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EXISTENCE, SCOPE AND FORM OF GENERALLY INTERNATIONALLY ACCEPTED AND APPLIED STANDARDS/NORMS FOR THE PROTECTION OF INTELLECTUAL PROPERTY

Note Prepared by the International Bureau of WIPO

Addendum

The following document, dated 22 June 1988, has been received from the Director General of the World Intellectual Property Organization.

INTRODUCTION

The present document has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) as a continuation of documents MTN.GNG/NG11/W/24 and 24/Add.1.

It deals with neighbouring rights.

PART VII: NEIGHBOURING RIGHTS

Introduction

The expression "neighbouring rights" is a term which is used for the sake of brevity and means the right of performers, producers of phonograms and broadcasting organizations. Those rights are rights which are close to or "neighbouring" on copyright in literary and artistic works. The word "copyright" itself is, however, used in two meanings. The basic and generally accepted meaning of "copyright" is the one in which this word is also used in the international copyright conventions and which only covers the protection of rights in literary and artistic works. Part II of document MTN.GNG/NG11/W/24 has dealt with copyright in that meaning. The other, wider meaning of "copyright" (in which this word is used in some of the national laws of countries with Anglo-American legal traditions) also covers the protection of certain of the beneficiaries under the concept of neighbouring rights, namely phonogram producers and broadcasters.

In the field of neighbouring rights, there are two main international conventions: the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter: the Rome Convention) and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (hereinafter: the Phonograms Convention). Both Conventions are administered jointly by WIPO, UNESCO and ILO.

The Rome Convention was adopted in Rome on 26 October 1961, and entered into force on 18 May 1964. So far, thirty-two countries have adhered to the Rome Convention.1

It should be noted that a number of countries with important entertainment industries (e.g. Australia, Canada, China, Hungary, India, Japan, Kenya, Nigeria, Singapore, Soviet Union, Spain, United States) are not yet party to that Convention.

The Intergovernmental Committee of the Rome Convention adopted a Model Law Concerning the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter: the Model Law) in Brussels in May 1974. The Model Law, along with a commentary on it, was intended to serve as guidance to national legislators for the implementation of the Rome Convention.

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1The list of the States party to the Rome Convention is contained in Annex I of this document.

The Phonograms Convention was adopted in Geneva on 29 October 1971, and entered into force on 18 April 1973. So far, forty-one countries have adhered to the Phonograms Convention.1

It is also to be noted that certain countries with important phonographic industries (e.g. Belgium, Canada, China, Ireland, Nigeria, Singapore, Soviet Union, Thailand) are not yet party to that Convention.

WIPO regularly monitors national legislation, case law and contractual practice concerning neighbouring rights and actively promotes the adherence of further countries to the Rome Convention and the Phonograms Convention.

This document contains three chapters: chapter (A) deals with the protection of performers, chapter (B) deals with the protection of producers of phonograms and chapter (C) deals with the protection of broadcasting organizations.

(A) THE PROTECTION OF PERFORMERS

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines and the extent of acceptance of such treaties

The Rome Convention obliges each Contracting State to protect the rights of performers in respect of their performances.

Under the Rome Convention, "'performers' means actors, singers, musicians, dancers, and other persons

who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works".

The Diplomatic Conference in Rome felt it unnecessary to define "performance". As the General Report of that Conference points out, it was considered that "performance" obviously means the activities of a performer as defined by the Convention.

(ii) Current WIPO activities

None

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1The list of the States party to the Phonograms Convention is contained in Annex II of this document.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

All the national laws of the countries party to the Rome Convention provide for the protection of performers in respect of their performances and offer definitions which, in general, correspond - with some differences of minor importance - to those given by the Rome Convention.

Several countries which are not party to the Rome Convention also provide for the protection of performers (e.g. German Democratic Republic, Greece, Guinea, Hungary, Iceland, Israel, Japan, Portugal, Spain, Zaire).

The definitions of "performers" and "performances" in national laws differ to some extent. There are certain national laws (e.g. the laws of the Nordic countries, Czechoslovakia, Hungary) which do not contain any specific definitions (it is the meaning of the word in common parlance which is thus accepted) and it is up to case law to decide about borderline cases. Some other national laws give a fairly general definition (e.g. the laws of Austria, Germany (Federal Republic of)), while still other national laws mention various categories of performers as examples (actors, singers, narrators, musicians, etc.) (e.g. the laws of Brazil, Chile, Ecuador, Guinea, Japan) or use verbs other than "perform" to describe certain types of activities of performers such as "act", "sing", "deliver", "declaim", "play in" (e.g. the laws of France, Philippines). The majority of national laws only refer to performers as persons who perform literary and artistic works, while certain other national laws (e.g. the laws of Ecuador, Guinea, Rwanda) provide that those who perform expressions of folklore are also considered performers. Finally, the majority of national laws only refer to performers in general terms and do not differentiate between the two major categories of them, namely between interpreters of works (such as conductors, directors) and performers proper (actors, singers, musicians, etc.), while in certain national laws, a distinction is made between those categories (e.g. in the laws of Chile, Ecuador, Ghana, Hungary, Japan, Portugal).

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, a performance is protected if any of the following conditions is met:

- the performances take place in another Contracting State;

- the performance is incorporated in a phonogram which is protected under the Convention;

- the performance, not being fixed on a phonogram, is carried by a broadcast which is protected under the Convention.

The Rome Convention does not require compliance with formalities as a condition of the protection of performances. At the same time, it does not exclude formalities at the national level in respect of performances included in phonograms.

However, if, as a condition of protecting the rights of performers in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, those are considered as fulfilled

if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P, accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice must also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice must also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

As the General Report of the Diplomatic Conference in Rome makes clear, in countries where no formalities are required as a condition of protection, performances included in phonograms must be protected under the Convention even if such phonograms do not bear the notice specified by the Convention.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The national laws of the countries party to the Rome Convention prescribe that the notice mentioned in item (i), above, must be indicated on the copies or containers of the phonograms (which, at least indirectly, is a condition also for the protection of the performances included in the phonograms).

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, there are no procedures for obtaining the rights of performers.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for obtaining the rights of performers under national laws.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The scope of rights granted under the Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to performers if the criteria for obtaining protection for their performances, mentioned in item (2)(i), above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to performers who are its nationals as regards performances taking place, or being broadcast, or first fixed, on its territory.

National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention.

Under the Rome Convention, the protection provided for performers must include the possibility of preventing:

- the broadcasting and the communication to the public, without their consent, of their live performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from the fixation;

- the fixation, without their consent, of their unfixed performance;

- the reproduction, without their consent, of a fixation of their performance, if the original fixation itself was made without their consent, if the reproduction is made for purposes different from those for which the performers gave their consent, or if the original fixation was made in accordance with those provisions of the Convention which allow exceptions to neighbouring rights (see below in this item) and the reproduction is made for purposes different from those referred to in those provisions.

It should be noted that the words "the possibility of preventing" differ from those which are used in respect of the protection for producers of phonograms and broadcasting organizations ("the right to authorise or prohibit"). In respect of performers, States party to the Convention are free to choose the means used to implement the Convention (law of employment, of personality, of unfair competition or unjust enrichment, etc., or grant of an exclusive right to performers).

As far as the relations between performers and broadcasting organizations are concerned, the Rome Convention provides that if broadcasting was consented to by the performers, it is a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes and the reproduction of such fixations for broadcasting purposes. The terms and conditions governing the use by broadcasting organizations of fixations made for broadcasting purposes is to be determined in accordance with the domestic law of the Contracting State where protection is claimed. However, the domestic law must not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

The Model Law offers the following regulation of the relations between performers and broadcasting organizations: in the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would be normally inferred, the authorization to broadcast does not imply an authorization to license other broadcasting organizations to broadcast the performance, the authorization to broadcast does not imply an authorization to fix the performance, the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation, and the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast the performance from the fixation or any reproduction of such fixation.

Under the Rome Convention, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on the rights of performers, mentioned above, have no further application.

The Rome Convention provides for possible exceptions to the protection guaranteed to neighbouring rights owners, including performers. Exceptions are permitted as regards:

- private use;

- use of short excerpts in connection with the reporting of current events;

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic law, provide for the same kinds of limitations with regard to the protection of neighbouring rights as it provides for, in its domestic law, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

(ii) Current WIPO activities

In recent programme periods, a thorough analysis of the worldwide copyright and neighbouring rights situation has been carried out in the framework of various meetings convened jointly with UNESCO.

In the first phase of analysis - in the 1982-83 and 1984-85 bienniums - WIPO activities concentrated on new uses (such as reproduction for private purposes, rental and lending, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighbouring rights - including the rights of performers - were grouped according to the main categories of works. In connection with each category, principles were outlined which were intended to serve as guidance for governments and national legislators. The memoranda prepared for the meetings of the committees of governmental experts on various categories of works dealt with all problems - particularly the ones raised by the new technologies - in respect of the scope and the application of rights, and contained altogether 141 principles and a detailed commentary including an analysis of the obligations under the international copyright and neighbouring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis is a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988.

The scope and application of neighbouring rights - including the rights of performers - in respect of certain new uses is also intended to be discussed in the WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property to be held in Geneva in September 1988.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The scope of right recognized by countries party to the Rome Convention corresponds, at least, to the minimum standards of the Rome Convention as outlined in item (i) above; but also the laws of several countries not bound by that convention recognise, generally, similar rights for performers.

Performers have the right to authorise and prohibit - or, at least, the possibility of preventing - the fixation as well as the broadcasting and the communication to the public of their live performances in a number of countries (e.g. in Argentina, Brazil, Chile, Colombia, Congo,
Costa Rica, Czechoslovakia, Ecuador, France, Germany (Federal Republic of), Greece, Guinea, Hungary, Ireland, Italy, Japan, Mexico, Niger, Nordic countries, Portugal, Spain, United Kingdom, Uruguay).

The exceptions to the rights of performers in national laws correspond, in general, to the ones allowed by the Rome Convention, for example, private use. Several countries, however, have introduced a compensation system to counterbalance the prejudice to copyright and neighbouring rights owners caused by the widespread private reproduction of audiovisual works and phonograms, in the form of a levy on blank tapes and cassettes and/or on recording equipment (e.g. Austria, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Norway, Portugal, Spain, Sweden). Performers also receive a certain share of such compensatory payments.

5. Duration of rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Rome Convention obliges the countries which are party to it to protect performances for at least twenty years. The starting point of this term of protection is, for performances incorporated in phonograms, the end of the year in which the fixation was made, and, for performances not incorporated in phonograms, the end of the year in which the performance took place.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than twenty years.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The term of protection of the rights of performers determined by the national laws of countries party to the Rome Convention - and, in general,
also of countries not party to that convention but protecting the rights of performers - corresponds, at least, to the minimum term prescribed by that convention and mentioned in item (i), above. Certain legislations, however, provide for a longer term of protection.

The term of protection of the right of performers is twenty-five years, e.g. in Czechoslovakia, Ecuador, El Salvador, Germany (Federal Republic of); thirty years, e.g. in Chile; forty years, e.g. in Guinea, Spain; fifty years, e.g. in Austria, Costa Rica, Denmark, France, Sweden; sixty years in Brazil.

6. Duration/cost of procedures for maintaining rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, there are no procedures for maintaining the rights of performers.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for maintaining the rights of performers under national laws.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under a provision of the Rome Convention - a provision which concerns both the rights of performers and the rights of producers of phonograms - if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public (what are called "secondary uses" of phonograms), an equitable remuneration in the form of one single sum must be paid by the user to the performers, or to the producers of phonograms, or to both. (This is equivalent to compulsory licensing.) Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration. The Convention, however, allows various reservations in respect of that right to equitable remuneration. Any Contracting State may declare that:

- it will not apply the article which provides for that right;
- it will not apply the article in respect of certain uses;
- as regards phonograms the producers of which are not nationals of another Contracting State, it will not apply that article;
- as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that article to the extent to which, and to the term for

which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration must not be considered as a difference in the extent of protection.

The Model Law provides that the above-mentioned equitable remuneration should be paid to the producer of phonograms and that, unless otherwise agreed between the performers and the producer, half the amount received by the producer must be paid by the producer to the performers.

(ii) Current WIPO activities

Even where compulsory licensing is allowed (see item (i) above), WIPO promotes collective administration of rights that is based on negotiations and contractual arrangements. (Collective administration is done by societies of neighbouring rights owners or similar bodies. They give, in the name of the individual owners of rights, who are their members or who are otherwise associated with them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighbouring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audio-visual works, phonograms and musical works in the framework of the series of meetings on various categories of works mentioned in item (4)(ii) above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As is mentioned in item (i) above, States party to the Rome Convention may make reservations to the provision of the Convention under which a single equitable remuneration must be paid to producers of phonograms or to performers or to both in case of a so-called "secondary use" (for the description of which see item (i) above) of phonograms published for commercial purposes. Of the countries party to the Rome Convention, five countries - Congo, Fiji, Luxembourg, Monaco, Niger - have declared that they do no apply such a system of remuneration for "secondary uses" of phonograms while ten countries made other reservations mentioned in item (i) above (namely, Austria, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Italy, Ireland, Norway,
United Kingdom) (see item (B)(7)(iii)).

The national laws of a number of countries provide for an equitable remuneration for "secondary uses" of phonograms along the lines indicated in item (i) above (e.g. Argentina, Austria, Barbados, Brazil, Chile, Colombia, Costa Rica, Czechoslovakia, El Salvador, Ecuador, France, Germany (Federal Republic of), Guinea, Ireland, Italy, Japan, Mexico, Nordic
countries, Paraguay, Philippines, Uruguay).

8. Procedures available for enforcement of rights and remedies/ sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines and the extent of acceptance of such treaties

The Rome Convention contains no provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;

- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation;

and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighbouring rights to be violated, is a liable to a fine for the first offence, and is liable to a find or to imprisonment, or both, for each subsequent offence.

(ii) Current WIPO Activities

At the beginning of the 1980s, WIPO started an intensive anti-piracy programme. So far, this programme has included the organization of two WIPO World-wide Forums on Piracy in 1981 and 1983, an anti-piracy resolution by the Conference of WIPO in 1985, and the elaboration of detailed principles on anti-piracy measures concerning the piracy of audio-visual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii) above. These activities covered, inter alia, acts of piracy involving the infringement of neighbouring rights, including the rights of performers.

The model provisions for national laws submitted to the WIPO Committee of Exports on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of piracy. The following conservatory measures are proposed: seizure of the pirate copies, sealing of the premises where acts of piracy take place, seizure of the tools for the manufacturing or packaging of the pirate copies and of papers referring to such copies, ordering the termination of the acts of piracy, ordering disclosure of the source of the pirate copies. The civil remedies which are proposed are damages, payment of legal costs (including lawyer's fees) and, subject to certain conditions, destruction of the pirate copies and of tools able to be used to continue acts of piracy, as well as ordering the non-continuation of acts of piracy. As regards criminal sanctions, any act of piracy is qualified as an offence; under one alternative, the sanction
is, where the act of piracy was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In practically all countries party to the Rome Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are provided for the protection of the rights of performers. Conservatory measures and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

Civil remedies and/or criminal penalties are also provided for the protection of performers in some countries not party to the Rome Convention (e.g. in Argentina, Australia, Bangladesh, Ghana, Japan, Portugal, Spain, Trinidad and Tobago).

Certain new preliminary, conservatory measures have been developed in countries with Anglo-American legal traditions. Such measures can be obtained speedily, and contribute highly to fight piracy in so far as they can prevent the destruction of evidence and the removal of financial resources against which damages may be claimed. For example, the
"Anton Piller Order" is an order granted by the court permitting the inspection of premises on which it is believed some activity is being carried on which infringes the copyright and/or neighbouring rights of the plaintiff. The order has, in particular, the following features: first, the order is granted ex parte, that is, on the application and in the presence only of the copyright and/or neighbouring rights owner, without prior warning being given to the defendant. Secondly, the terms on which the order is granted enable the copyright and/or neighbouring rights owner to inspect the premises of the defendant, and all documents (including business information, such as bills, invoices, sources of supply and customer lists) relating to the alleged infringement. Thirdly, the order for inspection is often accompanied by an injunction restraining the
defendant from altering or removing in any way articles or documents referred to in the order for inspection.

A further development in some jurisdictions has been the "Mareva" injunction. This remedy was developed to deal with cases in which there was a danger that a defendant would move his assets out of the jurisdiction in which the action is brought before a judgement of damages could be enforced. The injunction has

the effect of freezing the defendant's assets until the proceedings are completed. One particularly important aspect of the injunction is that it binds third parties, such as banks, thus effectively preventing the manipulation of the defendant's assets during the period in question.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines and the extent of acceptance of such treaties

Under the Rome Convention, the International Court of Justice is competent to decide on any dispute between two or more countries party to the Convention concerning the interpretation or application of the Convention, unless such dispute is settled by another mode.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, there are no commonly applied national provisions and practices.

(B) THE PROTECTION OF PRODUCERS OF PHONOGRAMS

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines and the extent of acceptance of such treaties

The Rome Convention obliges each Contracting State to protect the rights of producers of phonograms in respect of their phonograms.

Under the Rome Convention, "'phonogram' means any exclusively aural fixation of sounds of a performance or of other sounds". The Phonograms Convention contains the same definition.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

All the national laws of the countries party to the Rome Convention provide for the protection of phonograms.

Several countries which are not party to the Rome Convention also protect rights of phonogram producers (e.g. German Democratic Republic, Guinea, Hungary, Iceland, Japan, Portugal, Spain, United States, Zaire).

The national laws of certain countries do not use the word "phonograms" but rather its synonym "sound recordings" (e.g. Australia, Ireland, New Zealand, Philippines, Singapore, Tanzania, United Kingdom, United States). Otherwise, the definitions of "phonograms" or "sound recordings" in various national laws are similar to each other and correspond, in all relevant elements, to the definition offered by the Rome Convention.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, a phonogram is protected if any of the following conditions is met:

- the producer of the phonogram is a national of another Contracting State (criterion of nationality);

- the first fixation of the sound was made in another Contracting State (criterion of fixation);

- the phonogram was first published in another Contracting State (criterion of publication); if a phonogram was first published in a non-Contracting State but was also published in a Contracting State within thirty days of its first publication (simultaneous publication), it is considered as first published in the Contracting State.

Any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation.

No Contracting State may exclude the application of both the criterion of fixation and the criterion of publication. Furthermore, no country may exclude the application of the criterion of nationality; all must protect a phonogram whose producer is a national of another Contracting State. Nevertheless, there is an exception to this basic rule for States whose laws, on the date of the adoption of the Convention - that is, on 26 October 1961 - granted protection only on the basis of the place of the first fixation. Such States may declare that they will apply the criterion of fixation alone.

The Rome Convention does not require compliance with formalities as a condition of the protection of phonograms. At the same time, it does not exclude formalities at the national level.

However, if, as a condition of protecting the rights of producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, those are considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P, accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice must also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice must also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

As the General Report of the Diplomatic Conference in Rome makes clear, in countries where no formalities are required as a condition of protection, phonograms must be protected under the Convention even if they do not bear the notice specified by the Convention.

The criterion of the protection of phonograms under the Phonograms Convention is that the producer of the phonograms be a national of another Contracting State. Nevertheless, there is an exception to this basic rule for States whose laws, on the date of the adoption of the Convention - that is, on 29 October 1971 - granted protection only on the basis of the criterion of the place of first fixation. Such States may declare that they apply this criterion instead of the criterion of the nationality of the producer.

In respect of formalities, the provisions of the Phonograms Convention are similar to the ones contained in the Rome Convention.

The Model Law contains a provision under which, as a condition of protection of phonograms, all copies in commerce of the published phonograms or their containers must bear a notice which is practically the one that is described in the Rome Convention and the Phonograms Convention.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As far as the criteria for the protection of phonograms are concerned, the criterion of fixation has been excluded by Fiji, Germany (Federal Republic of), Ireland and United Kingdom (and, thus, those countries only apply the criteria of nationality and of publication); the criterion of publication has been excluded by Congo, France, Luxembourg, Monaco and Niger (and, thus, those countries only apply the criteria of nationality and of fixation); Denmark, Finland and Italy only apply the criterion of fixation and do not apply either the criterion of nationality or the criterion of publication. All those countries made appropriate reservations to the Rome Convention (see item (i), above).

In respect of formalities, the national laws of the countries party to the Rome Convention and to the Phonograms Convention, and also of some other countries (e.g. the United States), prescribe that the notice mentioned in item (i) above, must be indicated on the copies or containers of the phonograms, as a condition of protection.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention and the Phonograms Convention, there are no procedures for obtaining the rights of phonogram producers.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for obtaining the rights of producers of phonograms under national laws. Although in the United States registration of works with the Copyright Office is not a condition for protection (but only a prerequisite for filing suits and a means of establishing prima facie evidence) most of those who aspire to protection actually register their works. The number of such registrations is currently more than 600,000 per year.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines and the extent of acceptance of such treaties

The scope of rights granted under the Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to producers of phonograms if the criteria for obtaining protection for their phonograms, mentioned in item (2)(i) above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to producers of phonograms who are its nationals as regards phonograms first fixed or first published on its territory.

National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention.

Under the Rome Convention, the producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

The Rome Convention provides for possible exceptions to the protection guaranteed to neighbouring rights owners, including phonogram producers. Exceptions are permitted as regards:

- private use;

- use of short excerpts in connection with the reporting of current events;

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic laws, provide for the same kinds of limitations with regard to the protection of neighbouring rights as it provides for, in its domestic laws, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

Under the Phonograms Convention, each Contracting State must 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.

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

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 licences may be permitted unless all of the following conditions are met:

- the duplication is for use solely for the purpose of teaching or scientific research;

- the licence is valid for duplication only within the territory of the Contracting State whose competent authority has granted the licence and does not extend to the export of duplicates;

- the duplication made under the licence gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

(ii) Current WIPO activities

In recent programme periods, a thorough analysis of the world-wide copyright and neighbouring rights situation has been carried out in the framework of various meetings convened jointly with UNESCO.

In the first phase of analysis - in the 1982-83 and 1984-85 bienniums - WIPO activities concentrated on new uses (such as reproduction for private purposes, rental and lending, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighbouring rights - including the rights of phonogram producers - were grouped according to the main categories of works. In connection with each category, principles were outlined which were intended to serve as guidance for governments and national legislators. The memoranda prepared for the meetings of the committees of governmental experts on various categories of works dealt with all problems - particularly the ones raised by the new technologies - in respect of the scope and the application of rights, and contained altogether 141 principles and a detailed commentary including an analysis of the obligations under the international copyright and neighbouring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis is a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988.

The scope and application of neighbouring rights - including the rights of phonogram producers - in respect of certain new uses is also intended to be discussed in the WIPO World-wide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property to be held in Geneva in September 1988.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The scope of rights recognized by countries party to the Rome Convention and/or the Phonograms Convention corresponds, at least, to the minimum standards of those conventions as outlined in item (i) above; but also the laws of several countries not bound by those conventions recognize, generally, similar rights for producers of phonograms.

The national legislations of countries party to the Rome Convention and/or the Phonograms Convention provide for an exclusive right for phonogram producers to authorize the reproduction of their phonograms. In addition, a number of other countries not party to either one or the other of the above-mentioned conventions provide for such an exclusive right (e.g. Bangladesh, Malaysia, Pakistan, United States).

Producers of phonograms also enjoy protection against the importation of duplicates of their phonograms made without their consent, in all the countries party to the Phonograms Convention.

The right of phonogram producers to authorize the rental of their phonograms is explicitly recognized in certain countries (e.g. in France, Japan, United States).

Producers of phonograms enjoy an exclusive right to authorize the broadcasting and communication to the public of their phonograms under the national laws of several countries (e.g. Australia, Bangladesh, Fiji, India, New Zealand, Pakistan, United Kingdom). Several other countries provide for a right of remuneration in that respect (see item (7)(iii) below).

The exceptions to neighbouring rights in national laws correspond, in general, to the ones allowed by the Rome Convention and the Phonograms Convention, for example, private use. Several countries, however, have introduced a compensation system to counterbalance the prejudice to copyright and neighbouring rights owners caused by the widespread private reproduction of audio-visual works and phonograms, in the form of a levy on blank tapes and cassettes and/or on recording equipment (e.g. Austria, Finland, France, Germany (Federal Republic of), Hungary, Iceland, Norway, Portugal, Spain, Sweden). Producers of phonograms also receive a certain share of such compensatory payments.

5. Duration of rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Rome Convention obliges the countries which are party to it to protect phonograms for at least twenty years. The starting point of this term of protection is the end of the year in which the fixation was made.

Under the Phonograms Convention, the duration of protection is a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration of protection, it must not be less than twenty years from the end either of the year in which the sounds embodied in the phonograms were first fixed or of the year in which the phonogram was first published.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than twenty years.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The term of protection of the rights of phonogram producers determined by the national laws of countries party to the Rome Convention and/or the Phonograms Convention - and, in general, also of countries not party to those conventions but protecting such rights - corresponds, at least, to the minimum term prescribed by those conventions and mentioned in item (i) above. Certain legislations, however, provide for a longer term of protection.

The term of protection of the rights of producers of phonograms is twenty-five years, e.g. in Czechoslovakia, El Salvador, Germany (Federal Republic of); thirty years, e.g. in Chile, Italy, Portugal; forty years, e.g. in Guinea, Spain; fifty years, e.g. in Austrlia, Austria, Bahamas, Bangladesh, Canada, Costa Rica, Fiji, France, Ghana, Guatemala, India, Malaysia, New Zealand, Pakistan, Singapore, Sweden; sixty years in Brazil; seventy-five years in the United States.

6. Duration/cost of procedures for maintaining rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention and the Phonograms Convention, there are no procedures for maintaining the rights of producers of phonograms.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for maintaining the rights of producers of phonograms under national laws.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under a provision of the Rome Convention - a provision which concerns both the rights of performers and the rights of producers of phonograms - if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public (what are called "secondary uses" of phonograms), an equitable remuneration in the form of one single sum must be paid by the user to the performers, or to the producers of phonograms, or to both. (This is equivalent to compulsory licensing.) Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration. The Convention, however, allows various reservations in respect of the right to equitable remuneration. Any Contracting State may declare that:

- it will not apply the Article which provides for that right;
- it will not apply that Article in respect of certain uses;
- as regards phonograms the producers of which are not nationals of another Contracting State, it will not apply that Article;
- as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State

making the declaration; however, the fact that the Contracting State of which the producer is a national does not granted the protection to the same beneficiary or beneficiaries as the State making the declaration must not be considered as a difference in the extent of protection.

The Model Law provides that the above-mentioned single equitable remuneration should be paid to the producer of phonograms and that, unless otherwise agreed between the performers and the producer, half the amount received by the producer must be paid by the producer to the performers.

(ii) Current WIPO activities

Even where compulsory licensing is allowed (see item (i) above), WIPO promotes collective administration of rights that is based purely on negotiations and contractual arrangements. (Collective administration is done by societies of copyright and/or neighbouring rights owners or similar bodies. They give, in the name of the individual owners of rights who are their members or who are otherwise associated with them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighbouring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audio-visual works, phonograms and musical works in the framework of the series of meetings on various
categories of works mentioned in item (4)(ii) above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As is mentioned in item (i) above, States party to the Rome Convention may make reservations to the provision of the Convention under which a single equitable remuneration must be paid to producers of phonograms or to performers or to both in case of a so-called "secondary use" (for the description of which see item (i) above) of phonograms published for commercial purposes. Such States may declare that they do not apply the relevant provisions or that they make certain other reservations concerning the extent of application of those provisions (see item 1 above).

Of the countries party to the Rome Convention, five countries - Congo, Fiji, Luxembourg, Monaco, Niger - have declared that they do not apply such a system of remuneration for "secondary uses" of phonograms while ten countries made other reservations. Denmark, Finland, Italy, Norway and the United Kingdom declared that they will apply the provision only in respect of certain uses, for instance use for economic gain or use in the form of broadcasting or, in addition to broadcasting, communication to the public but only if carried out for commercial purposes. Austria, Czechoslovakia, France, Italy, Norway and the United Kingdom declared that they will not apply the provision as regards phonograms the producer of which is not a national of another Contracting State. Austria, Czechoslovakia, Denmark, Finland, Germany (Federal Republic of), Italy, Norway and the United Kingdom used another possibility of reservation according to which a State which grants a right of remuneration for "secondary uses" of phonograms the producers of which are nationals of another Contracting State, may limit that right to the extent of which the latter State grants such a right of remuneration to producers which are nationals of the former State.

The national laws of a number of countries provide for a single equitable remuneration for "secondary uses" of phonograms along the lines indicated in item (i) above (e.g. Argentina, Austria, Barbados, Brazil, Chile, Colombia, Costa Rica, Czechoslovakia, El Salvador, Ecuador, France, Germany (Federal Republic of), Guinea, Ireland, Italy, Japan, Mexico, Nordic countries, Paraguay, Philippines, Uruguay).

8. Procedures available for enforcement of rights and remedies/ sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Neither the Rome Convention nor the Phonograms Convention contains provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;

- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation; and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighbouring rights to be violated, is liable to a fine for the first offence, and is liable to a fine or to imprisonment, or both, for each subsequent offence.

(ii) Current WIPO activities

At the beginning of the 1980s, WIPO started an intensive anti-piracy programme. So far, this programme has included the organization of two WIPO World-wide Forums on Piracy in 1981 and 1983, an anti-piracy resolution by the Conference of WIPO in 1985, and the elaboration of detailed principles on anti-piracy measures concerning the piracy of audio-visual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii) above. These activities covered, inter alia, acts of piracy involving the infringement of neighbouring rights, including the rights of producers and phonograms.

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of piracy. The following conservatory measures are proposed: seizure of the pirate copies, sealing of the premises where acts of piracy take place, seizure of the tools for the manufacturing or packaging of the pirate copies and of papers referring to such copies, ordering the termination of the acts of piracy, ordering disclosure of the source of the pirate copies. The civil remedies which are proposed are damages, payment of legal costs (including lawyer's fees) and, subject to certain conditions, destruction of the pirate copies and of tools able to be used to continue acts of piracy, as well as ordering the non-continuation of acts of piracy. As regards criminal sanctions, any act of piracy is qualified as an offence; under one alternative, the sanction is, where the act of piracy was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In practically all countries party to the Rome Convention and/or the Phonograms Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are provided for the protection of the rights of producers of phonograms. Conservatory measures and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

In certain countries not party to the Rome Convention and/or to the Phonograms Convention, but where producers of phonograms are protected, civil and/or criminal remedies are also provided for the protection of producers of phonograms (e.g. in Bangladesh, Ghana, Guinea, Hungary, India, Pakistan, Portugal, Spain, Trinidad and Tobago, United States).

As far as conservatory measures are concerned, in several countries (mainly in countries with Anglo-American legal traditions) "Anton Piller Order" and "Mareva injunction" could be granted by a court, as mentioned in item (A)(8)(iii).

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, the International Court of Justice is competent to decide on any dispute between two or more countries party to the Convention concerning the interpretation or application of the Convention, unless such dispute is settled by another mode.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, there are no commonly applied national provisions and practices.

(C) THE PROTECTION OF BROADCASTING ORGANIZATIONS

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Rome Convention obliges each Contracting State to protect the rights of broadcasting organizations in respect of their broadcasts.

Under the Rome Convention, "'Broadcasting' means the transmission by wireless means for public reception of sounds or of images and sounds." The Convention does not offer a separate definition of "broadcast", but it is generally understood as meaning the entire programme transmitted by means of broadcasting irrespective of its contents.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

All the national laws of the countries party to the Rome Convention provide for the protection of broadcasts.

Several countries which are not party to the Rome Convention also protect the rights of broadcasting organizations (e.g. Austria, Bangladesh, Cyprus, German Democratic Republic, Ghana, Guinea, Hungary, Iceland, India, Kenya, Malaysia, Malta, New Zealand, Pakistan, Portugal, Singapore, Spain, Zaire, Zambia).

Certain countries with important broadcasting activities, for instance the United States, do not grant protection to broadcasters under the statutes in this field.

In respect of the definitions of "broadcasting" and "broadcast" there are more important differences at the national level. While in the majority of national laws, those definitions - in keeping with the definition offered by the Rome Convention - only cover transmissions by wireless means, a number of national laws extend the definitions of "broadcasting" and "broadcast" to transmissions by wire (cable, etc.) (e.g. Bangladesh, Cyprus, India, Kenya, Malaysia, Malta).

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, a broadcast is protected if any of the following two conditions are met:

- the headquarters of the broadcasting organization is situated in another Contracting State;

- the broadcast was transmitted from a transmitter situated in another Contracting State.

However, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State.

The Rome Convention does not require compliance with formalities as a condition of the protection of broadcasts.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As far as the criteria for the protection of broadcasts are concerned, Denmark, Fiji, Finland, Ireland, Italy, Norway and the
United Kingdom only protect broadcasts under the Rome Convention if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. All those States made appropriate reservations to the Rome Convention (see item (i) above).

National laws do not require compliance with formalities as a condition of the protection of broadcasts.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, there are no procedures for obtaining the rights of broadcasting organizations.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for obtaining the rights of broadcasting organizations under national laws.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The scope of rights granted under the Rome Convention is determined by the principle of national treatment and by the minimum standards of protection prescribed by the Convention.

Each Contracting State must grant national treatment to broadcasting organizations if the criteria for obtaining protection for their broadcasts, mentioned in item (2)(i) above, are met. Under the Rome Convention, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

National treatment is subject to the minimum standards prescribed by the Rome Convention, that is, to the protection specifically guaranteed, and the limitations specifically provided for, in the Convention.

Under the Rome Convention, the broadcasting organizations have the right to authorize or prohibit:

- the rebroadcasting of their broadcasts;

- the fixation of their broadcasts;

- the reproduction of fixations, made without their consent, of their broadcasts or of fixations made for purposes in respect of which the Convention permits exceptions, if the reproduction is made for other purposes;

- the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The latter right of broadcasting organizations (that is, their right to authorize or prohibit the communication to the public of their television broadcasts in certain cases) is restricted in two ways. First, it is a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised (a term which is generally interpreted as a possible basis also for compulsory licences). Second, Contracting States may make a declaration that they do not recognize that right.

The Rome Convention provides for possible exceptions to the protection guaranteed to neighbouring rights owners, including broadcasting organizations. Exceptions are permitted as regards:

- private use;

- use of short excerpts in connection with the reporting of current events;

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

- use solely for the purposes of teaching or scientific research.

In addition, any Contracting State may, in its domestic laws, provide for the same kinds of limitations with regard to the protection of neighbouring rights as it provides for, in its domestic laws, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

(ii) Current WIPO activities

In recent programme periods, a thorough analysis of the world-wide copyright and neighbouring rights situation has been carried out in the
framework of various meetings convened jointly with UNESCO.

In the first phase of analysis - in the 1982-83 and 1984-85 bienniums - WIPO activities concentrated on new uses (such as reproduction for private purposes, direct broadcasting by satellite, cable distribution), while in the 1986-87 biennium, a second phase was started in which the specific questions of copyright and neighbouring rights - including the rights of broadcasting organizations - were grouped according to the main categories of works. In connection with each category, principles were outlined which were intended to serve as guidance for governments and national legislators. The memoranda prepared for the meetings of the committees of governmental experts on various categories of works dealt with all problems - particularly the ones raised by the new technologies - in respect of the scope and the application of rights, and contained altogether 141 principles and a detailed commentary including an analysis of the obligations under the international copyright and neighbouring rights conventions and the provisions of national laws.

The last step of the above-mentioned detailed analysis is a review of the principles discussed at the previous meetings, made by the Committee of Governmental Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in June 1988.

The scope and application of neighbouring rights, including the rights of broadcasting organizations, in respect of certain new uses is also intended to be discussed in the WIPO World-wide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property to be held in Geneva in September 1988.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The scope of rights recognized by countries party to the Rome Convention corresponds, at least, to the minimum standards of those conventions as outlined in item (i) above; but also the laws of several countries not bound by that Convention recognize, generally, similar rights for broadcasting organizations.

Broadcasting organizations enjoy the minimum protection mentioned in item (i) above, in the countries party to the Rome Convention. Some other countries also provide for comparable protection (e.g. Australia, Bangladesh, Cyprus, German Democratic Republic, Ghana, Guinea, Hungary, Kenya, Malaysia, Malta, New Zealand, Pakistan, Portugal, Singapore, Spain, Zaire, Zambia).

As regards the right of broadcasting organizations to authorize or prohibit the communication to the public of their television broadcasts in
certain cases, as mentioned under item (4)(i), a declaration not to recognize such right has been made by the following Contracting States; Austria, Italy, Luxembourg, Monaco, while the two other Contracting States, namely Finland and Sweden have declared that they recognize it only in so far as communication to the public of television broadcasts in a cinema or a similar place is concerned.

The exceptions to the rights of broadcasting organizations in national laws correspond, in general, to the ones allowed by the Rome Convention.

5. Duration of rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Rome Convention obliges the countries which are party to it to protect broadcasts for at least twenty years. The starting point of this term of protection is the end of the year in which the broadcast took place.

The Model Law does not fix any term of protection but provides that the term to be chosen should not be less than twenty years.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The term of protection of the rights of broadcasting organizations determined by the national laws of countries party to the Rome Convention - and, in general, also of countries not party to that Convention but protecting the rights of broadcasting organizations - corresponds, at least, to the minimum term prescribed by those conventions and mentioned in item (i) above. Certain legislations, however, provide for a longer term of protection.

Term of protection of the rights of broadcasting organizations is twenty-five years, e.g. in El Salvador, Germany (Federal Republic of), Pakistan, Peru; forty years, e.g. in Guinea, Spain; fifty years, e.g. in Australia, Bahamas, Bangladesh, Fiji, France, India, Ireland, Malaysia, New Zealand, Singapore, Sweden, the United Kingdom; sixty years in Brazil.

6. Duration/cost of procedures for maintaining rights

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, there are no procedures for maintaining the rights of broadcasting organizations.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There are no procedures for maintaining the rights of broadcasting organizations under national laws.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, broadcasting organizations have the right to authorize or prohibit the communication to the public of their television broadcasts if such communication is made in places accessible to the public. As is indicated in item (4)(i) above, that right is restricted in two ways. First, it is a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised. Second, Contracting States may make a declaration that they do not recognize that right.

The possibility for determining the conditions under which the right concerned may be exercised is considered as a basis for compulsory licences. (The Berne Convention contains practically the same wording in its provision which allows compulsory licences with regard to broadcasting of works and communication to the public by wire or by rebroadcasting of the broadcast of works.)

The Model Law on neighbouring rights does not include this right, but the commentary draws attention to the fact that it is included in the, albeit optional, conventional minima for broadcasting organizations.

(ii) Current WIPO activities

Even where compulsory licensing is allowed (see item (i) above), WIPO promotes collective administration of rights that is based purely on negotiations and contractual arrangements. (Collective administration is done by societies of copyright and/or neighbouring rights owners or similar bodies. They give, in the name of the individual owners of rights who are their members or who are otherwise associated with

them, authorization for certain uses, collect fees and distribute them among the owners of the rights.) WIPO organized an International Forum on the Collective Administration of Copyrights and Neighbouring Rights in Geneva in May 1986. Detailed principles were also offered and discussed on the collective administration of various rights in audio-visual works, phonograms and musical works in the framework of the series of meetings on various categories of works mentioned in item (4)(ii) above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As mentioned under item (7)(i), a non-voluntary licensing system can be laid down by domestic law. In respect of simultaneous and unchanged retransmission by cable, certain national legislations provide for compulsory licences (e.g. Austria, Hungary, Trinidad and Tobago, United Kingdom).

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Rome Convention contains no provisions on procedures available for enforcement of rights and remedies/sanctions in cases of infringement.

Under the Model Law, the following civil sanctions are available:

- an injunction, upon such terms as the court may deem reasonable, to restrain violations;

- payment to the complaining party of any damages suffered by him as a result of a violation, including any profits enjoyed by the violator that are attributable to the violation; and if the violation is found to have been malicious, the court may, at its discretion, award exemplary damages.

Furthermore, the Model Law provides that any person who knowingly violates or causes neighbouring rights to be violated, is liable to a fine for the first offence, and is liable to a fine or to imprisonment or both, for each subsequent offence.

(ii) Current WIPO activities

At the beginning of the 1980s, WIPO started an intensive anti-piracy programme. So far, this programme has included the organization of two WIPO World-wide Forums on Piracy in 1981 and 1983, an anti-piracy resolution by the Conference of WIPO in 1985, and the elaboration of detailed principles on anti-piracy measures concerning the piracy of audio-visual works and phonograms, in the series of meetings on various categories of works mentioned in item (4)(ii) above. These activities covered, inter alia, acts of piracy involving the infringement of neighbouring rights, including the rights of broadcasting organizations.

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of piracy. The following conservatory measures are proposed: seizure of the pirate copies, sealing of the premises where acts of piracy take place, seizure of the tools for the manufacturing or packaging of the pirate copies and of papers referring to such copies, ordering the termination of the acts of piracy, ordering disclosure of the source of the pirate copies. The civil remedies which are proposed are damages, payment of legal costs (including lawyer's fees) and, subject to certain conditions, destruction of the pirate copies and of tools able to be used to continue acts of piracy, as well as ordering the non-continuation of acts of piracy. As regards criminal sanctions, any act of piracy is qualified as an offence; under one alternative, the sanction is, where the act of piracy was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In practically all countries party to the Rome Convention, civil remedies (such as injunction, compensation of damages, measures such as seizure or destruction of infringing copies) and criminal penalties (fines, imprisonment) are usually provided for the protection of the rights of broadcasting organizations. Conservatory measure and penal sanctions are usually of the same nature as those used in case of serious copyright infringements. In certain countries with Anglo-American legal traditions, those measures are identical.

In some countries not party to the Rome Convention, civil remedies and/or penal sanctions are also provided for the protection of the rights of broadcasting organizations (e.g. Bangladesh, Ghana, Guinea, India, Japan, New Zealand, Pakistan, Portugal, Spain).

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Rome Convention, the International Court of Justice is competent to decide on any dispute between two or more countries party to the Convention concerning the interpretation or application of the Convention, unless such dispute is settled by another mode.

(ii) Current WIPO activities

None

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, there are no commonly applied national provisions and practices.

ANNEX I

States Party to the Rome Convention
(as of 1 June 1988)

Austria
Barbados
Brazil
Burkina Faso
Chile
Colombia
Congo
Costa Rica
Czechoslovakia
Denmark
Dominican Republic
Ecuador
El Salvador
Fiji
Finland
France

Germany (Federal Republic of)
Guatemala
Ireland
Italy
Luxembourg
Mexico
Monaco
Niger
Norway
Panama
Paraguay
Peru
Philippines
Sweden
United Kingdom
Uruguay

Total: 32

ANNEX II

States Party to the Phonograms Convention
(as of 1 June 1988)

Argentina
Australia
Austria
Barbados
Brazil
Burkina Faso
Chile
Costa Rica
Czechoslovakia
Denmark
Ecuador
Egypt
El Salvador
Fiji
Finland
France
Germany (Federal Republic of)
Guatemala
Holy See
Hungary
India
Israel
Italy
Japan
Kenya
Luxembourg
Mexico
Monaco
New Zealand
Norway

Panama
Paraguay
Peru
Republic of Korea
Spain
Sweden
United Kingdom
United States
Uruguay
Venezuela
Zaire

Total: 41