



ELEVENTH ITEM ON THE AGENDA

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) and World Intellectual Property Organization (WIPO) Diplomatic Conference on the Protection of Audiovisual Performances (December 2000)

1. Since the adoption of International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) in 1961, WIPO's activity has led to the adoption of a number of related instruments, including the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971) and the Convention Relation to the Distribution of Programme-carrying Signals Transmitted by Satellite (1974). In the early 1990s, WIPO prepared the way for new treaties to cover the area of copyright in the context of rapidly evolving technologies, multimedia convergence and the globalization of media and entertainment in the digital age – the Agreement between WIPO AND WTO on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement, 1995), the WIPO Copyright Treaty (WCT, 1996) and the WIPO Performances and Phonograms Treaty (WPPT, 1996). This latter Treaty provides for improved protection for performers, producers of phonograms and broadcasters. But an area of major concern was that its general application to audiovisual performances was excluded because agreement could not be reached at the Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions, held in Geneva from 2-20 December 1996. The Basic Proposal for the Substantive Provisions of the WPPT included an alternative solution extending the protection accorded to performers to audiovisual performances as well. However, the WPPT did not extend the protection of performers to their performances fixed in audiovisual fixations. Instead, the Diplomatic Conference adopted a resolution concerning audiovisual performances, calling for the convocation of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on the schedule of the preparatory work on a protocol to the WPPT concerning audiovisual performances, with a view to the adoption of such an instrument not later than in 1998. WIPO has been in the process of negotiating such an instrument, to complement the WPPT, for the past four years. The protection of the rights of performers and other rights-holders in relation in audiovisual performances is of utmost importance in today's entertainment industry, with digitization creating unlimited possibilities for copying, reproducing, recreating, reusing, etc. the works of performers.

2. WIPO held a Diplomatic Conference from 7 to 20 December 2000 to develop an instrument on the protection of audiovisual performances.¹ There was considerable debate at the Diplomatic Conference over the controversial issue of the presumption of transfer of performers' rights to the producers of audiovisual productions (when their performances are recorded or "fixed" in audiovisual productions), and the ILO's view in this area was expressed by the Executive Director of the Social Dialogue Sector with the aim of encouraging the search for an acceptable provision on this issue. A consensus was eventually reached on the Preamble and 19 articles dealing with the following: relation to other conventions and treaties; definitions; beneficiaries of protection; national treatment; moral rights; economic rights of performers in their unfixed performances; right of reproduction; right of distribution; right of rental; right of making available of fixed performances; right of broadcasting and communication to the public; limitations and exceptions; term of protection; obligations concerning technological measures; obligations concerning rights management information; formalities; reservations; application in time; and provision on enforcement of rights.
3. However, with respect to article 12, no agreement could be reached. Four alternatives were put forward: a provision on transfer of rights on entitlement to exercise rights; on law applicable to transfers or no such provision. The Diplomatic Conference closed with the following statement: "The Diplomatic Conference notes first their provisional agreement on 19 (out of 20) articles [and the preamble] and, second, recommends to the WIPO Assemblies in September 2001 Session to reconvene the Diplomatic Conference to settle outstanding issues." Despite strong statements of regret from some governments and NGOs, the general mood was that efforts would continue to find a solution to the remaining problems, mostly questions of wording and matters of principle. A WIPO instrument on the protection of audiovisual performances would in itself call for a substantial re-examination of the Rome Convention, although the process of updating international law in this area will need to continue through a WIPO diplomatic conference to adopt an international instrument on the rights of broadcasting organizations, planned for 2003.
4. The 18th Ordinary Session of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) will be held at ILO headquarters in Geneva from 27-29 June 2001. It may be recalled that under article 32 of the Rome Convention, 1961, the ILO, UNESCO and WIPO constitute the joint secretariat of the Intergovernmental Committee. Given the developments at the WIPO Diplomatic Conference in December 2000, and in view of the limited interest shown in the Intergovernmental Committee in recent years, it is likely that the Intergovernmental Committee might consider whether to continue meeting every two years or not.
5. The report to be presented to the 18th Ordinary Session of the Intergovernmental Committee will provide information about the state of adherence to the Rome Convention and to related international copyright conventions referred to in the Rome Convention, the Phonograms Convention and the Satellites Conventions. Summarized in the report will be the activities of the three organizations, ILO, UNESCO and WIPO, in providing assistance and training for developing countries with a view to promoting the protection of performers, producers of phonograms and broadcasting organizations. The ILO section of the report will provide information on the Symposium on Information Technologies in the Media and Entertainment Industries: Their Impact on Employment, Working Conditions

¹ WIPO's press release on the outcome of the Diplomatic Conference is available in the meeting room.

and Labour Management Relations (Geneva, 28 February-3 March 2000) and activities in the media and entertainment sector, as well as examining the scope of the increased protection for workers in audiovisual productions with the WIPO Instrument on the Protection of Audiovisual Performances (due for further discussion in September 2001) might provide.

6. The main agenda items of the Intergovernmental Committee are likely to be the possible implications of the adoption of a WIPO Instrument on the Protection of Audiovisual Performances and on the further examination of a study requested by the 16th Ordinary Session of the Intergovernmental Committee in 1997, on the relationship of, and comparison between, the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT) and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement); and the evolution and possible improvement of the protection of the neighbouring rights recognized by the Rome Convention.² The Intergovernmental Committee's 1999 session was only able to hold a limited discussion on the study and the possible revision of the Rome Convention. There was general consensus in expressing appreciation for the comprehensive study, pointing to a number of controversial issues raised by it and inviting member States parties to the Rome Convention, observer States and intergovernmental organizations to submit their views and comments on the study to the secretariat by May 2000. By December 2000, only two comments had been received on the study from the Governments of Australia and Norway
7. The ILO is responsible, in the context of hosting the next session of the Intergovernmental Committee, for receiving, translating and circulating comments on the study in good time. As an intergovernmental organization, the ILO may also need to prepare its own views and comments on the study (December 2000) and on subsequent developments.
8. ***The Committee may wish to recommend to the Governing Body that it: take note of this summary of the WIPO Diplomatic Conference (December 2000); endorse the continued participation of the Office in the preparation of the proposed instrument; and invite the Director-General to report to the Governing Body at its session in November 2001 on the outcome of the 18th Ordinary Session of the Intergovernmental Committee of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961).***

Geneva, 12 February 2001.

² Michel M. Walter: *The relationship of, and comparison between, the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT) and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement); the evolution and possible improvement of the protection of the neighbouring rights recognized by the Rome Convention (ILO/UNESCO/WIPO/ICR.17/6)*, paper presented at the 17th Ordinary Session of the Intergovernmental Committee, Geneva, 5-7 July 1999. Copies will be available at the Committee's meeting in English, French and Spanish.