NOTE

from : General Secretariat of the Council
to : Delegations

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- Permanent benefits to performers: Drafting suggestion by the United Kingdom delegation

Delegations will find in Annex a drafting suggestion proposed by the United Kingdom delegation for discussion at the Intellectual Property Attachés meeting on 3 April 2009.
The UK suggests the following changes to Article 1(4) in order that the transitional measures become permanent measures.

Changes are marked up in **bold & underlined** and **bold & strikethrough** with reference to 7261/09 of 11th March.

**Article 1(4)**

(4) The following Article 10a shall be inserted:

**Article 10a**

*Transitional Measures relating to the transposition of Directive [insert number of the amending directive]*

1. In the absence of clear indications to the contrary, a contract concluded before *[insert date before which Member States are to transpose the amending directive, as mentioned in Article 2 below]*, whereby a performer has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter: a "contract on transfer or assignment"), shall be deemed to continue to produce its effects beyond the moment at which, by virtue of Article 3 (1) in its version before amendment by Directive [// insert: Nr. of this amending directive], the performer would be no longer protected.

2. [Deleted]

3. [Deleted]

4. [Deleted]

5. [Deleted]

6. *Deleted (turned into a permanent claus - see paragraph 2 above).*

6a [Deleted]
Article 1 (2b)

(2b) In Article 3, the following paragraphs 2b to 2e shall be inserted:

2b Where a contract on transfer or assignment gives the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year immediately following the end of the 50th year of the term of protection. The right to obtain an annual supplementary remuneration cannot be waived by the performer.

2c The overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration referred to in paragraph 2b shall correspond to 20 percent of the revenues which he has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of those phonograms in regard to which, by virtue of Article 3(1) in its version before amendment by Directive [insert number of the amending Directive], the performer would no longer be protected on 31 December of the said year.

Member States shall ensure that phonogram producers are required to provide to performers, who are entitled to the annual supplementary remuneration referred to in paragraph 2b, on request, any information which may be necessary in order to secure the payment of that remuneration.

2d Member States shall ensure that the right to obtain an annual supplementary remuneration referred to in paragraph 2b is administered by collecting societies.

2e Where a performer is entitled to recurring payments, neither advance payments nor any contractually agreed deductions shall be deducted from the payments to the performer for use of his work in the period following the end of the 50th year of the term of protection."
Article 1(3)

“5. Article 3(1) to (2e) in the version….”

Consequential amendments would also be necessary at Recitals 10, 11 and 15:

“… accompanying transitional measures…”