The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

Done at Geneva October 29, 1971;

Ratification advised by the Senate of the United States of America October 1, 1973;

Ratified by the President of the United States of America November 9, 1973;

Ratification of the United States of America deposited with the Secretary-General of the United Nations November 26, 1973;

Proclaimed by the President of the United States of America April 17, 1974;

Entered into force with respect to the United States of America March 10, 1974.

[T.I.A.S. No. 7808]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms was opened for signature at Geneva October 29, 1971;

The Senate of the United States of America by its resolution of October 1, 1973, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention;

The President of the United States of America ratified the Convention on November 9, 1973, in pursuance of the advice and consent of the Senate;

The United States of America deposited its instrument of ratification of November 26, 1973 with the Secretary General of the United Nations, and on December 10, 1973 the Director General of World Intellectual Property Organization informed the States indicated in the Convention of such deposit;

Pursuant to the provisions of paragraph (2) of Article 11 of the Convention, the Convention entered into force for the United States of America on March 10, 1974;

NOW, THEREFORE, I, Richard Nixon, President of the United States of America, proclaim and make public the said Convention to the end that it shall be observed and fulfilled with good faith by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this seventeenth day of April in the year of our Lord one thousand nine hundred seventy-four and of

[seal] the Independence of the United States of America the one hundred ninety-eighth.

RICHARD NIXON

By the President:

HENRY A. KISSINGER
Secretary of State

The Contracting States,

concerned at the widespread and increasing unauthorized duplication of phonograms and the damage this is occasioning to the interests of authors, performers and producers of phonograms;

convinced that the protection of producers of phonograms against such acts will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms;

recognizing the value of the work undertaken in this field by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization;

anxious not to impair in any way international agreements already in force and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers and to broadcasting organizations was well as to producers of phonograms;

have agreed as follows:

Article 1

For the purposes of this Convention:

(a) "phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;

(b) "producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;

(c) "duplicate" means an article which contains sounds taken directly or indirectly from the phonogram and which embodies all or a substantial part of sounds fixed in that phonogram;

(d) "distribution to the public" means any act by which duplicates of a phonogram are offered, directly or indirectly, to the general public or any section thereof.

Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

Article 3

The means by which this Convention is implemented shall be a matter for the domestic law of each Contracting State and shall include one or more of the following: protection by means of the grant of copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions.

Article 4

The duration of the protection given shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the protection, that duration shall not be less than twenty years from the end either of the year in which the sounds embodied in the phonogram were first fixed or of the year in which the phonogram was first published.

Article 5

If, as a condition of protecting the producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the authorized duplicates of the phonogram[s] distributed to the public or their containers bear a notice consisting of the symbol e, accompanied by the year date of the first publication, placed in such manner as to give reasonable notice of claim of protection; and, if the duplicates or their containers do not identify the producer, his successor in title or the exclusive licensee (by carrying his name, trademark or other appropriate designation), the notice shall also include the name of the producer, his successor in title or the exclusive licensee.

Article 6

Any Contracting State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions, may in its domestic law provide, with regard to the protection of producers of phonograms, the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works. However, no compulsory licenses may be permitted unless all of the following conditions are met:

(a) the duplication is for use solely for the purpose of teaching or scientific research;

(b) the license shall be valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and shall not extend to the export of duplicates;

(c) the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, *inter alia*, the number of duplicates which will be made.

(1) This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, to producers of phonograms or to broadcasting organization under any domestic law or international agreement.

(2) It shall be a matter for the domestic law of each Contracting State to determine the extent, if any, to which performers whose performances are fixed in a phonogram are entitled to enjoy protection and the conditions for enjoying any such protection.

(3) No Contracting State shall be required to apply the provisions of this Convention to any phonogram fixed before this Convention entered into force with respect to that State.

(4) Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Director General of the World Intellectual Property Organization, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

Article 8

(1) The International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms. Each Contracting State shall promptly communicate to the International Bureau all new laws and official texts on this subject.

(2) The International Bureau shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided for therein.

(3) The International Bureau shall exercise the functions enumerated in paragraphs (1)and (2) above in cooperation, for matters within their respective competence, with the United Nations Educational, Scientific and Cultural Organization and the International Labour Organization.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until April 30, 1972, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1) of this Article.

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nation.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

Article 10

No reservation to this Convention are permitted.

Article 11

(1) This Convention shall enter into force three months after deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, the Convention shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization informs the States, in accordance with Article 13, paragraph (4), of the deposit of its instrument.

(3) Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification will take effect three months after the date on which it is received.

(4) However, the preceding paragraph may in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Convention is made applicable by another Contracting State by virtue of the said paragraph.

Article 12

(1) Any Contracting State may denounce this Convention, on its own behalf or on behalf of any of the territories referred to in Article 11, paragraph (3), by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the Secretary-General of the United Nations has received the notification.

Article 13

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director General of the World Intellectual Property Organization, after consultation with the interested Governments in Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of this United Nations shall notify the Director General of the World Intellectual Property Organization, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of:

(a) signatures to this Convention;

(b) the deposit of instruments of ratification, acceptance or accession;

(c) the date of entry into force on this Convention;

(d) any declaration notified pursuant to Article 11, paragraph (3);

(e) the receipt of notifications of denunciation.

(4) The Director General of the World Intellectual Property Organization shall inform the States referred to in Article 9, paragraph (1), of the notifications received pursuant to the preceding paragraph and of any declarations made under Article 7, paragraph (4). He shall also notify the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of such declarations.

(5) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to the States referred to in Article 9, paragraph (1).

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at Geneva, this twenty-ninth day of October, 1971.