

Standing Committee on Copyright and Related Rights

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**PROPOSAL ON THE PART OF THE RUSSIAN FEDERATION WITH
REGARD TO STRENGTHENING THE PROTECTION OF THEATRE
DIRECTORS' RIGHTS AT THE INTERNATIONAL LEVEL**

prepared by the Russian Federation

General summary

It is proposed that the Standing Committee on Copyright and Related Rights of WIPO discuss the issue of providing a special international law regulation with regard to the rights of directors of theatrical productions.

The aim of the proposal is establish a specific legal status of directors of theatrical productions by way of introducing amendments into the existing international treaties or by way of drafting a new international treaty.

Background information

In the modern theatre, it is the director's efforts that result in the consolidation of all elements of the stage performance including the following: the play, the acting, the decorations, the sound and musical accompaniment. *The activities of a theatrical production director are similar to those of a film director, but the latter, unlike the former, possesses copyright for the produced film.*

Theatrical productions are often used by third parties without the theatre directors' permission and without any remuneration paid to them, because the legal instruments of enforcement provided by international and national law fail to be efficient enough.

In accordance with the Civil Code of the Russian Federation, the theatrical productions are covered by related rights (as performances) provided that such performances are expressed in the form allowing their reproduction and distribution by technical means.

A director of a theatrical production (a person executing the production of a theatre, circus, puppet, popular or any other theatrical performance) is recognized as a performer (author of a performance).

That said, the result of creative activities of the said director is expressed directly in the form of a live performance, i.e. not by technical tools.

In order to strengthen the protection of rights of theatre directors, a new law is coming into force starting from January 1, 2018, which will still regard theatrical productions to be covered by related rights, but will require for it to be expressed in the form allowing its subsequent public reproduction while retaining the ability to be recognized by the audience (*i.e. it may be expressed in the live format*), as well as in the form allowing their reproduction and distribution by technical means (*i.e. in the recorded format*).

In addition to the above, the director is attributed the right to inviolability of the protected theatrical production, i.e. the right to protect its production from any distortions, changes leading to corruption of its meaning or to violation of the integrity of perception of the production both during its public execution (*in the live format*) and during its reproduction in the recorded form.

That said, based on the definition of performers provided by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) and by the WIPO Performances and Phonograms Treaty (WPPT) (1996), the rights of directors of theatrical productions are not covered by the said instruments.

According to the provisions of the Rome Convention (Article 3), by the term "performers" are covered actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works.

In accordance with Article 7 of the Rome Convention, the performers shall have the right to prevent the following actions to which they gave no consent:

- *the broadcasting and the communication to the public of their performance;*
- *the fixation, without their consent, of their unfixed performance;*
- *the reproduction, without their consent, of a fixation of their performance:*
 - (a) *if the original fixation itself was made without their consent;*
 - (b) *if the reproduction is made for purposes different from those for which the performers gave their consent.*

Thus, according to the Rome Convention the directors of theatrical productions are not explicitly stated in the definition of the term “performers”. Also, it is impossible to indirectly classify the directors among “other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works”.

The WIPO Performances and Phonograms Treaty (WPPT) was adopted in 1996 in development of provisions of the Rome Convention.

It is the World Intellectual Property Organization that is charged with administering the WPPT.

WPPT defines performers as actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore.

WPPT establishes that performers shall have personal non-economic rights (Article 5):

- *to claim to be identified as the performer of his performances as regards his live aural performances or performances fixed in phonograms;*

- *to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.*

WPPT also defines economic rights of the performers:

With regard to unfixed performances the performers shall enjoy the exclusive right of authorizing:

- *the broadcasting and communication to the public of their unfixed performances;*
- *the fixation of their unfixed performances.*

With regard to fixed performances the performers shall have the right to authorize:

- *the reproduction of their performances fixed in phonograms;*
- *the making available to the public (e.g. via internet) of original and copies of their performances fixed in phonograms;*

- *the commercial rental to the public of the original and copies of their performances fixed in phonograms.*

Therefore, as compared to the Rome Convention, WPPT considerably expands the range of performers’ rights, including both on recorded and live performances. However, the list of rights holders remains the same as in the Rome Convention, so the directors are not covered by the term “performers”.

Proposal:

The Russian Federation proposes to the Standing Committee on Copyright and Related Rights of WIPO to initiate a WIPO study with the aim to:

- (i) examine national legislations of WIPO's member states with regard to protection of rights of directors of theatrical productions, conditions for grant of the respective legal protection;
- (ii) examine national legislations of WIPO's member states regarding protection of performances not fixed in any material form;
- (iii) study the enforcement practice in the area of protection of rights of directors of theatrical productions;
- (iv) analyze the efficiency of protection of rights of directors of theatrical productions in order to further evaluate possible mechanisms of international protection of the said group of rights holders;
- (v) develop the main elements of the mechanism for international protection and enforcement of rights of directors of theatrical productions;

evaluate the rationale for drafting and adopting a separate WIPO treaty with regard to the rights of directors

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