

# Questionnaire Concerning Topic 7

## Protection, Exercise and Enforcement of Performers' Rights after the 1996 and 2000 WIPO Diplomatic Conferences

### Introduction

This questionnaire, prepared by Dr. Pál Tomori (EJI – Hungary), is related to Topic 7 of the Congress agenda and aims to review the state of affairs regarding the protection, exercise and enforcement of performers' rights after the 1996 and 2000 WIPO Diplomatic Conferences.

For the purposes of this questionnaire the WIPO Performances and Phonograms Treaty (hereinafter: "WPPT") is considered as the globally agreed international minimum standard for the protection of performers' rights. The primary objective of the questionnaire is therefore to map out the territories *beyond* the WPPT and to examine to what extent in a fully bloomed digital environment the various national laws deem it necessary to *surpass* these minimum standards.

The questionnaire consists of the following main sections: 1. Definitions. 2. Moral rights. 3. Economic rights: exclusive rights. 4. Economic rights: rights to remuneration. 5. Legal provisions on the contractual terms of exploitation.

### 1. Definitions

#### 1.1. Definition of "performers"

Does the definition of "performers" under your national legislation differ in any way from the definition used in the WPPT? If yes, please describe in what respect.

- No
- Yes, in the following respect: [...]

#### 1.2. Definition of "phonogram"

Does the definition of "phonogram" under your national legislation differ in any way from the definition used in the WPPT? If yes, please describe in what respect.

- No
- Yes, in the following respect: [...]

### ***1.3. Agreed Statement concerning Article 2(b) of the WPPT***

According to the Agreed Statement concerning Article 2(b) of the WPPT “it is understood that the definition of phonogram provided in Article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.” Is there an established interpretation for this Agreed Statement in your country? If not, or if your understanding differs from the established interpretation, please describe how you construe this Agreed Statement.

- No established interpretation
- The established interpretation is as follows: [...]
- Our understanding differs from the established interpretations and is as follows: [...]

### ***1.4. Definition of “audio-visual performances” and “audio-visual fixations”***

Is there a specific definition under your national legislation for “audio-visual performances” or for “audio-visual fixations”? If yes, please describe the content of these definitions.

- No specific definition
- The definition of “audio-visual performances” is as follows: [...]
- The definition of “audio-visual fixations” is as follows: [...]

## **2. Moral rights**

### ***2.1. Article 5(1) of the WPPT - a)***

Do the moral rights granted under your national legislation to performers in respect of their performances extend in any way beyond the moral rights granted to them under the WPPT? If yes, please describe the scope of the extension.

- No
- Yes

The scope of the extension is as follows: [...]

### ***2.2. Article 5(1) of the WPPT - b)***

According to Article 5(1) of the WPPT, the right to claim to be identified as the performer of his performances is not applicable where omission is dictated by the manner of the use of the performance. Is there an established interpretation for this exception in your country? If not, or if your understanding differs from the established interpretation, please describe how do you construe this exception?

- No established interpretation

- The established interpretation is as follows: [...]
- Our understanding differs from the established interpretations and is as follows: [...]

### ***2.3. Moral rights subsisting in “aural” and “audio-visual” performances***

Is there any difference in the set of moral rights granted under your national legislation to performers in respect of their performances depending on whether the performance is “aural” or “audio-visual”? If yes, please describe these differences.

- No
- Yes, the differences are as follows: [...]

## **3. Economic rights: exclusive rights**

### ***3.1. Exclusive rights subsisting in unfixed performances and in performances fixed in phonograms – a)***

Do the exclusive rights granted under your national legislation to performers with respect to their unfixed performances and performances fixed in phonograms extend in any way beyond the exclusive rights granted to them under the WPPT?

- No (please disregard question 3.2)
- Yes

### ***3.2. Exclusive rights subsisting in unfixed performances and in performances fixed in phonograms - b)***

If you answered “Yes” to question 3.1, please identify the exclusive rights where such extension exists and describe the scope of the extension.

- Rights in unfixed performances  
The scope of the extension is as follows: [...]
- Right of reproduction  
The scope of the extension is as follows: [...]
- Right of distribution  
The scope of the extension is as follows: [...]
- Right of rental  
The scope of the extension is as follows: [...]
- Right of making available fixed performances\_  
The scope of the extension is as follows: [...]
- Other exclusive rights not listed above.  
Please specify the content of the exclusive right: [...]

### ***3.3. Exclusive rights subsisting in unfixed “aural” and “audio-visual” performances***

Is there any difference in the set of exclusive rights granted under your national legislation to performers in respect of their unfixed performances depending on whether the performance is “aural” or “audio-visual”? If yes, please describe these differences.

- No
- Yes, the differences are as follows: [...]

### ***3.4. Exclusive rights subsisting in performances fixed in phonograms and in performances fixed in “audio-visual fixations”***

Is there any difference in the set of exclusive rights granted under your national legislation to performers in respect of their fixed performances depending on whether the performance is fixed in a phonogram or in an “audio-visual fixation”? If yes, please describe these differences.

- No
- Yes, the differences are as follows: [...]

## **4. Economic rights: rights to remuneration**

### ***4.1. Agreed Statement concerning Article 15 of the WPPT***

According to the Agreed Statement concerning Article 15 of the WPPT “it is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age”. Do the rights granted under your national legislation to performers with respect to the broadcasting and communication to the public of their performances fixed in phonograms extend in any way beyond the rights granted under Article 15 of the WPPT? If yes, please describe the scope of the extension.

- No
- Yes

The scope of the extension is as follows: [...]

### ***4.2. Remuneration rights subsisting in performances fixed in phonograms***

In addition to the rights specified in 4.1, are there any other rights to remuneration granted under your national legislation to performers in respect of their performances fixed in phonograms? If yes, please describe the content of these rights.

- No
- Yes, the content of these rights are as follows: [...]

#### **4.3. Remuneration rights subsisting in performances fixed in phonograms and in performances fixed in “audio-visual fixations”**

Is there any difference in the rights to remuneration granted under your national legislation to performers in respect of their fixed performances depending on whether the performance is fixed in a phonogram or in an “audio-visual fixation”? If yes, please describe these differences.

- No
- Yes, the differences are as follows: [...]

### **5. Legal provisions on the contractual terms of exploitation**

#### **5.1. Specific legal provisions on the contractual terms of exploitation**

Does your national legislation contain any specific legal provisions in respect of the contractual terms of exploitation that are (also) applicable to performers?

- Yes
- No (please disregard questions 5.2 – 5.7)

#### **5.2. Relevant legal instrument**

If you answered “Yes” to question 5.1, please indicate the relevant legal instrument containing these specific legal provisions.

- Copyright Act (Act on Authors’ Rights)
- Civil Code
- Other legal instrument (please specify): [...]

#### **5.3. Written form**

Is there any specific legal provision requiring that the contractual terms of exploitation be recorded in writing? If yes, please describe the content and indicate the binding force of this provision.

- No
- Yes, the content of this provision is as follows: [...]
- No departure from this provision even by mutual will
- Departure from this provision is permitted by mutual will

#### **5.4. Rules of interpretation**

Is there any specific legal provision requiring that in case of ambiguity the contractual terms of exploitation be interpreted in favour of the performer? If yes, please describe the content of this provision.

- No
- Yes, the content of this provision is as follows: [...]

**5.5. Restrictions on the transfer of economic rights subsisting in performances**

Are there any restrictions under your legislation on the transfer of economic rights subsisting in performances? If yes, please describe the content of these restrictions.

- No
- Yes, the content of these restrictions is as follows: [...]

**5.6. Presumption regarding the transfer of economic rights subsisting in performances**

Are there any specific legal provisions on the presumption of the transfer of economic rights subsisting in performances? If yes, please describe the content of these provisions.

- No
- Yes, the content of these provisions is as follows: [...]

**5.7. Specific legal provisions on the contractual terms of exploitation regarding “aural” and “audio-visual” performances**

Is there any difference under your national legislation in the specific legal provisions on the contractual terms of exploitation depending on whether the performance is “aural” or “audio-visual”, or depending on whether the performance is fixed in a phonogram or in an “audio-visual fixation”? If yes, please describe these differences.

- No
- Yes, the differences are as follows: [...]