Information Circular

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FIAPF calls on WIPO to limit broadcasters’ rights in planned Treaty

The 9th Session of the WIPO Standing Committee (SCCR) took place from June 23 to 27 and focussed on the issue of the protection of broadcasters against the piracy of their signal. During the previous WIPO SCCR last November, Member States were asked to submit proposals. The main questions were:

- who would be the beneficiaries of the possible treaty?
- what would be the scope of rights granted to the beneficiaries?

Only three new proposals were presented in treaty language, one from Kenya, one from Egypt, another from the USA, the latest containing no significant changes in comparison to their previous proposal, apart from the clarification that beneficiaries would have to be moral persons (not individuals). The US proposal still refers to three categories of possible beneficiaries:

- Traditional broadcasters
- Cablecasters
- Webcasters

During the meeting, the European Community submitted a new Common Position on the definition of broadcasting. The paper proposes to exclude “the mere retransmission by cable of broadcasts of a broadcasting organization, transmissions on computer networks, or the making available of fixations of broadcasts [in places accessible to the public]”. However, the simultaneous and unaltered transmission on computer networks (simulcasting) would be protected.

The Canadian delegation formulated a reservation on the simultaneous retransmission by wire or wireless means of unencrypted wireless broadcasts that would not give rise to protection (obviously in reference to the risk of added cost of retransmission of the main US TV channels for the Canadian cable casters).

Egypt’s proposal, suggested traditional broadcasters and cablecasters (excluding webcasters) as possible beneficiaries of the treaty and included a larger range of rights than the Rome Convention’s (e.g. computer network retransmission, deferred transmission by wire, or wireless means.)

In the course of the debate over the scope of the Treaty India, Brazil and Egypt strongly opposed the inclusion of webcasters which they considered not yet properly defined. Some delegations (e.g. Russia) suggested developing a separate treaty or protocol on the issue.
These delegations also objected strongly to a list of ten rights presented in the chairman's assessment as having been agreed by the delegations:

1) Fixation; 2) Reproduction of fixations; 3) Distribution of fixations; 4) Re-broadcasting (simultaneous); 5) Retransmission by cable (simultaneous); 6) Retransmission over the Internet (simultaneous); 7) Deferred broadcasting/cable/internet transmission based on fixation; 8) Making available of fixed broadcasts cable/internet transmission based on fixation; 9) Communication to the public (in places accessible to the public); 10) Obligations regarding technological protection measures and rights management information; decryption of encrypted broadcasts.

These three countries also had the support of China, Indonesia and – to a certain extent - Japan.

FIAPF is acting within a coalition of NGOs made up of trade associations in the areas of music publishing, performers and authors - A joint NGO's recommendation in three languages (French, English and Spanish) was distributed to the WIPO delegates. Such an alliance of interests is without precedent in the history of WIPO lobbying.

**The coalition's overriding objective is to try to limit the treaty to the rights necessary to protect the broadcasters signal only.** It is also against the inclusion of webcasters in the treaty (in opposition to the US proposal). The record of FIAPF's intervention is eloquent in both respects: "[FIAPF] expressed the view that the objective of the proposed treaty should be limited to fighting against piracy. Some of the rights contained in the chairman's document guiding the discussions were not related to signal protection as in distribution of fixation. On the other hand, whereas retransmission over the Internet (simultaneous), deferred broadcasting/cable/internet transmission based on fixation had been dealt with in the last session of the SCCR as mere suggestions, their inclusion in the new listing of rights seemed to erroneously imply some sort of consensus over those issues. Finally, with respect to the broadcast flag, FIAPF considered that broadcasters should have the technological means for preventing the non-authorized redistribution of their signal over the Internet, and that that issue could well be dealt with in the proposed treaty."

The next (10th) session of the SCCR is due to take place from November 3rd to 5th. Delegations are invited to consider a suitable timetable for further preparatory steps and the possibility of organizing a Diplomatic conference.

An information meeting would be organized, the theme of which would be chosen by Mr. Kamil ldris. (DG of WIPO).

The following documents are available on the FIAPF extranet:

- Joint NGOs' recommendation
- Canadian documents
- European Community submission
- Chairman's Assessment

See also WIPO website:


**WIPO to test ground on performers rights agenda**

Since the failure of the WIPO Diplomatic Conference in December 2000 negotiation towards a Treaty on performers’ rights has been at a standstill. A decision to hold an informal...
“information” meeting in June this year was the first sign that WIPO may be trying to re-launch the process. The meeting was latterly postponed by WIPO to November 6th, due to alleged translation problems.

The November meeting will feature two speakers from the performers' camp. (Spanish actress and performers' organisation Chairperson Assumpta Serna and African actor Gerard Essomba.)

Mr. Aurelio de Laurentiis, FIAPF Honorary President is also scheduled to speak about the role of the film producer in the creative and financial process of making a film. His presentation would cover contractual relationships with actors and the need to secure the rights related to the numerous performances - and especially the performers rights - through transfer rules.

In preparation of the meeting, two studies (1) are now available on the WIPO website as well as a large survey (800 pages) prepared by the WIPO Secretariat on the national protection of performers.

An additional study on territoriality and rights by Profs. Lucas (Nantes University) and US Jane L. Ginsburg (Columbia Law School) are still expected.

In the run-up to the meeting initially scheduled for June, the European Parliament approved on May 15th (by a unanimous vote) a recommendation on the necessity to protect audiovisual performers at an international level. The declaration calls on the European Commission to take positive action to ensure the adoption of an effective WIPO Treaty in favour of AV performers.

It is clear that, although the November meeting is not billed as a forum for legal/technical negotiations on a possible Performers' Treaty, we might find that some EU Member States will want to use it as a means of applying pressure for the Treaty to be put back on tracks.

Relevant WIPO studies (1) on performers are available from the following web address:

http://www.wipo.int/copyright/en