proposal that was confined to sound, musical performances or musical performances fixed in phonograms only, and Alternative B contained a proposal extending protection to audiovisual fixations. This method of drafting acknowledged the disagreement and called upon the participants in the Diplomatic Conference to negotiate toward a solution[2], which was not found at that occasion.

[2] In order to facilitate consideration of this matter and provide another model for the possible resolution of the issue a further alternative, Alternative C was presented. This alternative solution was based on the possibility of making a reservation concerning the scope of the rights of performers. This alternative could be used only if the Diplomatic Conference based its decision on this matter on Alternatives B, extending the protection to audiovisual fixations of performances. By making the reservation provided for in Alternative C, a Contracting Party to

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8. However, revisiting the 1996 Diplomatic Conference may be useful to understand the enduring difficulties in the present situation. Many of the issues that have focused the debate on the protection of actors ever since were already debated in December 1996, including the transfer of rights from the performer to the producer; moral rights of audiovisual performers and the so-called flexible implementation, according to which Treaty obligations could have been implemented by means of collective bargaining instead of legal statue.

9. Already at that time the difficulties were described as related to the international compatibility of two systems (neighbouring rights and collective bargaining), the functioning of which was considered as satisfactory at national level by each of the groups of Member States concerned. As you know the Diplomatic Conference finally adopted a Treaty, the WPPT, only focused, in general, on the exploitation of performances on phonograms, and not in audiovisual media. However the Conference also adopted a resolution calling to convene the following year a Diplomatic Conference on the protection of audiovisual performances, which did not take place until December 2000.

B. The Diplomatic Conference on the Protection of Audiovisual Performances

10. The Conference took place from December 7 to December 20, 2000. The discussions at the Diplomatic Conference were based in a Basic Proposal with two basic alternatives, which reflected the two diverging views on the international protection of audiovisual performances. According to a group of countries, including the US, the Treaty should be as self- standing as possible, without links to other existing Treaties. Other countries, such as the Members of the EU, considered that the Treaty should be modeled after WPPT by means of reference to the different substantive provisions. This reference had a *mutatis mutandis* character, so the provisions in WPPT would apply with 'the necessary changes having been made.

11. As a matter of fact the negotiations in the Diplomatic Conference showed that consensus was possible under the model offered by WPPT for a number of issues, including: right of reproduction; right of making available; right of rental (here the model was rather the TRIPS Agreement); right of distribution; limitations and exceptions; technological measures; rights management information and enforcement provisions.

12. However for a number of other issues, where the divergence was broader, the solutions tested differed notably from provisions in WPPT or contained some sort of compromise with them. This was the case regarding the definition of audiovisual fixation; moral rights of performers; application in time; national treatment and, above all, transfer of rights. Analysis of each of these areas continues to be useful to highlight the specific challenges of the international protection of audiovisual performances and to measure the extent of diverging views in crucial areas.

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the Treaty could limit the protection it granted according to the Treaty to sounds, musical performances and musical performances fixed in phonograms only.

(a) The Definition of Audiovisual Fixation

13. According to the Basic Proposal "audiovisual fixation" means the embodiment of moving images, whether or not accompanied by sound or by the representations thereof, from which they can be perceived, reproduced or communicated through a device. This broad definition combined with the WPPT definition of phonogram -which excludes fixations incorporated in a cinematographic or audiovisual work- lead to the interpretation that music videos and other instances where a music fixation is incorporated in an audiovisual work are not to be considered as phonograms but as audiovisual fixations, subject to the new proposed Treaty. This approach was disputed, among others, by music performers who were concerned by the possibility to be subject to the audiovisual regime, which was considered closer to the interests of producers and less favorable for performers than WPPT.

14. In order to overcome the controversy the solution was found in an agreed statement according to which the definition of audiovisual fixation was without prejudice to the definition of phonogram in WPPT. Accordingly it was WPPT – and its also disputed interpretations of the notion of phonogram- who should be analyzed in delimitating phonograms from audiovisual fixations.

(b) Moral rights

15. WPPT is the first international Treaty recognizing moral rights for performers (only for aural performances). In the outcome of the discussions of the 2000 AV Diplomatic Conference there was a provision on moral rights that followed the model of the WPPT. However, the position of some Governments and stakeholders, including the US Government and the film studios, contributed to reduce the WPPT level of protection in this area. According to their proponents these changes were justified to accommodate current practices in the audiovisual industry, such as special formats and editing that takes place in movies shown in airplanes, or advertisement inserted during TV programs at the lower part of the screen.

16. While there were no changes regarding the right of paternity or attribution over the performance two drafting changes aimed at reducing the scope of the right to integrity contained in WPPT.

17. First, the possibility to object to any distortion, mutilation or other modification of the performance that would be prejudicial to the reputation of the performer was softened by inserting a final tempering expression, that is, "taking due account of the nature of audiovisual fixations."[3]

18. Secondly, an agreed statement was introduced clarifying that modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications.

[3] As you recall WWP represents in turn a softer version of BC article 6 *bis*, which covers not only prejudice to the reputation but also to the honor of the author.

(c) National Treatment

19. Generally speaking the national treatment provisions negotiated for the proposed Treaty were modeled after WPPT. However in the context of this provision there was an interesting debate on the principle of "no collection without distribution". During the negotiations the US submitted a proposal stating that no Contracting Party should allow collection of remuneration in respect of performances of nationals of another Contracting Party, unless distribution of such remuneration was made to those nationals. Such a provision was not included in the proposed Treaty and the President of the Committee where the discussion in substance took place (Main Committee I) asked Member States whether the provision on national treatment could be adopted with the understanding that the principle be taken to the Records of the Diplomatic Conference.

20. The principle was described as an understanding "that there is no legal basis for collection of remuneration in a Contracting Party in respect of nationals of another Contracting Party for rights that it does not accord to those nationals. Collections in such circumstances would be inappropriate and without legal authority. Therefore all those from whom such remuneration is claimed should have legal remedies against the payment. Where remuneration is collected, on the basis of proper mandates, in a Contracting Party for rights that it accords to the nationals of another Contracting Party, but not distributed to them, those nationals should have legal means to ensure that they received the remuneration collected on their behalf."

21. In the absence of oral opposition the President considered this understanding adopted by consensus. However, the European Community and its Member States submitted a document stating that the Declaration by the President of Main Committee I was of unilateral nature and did not imply any commitment for the members of the Committee.

22. The issue of no collection without distribution reveals a possible second area of persistent divergence among member States, one that is connected to the issue of transfer of rights from the performer to the producer and to the general compatibility of neighboring rights of performers with systems based on collective management.

23. Since December 2000 a number of countries, including the EU Community and its Member States have further engaged in a process directed to increase transparency, equity, non-discrimination and accountability in collective management, adopting measures that partly reflect the concerns expressed in the principle of no collection without distribution. Among these initiatives feature at EU level the April 2004 Communication on the Management of Copyright and Related Rights in the Internal Market and the related consultation to stakeholders; the July 7, 2005 Study on a community initiative on the cross-border collective management of copyright and the Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services.

24. It is yet to be seen whether these developments and other related initiatives in other jurisdictions have any influence on the way that the principle of no collection without distribution is interpreted today.

(d) Application in Time

25. The general rule in international Treaties on Copyright and Related rights, reflected originally in art. 18 of the Berne Convention, is that protection applies to subject matter that has not entered the public domain at the moment of the coming into force of a given Instrument and not only to creations and contributions that are undertaken after its entry into force. This principle is known as "retrospective" protection. The protection thus extends to both "old" and "new" subject matter, performances in this case. "Old" performances can, of necessity, only exist if fixed.

26. However US producers were of the view, a position latter assumed by the US Government, that the introduction of new rights might be disruptive to established agreements in the audiovisual industry and that it was necessary to introduce an option not to apply the provisions of the proposed Instrument to fixed performances that exist at the moment of its entry into force. The tentative agreement was based on this new rule, which allowed granting protection only in respect to performances that took place after entry into force of the Treaty.

(e) Transfer of rights

27. Article 12 of the Basic Proposal of the Treaty offered various alternatives regarding the transfer or entitlement to exercise rights of audiovisual performers:

- Alternative E Transfer
- Alternative F Entitlement to Exercise Rights
- Alternative G Law Applicable to Transfers (based on rules on private international law)
- Alternative H [No such provision]

28. Alternative E was based on a rebuttable presumption of transfer. Alternative F was based on the model of Article 14*bis* (2) of the Berne Convention with slight adjustments. Alternative G was based on the principles of private international law and the main operation was based on the well-known concept of the law of the country most closely connected to the subject matter. Alternative H indicated that there should be no provision in the Treaty related to transfers or other similar operations, based on the assumption that the national solutions should prevail.

29. As regards Alternative G, many delegations of the Diplomatic Conference did not seem convinced of the inclusion of rules on private international law in the Treaty. Apart from the fact that those rules are of horizontal character and are to be applied across the board, they are only found in a limited manner in other copyright treaties. Nevertheless, at the end of the Conference, this Alternative looked as the basis for a compromise solution. It offered a model which did not require any clauses on transfer or entitlement in national law, but brought about an obligation to the Contracting Parties of recognizing the transfer of the exclusive rights of authorization by agreement or by operation of law in other Contracting Parties[4].

[4] The main function of Alternative G was to guarantee the recognition of different arrangements for the transfer of rights that are in use in different Contracting Parties. It did so providing that a transfer of any of the exclusive rights of authorization to the producer shall be governed by the law of the country most closely connected with the audiovisual fixation. This rule would have been applicable in all cases of transfer of rights, whether by agreement or by operation of law.

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30. However the numerous versions drafted on the basis of International Private Law demonstrated both political difficulties and legal complexities regarding the application of rules on private international law *vis-à-vis* the protection of audiovisual performances.

31. The deadlock was related to the consequences that the international recognition of statutory transfers of exclusive rights could entail. Those countries in favor of such recognition demanded to have certainty and clarity on the producer's ability to exercise the exclusive rights of authorization for the effective exploitation of films in a global environment. Opposition against that recognition was mainly founded in the concern about the consequences that the application of foreign rules on transfer could have in the domestic exploitation of films. It was feared that such rules could conflict with national legislation in areas such as initial ownership, contract law; content of the rights and the modalities of exercise of rights. Opponents further considered that such International Private Law rules could affect the international flux of monies derived from the exploitation of films, benefiting the countries whose legislation was designated as applicable.

32. Absence of agreement on transfer of rights directly led to failure of the Conference in adopting of a Treaty on the protection of audiovisual performances. The Conference therefore resulted in a general understanding between the participating government delegations concerning 20 substantive provisions of a WIPO audiovisual performances Treaty, except for one, dealing with the international recognition of transfer of rights under national law.

33. The Diplomatic Conference also recommended to the WIPO Assembly of Member States, at its meeting in September 2001, to reconvene the Conference in order to finally adopt the new treaty. However, during the Assembly, Member States considered that it was necessary to continue consultations to resolve the deadlock over the above-mentioned provision. They therefore decided to carry the issue over to the 2002 session of the WIPO Assemblies. Since then the issue has remained in the agenda of the General Assembly but the reconvening of the Diplomatic Conference has not taken place. Meanwhile, the WIPO Secretariat has been maintaining a close dialogue with governments and NGOs to bridge the existing gaps and to find possible ways for an evolution in the negotiations.

C. Latest Developments at WIPO

34. Since the 2000 Diplomatic Conference WIPO has undertaken an extensive activity of fact finding and analysis in order to structure a comprehensive, documented view on the present situation. Information provided by the Secretariat includes:

- results of a worldwide survey on national legislation protecting fixed audiovisual performances[5].

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The rule would be rebuttable: it would be applicable only in the absence of any contractual clauses to the contrary, and like the previous alternatives, it would apply only to the exclusive rights of authorization and only to the particular audiovisual fixation.

[5] http://www.wipo.int/documents/en/meetings/2003/avp_im/doc/avp_im_03_2.doc

– two studies on the treatment accorded to performers in current audiovisual production contracts and collective bargaining agreements in several countries[6].

– the results of a study on provisions relating to transfer of copyright and related rights and private international law rules on transfer under the legislation of 8 countries. This "Study on Transfer of the Rights of Performers to Producers of Audiovisual Fixations" (AVP/IM/03/4 Add.), was presented by one of its authors, Mr. André Lucas, Professor of Law, University of Nantes, in the course of an Information Meeting on the Protection of Audiovisual Performances which took place in Geneva at the headquarters of WIPO on November 17, 2004. The analysis of the Professors led to some skepticism regarding the effectiveness of any choice of law rule, even if one could be agreed-upon[7].

35. The Study concluded that designating a choice of law rule, even were agreement possible, will not resolve the essential difficulties. On the one hand, the solution is likely to be too complex and unpredictable. On the other hand, simpler solutions may prove unpalatable to performers, because they will tend to favor application of laws chosen by producers. ("Chosen" either as a matter of contract, or by virtue of the producer's selection of the country of its business establishment.) It would be easier to resolve questions of applicable law if the process of substantive harmonization were more advanced.

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[6] http://www.wipo.int/documents/en/meetings/2003/avp_im/doc/avp_im_03_3a.doc
http://www.wipo.int/documents/en/meetings/2003/avp_im/doc/avp_im_03_3b.doc

[7] Four scenarios explained that skepticism:

1. The treaty would fix a choice of law rule characterizing all rules relevant to transfers as matters of contract, and then would direct application of the law of the contract. This solution would have the merit of uniformity and predictability. But the designated law may be overriden by local mandatory rules or *ordre public*, unless the treaty also limits their application to extreme cases. (This may be a trend in multilateral choice of law treaties.) However, local neighboring rights norms may increasingly be characterized as mandatory; this is the case in Germany, by virtue of the law of 2002, and in France through the combination of the Codes of Intellectual Property and of Labor relations.

2.- The treaty would characterize all rules relevant to transfers as matters of substance, and would further designate the law of the country of the work's origin (defined as the country of the producer's effective establishment) as the law applicable to transfers. This too would simplify and enhance predictability. But the forum's mandatory rules and *ordre public* remain a problem.

3. The treaty would characterize all rules relevant to transfers as matters of substance, and would further designate the law of the country/countries of the work's exploitation (receipt of work) as the law applicable to transfers. This would mean that the laws of each country of exploitation would determine the validity and scope of the transfer. This would alleviate the problem of mandatory rules, because these would be incorporated in the applicable laws. But this approach would greatly complicate exploitation.

4. The treaty would maintain the distinction between law of the contract and law of the substance of the right, but would define what matters fall under each heading. The treaty might further provide that, presumptively, matters concerning the scope of the transfer are governed by the law of the contract. We will not endeavor to articulate what the division between the domains of the contract and of the substantive law should be, particularly, as the national reports indicate, it is not at all clear, even as a matter of domestic law, what constitutes "validity and effects" and what constitutes "substance and alienability."

36. The WIPO Secretariat 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. At the last General Assembly it was decided that the issue remain on the agenda of the General Assembly for its session in September 2009.

37. The General Assembly also decided to organize national and regional seminars on the issue in order to promote developments in this area, both at the levels of national legislation and international consensus-building. These seminars already started in 2007 following a decision of the 2006 General Assembly.

38. So far, seminars have been organized in Asia, Africa, Europe and Latin America. In some cases the issue of audiovisual performances was part of the agenda in events not exclusively focused on performers' rights but with a larger scope and purpose.

39. In preparing these events the WIPO Secretariat has followed a flexible and balanced approach. National and regional seminars have followed different formats depending on the interest expressed by Member States and the stakeholders involved. In all Seminars, Member States and audiovisual performers were involved. However in some of them music performers were also involved; in others, producers and authors of audiovisual content were also invited to speak. Both approaches –one focusing on the audiovisual sector and the whole value chain for audiovisual content; the other focused on performances in a broad sense, covering both music and audiovisual performances– helped to analyze performances in a larger and more meaningful context.

40. The 18th session of the SCCR, which took place from May 25 to 29, 2008, debated the issue of the protection of audiovisual performances and decided to keep the issue in the agenda of the SCCR for its next session. The Committee expressed its appreciation for the seminars organized by the Secretariat and encouraged the Secretariat to continue that activity. The SCCR held presentations by the Copyright Offices, which had more recently hosted regional seminars[8].

41. This WIPO Sub-regional seminar on the protection of works and performances in the audiovisual sector is the latest of a long series of national or regional Seminars. In order to assess the results of this activity the Secretariat presented last year a Summary of the Outcome of the National and Regional Seminars on the Protection of Audiovisual Performances and Stocktaking of Positions (document SCCR 17/3). This factual document shows that the Seminars have so far achieved a promising, high degree of meaningful exchange among governments and stakeholders in three key areas, which correspond to three relations that are crucial for the activity of the performer; namely, the relation of the performer to her performance (subject and object of protection); the relation of the performer to other

[8] The Government of Malawi reported about the WIPO Regional Seminar on the Protection of the Rights of Performers in Africa which took place in Lilongwe, Malawi in January this year. The Government of Colombia reported about the V International Forum on the Protection of Audiovisual Performances in a Globalized Market which took place in Bogotá in December last year.

performers (organizations of performers); and the relation of the performer to other stakeholders and the public at large (rights over the performance and exercise thereof). In all these areas interesting experiences were shared and different models and practices were outlined to the benefit of Governments and stakeholders, including the following:

(a) Subject and object of protection

42. Under this cluster a number of topics were debated, including the notion of "performer" and how to delimit an audiovisual performance from other types of performances. Also discussed were the nature of performances as objects of protection under related rights and whether it was the creative character of the performance or other features that justified the granting of IP protection.

(b) Organizations of performers

43. Another group of issues dealt with how performers organize themselves to protect their rights and interests. During the national and regional seminars this issue was discussed under titles such as "Building the Social Infrastructure," "The Social Dimension of Protection" and "The Role of Guilds, Trade Unions and Collective Management Organizations". Under this cluster the following topics were discussed: the development of guilds and unions, on the one hand, and collective management organizations, on the other; the relationship between both types of entities and more generally between labor law and intellectual property and the role of governments and stakeholders in the promotion of efficient performers' organizations. During the Seminars these topics were developed in close cooperation with the organizations of performers and notably, at the international level, with the International Federation of Actors (FIA), the International Federation of Musicians (FIM) and the Societies' Council for the Collective Management of Performers' Rights (SCAPR), as well as with a number of regional and national guilds and collective management organizations for performers. In an expression of solidarity with performers in other regions of the world, several organizations contributed to Seminars in other regions.[9]

(c) Rights in Audiovisual Performances and Exercise Thereof

44. The third big area under discussion covers the relationship between performers and other stakeholders, and the public at large. It refers to the rights granted to performers and how they are transferred and exercised in order to undertake the commercial exploitation of the performances. In every national and regional Seminar presentations were made covering the international standard of protection. Depending on the specific scope of the event, an introduction was made either to the existing international protection of performances or the specific international norms on the protection of audiovisual content. In every seminar

[9] The Seminars benefited from intense participation of the Secretariat and some Member societies from the Association of European Performers' Organizations, AEPO-ARTIS, which unites 27 European collective management organizations for performers. Also the Ibero-Latin-American Federation of Performers (FILAIE), which groups collective management societies from 18 countries in Latin America and Europe, proved instrumental in the organization of several events.

presentations were made regarding the national and regional legislation. The debate on the existing legal framework of protection mostly focused on compliance of the national and regional legislation with the international standard, on the one hand, and in prospects for reform of the national and regional legislation, on the other[10].

45. During the Seminars, presentations were made by the WIPO Secretariat on the international protection of audiovisual performances, describing the current lack of protection for fixed audiovisual performances. The presentations also covered the outcome of the WIPO 2000 Diplomatic Conference on the protection of audiovisual performances, which contained a provisional agreement on nineteen articles, but also some open ends, including in particular the lack of common understanding on the issue of transfer of rights. The Secretariat also provided information on activities undertaken since December 2000 to improve the availability of information material regarding pending unresolved issues. On several occasions during the Seminars, performers called on governments to re-engage in negotiations with a view to adopt a Treaty on the protection of audiovisual performances. While many governments expressed general support for improving the protection of audiovisual performances at international level, there was no indication that the positions of parties had evolved since December 2000 and that, as a consequence, the prospects for a satisfactory conclusion of negotiations had improved. At the level of developments in the private sector a recent agreement between FIA and FIM urges Member States to restart negotiations on the basis of the 19 articles provisionally adopted in the year 2000.

46. The last SCCR reaffirmed its commitment to work on developing the international protection of performances in audiovisual media. It requested the Secretariat to prepare a background document on the main questions and positions. More importantly, it also requested the Secretariat to organize, in Geneva, informal, open-ended consultations among all members of the Committee on possible solutions to the current deadlock.

47. The protection of audiovisual performances will be maintained on the Agenda of the nineteenth session of the SCCR.

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[10] This third cluster was developed in close cooperation with governments from different countries. Government officials briefed participants in the respective legislative processes regarding the protection of performers. Besides the organizations of performers, producers were often invited to speak, with special focus on the transfer of rights from the performer to the producer and the exercise and exploitation of rights over the performance. In this regard WIPO benefited from the active cooperation of the International Federation of Film Producers (FIAPF) and its affiliates, such as the Motion Picture Association of America (MPA) or the Audiovisual Producers´ Rights Management Organization (EGEDA).