

ENDNOTES

1. 'Guide to the Rome Convention and the Phonograms Convention', WIPO, Geneva, 1981 p.34 paragraph 7.2.
  2. ibid p.41 paragraph 8.2.
  3. Nimmer M.B. - 'Nimmer on Copyright A Treatise on the Law of Literary, Musical and Artistic Property and the Protection of Ideas', Mathew Bender & Co Inc, New York, 1963-1986, p.2-144.1.
  4. Stewart S.M. - 'International Copyright and Neighboring Rights', Butterworth & Co Ltd, London, 1983 p.513.
  5. 'A Charter of Rights for Creators', Canada, House of Commons, Report of the Sub-Committee on the Revision of Copyright (Standing Committee on Communications and Culture), October 1985.
  6. 'Government Response to the Report of the Sub-Committee on the Revision of Copyright', February 1986.
  7. Masouye P. - 'The Rome Convention: Realities and Prospects', Copyright, Monthly Review of the World Intellectual Property Organisation, Geneva. September 1985, p.299. (The States referred to include Barbados, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay and Uruguay.)
  8. It is interesting to examine the provision of the United Kingdom legislation-in this regard. No express provision is contained in the Dramatic and Musical Performers' Protection Act 1958 (UK); see pp 795 to 797 of 'Copinger and Skone James on Copyright'. But the provisions of the United Kingdom Act need to be read in conjunction with the definitions which are contained in section 8 (Copinger, p.797). There, 'record' is defined to mean any record or similar contrivance for reproducing sound, including the sound-track of a cinematography film. 'Performance of a dramatic or musical work' is defined to include any performance, mechanical or otherwise, of any such work, being a performance rendered or intended to be rendered audible by mechanical or electrical means. It follows that there would be an unauthorised recording of a 'performance' within the meaning of the Act if, for example, a recording was used for the purpose of inclusion in the soundtrack of a film. This is because 'performance' includes a mechanical performance.
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The matter is the subject of consideration in some texts. It is referred to generally by Stewart on International Copyright and Neighbouring Rights in paragraphs 8.19 and 8.20 (pp.214-5). These references are in accordance with what is said in the WIPO Guide. However, when Stewart comes to summarise the provisions of the English legislation (paragraph 18.27, p.447) he says that it is an offence, without the consent of the performer, knowingly, (i) to make a record or a film of his 'live', that is, unfixed performance, 'directly or indirectly', that is either at the place where the performance takes place or off the air. The provisions are referred to similarly in the Report of the Committee to consider the Law on Copyright and Designs chaired by Whitford J; see paragraph 497, p.104.

It would seem that neither Stewart nor Whitford gives the United Kingdom provision a meaning which would enable a performer to prevent the use of a fixed performance for a purpose different from that originally agreed. If they are right, it would seem that the United Kingdom legislation does not provide for all matters contemplated by Article 7. If, on the other hand, the alternative construction referred to above is correct, that is not so, and the United Kingdom legislation does provide for this right.

9. See Part IV of this Report for minority's views.
10. Globerman S., and Rothman P., - 'An Economic Analysis of a Performers' Right' . Bureau of Corporate Affairs, Canada 1981.
11. *ibid* Summary p.2
12. 'Report of the Inquiry by the Copyright Tribunal into the Royalty Payable in Respect of Records Generally', Paragraph 6.6, AGPS, Canberra, December 1979.
13. The Australian Broadcasting Tribunal has, since 1981, had a requirement concerning radio broadcasting of a certain percentage of Australian music. The present requirement states:

\*A licensee shall ensure that no less than 20 per cent of the time occupied in the broadcasting of music each day by a licensee shall consist of performances by Australians.' (Radio Program Standard 4 RPS4).

Similarly, the ABT has established a system of points assessment and quotas with which television licensees must comply. This includes a minimum broadcast requirement of 104 hours of 'first run' Australian produced drama (including a minimum of 8 hours of first release Australian Children's drama) each year. At present many radio and television broadcasters exceed these standards.

14. Ladas, S. - 'International Protection of Literary and Artistic Property', The Macmillan Co, New York, 1938, vol. 1, P.11.
  15. Copinger and Skone James On Copyright. Sweet & Maxwell, London, 1980, 12th Ed, paragraph 1.
  16. ibid paragraph 109.
  17. Sharpe, D. - 'The Performing Artist and the Law', Law Book Company, Sydney, 1985, paragraph 67.
  18. Stewart, S.M., op. cit. P.8
  19. Victoria Park Racing and Recreation Grounds Ltd v Taylor (1937) 58 CLR 479 per Dixon J at 511.
  20. Stewart, S.M., op cit., p.181.
  21. Sterling, J.A.L., Carpenter M.L.C., - 'Copyright Law in the United Kingdom', Legal Books Pty Ltd, London, 1986, Chapter 11.
  22. 'A Charter of Right for Creators' loc. cit.
  23. 'Government Response . . .' loc. cit.
  24. The United Kingdom Government's proposals are set out in its 1986 White Paper on Intellectual Property and Innovation. P.63 paragraph 14.4.
  25. Cornish, W.R., - 'Intellectual Property', Sweet & Maxwell, London, 1981, p.449.
  26. Nimmer, M.B., 10loc.cit.
  27. ibid 2-150.
  28. In relation to the French legislation generally see Francon, A., - 'The New French Copyright Law', Copyright Bulletin, (Quarterly Review), Vol. 20 No 2/3, UNESCO, Paris, 1986, p.17.
  29. Stewart, S.M., op. cit.1, pp.424-427.
  30. Cornish, W.R. op.Cit., p.449.
  31. Stewart, S.M., op.Cit., p.184.
  32. Sterling, J.A.L. and Carpenter, M.C.L. op.Cit., paragraph 1407.
  33. Ricketson, S. - 'The Law of Intellectual Property\* The Law Book Company Limited, Sydney, 1984, p.434.
  34. Thompson, E. - 'Performers and Technological Change 25 years after the Rome Convention'. International Labour Review, Vol.125 No.5 1986, P.575 at P.576.
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ORGANISATIONS FROM WHOM SUBMISSIONS WERE RECEIVED

Australian Record Industry Association Ltd	24 September 1984
Australian Film Commission	18 September 1984
International Federation of Musicians	28 August 1984
New South Wales Film Corporation	20 August 1984
Producers and Directors Guild of Australia	31 <b>July</b> 1984
The Registered Clubs Association of NSW	20 <b>July</b> 1984
Interstar	12 <b>July</b> 1984
Confederation of Music Copyright Owners Ltd	17 May 1984
Australian Writers' Guild Ltd	28 February 1984
Advertising Federation of Australia	27 February 1984
Australia Council	27 February 1984
Australian Broadcasting Corporation	22 February 1984
Australian Copyright Council Ltd	9 February 1984
Actors' Equity of Australia	31 January 1984
The Australian Society of Authors Ltd	23 January 1984

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Musicians' Union of Australia	18 January 1984
Federation of Australian Radio Broadcasters	3 January 1984
Australian Writers' Guild Ltd	30 December 1983
Australian Folk Trust, Inc.	23 December 1983
Federation of Australian Commercial Television Stations	22 December 1983
The Rams Skull Press	13 December 1983

ORGANISATION FROM WHOM COMMENTS ON THE  
COMMITTEE'S DISCUSSION PAPER WERE RECEIVED

Actors' Equity of Australia	8 November 1985
Musicians' Union and Actors' Equity Performers' Collecting Society Ltd	21 October 1985
Australia Council	September 1985
Australian Federation of Consumer Organisations, Inc	20 August 1985
International Federation of Actors	19 August 1985
Advertising Federation of Australia Ltd	14 August 1985
The Musicians' Union of Australia	August 1985
Federation of Australian Radio Broadcasters	30 <b>July</b> 1985
Australian Record Industry Association Ltd	(undated)
International Federation of Musicians	15 <b>July</b> 1985
International Federation of <b>Phonogram</b> and <b>Videogram</b> Producers	28 June 1985

TEXT OF THE ROME CONVENTION

INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS,  
PRODUCERS OF **PHONOGRAMS** AND BROADCASTING ORGANISATIONS

The **Contracting** States, moved by the desire to protect the rights of performers, producers of **phonograms**, and broadcasting organisations,

Have agreed as follows:

Article 1

Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

Article 2

1. For the purposes of this Convention, national treatment shall mean the treatment accorded **by** the domestic law of the Contracting State in which protection is claimed:

- (a) to performers who are its nationals, as regards performances" taking place, broadcast, or first fixed, on its territory;
- (b) to producers of **phonograms** who are its nationals, as regards **phonograms** first fixed or first published on its territory;
- (c) to broadcasting organisations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

2. National treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention.

Article 3

For the purposes of this Convention:

- (a) 'performers' means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;

- (b) '**phonogram**' means any exclusively aural fixation of sounds of a performance or of other sounds;
- (c) 'producer of **phonograms**' means the person **who, or the** legal entity which, first fixes the sounds of a performance or other sounds;
- (d) 'publication' means the offering of copies of a phonogram to the public in reasonable quantity;
- (e) 'reproduction' means the making of a copy or copies of a fixation;
- (f) 'broadcasting' means the transmission by wireless means for public reception of sounds or of images and sounds;
- (g) 'rebroadcasting' means the simultaneous broadcasting by one broadcasting organisation of the broadcast of another broadcasting organisation.

#### Article 4

Each Contracting State shall grant national treatment to performers if any of the following conditions is met:

- (a) the performance takes place in another Contracting State;
- (b) the performance is incorporated in a **phonogram** which is protected under Article 5 of this Convention;
- (c) the performance, not being fixed on a **phonogram**, is carried by a broadcast which is protected by Article 6 of this Convention.

#### Article 5

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

- (a) the producer of the **phonogram** is a national of another Contracting State (criterion of nationality);
- (b) the first fixation of the sound was made in another Contracting State (criterion of fixation);
- (c) the phonogram was first published in another Contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

#### Article 6

1. Each Contracting State shall grant national treatment to broadcasting organisations if either of the following conditions is met:

- (a) the headquarters of the broadcasting organisation is situated in another Contracting State;
- (b) the broadcast was transmitted from a transmitter situated in another Contracting State.

2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

#### Article 7

1. The protection provided for performers by this Convention shall include the possibility of preventing:

- (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;
- (b) the fixation, without their consent, of their unfixed performance;
- (c) the reproduction, without their consent, of a fixation of their performance:
  - (i) if the original fixation itself was made without their consent;
  - (ii) if the reproduction is made for purposes different from those for which the performers gave their consent;

- (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.
2. (1) If broadcasting was consented to by the performers, it shall be 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 fixation for broadcasting purposes.
- (2) The terms and conditions governing the use by broadcasting organisations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the Contracting State where protection is claimed.
- (3) However, the domestic law referred to in sub-paragraphs (1) and (2) of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organisations.

#### Article 8

Any Contracting State may, by its domestic laws and regulations, specify the manner in which performers will be represented in connexion with the exercise of their rights if several of them participate in the same performance.

#### Article 9

Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artists who do not perform literary or artistic works.

#### Article 10

Producers of phonograms shall enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms.

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Article 11

If, as a condition of protecting the rights of producers of **phonograms**, or of performers, or both, in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be 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 shall 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 shall also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

Article 12

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, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

Article 13

Broadcasting organisations shall enjoy the right to authorise or prohibit:

- (a) the rebroadcasting of their broadcasts;
- (b) the fixation **of** their broadcasts;
- (c) the reproduction:
  - (i) of fixations, made without their consent, of their broadcasts;
  - (ii) of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions;
- (d) 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; it shall be 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.

Article 14

The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

- (a) the fixation was made - for phonograms and for performances incorporated therein;
- (b) the performance took place - for performances not incorporated in **phonograms**;
- (c) the broadcast took place - for broadcasts.

Article 15

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:
  - (a) private use;
  - (b) use of short excerpts in connexion with the reporting of current events;
  - (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;
  - (d) use solely for the purposes of teaching or scientific research.
2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of **phonograms** and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connexion 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 this Convention.

Article 16

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:
    - (a) as regards Article 12:
      - (i) it will not apply the provisions of that Article;
      - (ii) it will not apply the provisions of that Article in respect of certain uses;
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- (iii) as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article;
  - (iv) 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 shall not be considered as a difference in the extent of the protection;
- (b) as regards Article 13, it will not apply item (d) of that Article; if a Contracting State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13, item (d), to broadcasting organisations whose headquarters are in that State.

2. If the notification referred to in paragraph 1 of this Article **is made** after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it has been deposited.

#### Article 17

Any State which, on October 26, 1961, grants protection to producers of **phonograms** solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and for the purposes of paragraph **1(a)(iii)** and (iv) of Article 16, the criterion of fixation instead of the criterion of nationality.

#### Article 18

Any State which has deposited a notification under paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 or Article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

Article 19

Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, Article 7 shall have no further application.

Article 20

1. This Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of this Convention for that State.

2. No Contracting State shall be bound to apply the provisions of this Convention to performances or broadcasts which took place, or to phonograms which were fixed, before the date of coming into force of this Convention for that State.

Article 21

The protection provided for in this Convention shall not prejudice any protection otherwise secured to performers producers of **phonograms** and broadcasting organisations.

Article 22

Contracting States reserve the right to enter into special agreements among themselves in so far as such agreements grant to performers, producers of **phonograms** or broadcasting organisations more extensive rights than those granted by this Convention or contain other provisions not contrary to this Convention.

Article 23

This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until June 30, 1962, for signature by any State invited to the Diplomatic Conference on the International Protection of Performers, Producers of **Phonograms** and Broadcasting Organisations which is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

Article 24

1. This Convention shall be subject to ratification or acceptance by the signatory States.

2. This Convention shall be open for accession by any State invited to the Conference referred to in Article 23, and **by** any State Member of the United Nations, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations.

#### Article 25

1. This Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.

2. Subsequently, this Convention shall come into force in respect of each State three months after the date of deposit of its instrument of ratification, acceptance or accession. .

#### Article 26

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, the measures necessary to ensure the application of this Convention.

2. At the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of this Convention.

#### Article 27

1. Any State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for whose international relations it is responsible, provided that the Universal Copyright Convention or the International Convention for the Protection of Literary and Artistic Works applies to the territory or territories concerned. This notification shall take effect three months after the date of its receipt.

2. The notifications referred to in paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Articles 17 and 18, may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.

#### Article 28

1. Any Contracting State may denounce this Convention, on its own behalf or on behalf of all or any of the territories referred to in Article 27.

2. The denunciation shall be effected by a notification addressed to the Secretary-General of the United Nations and shall take effect twelve months after the date of receipt of the notification.

3. The right of denunciation shall not be exercised by a Contracting State before the expiry of a period of five years from the date on which the Convention came into force with respect to that State.

4. A Contracting State shall cease to be a party to this Convention from that time when it is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works.

5. This Convention shall cease to apply to any territory referred to in Article 27 from that time when neither the Universal Copyright Convention nor the International Convention for the Protection of Literary and Artistic Works applies to that territory.

#### Article 29

1. After this Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a revision conference in co-operation with the Intergovernmental Committee provided for in Article 32.

2. The adoption of any revision of this Convention shall require an affirmative vote by two-thirds of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.

3. In the event of adoption of a Convention revising this Convention in whole or in part, and unless the revising **Convention** provides otherwise:

- (a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;
  - (b) this Convention shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Convention.
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Article 30

Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

Article 31

Without prejudice to **the** provisions of paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Article 17, no reservation may be made to this Convention.

Article 32

1. An Intergovernmental Committee is hereby established with the following duties:

- (a) to study questions concerning the application and operation of this Convention; and
- (b) to collect proposals and to prepare documentation for possible revision of this Convention.

2. The Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution. The number of members shall be six if there are twelve Contracting States or less, nine if there are thirteen to eighteen Contracting States and twelve if there are more than eighteen Contracting States.

3. The Committee shall be constituted twelve months after the Convention comes into force by an election organised among the Contracting States, each of which shall have one vote, by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by a majority of all Contracting States.

4. The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of selecting its members for the future in such a way as to ensure rotation among the various Contracting States.

5. Officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the Directors-General and the Director thereof, shall constitute the Secretariat of the Committee.

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6. Meetings of the Committee, which shall be convened whenever a majority of its members deems it necessary, shall be held successively at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works.

7. Expenses of members of the Committee shall be borne by their respective Governments.

### Article 33

1. The present Convention is drawn up in English, French and Spanish, the three texts being equally authentic.

2. In addition, official texts of the present Convention shall be drawn up in German, Italian and Portuguese.

### Article 34

1. The Secretary-General of the United Nations shall notify the States invited to the Conference referred to in Article 23 and every State Member of the United Nations, as well as the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works:

- (a) of the deposit of each instrument of ratification, acceptance or accession;
- (b) of the date of entry into force of the Convention;
- (c) of all notifications, declarations or communications provided for in this Convention;
- (d) if any of the situations referred to in paragraphs 4 and 5 of Article 28 arise.

2. The Secretary-General of the United Nations shall also notify the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 29, as well as of any communication received from the Contracting States concerning the revision of the Convention.

IN FAITH WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Rome, this twenty-sixth day of October 1961, in a single copy in the English, French and Spanish languages. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States invited to the Conference referred to in Article 23 and to every State Member of the United Nations, as well as to the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

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STATES PARTY TO THE INTERNATIONAL CONVENTION FOR THE  
PROTECTION OF PERFORMERS. PRODUCERS OF PHONOGRAMS  
AND BROADCASTING ORGANISATIONS.  
THE ROME CONVENTION (1961)  
(As at March 1987)

STATE	DATE STATE BECAME PARTY
Austria	9 Jun 1973
Barbados	18 Sep 1983
Brazil	29 Sep 1965
Chile	5 Sep 1974
Colombia	17 Sep 1976
Congo	18 May 1964
Costa Rica	9 Sep 1971
Czechoslovakia	14 Aug 1964
Denmark	23 Sep 1965
Dominican Republic	27 Oct 1986
Ecuador	18 May 1964
El Salvador	29 Jun 1979
Fiji	11 Apr 1972
Finland	21 Oct 1983
Germany, Federal Republic of	21 Oct 1966
Guatemala	14 Jan 1977
Ireland	19 Sep 1979
Italy	8 Apr 1975
Luxembourg	25 Feb 1976
Mexico	8 May 1964
Monaco	6 Sep 1985
Niger	18 May 1964
Norway	10 Jul 1978
Panama	2 Sep 1983
Paraguay	26 Feb 1970
Peru	7 Aug 1985
Philippines	25 Sep 1984
Sweden	18 May 1964
United Kingdom	18 May 1964
Uruguay	4 Jul 1977

(Total: 30 States)

COPYRIGHT OWNERS' COLLECTING SOCIETIES

- . The Australasian Performing Right Association Ltd.
- . The Phonographic Performance Company of Australia Ltd.

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD (APRA).

Under section 31 of the Copyright Act, the copyright in a literary, dramatic or musical work includes the exclusive right to perform the work in public (which includes performance of the work in premises open to the public) and the right to broadcast the work. By virtue of section 36 of the Act, any public performance or **broadcasting** of such a copyright work **that takes** place without the authority of **the** owner of the copyright is an infringement of copyright in the work. These provisions give effect to the requirements of the Berne Convention for the Protection of Literary and Artistic Works to which Australia is a party.

APRA was established in 1926 by owners of copyright in musical works to exercise their rights of public performance and broadcasting. **APRA's** members assign to it the **public** performance and broadcasting rights in their works and in return receive from APRA payments proportionate to the public performance and broadcasting of their works. APRA has arrangements with equivalent organisations in other countries by which it has acquired rights in relation to foreign works. It thus exercises the right to grant licences subject to payment of **licence** fees in relation to almost all musical works performed in Australia.

If it is wished to publicly perform works that are under APRA's control without becoming liable to an action for infringement of copyright, it is necessary to obtain a **licence** from APRA. APRA formulates **licence** schemes setting out the fees subject to the payment of which it is prepared to grant blanket licences for the public performance of the musical works under its control. The fees charged by APRA vary according to the kind of establishment for which a **licence** is to be given.

Licence schemes such as those operated by APRA are subject to the overall control of the Copyright Tribunal established under the COPYright Act. Under section 157 of the Copyright Act an application may be made to the Tribunal by a person who claims that he requires a licence under a licence scheme but that the grant of a **licence** would be subject to the payment of charges or to conditions that are not reasonable in the circumstances. In this event the Tribunal has power to make orders specifying fees or conditions it considers reasonable.

APRA is a non-profit making organisation. It distributes all of the **licence** fees it collects to composers, lyricists and music publishers (ie. the copyright owners in the musical works), after deducting its collection costs.

PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LTD (PPCA)

Under the Copyright Act, copyright in a sound recording may include the exclusive rights to perform the recording in public and to broadcast the recording. Where these rights exist it may be an infringement of copyright to perform in public or broadcast the recording without the permission of the copyright owner. The question of which recordings marketed in Australia are so protected may be determined by reference to the Act and relevant regulations. As examples, however, most recordings made in Australia or the United Kingdom are protected, but most made in the United States of America are not.

PPCA is a collecting society established in 1969 by major producers and manufacturers of sound recordings to control the performing and broadcasting rights in various copyright sound recordings on behalf of the copyright owners. It does this through a licensing scheme under which it will give permission for the use of those recordings in certain situations and on certain conditions.

The fees payable to PPCA under its public performance licence-rising scheme are understood to be the fees it requires to be paid to it before it will give its permission for the public performance of whatever protected sound recordings are under its control. A failure to pay the licence fees may therefore leave any person performing those sound recordings in public liable to an action for infringement of copyright.

Licensing schemes such as that operated by PPCA are subject to the overall control of the Copyright Tribunal established under the Copyright Act. An application may be made to the Tribunal by a person who claims that he requires a **licence** under a licensing scheme but that the grant of a licence would be subject to the payment of charges or to conditions which are not reasonable in the circumstances. In this event the Tribunal has power to make orders specifying fees or conditions it considers reasonable.

In the case of published sound recordings there is an alternative to the obtaining of permission because the Act provides a 'statutory licence' which allows public performance of such recordings without infringement if certain conditions are met. These conditions include payment of agreed remuneration or, failing agreement, an undertaking to pay equitable remuneration as determined by the Copyright Tribunal. It is understood that PPCA has authority to make agreements or accept undertakings pursuant to the statutory licence on behalf of relevant copyright owners.

LEGAL PROTECTION FOR PERFORMERS IN OTHER COUNTRIES

Legal Rights Granted to Performers

- (a) The recording of a performance
  - (b) The broadcasting of a performance
  - (c) The communication to the public of a performance
  - (d)** The distribution by cable of a performance
  - (e) The reproduction of a recorded performance
  - (f) Equitable remuneration for the broadcasting of a recorded performance
  - (g) Equitable-remuneration for the communication to the public of a recorded performance
  - (h) Equitable remuneration for the distribution by cable of a recorded performance
- + Right to remuneration only
- \* Right of authorisation or prohibition
- (1) Right to (d) and (h) excluded for broadcasting relay services and small community antenna systems; simultaneous, complete and unchanged distribution of Oesterreichischer **Rundfunk** broadcasts in Austria considered as part of the original broadcast; statutory licence in respect of simultaneous, complete and unchanged cable distribution of foreign broadcasts.
  - (2) Right to (f) and (h) if records have previously been published.
  - (3) See definition of diffusion in Article 16 and also Article 80 concerning rights to (d), (f) and (h).

SOURCE : The information contained in this appendix was compiled from a number of sources. Most of **the** information is derived from Appendix 1/9 of the memorandum submitted by the International Federation of **Phonogram** and Videogram Producers (IFPI), on the means employed to guarantee the rights established by the Rome Convention, at the ILO/UNESCO/WIPO Intergovernmental meeting in Paris, 'June 1985. The Committee" notes that the information in respect of some countries may be inadequate or out of date.

BARBADOS

Copyright Act 1981 (1982-1) of 22 Jan 1982.

- (i) (a) (b) (d) (e)
  - (ii) 20 years
  - (iii) Berne, UCC, Rome
  - (iv) Both producers of **phonograms** and performers have a right to remuneration in respect of broadcasting and public performance of **phonograms**. A **society** to collect the remuneration was set up in June 1985. Remuneration is to be shared equally between phonogram producers and performers.
- 

BELGIUM

Neither producers of **phonograms** nor performers have a broadcasting or public performance right under Belgium law.

- (i) -
  - (ii) -
  - (iii) **Berne, UCC**
  - (iv) A joint collecting society **BELGRAMEX** collects remuneration and distributes it according to the 1976 Protocol of the 1954 IFPI, FIM agreement. **Phonogram** producers receive two thirds and performers one third of the net distributable income.
- 

BRAZIL

Law No 4.944 of 6 April 1966 and Law No 5.988 of 14 December 1973.

- (i) (a) (b) (c) (e) (f) (g) implication (d) (h)
  - (ii) 60 years
  - (iii) **Berne, UCC, Rome**
  - (iv) Performers have a right to remuneration in respect of broadcasting and public performance of phonograms. Money is collected for both producers and performers. Following deductions of 16.6% for the musicians union, **3%** to a fund for social purposes and between 10% to 13% for administrative expenses the remaining money is split equally between producers and performers.
-

**CANADA**

**Copyright Act.** Revised statutes of Canada, 1970 chapter 30

- (i) nil
  - (ii) -
  - (iii) **Berne, UCC**
  - (iv) Performers in Canada receive remuneration for their performance only by contract. There is no performing right for performers.
- 

**CHILE**

Law No 17. 336 of 28 August 1970.

- (i) (a) (b) (c) (e) (f) (g) by implication (d) (h)
  - (ii) 30 years
  - (iii) Berne, UCC, Rome
  - (iv) Performers have a right to remuneration for the communication of **phonograms** to the public. Remuneration is shared with **phonogram** producers by contract. The agreement provides for equal sharing of the revenue.
- 

**COLOMBIA**

Law No 23 of 28 January 1982.

- (i) (a) (b) (c) (e) (f) (g) by implication (d) (h)
  - (ii) 80 years **p.m.a.**
  - (iii) **UCC**, Rome
  - (iv) Performers have an equitable right to share in remuneration for broadcasting and public performance of phonograms. This money is paid to producers of **phonograms** who share it equally with performers.
- 

**CONGO**

Law No 24/82 of 7 July 1982.

- (i) (a) **(b)** (c) (e)
  - (ii) 20 years
  - (iii) Berne, Rome
-

COSTA RICA

Law No 6683 of 24 September 1981.

- (i) (a) (b) (c) (e) (f) (g) by implication (d)
  - (ii) 50 years
  - (iii) **UCC**, Rome
- 

CZECHOSLOVAKIA

Law No 35 of 25 March 1965.

- (i) (a) (b) (c) (e) (f) (g) by implication (d)
  - (ii) 25 years
  - (iii) Berne, **UCC**, Rome
  - (iv) Performers have a right to remuneration for the broadcasting and public performance of their recorded performances. Remuneration is based on contracts the performers organisation has with the state broadcasting organisation. The performers organisation distributes directly to performers.
- 

DENMARK

Law No 158 of 31 May 1961 as amended to 8 June 1977.

- (i) (a) (b) (c) (e) (f) (g)
  - (ii) 25 years
  - (iii) Berne, **UCC**, Rome
  - (iv) Performers-and producers of **phonograms** have a right to remuneration for broadcasting and public performance. The Performers share of broadcasting revenue is calculated on the basis of broadcasting logs, using a points system. Public performance moneys are divided equally between various national performers unions and **phonogram** producers.
-

**ECUADOR**

**COPYright** Law No 610 of 30 July 1976.

- (i) (a) (b) (c) (e) (f) (g) (h)
  - (ii) 25 years
  - (iii) UCC, Rome
  - (iv) Performers have a right to remuneration for broadcasting and public performance. Remuneration is shared equally, by contract, with producers of phonograms.
- 

**EL SALVADOR**

Law No 376 of 6 September 1963.

- (i) (a) (b) (c) (e) (f) (g) by implication (d) (h)
  - (ii) 25 years
  - (iii) UCC, Rome
- 

**FIJI**

**Performers Protection Ordinance 1966.**

- (i) (a) (b) (c) (d) (e)
  - (ii) -
  - (iii) Berne, UCC, Rome
- 

**FINLAND**

Law No 404 of 8 July 1961 as amended up to 8 June 1984.

- (i) (a) (b) (c) (e) (f)
  - (ii) 25 years
  - (iii) Berne, UCC, Rome
  - (iv)** Both producers of phonograms and performers have a right to equitable remuneration for broadcasting of phonograms. There is no public performance right. Remuneration is based on a tariff per minute of playing time. Remuneration from broadcasting Finnish recordings is distributed equally between film producers and performers. Money collected from broadcasting foreign recordings is used for the general benefit of Finnish performers and producers.
-

**FRANCE**

Law on Authors' Rights and on the Rights of Performers, Producers of Phonograms and Videograms and Audiovisual Communication Enterprises (No. 85-660 of 3 **July** 1985).

- (i) (a)(b)(c)(d)(e)(f)(g)
  - (ii) not limited
  - (iii) Berne, **UCC**
  - (iv) Article 19 of this law decrees that performers are presumed to grant a transfer of their rights 'to producers of audiovisual works with whom they contract. Also the right to remuneration is afforded only in respect of phonograms and videograms first fixed in France.
- 

**GERMANY (Democratic Republic)**

**Copyright Act 1965.**

- (i) (a) (b) (e) (f) (g)
  - (ii) 10 years
  - (iii) Berne, **UCC**
- 

**GERMANY (Federal Republic)(2)**

**Copyright Act 1965** as amended up to 2 March 1974.

- (i) (a) (b) (c)(d) (e) (f) (g) (h)
  - (ii) 25 years
  - (iii) Berne, **UCC**, Rome
  - (iv) Performers have a right to equitable remuneration for the broadcasting and public performance of phonograms. Producers of phonograms have a right to share in this. Remuneration is based on an annual lump sum paid in accordance with **licence** fees. Broadcasting fees are shared **equally**. Public performance revenue is distributed 64% to performers and 36% to producers of phonograms.
-

**GUATEMALA**

Rome Convention.

- (i) (a) (b) (c) (e)
  - (ii) 20 years minimum
  - (iii) **UCC**, Rome
- 

**GUINEA**

**Copyriahnt Law** of 9 August 1980 (No **043/APN/CP**).

- (i) (a) (b) (c) (e) (f) (g)
  - (ii) 40 years
  - (iii) Berne, UCC
- 

**HOLY SEE(3)**

Italian Law **No 633 of 22 April 1941** as **amended** up to **29 July 1981**.

- (i) **(a)+(b)+(d)+(e)+(f)** (h)
  - (ii)
  - (iii) Berne, UCC
- 

**HONG KONG**

**The Copyright (Hong Kong) Order 1972** extends the UK **Copyright Act 1956** to Hong Kong.

Performers have no rights re broadcasting or public performance. They receive no share of the broadcasting or public performance revenue paid to producers of phonograms.

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**HUNGARY**

Copyright Decree No 9 of 1969 amended by Decree No 15 of 20 November 1982.

- (i) (a) (b) (c) (e)+
  - (ii) 20 years
  - (iii) Berne, UCC
- 

**ICELAND**

**Copyright Act 1972** as amended up to May 1974.

- (i) (a) (b) (c) (d) (e) (f) (g) by implication (h)
  - (ii) 25 years
  - (iii) Berne, **UCC**
  - (iv) Both producers of phonograms and performers have a right to equitable remuneration for the broadcast and public performance of phonograms. This revenue is shared equally.
- 

**INDIA**

**Indian Copyright Act 1957.**

- (i)
  - (ii)
  - (iii) Berne, UCC
  - (iv) Performers have no rights re broadcasting or public performance. They receive no share of the broadcasting or public revenue paid to producers of phonograms. A benefit fund for performers is under consideration.
- 

**IRAQ**

Law No 3 of 21 January 1971.

- (i) (a) (b) (c) (e) by implication (d)
  - (ii) 30 years
  - (iii) -
-

IRELAND

Performers' Protection Act 1968.

- (i) (a) (b) (c) (d) (e) no civil right of action
  - (ii) -
  - (iii) **Berne**, UCC, Rome
  - (iv) Producers of phonograms have a right to equitable remuneration for the broadcasting and public performance of **phonograms**, performers do not. However, Phonographic Performance Limited (**PPL**) which collects for the producers of phonograms distributes the remuneration it collects from broadcasting 66.6% to producers and 33.3% to performers unions. Public performance revenue is distributed only to producers of phonograms.
- 

ISRAEL

Performers' Rights Act 5744. 1984 of 13 June 1984.

- (i) (a) (b)
  - (ii) 25 years
  - (iii) **Berne**, UCC
  - (iv) Performers receive a 25% share of the net distributable revenue from broadcasting remuneration and 33.3% of the net revenue collected for public performance of phonograms.
- 

ITALY( 3 )

Law No 633 of 22 April 1941 as amended up to 29 July 1981.

- (i) (a) + (b) + (d) + (e) + (f) (h)
  - (ii) 20 years (including reproduction right)
  - (iii) **Berne**, **UCC**, Rome
-

JAMAICA

The UK Copyright Act 1911 applies.

- (i) -
  - (ii) -
  - (iii) -
  - (iv) Performers have no rights re broadcasting or public performance. Remuneration from broadcasting is collected by the Jamaican National **Group** of IFPI. 50% of the net remuneration is paid into the Musical Culture Fund. Money is allocated from this to approved institutions for the benefit and development of performers.
- 

JAPAN

Law No 48 of 6 May 1970 as amended up to 18 May 1984.

- (i) (a) (b) (d) (e) (f) (h)
  - (ii) 20 years
  - (iii) Berne, UCC
  - (iv) Both producers of **phonograms** and performers have a right to equitable remuneration for broadcasting of phonograms. There is no public performance right. Remuneration is divided equally between producers of **phonograms** and performers but it is collected and distributed separately by the performers and broadcasters and collecting organisations.
- 

LUXEMBOURG

Law of 23 September 1975.

- (i) (a) (b) (c) (e)
  - (ii) 20 years
  - (iii) Berne, **UCC**, Rome
-

MEXICO

Copyright Law 1956 as amended on 30 December 1981.

- (i) (a) (b) (c) (e) (f) (g)
  - (ii) 30 years
  - (iii) Berne, UCC, Rome
  - (iv) Performers have a right to remuneration for broadcasting and public performance of their recorded performances, producers of phonograms do not. No share of money collected for performers is paid to producers.
- 

MONACO

- (i) not available
  - (ii) not available
  - (iii) **Berne, Rome**
- 

NETHERLANDS

Neither performers nor producers of phonograms have **broadcasting or** public performance rights.

- (i) -
  - (ii) -
  - (iii) Berne, **UCC**
  - (iv) Contractual agreements provide for annual lump sum payments in respect of broadcasting and background music. Two thirds of the net distributable income is paid to producers of phonograms and one third to performers under the '1976 Protocol to the **IFPI/FIM** Agreement of 1954.
-

**NEW ZEALAND**

New Zealand COpyright Act 1962.

- (i)
  - (ii)
  - (iii) Berne, **UCC**
  - (iv) Performers have no rights re broadcasting or public performance. Producers of phonograms have undertaken to share remuneration with national performers. Phonographic Performance **(NZ)** Ltd. collects remuneration and pays 50% to New Zealand performers **proportionate** to sale figures.
- 

**NIGER**

Rome Convention.

- (i) (a) (b) (c) (e)
  - (ii) 20 years min
  - (iii) Berne, Rome
- 

**NORWAY**

COpyright Law 1961 as amended on 3 June 1977 and Fund Law of 14 December 1956.

- (i) (a) (b) **(c)** (e) (f) and (g)
  - (ii) 25 years
  - (iii) Berne, UCC, Rome
  - (iv) Remuneration for the broadcasting and public performance of phonograms is paid into the 'Kings Fund for Performing Artists'. Producers of **phonograms** share in the remuneration under law. Approximately 75% is distributed to performers and 25% to producers.
-

PANAMA

Rome Convention.

- (i) (a) (b) (c) (e)
  - (ii) 20 years min
  - (iii) **UCC**, Rome
- 

PARAGUAY

Law No 94 of 5 July 1951.

- (i) (a) (b) (c) **(e)** (f) (g) **by** implication (d) and (h)
  - (ii) 20 years
  - (iii) UCC, Rome
- 

PERU

- (i) not available
  - (ii) not available
  - (iii) Rome
- 

PHILIPPINES

Decree No 49 of 14 November 1972.

- (i) (a) (b) (c) (e)
  - (ii) 20 years
  - (iii) **Berne**, UCC, Rome
- 

RWANDA

Law No 27 1985 of 15 November 1985.

- (i) (a) (b) (c)
  - (ii) 25 years
  - (iii) Berne
-

**SPAIN**

Ministerial Decree of 10 July 1942 on Phonographic works.

- (i) -
  - (ii) -
  - (iii) Berne, UCC
  - (iv) Producers of phonograms share under contract revenue collected for broadcasting and public performance. **10%** of the gross remuneration is paid to **the** performers unions.
- 

**SWEDEN**

Law No 729 of 30 December 1960 as amended up to 19 May 1982.

- (i) (a) (b) (c) (e) (f)
  - (ii) 25 years
  - (iii) **Berne, UCC, Rome**
  - (iv) Both producers of **phonograms** and performers have a right to equitable remuneration for the broadcasting of phonograms. There is no public performance right. Money collected is distributed between the performers organisation 50% and the other 50% to producers of phonograms.
- 

**SWITZERLAND**

Performers have no rights re broadcasting or public performance.

- (i) -
  - (ii) -
  - (iii) Berne, UCC
  - (iv) The Swiss national group of IFPI collects the remuneration for public performance and broadcasting. One third is paid to performers.
- 

**TURKEY**

**Copyright Law 1951** as amended by Law No 2936 of November 1983.

- (i) (a) (b) (c) (d) (e) (f)\* (g)\* (h)\*
  - (ii) -
  - (iii) Berne
-

**UNITED KINGDOM**

Performers' Protection Acts 1958-72.

- (i) (a) (b) (d) (e) (no civil right)
  - (ii) -
  - (iii) Berne, UCC, Rome
  - (iv) Producers of **phonograms** have public broadcasting and performance rights. Performers do not have equitable rights they share the remuneration by contract and practice. Money collected by Phonographic Performance Limited, the collecting society, is distributed as follows: 10% is deducted for administrative expenses and a further **8%** to the **MCPS**. Of the remainder 12.5% is paid to the performers union, 20% to individual performers and 67.5% to producers of phonograms.
- 

**UNITED STATES OF AMERICA**

Title 17 USC COPYriahts.

- (i) -
  - (ii) -
  - (iii) Ucc
  - (iv) Neither Producers of phonograms nor performers have performance on broadcast rights.
- 

**URUGUAY**

Law No 9739 of 1937 as amended on 25 February 1938 and Law No **15 289 of** 1982.

- (i) (a) (b) (e) (f) (g) by implication (d) (h)
  - (ii) 40 years **p.m.a**
  - (iii) **Berne, Rome**
  - (iv) Performers have a right to equitable remuneration in respect of the broadcasting and public performance of phonograms. Revenue for public performance and broadcasting is collected by an authors organisation on behalf of authors, performers and producers. The revenue is divided **76%** to authors, **12%** to performers and 12% to producers.
-