

ANNEX 4

**Provisions of the International Convention
for the Protection of Performers, Producers
of Phonograms and Broadcasting Organisations
(the Rome Convention) (1961)[†]
referred to in the TRIPS Agreement***

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[†] Done at Rome on 26 October 1961.

* [WTO Secretariat note] There is no general obligation in the TRIPS Agreement to comply with the substantive provisions of the Rome Convention. However, the Rome Convention is referred to in Articles 1.3, 2.2, 3.1, 4(b) and 14.6 of the TRIPS Agreement. This volume uses the titles that the International Bureau of WIPO has given to Articles to facilitate their identification. The Table of Contents is added for the convenience of the reader. Neither the titles nor the Table of Contents appear in the signed text of the Convention.

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ARTICLE 1

[Safeguard of Copyright Proper]**

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

[Protection given by the Convention.
Definition of National Treatment]

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

[Definitions: (a) Performers; (b) Phonogram; (c) Producers of Phonograms; (d) Publication; (e) Reproduction; (f) Broadcasting; (g) Rebroadcasting]

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

[Performances Protected. Points of Attachment for Performers]

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

[Protected Phonograms: 1. Points of Attachment for Producers of Phonograms; 2. Simultaneous Publication; 3. Power to Exclude Certain Criteria]

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

[Protected Broadcasts: 1. Points of Attachment for Broadcasting Organizations; 2. Power to Reserve]

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.

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Article 10

[Right of Reproduction for Phonogram Producers]

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

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Article 12

[Secondary Uses 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, 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

[Minimum Rights for Broadcasting Organizations]

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

[Minimum Duration of Protection]

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

[Permitted Exceptions: 1. Specific Limitations; 2. Equivalent with Copyright]

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 connection 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 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 this Convention.

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Article 19

[Performers' Rights in Films]

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.

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