

# WIPO



SCCR/17/3

ORIGINAL: English

DATE: October 17, 2008

**E**

**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Seventeenth Session**  
**Geneva, November 3 to 7, 2008**

SUMMARY OF THE OUTCOME OF THE  
NATIONAL AND REGIONAL SEMINARS ON THE PROTECTION OF  
AUDIOVISUAL PERFORMANCES AND STOCKTAKING OF POSITIONS

*prepared by the Secretariat*

## I. INTRODUCTION

1. At its thirty-Fourth (18<sup>th</sup> Ordinary) session, which took place in Geneva, from September 24 to October 3, 2007, the WIPO General Assembly decided that the issue of protection of audiovisual performances would remain on the Agenda of the Assembly for its session of September 2008. The General Assembly also 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 2006 session of the general Assembly.

2. 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 before the end of 2008. As 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”.

3. The Sixteenth Session of the Standing Committee on Copyright and Related Rights (SCCR), which took place in Geneva from March 10 to 12, 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.

## II. NATIONAL AND REGIONAL SEMINARS: ORGANIZATIONAL MATTERS

4. Since September 2006 WIPO has organized a number of national and regional seminars as reflected in the Annex. Seminars have been organized in Africa, Asia, Central and Eastern Europe and Latin America. Additionally, a WIPO-Africa Regional Seminar on the protection of performers is scheduled to take place in Malawi in December this year and an International Forum on the protection of audiovisual performances will take place the same month in Colombia. In most cases the agenda of the Seminars covered two days, while in a few cases the Seminars lasted for either one or three days.

5. National and regional seminars have followed different formats depending on the interest expressed by Member States and the stakeholders involved. 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. 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 – contributed to analysis of audiovisual performances in a larger and more meaningful context.

6. In preparing these events the WIPO Secretariat has followed a flexible and balanced approach. Depending on the circumstances and resources available WIPO has partnered with Governments, trade unions and guilds, collective management organizations and organizations representing producers, performers and other stakeholders. In all cases the Seminars had a practical focus in areas that have a significant impact on the status and welfare of performers, such as the development of guilds and collective management, contractual relations and collective bargaining. Transfer of rights and remuneration systems, as well as legislative reform, featured among the issues that received greater attention during the Seminars. The role of collective management organizations, guilds and producers was extensively debated as performers do not exercise their rights in an isolated manner but in the context of a creative industry where other stakeholders play a relevant role.

### III. OUTCOME OF THE SEMINARS AND STOCKTAKING OF POSITIONS

7. The view has often been expressed at the SCCR that, in absence of new international regulations, Governments and stakeholders can still contribute significantly to improve the condition of audiovisual performers at national and regional levels. The national and regional seminars aimed at improving knowledge of the situation of performers in their respective geographical contexts. Additionally the Seminars opened a dialogue among stakeholders and Governments, with a view to facilitating the design of public policies and private initiatives having a favorable impact on the status of actors.

8. During the Seminars, discussions on the international protection of audiovisual performances remained at a merely informational level. The Secretariat's role in this area was limited to raising awareness among Governments and stakeholders about the current status of the issue. No signs from Member States were registered indicating new conditions and willingness to reopen international negotiations on the protection of audiovisual performances.

9. The Seminars offered a framework for discussion among interested parties regarding the situation of actors in the respective countries or regions. In a number of cases the WIPO Seminar offered the first such occasion for a comprehensive and balanced debate. Three main groups of issues could be identified as the main focus of discussions during the seminars: firstly, the subject and object of protection; secondly, the organizations of performers; thirdly, rights in performances and the exercise thereof. A more detailed description of the discussions under each of these three headings may further clarify the outcome of the Seminars.

#### (a) Subject and object of protection

10. 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.

11. During the Seminars there was a general recognition that the existing definition of performer in Article 2(a) of the WIPO Performance and Phonogram Treaty (WPPT) covered audiovisual performers, i.e., “performers are actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore.”

12. Under the prevailing international understanding, performers perform literary or artistic *works or expressions of folklore*. However, as revealed during the Seminars, legislation in some countries extends the scope of the definition to cover performers in variety shows, circuses and others<sup>1</sup>. Some national legislation contains provisions excluding “extras” from the definition of performer on the basis that their contribution is casual or incidental in nature. However, it was also argued during the Seminars that “extras” or “ancillary performers” do not qualify as performers as they do not, in the proper sense, perform literary or artistic work or expression of folklore. In consequence national legislation often does not deem it necessary to incorporate an explicit provision excluding extras. In any case it was made evident during the Seminars that each jurisdiction determines the threshold at which a person becomes a performer entitled to protection. In doing so it interprets national legislation in the light of established industry practice and criteria such as whether a person has a speaking role or is rather in the background with regard to the acting.

13. There is a strong sense of identity among actors, based on their common engagement in performing films, TV series and theater. Performing is a collective undertaking, different in this regard to other cultural endeavors. The fact that the same story can be adapted to different audiovisual media contributes to further intensify professional ties among audiovisual performers. Actors consider themselves as members of a distinct group within the larger community of performers, also covering singers and musicians. As discussed below, actors often belong to specific trade unions, guilds and collective management organizations. However, delimitation of audiovisual *performances* is not equally easy. An audiovisual performance is normally understood as any performance that can be embodied in an audiovisual fixation, a notion that extends far beyond performances undertaken by actors. In fact, the same performance is often subject to an audiovisual fixation and to fixation in a phonogram, as in the case of a music performance that is embodied both in video and in a phonogram. A trend often outlined during the Seminars related to the increasing use of performances combining music and images and how this convergence of media should be reflected at the institutional and legal levels, for instance by an increasing unity of action in the respective organizations of musicians and actors and in the rights assigned to each of them.

14. Performers often refer to the *creative* character of their performance. According to this view performers should be assimilated to authors. The performer *creates* or *recreates* her character and is engaged in a process of creative construction of her role and performance. The position of performers in the market place is also seen as the main motivation for the consumption of films and phonograms, ranking above authors and producers in their appeal to the public. Others, however, stress the classic justification for the protection of neighboring right owners, namely their contribution to the diffusion of works. Without performances, works such as films and music compositions would not reach the public. Performers do not take part in the creation of the work or a part of it – the given character and role – but in its

---

<sup>1</sup> One of the broadest definitions of performer is contained in article 4 of the Law of Performers of Peru (Law 28131), which covers even models and bullfighters.

interpretation or performance. Accordingly, they should only qualify for related rights status, arguably with lesser protection than authors, i.e., the true creators. In spite of this theoretical debate there is ample consensus in that in most national legislation the protection of performers is solidly anchored in a related rights regime<sup>2</sup>. Moreover, according to many observers there is a general tendency to raise protection under related rights of performers to a level more and more similar to copyright for authors. In other words, protection would gradually tend to be distinct but equally important. This resemblance would make less relevant the theoretical distinctions between the IP status of authors and performers and the nature of their respective contributions.

(b) Organizations of performers

15. 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.<sup>3</sup>

16. There are two main types of organizations dealing with the protection and remuneration of performers; namely, labor organizations and collective management organizations. This two-fold institutional approach reflects the fact that a performance may be simultaneously considered as a professional activity in the framework of a labor relation and as subject matter of intellectual property protection. There are a number of factors that underline the relevance of the labor dimension of performers as compared to other right owners, such as authors. First, performers usually undertake their activity collectively, in cooperation with other performers. Secondly, performers often work for others, undertaking their performances in the framework of an employment relation whether for performing in a film, a TV show or a theater play.<sup>4</sup>

---

<sup>2</sup> In some other countries like the US protection of performers may fall under copyright proper.

<sup>3</sup> 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.

<sup>4</sup> As outlined by FIM and FIA during the discussions performers sometimes are registered as independent contractors or free-lancers while being subject to the same subordinate relationship with employers. This situation is often seen by performers’ organizations as a source of discrimination in comparison to other artists that are actually employed by the management and enjoy benefits from collective bargaining agreements.

17. Labor organizations are often called trade unions, guilds or associations. They constitute a way of pooling the individual bargaining power of performers to improve their remuneration and other working conditions. Historically, they first focused in live performances to negotiate salaries and other working conditions (hours of work, weekly rest and paid leave, number of rehearsals and payment thereof; dressing rooms and other requirements in premises, etc.). With the development of recording media, guilds started to also negotiate minimum conditions for secondary uses of performances, a trend furthered with the development of new media, such as cinema and television. In this context guilds negotiate with producers collective agreements containing minimum standards of remuneration for different types of use of the performances (on-stage performance; live broadcasting, re-broadcasting, cable retransmission; digital uses, etc.).

18. The interplay between labor law and intellectual property, as well as the respective role of guilds and collective management organizations, greatly varies from one jurisdiction to another. In some cases the rights of audiovisual performers rely exclusively on collective bargaining and individual contract, the former setting minimum standards that are applied by the latter, which may also go beyond the minimum thresholds. At the opposite end there are countries where the rights of actors are granted statutorily under the related rights regime, and intellectual property rights are dealt with either individually under contract or collectively by means of collective management societies. Under a system of collective management the performer transfers some of her intellectual property rights to a collective management organization, which collects and distributes remuneration for use of her performance. In many countries, however, the model that applies is hybrid or mixed, with a significant role for both collective management societies and labor organizations.<sup>5</sup> In these cases it appears crucial that both types of entities cooperate closely for the benefit of performers.

19. The coexistence of collective management organizations and trade unions raised a number of issues for discussion during the seminars. In most cases these two types of organizations pursue their common goal in promoting the rights and welfare of performers by fulfilling their respective, complementary roles. The common membership of both types of organizations contributes to this goal. Very often trade unions are at the origin and heart of collective management organizations. In these cases the same performers organized in a guild for the promotion of their collective interests realize the advantages of having a separate, specialized organization to deal with the complex and time-consuming task of collecting and distributing remuneration for the use of performances. Collective management organizations often enjoy more financial resources than guilds and sometimes provide them with some sort of economic support. In a few cases guilds complain of a lack of support from their sister organizations. Other concerns relate to drawing the boundary between the respective roles of both types of entities, especially in regard to the remuneration of performers. This question was also phrased in a different way, namely, what should be the role of labor organizations for performers in the field of intellectual property, in two different scenarios: first, in the absence of collective management and second, once collective management is established.

---

[Footnote continued from previous page]

<sup>5</sup> One of the issues involved in the dual consideration of the performance relates to whether the remuneration of the performer is to be considered as a salary or as royalty. This delimitation, for which different criteria are used in different jurisdiction, may have important effects in areas such as taxation and social security.

There was a general agreement on the need for a full and frank dialogue between collective management organizations and guilds on this and other respects.

20. The role of governments in the promotion of trade unions and collective management organizations was also discussed during the Seminars. The measures that public authorities adopt to promote an environment conducive to an efficient social dialogue in the field of performers' rights are mostly outside the intellectual property realm. A number of international conventions administered by the International Labor Organization (ILO) focus on the right to collective bargaining and protection in the field of working conditions, social security, health, etc.<sup>6</sup> During the Seminars performers' unions outlined the strong link between the development of their profession and their collective organizations, on the one hand, and fundamental rights and freedoms, such as the right to peaceful assembly and association and freedom of expression, on the other. Collective bargaining cannot take place either where the producers – who are the negotiating partners of performers – are not organized. The role of UN agencies such as ILO and UNESCO was recognized in the areas of norm-setting, technical assistance, research and documentation.<sup>7</sup>

21. During the Seminars there was general recognition of the importance of collective management as a means of exercising performers' rights. However, collective management was not seen as a default solution, as in cases where individual exercise appears inconvenient or impossible given the massive scale of use. On the contrary, it was often regarded by performers as a preferable way of exercising their rights, one which reflects better the collective nature of their work and the strong sense of solidarity among them. For performers, collective management would thus be another way of pooling their resources, in this case to collect and distribute remuneration and jointly promote their rights. Moreover, in many jurisdictions collective management organizations fulfill an important role in catering for the welfare of its members and promoting the national culture, sometimes under a legal obligation to spend a part of their revenues in social and cultural activities.

---

<sup>6</sup> Among the International Labor Organization (ILO) Conventions on the issue, the most cited during the Seminars were the Convention number 87 concerning Freedom of Association and Protection of the Right to Organize, adopted on 9 July 1948, and Convention number 98 concerning the Application of the principles of the Right to Organize and to Bargain Collectively, adopted on 1 July 1949. The Recommendation concerning the Status of the Artist, adopted by the General Conference of UNESCO in Belgrade, on 27 October 1980 adopts a comprehensive approach embracing issues such as training, social status, employment, working and living conditions; professional and trade union organizations and cultural policies and organization.

<sup>7</sup> The relevance of ILO Conventions and their applicability to the rights of performers was highlighted on several occasions, together with the role of ILO in providing technical assistance in this field. Also UNESCO has engaged in relevant activities for the implementation of the Recommendation concerning the Status of the Artist, adopted in Belgrade in 1980. In June 1997, artists and authors from around the world attended the World Congress on the implementation of the Recommendation concerning the Status of the Artist. In their Final Declaration, they called on UNESCO to establish, with the help of international non-governmental organizations (NGOs) representing artists, a periodic review mechanism to monitor the progress achieved in the various States and propose new initiatives to implement the Recommendation. In the framework of this Recommendation, the Observatory on the Social Status of the Artist was created to gather all the information sent by UNESCO Member States and NGOs concerning key aspects of the life and work of artists, such as [Social Benefits and Taxes; Allowances and Fellowships; Networks and Partners and Copyright and Related Rights.](#)

22. Collective management organizations for performers have a different legal status in different jurisdictions. In most countries collective management is undertaken by private associations of performers but in a few cases collective management organizations have a public nature or are part of the public administration in one way or another. In cases where collective management has a non-governmental character it is often a not-for-profit undertaking, albeit in a few cases collective management is taken in charge with a gainful purpose. In a few jurisdictions collective management organizations for performers also represent other right owners, such as producers or authors.<sup>8</sup>

23. The role of public authorities in the establishment and functioning of collective management societies varies widely in different countries. In some jurisdictions collective management societies need a Government authorization to operate and their economic activity is subject to varying degree of control from public authorities, a regime that is absent in other jurisdictions.<sup>9</sup> During the discussions there was a general recognition that public authorities need to promote collective management for performers' rights and such principles therein as efficiency, accountability, transparency, solidarity and free competition. However it was also clear that the way and means of promotion should vary from one jurisdiction to another, depending on the model adopted in each of them. Given this diverse institutional landscape, the federating role of regional and international organizations such as SCAPR and ARTIS appeared as crucial to achieve, through self-regulation and consensus-building, common understanding in regard to the operation of collective management. During the Seminars several expressions of appreciation were registered in regard to the role played by WIPO in the promotion of collective management, especially concerning technical assistance in the establishment of such entities in developing countries and also in documentation and research.

(c) Rights in Audiovisual Performances and Exercise Thereof: The Situation at the National, Regional and International Levels.

24. 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.<sup>10</sup> In every seminar

---

<sup>8</sup> It is sometimes argued, especially in developing countries and/ or small territories that the size of the market for copyright and related rights may justify different categories of right owners pooling their resources together in a single society. In general circumstances performers tend to form societies by themselves, either a single society for all types of performers or separately for music performers and actors. In some cases the exercise of the same right or group of rights by different right owners (such as the rights over the phonogram exercised by both music performers and producers) serve as the basis for the establishment of a single society for more than one category of right owners.

<sup>9</sup> This may include approval of budgets, accounts and certain contracts and acquisitions. It may also involve a right of the government to inspect economic activity of the organization and the possibility to intervene in case of malfunction by such means as removing officials, taking in charge the administration of the society or even suspending or terminating its operations.

<sup>10</sup> In consequence the relevant provisions of the following international instruments were reviewed: the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the 1961 Rome Convention); the Agreement on Trade-Related Aspects of Intellectual



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.

25. 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).

26. The WPPT grants performers a number of important rights, including moral rights; the right of reproduction; the right of distribution; the right of rental; the right of making available of fixed performances and the right to remuneration for broadcasting and communication to the public. Obligations concerning rights management information and technological measures provide an important technological adjunct to protection in the digital environment. During the debates there was a general recognition of the importance of this regime of protection and its aptitude to enable exploitation of content in the new technological environment. In spite of the absence of international rules a considerable proportion of national and regional legislation confers at least some of these rights also in respect of audiovisual performances.<sup>11</sup> However, the focus of discussion during the Seminars related not so much to the rights granted but to the nature and content of the rights (e.g., exclusive rights or rights to remuneration) and the ways that such rights may be exercised and transferred.

27. Protection of performers varies widely among different jurisdictions. As regards audiovisual performances, the absence of international norms increases the diversity among modalities of protection. In some jurisdictions there are rights to authorize or prohibit certain acts (also called exclusive rights); sometimes, instead of the exclusive right to authorize or prohibit, only the more limited right to prevent is granted. Some countries confer a right to remuneration so the performer does not have the possibility to authorize or prevent the given use, but is entitled to receive compensation. Exclusive rights are usually regarded as having a greater value than other types of rights, because they confer a monopoly to permit or prohibit a given use of the performance. However, during the Seminars performers voiced on several occasions a preference for rights to remuneration over exclusive rights or, even better, for a

---

[Footnote continued from previous page]

Property Rights (the 1994 TRIPS Agreement); the WIPO Performance and Phonogram Treaty (the 1996 WPPT); the Berne Convention for the Protection of Literary and Artistic Works (1971 Paris Act); the WIPO Copyright Treaty (the 1996 WCT).

<sup>11</sup> The Survey on National Protection on Audiovisual Performances was prepared by the WIPO Secretariat in 2003: [http://www.wipo.int/edocs/mdocs/copyright/en/avp\\_im\\_03/avp\\_im\\_03\\_2\\_rev\\_2-main1.doc](http://www.wipo.int/edocs/mdocs/copyright/en/avp_im_03/avp_im_03_2_rev_2-main1.doc) It collects information from all WIPO Member States. Since the publication of the Study the trend to extend protection to actors has intensified, with several countries introducing protection or launching plans to enact such protection.

combination thereof.<sup>12</sup> By doing so they were not questioning whether the rights mentioned enable exploitation of their performances, but signaling instead that certain means of implementing those rights might have a more favorable impact than others in terms of remunerating performers. According to this view, exclusive rights have little economic impact when they are transferred, without significant compensation, to the producer. This situation is made more acute by legal mechanisms such as the presumption of transfer, which aims at facilitating economic exploitation of the performances by placing the exercise of the rights in the hands of producers.<sup>13</sup> Performers argue that, even in case that the presumption is rebuttable, as a result of their weaker negotiating power the exclusive rights may be transferred to the producer against an insubstantial payment, if any.

28. During the Seminars different formulae found in national legislation were examined, as well as their effects in ensuring that the transfer of rights takes place without harming the interests of performers. In some cases these compensating mechanisms are based on legal formalities, such as requiring that the contract be in writing, that each right transferred be specified separately in the contract and that no transfer of *future rights* – or non-existing modalities of exploitation – be allowed. Other systems focus on the result of the transfer for the performer and the relative situation of the same in the course of the exploitation. These solutions consist of establishing a right to participation in profits from the exploitation, a compensation proportional to the result of the exploitation, or even a claim to an equitable remuneration. The main concern of performers relates to the need to ensure remuneration in exchange for the transfer of exclusive rights. This assurance can also, as already mentioned above, take the form of a combination of an exclusive right with a right to remuneration.

29. The duration of rights was also discussed at national and regional seminars. There was a general recognition of the fifty years term of protection granted to audio performers in the TRIPS and WPPT. In some cases the term of protection has been extended beyond that limit in national legislation. According to performers national implementations extending the minimum term of protection contained in the international standard should ideally reflect the equality among performers and authors as enshrined in the international standard. In countries that confer rights on audiovisual performers the term of protection is usually similar to that of audio performers. In this regard, performers expressed the need to equate the term of protection for actors and music performers – and avoid any discrimination among them – in

---

<sup>12</sup> Under the European Rental Directive (Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property) when a performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that performer shall retain the right to obtain an equitable remuneration for the rental.

<sup>13</sup> Both related rights systems and systems based on collective bargaining have legal mechanisms in place to ensure that the audiovisual producer can undertake the exploitation of rights in the performance without obstacle. Under the *work-for hire* system in the United States, the rights are vested in human creators, but are regarded, under the law, as immediately assigned to the producer once consent 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 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.

possible extensions of the duration of protection currently being considered at the national and regional level (and specifically in the European Union).

30. 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.<sup>14</sup> 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.<sup>15</sup>

31. The position of all major private stakeholders has also remained unchanged, with the notable exception of a recent agreement between the International Federation of Actors (FIA) and the International Federation of Musicians (FIM). FIM and FIA together represent, from a trade union perspective, the whole community of performers, which justifies a more elaborate description of their recent agreement. Both FIA and FIM are concerned about the repercussions of new media developments on performers, where the latter cannot benefit from adequate intellectual property protection. As the distinction between sound and audiovisual performances is increasingly eroded, both federations consider the lack of an international audiovisual treaty at WIPO a damaging factor for all performers.

32. Both federations believe that the work achieved by the WIPO member States during the 2000 Diplomatic Conference was very encouraging and they repeatedly called for this process to be concluded successfully, putting an end to what they see as a very artificial discrimination that performers, who often work on both the sound and the audiovisual sector, have never understood, let alone accepted. Moreover, FIA and FIM, as they praise the work of the WIPO Secretariat to facilitate the dialogue and generate a deeper understanding of the stakes involved in the sector, also call on all member States to resume the negotiation as it was left in 2000, confirming the nineteen provisionally approved articles and making the protection of performers whole by a landmark audiovisual treaty with no unnecessary reference to the issue of transfer.

33. As indicated above, the WIPO Secretariat is not aware of any evolution in the position of governments regarding the international protection of audiovisual performances. Moreover

---

<sup>14</sup> For easy reference to the WIPO Studies and Surveys, please refer to the WIPO webpage at: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=5026](http://www.wipo.int/meetings/en/details.jsp?meeting_id=5026)

<sup>15</sup> The position of WIPO Member States on the international protection of performances is duly reflected in the corresponding reports for each session of the Standing Committee on Copyright and Related Rights (SCCR) and other WIPO bodies where the issue has been discussed, such as the General Assembly. There is no indication of any evolution beyond what is expressed therein.

there is no indication that the position of other major stakeholders, such as audiovisual producers, has changed in regard to issues such as the need for a transfer provision in any future Instrument on the protection of audiovisual performances.

(d) Conclusions

34. As expected, no formal conclusions were adopted in the Seminars, which were undertaken as a collective exercise to explore the situation of performers in different regions and the respective prospects and means for improvement. In this regard the Seminars achieved a promising, high degree of meaningful exchange among governments and stakeholders in the three areas mentioned, 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 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).

[Annex follows]

## ANNEX

### LIST OF WIPO NATIONAL AND REGIONAL SEMINARS ON THE PROTECTION OF AUDIOVISUAL PERFORMANCES - 2007/2008

1. II International Forum on Audiovisual Performances, Buenos Aires, November 13 and 14, 2006, organized by AISGE (Collective Management Society for Performers in Spain) and the Argentinean Union of Actors (AAA), with the support of the Government of Argentina.
2. WIPO Asia-Pacific Regional Symposium on Performers' Rights in the Digital Network Environment, Beijing, February 5 and 6, 2007, organized by the World Intellectual Property Organization (WIPO) in cooperation with the National Copyright Administration of the People's Republic of China (NCAC) and with the assistance of the Ministry of Culture and Tourism of the Republic of Korea.
3. III Seminar on the Challenges of the Audiovisual Sector in the Digital Environment, Bogotá, February 26 to 28, 2007, organized by WIPO, the Colombian Copyright Office and EGEDA (organization of producers from Spain and Latin America), in cooperation with Universities of Colombia and Spain and the Ministry of Culture in Spain.
4. National Seminar on Copyright and the Audiovisual Sector, Algeria, April 24 to 26, 2007, organized by WIPO and the Copyright Office of Algeria (ONDA).
5. WIPO National Workshop on Copyright and Related Rights in the Film and Audiovisual Sector, Beijing, May 24 and 25, 2007, in cooperation with State Administration of Radio, Film and Television (SARFT) of China.
6. WIPO Sub-Regional Workshop on Copyright and Related Rights in the Audiovisual Sector, Moscow, June 1<sup>st</sup>, 2007, organized by the World Intellectual Property Organization (WIPO) in cooperation with ROSPATENT and the Russian Government.
7. National Seminar on Collective Management of Performers' Intellectual Property Rights, Guatemala City, July 9, 2007, organized by WIPO in cooperation with the National Copyright Authority of Guatemala and the International Federation of Ibero-Latin American Performers (FILAIIE).
8. National Seminar on Collective Management of Performers' Intellectual Property Rights, Panama City, July 11, 2007, organized by WIPO in cooperation with National Copyright Authority of Panama and the International Federation of Ibero-Latin American Performers (FILAIIE).
9. National Seminar on Collective Management of Performers' Intellectual Property Rights, San Jose, Costa Rica, July 13, 2007, organized by WIPO in cooperation with the National Copyright Authority of Costa Rica and the International Federation of Ibero-Latin American Performers (FILAIIE).

10. IV Internacional Forum on the Protection of Audiovisual Performers in Latin America, Santiago de Chili, October 25 and 26, 2007, organized by Corporación de Actores de Chile (CHILEACTORES); Sociedad Chilena del Derecho de Autor (SCD) Fundación Aisge and Artistas Intérpretes, Sociedad de Gestión (AISGE, Actors, Spain), in cooperation with the Government of Chili and the World Intellectual Property Organization (WIPO).
11. Training Course on Collective Management Performers' Rights, Madrid, Spain, November 29 to December 5, 2007, organized by WIPO in cooperation with the AIE (Music Performers, Spain) and with the assistance of FILAIE.
12. WIPO Asia-Pacific Regional Symposium on Emerging Issues of Copyright and Related Rights in the Audiovisual Industry, Kathmandu, January 29 to 31, 2008, organized by the World Intellectual Property Organization (WIPO) in cooperation with the Nepal Copyright Registrar's Office, Ministry of Culture, Tourism and Civil Aviation Government of Nepal, and with the assistance of the Japan Copyright Office (JCO).
13. WIPO Sub-Regional Symposium on the Rights of Performers in the Digital Environment, Romania, June 10 to 12, 2008, organized by the World Intellectual Property Organization (WIPO), in cooperation with Romanian Copyright Office (ORDA), and with the assistance of the Romanian Center for Performing Artists Rights Management (CREDIDAM).
14. WIPO National Symposium on Emerging Issues of Copyright and Related Rights in the Film and Audiovisual Sector, Shanghai, June 16 and 17, 2008, organized by the State Administration of Radio, Film and Television (SARFT) of China, in cooperation with the World Intellectual Property Organization (WIPO) and the Protection of Film Copyright Society of China.
15. WIPO Malaysia National Seminar on Collective Management of Copyright and Related Rights for Performers, Kuala Lumpur, Malaysia, August 25 and 26, 2008, jointly organized by the World Intellectual Property Organization (WIPO) and the Intellectual Property Corporation of Malaysia (MyIPO), and with the assistance of the Performers and Artistes Rights (M) Sdn. Bhd. (PRISM).
16. WIPO Regional Seminar on the Protection of Performers in Africa, Lilongwe, Malawi, December 4 and 5, 2008, organized by the World Intellectual Property Organization (WIPO) in cooperation with the Government of Malawi.
17. V Foro Internacional Sobre Interpretaciones Audiovisuales - Las Interpretaciones Audiovisuales en un Mercado Globalizado, Bogotá, 10, 11 y 12 de diciembre de 2008, organized by Dirección Nacional de Derecho de Autor de Colombia (DNDA); Fundación Aisge y Artistas Intérpretes, Sociedad de Gestión (AISGE), in cooperation with the World Intellectual Property Organization (WIPO), the Círculo Colombiano de Artistas (CICA); the Ministry of Education of Colombia and the Consejo Nacional de la Cultura y las Artes.

[End of Annex and of document]