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**COMMITTEE OF EXPERTS
ON A PROTOCOL
CONCERNING AUDIOVISUAL PERFORMANCES**

**Second Session
Geneva, June 8 to 12, 1998**

REPORT OF THE REGIONAL CONSULTATION MEETING FOR
ASIA AND THE PACIFIC, HELD IN NEW DELHI FROM MAY 20 TO 22, 1998*

*submitted on behalf of Bangladesh, Brunei Darussalam, India, Indonesia, Malaysia,
Mongolia, Pakistan, Philippines, Qatar, Republic of Korea, Singapore, Thailand and the
United Arab Emirates*

* This report was received on June 8, 1998.

REPORT OF THE REGIONAL CONSULTATION MEETING FOR COUNTRIES OF ASIA
AND THE PACIFIC ON A PROTOCOL CONCERNING AUDIOVISUAL
PERFORMANCES

New Delhi, May 20 to 22, 1998

The Regional Consultation Meeting for Countries of Asia and the Pacific on a Protocol Concerning Audiovisual Performances was held in New Delhi from May 20 to 22, 1998. India was elected Chairman of the meeting.

The discussion was based on the WIPO document No. AP/CE/2/2 (Proposals and other Submissions received from WIPO Member States and European Community). The participating countries had also before them the proposals of the United States of America and those of the Republic of Korea (WIPO document No. AP/CE/2/3).

Consensus was reached on the following:

The context of extending performers' rights to audiovisual performances is not uniform. For example, it may differ in developing countries in view of the special industrial practices existing in the film industry. Administration of copyright and related rights needs to be developed much in these countries. In the absence of a well-developed collective administration system, provision of new rights to performers in their audiovisual performances may not help the performers. It is also necessary to wait for the results of the rights given to performers in their audio performances. In this scenario, several participants felt that it was necessary not to hasten with a new Protocol.

The Group went through the proposals submitted by different countries and held detailed discussions amongst others on the following issues:

- Definitions
- National Treatment
- Moral rights of performers
- Economic rights of performers, particularly right of rental, rights of broadcasting and communication to the public
- Transfer of rights

Pursuant to the discussion, the following broad positions have emerged:

- Considering the special nature of the audiovisual industry, the Group expressed the need to consider exclusion of certain categories of performers, whose performances are casual or incidental, from the definition of performers, but felt it necessary to discuss the issue further.
- The Group also noted the differences in the definitions of “fixations” and “audiovisual works” in the various proposals.

- On the questions of Beneficiaries to the Protocol and National Treatment the Group discussed the Berne Convention and Rome Convention approaches and decided to take a stand only after the substantive provisions of the Protocol were finalized.
- Considering the changes in technology and adaptations required to facilitate commercial exploitation of films by producers, the Group felt the need to incorporate appropriate exceptions in the moral rights. The extent and scope of exceptions will be spelt out after discussions in their respective countries.
- On the question of the economic rights of the audiovisual performers, the Group discussed the right of reproduction, the right of distribution and the right of making available the performance and agreed to follow generally the principles adopted in WIPO Performances and Phonograms Treaty (WPPT) including those contained in the Agreed Statements appearing as footnotes thereto.
- Regarding rental rights, the Group considered the implications of recognizing it as a separate right but reserved their positions for further study and discussion on whether to follow the TRIPS Agreement approach or the WPPT approach or any other approach.
- Regarding rights of broadcasting and communication to the public, the Group decided to look into their implications for domestic law and come out with a position later.
- Regarding transfer of rights, the rebuttable presumption clause incorporated in some proposals was found to be deserving merit.
- Regarding limitations and exceptions, obligations concerning technological measures, obligations concerning rights management information, provisions on enforcement of rights and formalities, it was agreed to follow generally the WPPT approach.
- Regarding application in time, the Group wanted to look into its implications further.
- The Group felt that the clause regarding reservations needs to be considered after the substantive provisions are agreed upon.
- There was a general consensus that the number of signatories must be the same as that of WPPT.

The participating countries reserved their rights to examine the issues afresh in the light of new proposals that may be presented in future and their implications to the domestic situations and laws.

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