

# Introduction

**MICHEL WALTER**  
University of Vienna  
Vienna, Austria

It is the duty of every moderator to start with cordially saying thanks to our Hungarian friends for having so perfectly and marvelously organized this congress. So, I would like to start with this too.

I assume that this is the first time in the history of ALAI that a whole day's program will be dedicated to the closest neighbors of authors, namely the performing artists. They are really close neighbors for several reasons. You may have noticed this already when this conference had not yet started working when some participants to this congress entered the stage and performed in the strict sense of the word. But you can push the analysis a little bit forward and ask the question whether our speakers, moderators or whoever wants to have the floor to make an observation are not deemed to be as performers as well. Since they deliver, perform literary works in principle open for copyright protection.

So, not only performing artists are very close neighbors to authors but also copyright lawyers are close neighbors to authors. If I would like to put it with a quotation from Shakespeare, "all the world is a stage" and all the copyright lawyers merely play for us.

To be serious, I will not abuse of my dominant position having this microphone before me. Nevertheless, let me say a few words on the situation that we are faced with on the international level as far as the protection of performing artists is concerned. Just to remind you what this is all about.

We are faced with three international instruments, as you know it. First of them, the Rome Convention dated 1961, which really was a breakthrough at that time when the legal framework for the protection of performing artists was still under construction and not quite recognized even in Europe with national treatment – we can discuss in whatever way you want to understand it – plus certain minimal rights and in principle covering also audiovisual artists.

Second step: the TRIPS agreement. You all know about it. It has not change too much as far as the minimum rights of performing artists are concerned. It took as a basis the Rome Convention and added some remarkable plus elements; for instance, an extended term of protection, and a rental right. But what seems to me more important, it extended indirectly the field of application of the Rome

Convention to all WTO members, plus, it applied the retroactive effect of Article 18 of the Berne Convention also to the rights of performers.

Then let us consider the third scene, to stay within the framework of Shakespeare's terminology: the WPPT which was indeed a great success. It has brought about a great progress in this field in turning the possibility to prevent into real exclusive rights, in making clear some questions left open by the Rome Convention, in granting explicitly exclusive fixation rights, reproduction rights, rental rights, in extending again the term of protection, in adding, of course, a making available right, and so on. But, on the other hand – and this is the big problem – audiovisual performers are not covered by the treaty.

So, the last scene of all, which ends this strangely eventful history, was the WIPO diplomatic conference in December 2000 dedicated entirely to a possible treaty on the protection of audiovisual performing artists. As you all know, the diplomatic conference failed. There was the crucial notion of national treatment which is very difficult to tackle in this field, and also the thorny problem of the transfer of rights to producers, the solution of which would have required a set of rules of applicable law dealing with such transfer.

So, this conference failed and the question may arise: what shall we do? I will not comment on that. I think this will be the main point of our discussion today among many others which will be dealt with.

I would now leave the floor for to the speakers. We have today three panels all dealing with more or less the same question, the legal framework of performing artists, both in the audio sector and in the audiovisual sector. I think our first panel will have a more or less general approach to these questions whereas the other two panels will deal with the specific issues of those two sectors. In this panel, the first speaker will be Pál Tomori, who is Director of the collecting society dealing with the right of performing artists in Hungary. He is our general reporter on the basis of the answers received from the national groups to a questionnaire. He will be followed by Benoît Machuel, who himself, as he told me some minutes ago, was for many years a practicing musician himself and now he is the Secretary General of the International Federation of Musicians (FIM). And the third speaker in this panel will be Dominick Luquer, the Secretary General of the International Federation of Actors (FIA).