

Dated: November 21, 2000.

**David L. Evans,**

*Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

Dated: November 21, 2000

**William W. Fox, Jr.,**

*Director, Office of Science and Technology, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.*

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BILLING CODE 3510-KA-M

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

RIN 0651-AB28

#### Request for Comments on Basic Proposals for an Instrument on the Protection of Audiovisual Performances to be Considered by the WIPO Diplomatic Conference

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The World Intellectual Property Organization (WIPO) will convene a Diplomatic Conference on the Protection of Audiovisual Performances, in Geneva, Switzerland, during December 7-20, 2000. Two Basic Proposals will form the basis for the negotiations: the Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances to be Considered by the Diplomatic Conference (document IAVP/DC/3), which was prepared by the Chairman of the Standing Committee on Copyright and Related Rights (SCCR), is available on the WIPO website at <http://www.wipo.int>. The Basic Proposal for Administrative and Final Provisions of the Instrument (document IAVP/DC/4), prepared by the International Bureau of WIPO, is also available on the WIPO website. The United States Patent and Trademark Office ("USPTO"), in cooperation with the United States Copyright Office and the United States Department of State, is seeking views of the public on this effort and any consequent potential changes to United States law and practice. Comments received will be shared among the relevant agencies.

**DATES:** Comments should be submitted on or before December 6, 2000.

**ADDRESSES:** Persons wishing to offer written comments should address those comments to the Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked

to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305-7575 or by electronic mail through the Internet to [elizabeth.shaw2@uspto.gov](mailto:elizabeth.shaw2@uspto.gov). All comments will be maintained for public inspection in Room 902 of Crystal Park II, 2121 Crystal Drive, Arlington, Virginia. The relevant negotiating documents may be found at the WIPO website: [http://wipo.int/news/en/index.html?wipo\\_content\\_\\_frame=/news/en/conferences.html](http://wipo.int/news/en/index.html?wipo_content__frame=/news/en/conferences.html).

#### FOR FURTHER INFORMATION CONTACT:

Linda S. Lourie by telephone at (703) 305-9300; by facsimile at (703) 305-8885; by electronic mail to [linda.lourie@uspto.gov](mailto:linda.lourie@uspto.gov); or by mail addressed to the Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Linda S. Lourie, Attorney-Advisor.

#### SUPPLEMENTARY INFORMATION:

##### Background

WIPO will convene a Diplomatic Conference on the Protection of Audiovisual Performances in Geneva, Switzerland, during December 7-20, 2000. Two Basic Proposals will form the basis for the negotiations. The Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances, which will be considered by the Diplomatic Conference (document IAVP/DC/3), was prepared by the Chairman of the SCCR. The Basic Proposal for Administrative and Final Provisions of the Instrument (document IAVP/DC/4) was prepared by the International Bureau of WIPO. The texts of both the Basic Proposal for the Substantive Provisions and the Basic Proposal for Administrative and Final Provisions, along with other documents relating to the forthcoming Diplomatic Conference, are available on the WIPO website.

The issues considered under the Basic Proposal for the Substantive Provisions were initially considered within the framework of the 1996 Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, which concluded with the signing of the WIPO Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT"). However, at that time, no international consensus developed to provide for protection for audiovisual performances and the decision was taken by the Diplomatic Conference to postpone consideration of this issue for further discussion by the Standing Committee on Copyright and Neighboring Rights. During the consideration over the past four years of

existing national and regional legislation concerning audiovisual performances and information on the *de facto* situation, including contractual practice, the United States has put forward a number of proposals to advance the protection of performers of audiovisual works in line with current U.S. practice; many of these proposals have found their way into the Basic Proposal. Various proposals have been submitted by other WIPO members, including Korea, the Group of African States, Canada, the United Republic of Tanzania and Japan. The European Community also submitted proposals on behalf of its member states. In light of the extensive study of the issues, the present Diplomatic Conference is now being convened.

The United States position reflects the broad private sector consensus that has developed among performers unions, motion picture producers and other affected groups. Four provisions, in particular, are of primary importance for U.S. interests in light of current industry practices, namely those pertaining to national treatment, moral rights, the transfer of rights from the performer to the producer and the broadcast and communication to the public right. The Basic Proposal addresses each of these issues (Articles 4, 5, 11 and 12, respectively).

#### Brief Summary of the Basic Proposals

The Basic Proposal for the Substantive Provisions of an Instrument on the Protection of Audiovisual Performances would update the international norms on the rights offered to audiovisual performers, compliment our existing international obligations and further our policy of strong intellectual property protection.

Essentially, the Instrument has four objectives, namely: (1) To develop and maintain the protection of rights of performers in their audiovisual performances in a manner as effective and uniform as possible, consistent with the goal of facilitating the exploitation of audiovisual works in the global marketplace, (2) to introduce new international rules in order to provide adequate solutions to the questions raised by economic, cultural and technological developments, (3) to offer responses to the challenges of digital technology and (4) to provide a balance between the rights of audiovisual performers and the larger public interest, particularly education, research and access to information.

To achieve these objectives, the Instrument will include:

- An exclusive right of reproduction for performers in respect of their

performances fixed in audiovisual fixations, with a related provision on exceptions (corresponding to the WPPT);

- The recognition of a right of distribution for performers (corresponding to the WPPT);
- The provision allowing Contracting Parties to determine conditions for the territorial effect of the exhaustion;
- An exclusive right for performers to authorize the making available of their performances fixed in audiovisual fixations, by wire or wireless means, in an interactive, on-demand system consistent with the equivalent right provided under the WPPT;
- An exclusive right of rental for performers where commercial rental has led to widespread copying that “materially impairs” the performers’ exclusive right of reproductions (this is the same “material impairment test” as found in the TRIPs Agreement and the WCT with respect to authors of cinematographic works);
- “Moral rights” for performers, including the right to claim to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and the right to object to distortions, mutilations or other modifications of their performances that would be prejudicial to their reputations (performers would not be able to object to modifications that are consistent with the normal exploitation of a performance);
- Exclusive rights of performers to authorize the broadcasting and communication to the public of their performances fixed in audiovisual fixations or a right to equitable remuneration for such uses, consistent with the WPPT;
- A mechanism to ensure that the rights necessary to exploit the film can be effectively secured by the producers;
- A 50-year term of protection for the rights of performers (corresponding to the WPPT); and
- The relevant definitions (“audiovisual fixation,” “broadcasting,” and “communication to the public”) adapted to the requirements of digital technology.

The Instrument may also include:

- An obligation to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers to protect their rights, such as was provided for in the WPPT;
- An obligation to make unlawful the removal and alteration of electronic rights-management information without authority, as well as the related acts of

distribution, importation for distribution and communication to the public, such as was provided for in the WPPT; and

- An obligation to provide for effective enforcement measures necessary to protect the rights granted under this Basic Proposal (corresponding to the WPPT, the Berne Convention and the TRIPs Agreement).
- The Basic Proposal presents two alternatives for national treatment: a broad national treatment approach that obliges Contracting Parties to grant national treatment to nationals of other Contracting Parties (a Contracting Party may limit the protection beyond that which is provided for under this Basic Proposal to nationals of other Contracting States on a reciprocal basis); and a narrower one that corresponds to the WPPT. The second provision would provide for national treatment only in respect of the exclusive rights specifically granted in the Basic Proposal and any right to equitable remuneration where such a right is offered in lieu of the right of authorization for broadcasting and communication to the public.

No reservations are allowed under the Basic Proposal. However, the Basic Proposal gives members the option of providing protection to fixed performances in existence at the time of the entry into force of the Instrument and to all performances, whether or not fixed, that occur after the entry into force of the Instrument.

To set forth terms on the formal matters, the Basic Proposal for the Administrative and Final Provisions contains specific Administrative Provisions relating to the administration and implementation of the Basic Proposal. The first issue for consideration by the Diplomatic Conference will be whether this Basic Proposal shall be a self-standing Treaty or a Protocol to the WPPT. One of the implications for this distinction is whether a member State can be a Contracting Party of the present Instrument without being a member of the WPPT, a Treaty which has not yet entered into force (to date, only 16 of the necessary 30 ratifications or accessions have been deposited with the Director General of WIPO). The other alternative offered provides for a separate Assembly where the Instrument becomes a self-standing Treaty.

With either alternative, any intergovernmental organization, such as the European Community, may participate in the vote, in place of its member States, with a number of votes equal to the number of its member

States party to the Instrument; no intergovernmental organization is permitted to vote if any of its member States votes for itself.

#### Issues for Public Comment

The USPTO, in cooperation with the United States Copyright Office and the United States Department of State, is interested in assessing support for the effort to negotiate an Instrument for the Protection of Audiovisual Performances. Interested members of the public are invited to present written comments on any issues they believe to be relevant to protection of audiovisual performances or any aspects of the proposed Basic Proposal. Comments are particularly welcome on the following specific issues:

1. What relationship would you wish to see the proposal Instrument have to the WPPT?
2. What effect, if any, would the designation of the proposed Instrument as a self-standing Treaty, as opposed to a Protocol to the WPPT, have on current U.S. or international practices?
3. The Basic Proposal presents two alternatives for determining National Treatment, namely the obligation to grant national treatment for exclusive rights, rights of remuneration, and additional rights, which may be limited by reciprocity, as well as a more limited national treatment rule such as appears in the WPPT. Which alternative would be preferable in light of current U.S. and international practice?
4. What changes in current practices, including collective bargaining agreements, and broadcasting agreements, would be needed in light of the proposal on broadcasting rights, whether an exclusive right or right of remuneration?
5. The Basic Proposal presents four alternatives for determining the relationship between performers and producers, including a presumption of transfer from the performer to the producer, the entitlement by the producer to exercise the exclusive rights of authorization, a conflict of laws approach, and silence on the issue. In your experience, what would be the relative benefits/disadvantages you would expect in each of these situations? What would be the most predictable and fair solution?
6. The Basic Proposal does not mandate the protection for fixed performances that exist at the time of the entry into force of the Instrument but does permit Member States to do so. In your experience, what benefits or disadvantages would you foresee in allowing for such protection of pre-existing works?

7. How should the issue of moral rights be treated, both in relation to current and future industry practices and past fixed performances not protected by this Instrument? Should they be waivable or transferable? Has the Basic Proposal addressed concerns adequately? Would any additional language be helpful in clarifying U.S. current practices?

8. One mechanism for indicating a consensus in the WCT and WPPT where treaty language was not appropriate was the Agreed Statement. What, if any, Agreed Statements would be desirable to use to augment the Basic Proposal?

In your response, please include the following: (1) Clearly identify the matter being addressed; (2) provide examples, where appropriate, of the matter being addressed; (3) identify, if possible, any relevant legal authorities applicable to the matter being addressed; and (4) provide suggestions regarding how the matter should be addressed by the United States.

Dated: November 22, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00-30331 Filed 11-27-00; 8:45 am]

**BILLING CODE 3510-16-M**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### **Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for BRAC 95 Disposal and Reuse of East Fort Baker, California**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with Public Law 101-510 (as amended), and the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of East Fort Baker, California.

The Final EA evaluates the environmental impacts of the disposal and subsequent reuse of the 91-acre installation. Enactment of the Golden Gate National Recreation Area Act (Public Law 92-589) requiring that, when the Department of Defense determined that it no longer had a need for East Fort Baker, the property would transfer to the jurisdiction of the Secretary of the Interior. Disposal of East Fort Baker to the Secretary of the Interior will allow the property to be reused in accordance with the National Park Service's Proposed Plan. Pursuant

to the National Environmental Policy Act, the National Park Service prepared a final environmental impact statement (EIS) that examined and analyzed the environmental impacts of the Proposed Plan and its alternatives. This final EIS has been incorporated by reference into the Army's disposal and reuse EA. The only other alternative examined by the Army was the no action alternative. Under the no action alternative, the Army would not dispose of property, but would maintain it in a caretaker status for an indefinite period. Based on the environmental analysis documented in the EA, the Army has determined that the proposed disposal action would have no significant direct, indirect or cumulative impact on the natural or human environment.

**DATES:** Comments must be submitted on or before December 28, 2000.

**ADDRESSES:** A copy of the EA may be obtained by writing to Mr. Jerry Fuentes, Corps of Engineers, Sacramento District, Environmental Resources Branch, 1325 J Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry Fuentes at (916) 557-7730.

**SUPPLEMENTARY INFORMATION:** A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the closure of East Fort Baker was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA and FNSI are available for review at the Marin County Free Library, Marin County Civic Center, San Rafael, CA 94903 and the Sausalito Public Library, 420 Litho, Sausalito, CA 94965.

Dated: November 20, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).*

[FR Doc. 00-30180 Filed 11-27-00; 8:45 am]

**BILLING CODE 3710-08-M**

## DEPARTMENT OF EDUCATION

### **Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 28, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 21, 2000.

**William Burrow,**

*Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### **Office of Special Education and Rehabilitative Services**

*Type of Review:* New.

*Title:* National Longitudinal Transition Study-2 (NLTS-2) Survey Package.

*Frequency:* One time.

*Affected Public:* Individuals or households; Not-for-profit institutions. *Reporting and Recordkeeping Hour Burden:*

Responses: 18,977

Burden Hours: 7,843

*Abstract:* NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services and achievements in multiple domains