

BELJING TREATY ON AUDIOVISUAL PERFORMANCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE BELJING TREATY ON AUDIOVISUAL PERFORMANCES, DONE
AT BEIJING ON JUNE 24, 2012 (BEIJING TREATY)



FEBRUARY 10, 2016.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PUBLISHING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 10, 2016.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Beijing Treaty on Audiovisual Performances, done at Beijing on June 24, 2012 (Beijing Treaty). I also transmit, for the information of the Senate, a report of the Secretary of State with respect to the Beijing Treaty that includes a summary of its provisions.

This copyright treaty, concluded under the auspices of the World Intellectual Property Organization (WIPO), advances the national interest of the United States in promoting the protection and enjoyment of creative works. The Beijing Treaty provides a modern international framework for the rights of performers in motion pictures, television programs, and other audiovisual works, similar to that already in place for producers of such works, for authors, and for performers and producers of sound recordings, pursuant to other WIPO copyright treaties the United States has joined.

The United States played a leadership role in the negotiation of the treaty, and its provisions are broadly consistent with the approach and structure of existing U.S. law. Narrow changes in U.S. law will be needed for the United States to implement certain provisions of the treaty. Proposed legislation is being submitted to both houses of the Congress in conjunction with this transmittal.

I recommend that the Senate give early and favorable consideration to the Beijing Treaty, and give its advice and consent to its ratification, subject to a declaration pursuant to Article 11 of the Beijing Treaty as described in the accompanying Department of State report.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, January 22, 2016.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Beijing Treaty on Audiovisual Performances, done at Beijing June 24, 2012 (Beijing Treaty). The United States played a leadership role in the development of the Treaty, which was negotiated under the auspices of the World Intellectual Property Organization (WIPO). Joining the Beijing Treaty will promote the development of appropriate international rules in the realm of intellectual property and advance the rights of U.S. performers in motion pictures and television programs on par with existing global standards for musical performers.

A brief summary of the treaty follows below. A detailed overview of the treaty, with an article-by-article summary, is enclosed.

The Beijing Treaty is intended to provide up-to-date copyright protection for audiovisual performers in the United States and in countries around the world. It provides a modern international framework for performers' legal rights—an increasingly important assurance in today's world where audiovisual works are distributed globally in digital form. It also fills a gap in the international copyright system by extending to such performers the type of protections previously accorded to authors and to performers and producers of sound recordings, pursuant to existing international agreements to which the United States is a party. The Treaty's framework is consistent with existing U.S. standards and its further adoption worldwide would advance national economic interests in the appropriate development, protection and exploitation of the intellectual property generated by America's creative artists and industries.

The provisions of the Beijing Treaty were carefully negotiated over a period of more than 15 years. The issues initially were considered in connection with the 1996 diplomatic conference that led to the conclusion of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). (The United States ratified those two treaties in 1999, following Senate advice and consent and Congressional passage of the Digital Millennium Copyright Act the previous year.) At the time, however, no international consensus had developed as to how similar protection should be afforded to audiovisual performers. Countries narrowed the gaps at a diplomatic conference in 2000, but deadlocked over the issue of how performers could transfer to producers, by contract

or otherwise, their exclusive rights regarding the uses of their performances. In 2010, the United States, with input and support from U.S. movie studios as well as artists' representatives, worked to develop language that permits, but does not require, parties to provide in their domestic law for such a transfer of rights, once a performer has consented to the fixation of his or her performance. This compromise, reflected now in Article 12 of the Treaty, attracted support from other key jurisdictions and paved the way for the text to be finalized at a diplomatic conference in Beijing June 24, 2012. The outcome avoids prejudicing what is known in the United States as the "work made for hire" doctrine, a bedrock of U.S. motion picture industry practice.

Among other elements, the Beijing Treaty includes provisions on audiovisual performers' exclusive rights of authorizing the broadcasting, communication and fixation of their live performances; their exclusive rights of reproduction, distribution, rental, making available and communication to the public of their fixed performances; digital technologies; certain moral rights; and national treatment. The rights provided for are modeled on, and similar to, the rights provided to performers and producers of sound recordings pursuant to the WPPT. (Authors, software developers and computer programmers are accorded similar rights pursuant to the Berne Convention for the Protection of Literary and Artistic Works and the WCT.) These rights are largely already enshrined for copyright owners in the United States and many other countries: their inclusion in the Beijing Treaty helps develop international rules in the copyright area and encourages other countries to adopt these rules. The limited statutory changes for the United States to implement the Treaty are described in the separate proposed legislation the Administration is submitting to the Senate and to the House of Representatives in conjunction with the transmittal of this Treaty. The Beijing Treaty is non-self-executing.

As described further in the article-by-article summary in the overview, one declaration in respect of Article 11 of the Treaty, concerning the exclusive right to authorize broadcasting and an alternative right to equitable remuneration, is recommended for inclusion in the Senate's resolution of advice and consent to ratification of the Beijing Treaty.

The Beijing Treaty is a landmark achievement for labor and industry working together to protect and promote U.S. audiovisual works globally. The Treaty will further encourage U.S. businesses and artists to invest time and talent in producing and exporting motion pictures and television programs, an area where America has a strong competitive edge. Once the Treaty is in force, if the United States joins, it will help ensure that U.S. performers are appropriately protected when their audiovisual performances are enjoyed by audiences in other countries that are parties to the Treaty.

In view of the foregoing, I recommend that the Beijing Treaty on Audiovisual Performances be transmitted to the Senate as soon as possible for its advice and consent to ratification, subject to a declaration pursuant to Article 11, as described in the Overview.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

Overview

Article-by-Article Summary of Provisions: Beijing Treaty on Audiovisual Performances

The Beijing Treaty on Audiovisual Performances (Beijing Treaty) is intended to provide up-to-date copyright protection for performers in motion pictures and television programs (audiovisual performers) in the United States and in countries around the world. It provides a modern international framework for performers' legal rights – an increasingly important assurance in today's world where audiovisual works are distributed globally in digital form. It also fills a gap in the international copyright system by extending to such performers the type of protections previously accorded to authors and to performers and producers in sound recordings, pursuant to existing international agreements to which the United States is a party.

The Beijing Treaty obligates parties to provide to audiovisual performers the exclusive right of authorizing the broadcasting, communication, and fixation of their live performances; the exclusive rights of reproduction, distribution, rental, making available, broadcasting, and communication to the public of their fixed performances; certain moral rights; and national treatment (Articles 4–11). It permits, but does not require, parties to provide that rights may be transferred to (e.g., by contract) or owned by the producers, thus reflecting a bedrock of U.S. film industry practice known as the “work made for hire” doctrine (Article 12). The Treaty also includes important language found in existing copyright treaties, known as the “three-step test,” which permits certain reasonable limitations and exceptions to the aforementioned rights (Article 13).

Additionally, the Beijing Treaty includes a number of digital-age provisions similar to elements of the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT). For example, it provides that parties must: grant performers the exclusive right of reproduction of their performances fixed in audiovisual fixations “in any manner or form,” which is understood to include digital form in an electronic medium (Article 7); proscribe the circumvention of technological protection measures (TPMs) that control access to and use of protected performances (Article 15); and protect the integrity of electronic rights management information (Article 16). Other provisions in the Treaty address term of protection, formalities,

reservations, timing of application, and enforcement procedures (Articles 14 and 17–20) and set forth standard administrative and institutional mechanisms common to treaties administered by WIPO (Articles 21–30).

All provisions of the Treaty are detailed below. In conjunction with the adoption of the Treaty, as is common practice in the context of WIPO treaties, the negotiating parties adopted a number of understandings related to specific provisions in the Treaty, referred to as “Agreed Statements.” These statements represent the negotiators’ understanding of the language of the Treaty and can aid in the interpretation of certain articles. The United States delegation joined in the adoption of the Agreed Statements.

For the most part, existing U.S. law, principally the Copyright Act, would enable the United States to implement the obligations of the Beijing Treaty. The limited statutory changes for implementation are described in the separate legislative proposal the Administration is submitting to both houses of Congress in conjunction with this Treaty. The Beijing Treaty is non-self-executing.

Preamble

The preamble provides, among other things, that the parties: (1) desire to develop and maintain protections for the rights of performers in their audiovisual performances in a manner as effective and uniform as possible; (2) recognize the need to maintain a balance between those rights and the larger public interest, in particular with respect to education, research, and access to information; (3) recognize the profound impact of new information and communication technologies on the production and use of audiovisual performances; and (4) recall the importance of the WIPO Development Agenda (established by WIPO Member States in 2007).

Article 1: Relation to Other Conventions and Treaties

Article 1 provides that the Beijing Treaty does not affect rights and obligations under any other treaties. Although this article applies to all treaties, the Article highlights specifically the WPPT and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the “Rome Convention”), and an accompanying Agreed Statement references the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The Article also emphasizes that protections under the Treaty – which are geared to audiovisual

performances – do not affect the protection of copyright in literary and artistic works.

Article 2: Definitions

Article 2 defines a number of key terms used in the Treaty: “performers,” “audiovisual fixation,” “broadcasting,” and “communication to the public.” The definition of performers covers actors, singers, musicians, dancers, and others who perform literary and artistic works or expressions of folklore, including, as an Agreed Statement sets forth, literary or artistic works created or first fixed in the course of a performance.

Article 3: Beneficiaries of Protection

Article 3 obliges parties to provide the protections granted under the Treaty to performers who are nationals of other parties to the Treaty, as well as to performers who have their habitual residence in one of the parties.

Article 4: National Treatment

Article 4 requires parties to grant national treatment – i.e. the same treatment they provide to their own nationals – to nationals of other parties with regard to the exclusive rights provided for in the Treaty and the right of equitable remuneration, except to the extent that another party makes a reservation as permitted under Article 11 of the Treaty.

Article 5: Moral Rights

Pursuant to Article 5, parties must provide performers with certain “moral rights” regarding their “unfixed” (i.e., live) and “fixed” (i.e., recorded) performances, even after the transfer of those rights. In particular, performers must have the right to claim to be identified as the performer (often called the right of “attribution”), except where omission is dictated by the manner of the use of the performance. Performers must also have the right to object to the distortion, mutilation, or other modification of a performance that would be prejudicial to the performer’s reputation (often called the right of “integrity”). An Agreed Statement provides that modifications of an audiovisual performance that are consistent with the normal exploitation of a performance, such as editing, compression, dubbing, or formatting, are not modifications for the purposes of this article. The Agreed

Statement further provides that mere use of new or changed technology does not amount to a modification for purposes of this article.

Articles 6-11: Exclusive Rights of Performers

These articles obligate parties to provide to performers the exclusive right of authorizing the:

- broadcasting and communication to the public of their unfixed performances, except when the performance is part of a broadcast, and the fixation of their unfixed performances. (Article 6)
- reproduction of their audiovisual performances fixed “in any manner or form.” An Agreed Statement makes clear that the reproduction right, and the exceptions and limitations permitted to be made to such right in Article 13, apply fully in the digital environment. The Agreed Statement also makes clear that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this article. (Article 7)
- distribution of the original and copies of their fixed performances. Parties have latitude to determine any conditions under which exhaustion of the distribution right applies after the first sale or other transfer of ownership. An Agreed Statement specifies that the phrase “original and copies” refers only to fixed performances capable of being circulated as tangible objects. (Article 8)
- commercial rental to the public of the original and copies of their fixed performances. Parties need not provide for this right, however, unless commercial rental has led to widespread copying of such performances in a manner that materially impairs a performer’s exclusive right of reproduction. Again, an Agreed Statement specifies that the phrase “original and copies” refers only to fixed performances capable of being circulated as tangible objects. (Article 9)
- making available to the public of their fixed performances, by wire or wireless means, “in such a way that members of the public may access them from a place and at a time individually chosen by them.” This provision secures the right of audiovisual performers to authorize on-demand transmissions of their performances to members of the public. (Article 10)

- broadcasting and communication to the public of their fixed performances, unless a party instead wishes to establish a right of equitable remuneration for the direct and indirect uses of such performances and sets the conditions for the exercise of that right. A party opting for the equitable remuneration alternative must so notify the WIPO Director General by making a declaration to that effect. A party may also limit the application of these rights or not apply them at all, by providing a declaration to that effect to WIPO. (Article 11)

It is recommended that ratification of the Beijing Treaty by the United States be accompanied by a declaration, in accordance with Article 11 of the Treaty, to take into account statutory licenses in the Copyright Act, which limit copyright owners' otherwise exclusive rights to authorize the broadcasting and communication to the public of fixed performances by providing for "secondary" retransmissions by cable and satellite. The declaration would state:

Pursuant to Article 11 of the Beijing Treaty on Audiovisual Performances, the United States declares that it will not apply the provisions of Article 11(1) to the extent that statutory licenses set forth in sections 111, 119 and 122 of the U.S. Copyright Act authorize certain secondary transmissions of a work embodied in a primary transmission by a broadcast television station.

In particular, the United States declares, pursuant to paragraphs (2) and (3) of Article 11, that

- (a) instead of the exclusive right of authorization provided for in Article 11(1), it has established through such statutory licenses a right of equitable remuneration to the copyright owner in respect of such secondary transmissions made outside a local viewing area; and
- (b) it will not apply the provisions of paragraphs (1) or (2) of Article 11 in respect of such secondary transmissions made within a local viewing area.

Article 12: Transfer of Rights

Article 12 addresses the transfer of rights in an audiovisual performance from a performer to a producer, and allows for diverse national approaches on this subject. The article expressly permits, but does not require, parties to provide that the exclusive rights of a performer set forth in Articles 7–11 shall be owned or exercised by or transferred to the producer of an audiovisual work, e.g., a film or a

television program, once a performer has consented to the fixation of his or her performance in such film or other work. Such transfer is also subject to any contract to the contrary between the performer and the producer as determined by national law. Article 12 permits parties also to require that such consent or contract be in writing and also permits national laws or individual, collective, or other agreements to provide the performer with the right to receive royalties or equitable remuneration for any use of the performance.

Such “work made for hire” or equivalent arrangements, in which a performer is an employee or contracts that the producer of an audiovisual work rather than the performer or performers is the copyright owner, are the centerpiece of relevant U.S. law and industry practice. 17 U.S.C. §§ 101, 106; see also U.S. Copyright Office Circular No. 9 (2012). In light of Article 12’s accommodation of such arrangements, exclusive rights referred to in the text as being vested in “performers” – including that referred to in Article 11 of the Treaty – may instead be vested in the producer of an audiovisual work who is the copyright owner by virtue of such work for hire arrangements, allowing application of the treaty in a manner consistent with U.S. law and practice.

Article 13: Limitations and Exceptions

Article 13 allows parties to provide the same kind of limitations and exceptions to the rights provided for in the Treaty as they provide in national law for copyright in literary and artistic works, subject to the well-established international standard for exceptions and limitations, commonly referred to as the “three-step test,” that is set forth in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works, Article 10 of the WCT, and Article 13 of the TRIPS Agreement. In particular, Article 13 of the Beijing Treaty obliges parties to confine any limitations or exceptions to “[i] certain special cases which [ii] do not conflict with a normal exploitation of the performance and [iii] do not unreasonably prejudice the legitimate interests of the performer” (delineations added). An Agreed Statement provides that the Agreed Statement to Article 10 of the WCT is applicable, *mutatis mutandis*, thereby clarifying that parties are permitted to “carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention” as well as to “devise new exceptions and limitations that are appropriate in the digital network environment.”

Article 14: Term of Protection

Article 14 requires parties to grant performers a term of protection of at least 50 years, computed from the end of the year in which the performance is fixed.

Article 15: Obligations Concerning Technological Measures

Article 15 obliges parties to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers to protect the exercise of their rights in their performances and to restrict acts that are not authorized by the performer or permitted by law. An Agreed Statement reflects the shared understanding that this Article is not intended to prevent parties from adopting measures so that, in certain situations involving technological measures applied to an audiovisual performance, where an individual has lawful access to that performance and seeks to enjoy limitations and exceptions in place under that party's law in accordance with Article 13, such individual may enjoy the permitted access. Another Agreed Statement clarifies that the phrase "technological measures used by performers" should be construed broadly to include measures applied by the representatives, licensees, and assignees of the performer.

Article 16: Obligations Concerning Rights Management Information

Article 16 proscribes the unauthorized removal or alteration of any electronic rights management information (RMI), or dissemination of works in which the RMI is known to have been removed or altered, mandating that parties provide adequate and effective remedies against a person performing such acts when the person knows or has reason to know that the act will induce, enable, facilitate, or conceal an infringement of rights provided for under the Treaty. RMI is defined as information that identifies the performer or his or her performance, or information about the terms and conditions of use, along with any associated numbers or codes, when attached to a performance fixed in an audiovisual fixation. An Agreed Statement provides that the Agreed Statement to the corresponding provision on rights management information of the WCT, Article 12, is applicable *mutatis mutandis* to Article 16. It is thus understood that the Article 16(1) phrase "infringement of any right covered by the Treaty" includes both exclusive rights and rights of remuneration, and that Article 16 is not a basis for parties to implement rights management systems that would impose impermissible formalities, prohibiting the free movement of goods or impeding the enjoyment of rights under the Treaty.

Article 17: Formalities

Article 17 prohibits parties from imposing formalities on the enjoyment and exercise of the rights of performers pursuant to the Treaty.

Article 18: Reservations and Notifications

Other than with respect to the exclusive right to authorize the broadcasting and communication to the public and the right to equitable remuneration, as set out in Article 11, no reservations to the Treaty are allowed.

Article 19: Application in Time

Article 19(1) provides that the Treaty applies to fixed performances existing as of the date of entry into force of the Treaty for a party and to all performances that take place after the entry into force of the Treaty for that party. Notwithstanding the protection accorded under paragraph (1) to existing fixed performances, paragraph (2) gives a party discretion not to apply the exclusive post-fixation economic rights set forth in Articles 7–11 to performances fixed up to the time of entry into force of the Treaty for that party, by notifying the WIPO Director General (the depositary) in a declaration. Where a party so chooses to limit the retroactive protection of audiovisual performances, another party may act reciprocally vis-à-vis the notifying party.

It is not recommended that the United States make the declaration permissible under paragraph (2) of Article 19. Providing protection for performances that have already been fixed – the approach taken by the United States in implementation of the WPPT – helps ensure that U.S. performers in existing audiovisual works will enjoy equivalent protection in foreign countries.

Paragraph (3) provides that protection under the Treaty is without prejudice to acts committed, agreements concluded, or rights acquired before the treaty enters into force for each party. Paragraph (4) permits a party to provide in its national law for transitional arrangements for persons who engaged in lawful uses of a performance prior to entry into force of the Treaty with respect to subsequent uses of the same performance.

Article 20: Provisions on Enforcement of Rights

Article 20 obliges parties to adopt, “in accordance with their legal systems,” measures necessary to ensure the application of the Treaty. The second paragraph of the article obliges parties to ensure the availability of enforcement procedures that permit effective action against any act of infringement of rights covered by the Treaty. Remedies that are expeditious and that serve to deter future infringements must be available.

Articles 21-30: Administrative & Institutional Provisions

Article 21 requires the parties to have an Assembly responsible for addressing matters concerning the maintenance, development, application, and operation of the Treaty. The Assembly shall endeavor to act by consensus and shall establish its own rules of procedure. Any WIPO Member State and the European Union (EU) is permitted to become a party to the Treaty; the Assembly may decide also to admit any intergovernmental organization that, like the EU, provides the specified declaration of competence (Article 23). Any intergovernmental organization that is a party to the Treaty is permitted to participate in a vote in place of its Member States that are parties—with a number of votes equal to the number of its Member States that are parties to the Treaty. However, no such organization shall participate in a vote if any one of its Member States exercises its right to vote (Article 21(3)(b)). Each contracting party bears all the obligations under the Treaty (Article 24). The International Bureau of WIPO is to perform administrative tasks concerning the Treaty (Article 22), and the WIPO Director General is the depositary of the Treaty (Article 30). Thirty eligible parties must ratify or accede to the Treaty to bring it into force (Article 26). Other provisions specify procedures for denunciation, languages, signature, and effective date of becoming a party (Articles 25 and 27–29). These articles closely resemble the comparable administrative and institutional provisions in other recent treaties concluded within, and administered by, WIPO.

Beijing Treaty on Audiovisual Performances

**World Intellectual Property Organization
Geneva, 2012**

Beijing Treaty on Audiovisual Performances**TABLE OF CONTENTS**

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Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers in their audiovisual performances in a manner as effective and uniform as possible,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the Convention Establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of audiovisual performances,

Recognizing the need to maintain a balance between the rights of performers in their audiovisual performances and the larger public interest, particularly education, research and access to information,

Recognizing that the WIPO Performances and Phonograms Treaty (WPPT) done in Geneva on December 20, 1996, does not extend protection to performers in respect of their performances fixed in audiovisual fixations,

Referring to the Resolution concerning Audiovisual Performances adopted by the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions on December 20, 1996,

Have agreed as follows:

Article 1
Relation to Other Conventions and Treaties

- (1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the WPPT or the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome on October 26, 1961.
- (2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.
- (3) This Treaty shall not have any connection with treaties other than the WPPT, nor shall it prejudice any rights and obligations under any other treaties^{1,2}.

¹ **Agreed statement concerning Article 1:** It is understood that nothing in this Treaty affects any rights or obligations under the WIPO Performances and Phonogram Treaty (WPPT) or their interpretation and it is further understood that paragraph 3 does not create any obligations for a Contracting Party to this Treaty to ratify or accede to the WPPT or to comply with any of its provisions.

² **Agreed statement concerning Article 1(3):** It is understood that Contracting Parties who are members of the World Trade Organization (WTO) acknowledge all the principles and objectives of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and understand that nothing in this Treaty affects the provisions of the TRIPS Agreement, including, but not limited to, the provisions relating to anti-competitive practices.

Article 2

Definitions

For the purposes of this Treaty:

- (a) "performers" are 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 folklore³;
- (b) "audiovisual fixation" means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device⁴;
- (c) "broadcasting" means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (d) "communication to the public" of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, "communication to the public" includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.

³ **Agreed statement concerning Article 2(a):** It is understood that the definition of "performers" includes those who perform a literary or artistic work that is created or first fixed in the course of a performance.

⁴ **Agreed statement concerning Article 2(b):** It is hereby confirmed that the definition of "audiovisual fixation" contained in Article 2(b) is without prejudice to Article 2(c) of the WPPT.

Article 3
Beneficiaries of Protection

- (1) Contracting Parties shall accord the protection granted under this Treaty to performers who are nationals of other Contracting Parties.
- (2) Performers who are not nationals of one of the Contracting Parties but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.

Article 4
National Treatment

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and the right to equitable remuneration provided for in Article 11 of this Treaty.
- (2) A Contracting Party shall be entitled to limit the extent and term of the protection accorded to nationals of another Contracting Party under paragraph (1), with respect to the rights granted in Article 11(1) and 11(2) of this Treaty, to those rights that its own nationals enjoy in that other Contracting Party.
- (3) The obligation provided for in paragraph (1) does not apply to a Contracting Party to the extent that another Contracting Party makes use of the reservations permitted by Article 11(3) of this Treaty, nor does it apply to a Contracting Party, to the extent that it has made such reservation.

Article 5 Moral Rights

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:

- (i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and
- (ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed⁵.

⁵ **Agreed statement concerning Article 5:** For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

Article 6
Economic Rights of Performers in their Unfixed Performances

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
- (ii) the fixation of their unfixed performances.

Article 7
Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form⁶.

⁶ **Agreed statement concerning Article 7:** The reproduction right, as set out in Article 7, and the exceptions permitted thereunder through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.

Article 8
Right of Distribution

- (1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.
- (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer⁷.

Article 9
Right of Rental

- (1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.
- (2) Contracting Parties are exempt from the obligation of paragraph (1) unless the commercial rental has led to widespread copying of such fixations materially impairing the exclusive right of reproduction of performers⁸.

⁷ **Agreed statement concerning Articles 8 and 9:** As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

⁸ **Agreed statement concerning Articles 8 and 9:** As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

Article 10
Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 11
Right of Broadcasting and Communication to the Public

(1) Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.

(2) Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.

(3) Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

Article 12
Transfer of Rights

(1) A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the

contrary between the performer and the producer of the audiovisual fixation as determined by the national law.

(2) A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.

(3) Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.

Article 13

Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer⁹.

⁹ **Agreed statement concerning Article 13:** *The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable mutatis mutandis also to Article 13 (on Limitations and Exceptions) of the Treaty.*

Article 14 **Term of Protection**

The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

Article 15 **Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances, which are not authorized by the performers concerned or permitted by law^{10,11}.

¹⁰ **Agreed statement concerning Article 15 as it relates to Article 13:** It is understood that nothing in this Article prevents a Contracting Party from adopting effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article 13, where technological measures have been applied to an audiovisual performance and the beneficiary has legal access to that performance, in circumstances such as where appropriate and effective measures have not been taken by rights holders in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party's national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, it is further understood that the obligations under Article 15 are not applicable to performances unprotected or no longer protected under the national law giving effect to this Treaty.

¹¹ **Agreed statement concerning Article 15:** The expression "technological measures used by performers" should, as this is the case regarding the WPPT, be construed broadly, referring also to those acting on behalf of performers, including their representatives, licensees or assignees, including producers, service providers, and persons engaged in communication or broadcasting using performances on the basis of due authorization.

Article 16 **Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of performances fixed in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the performer, the performance of the performer, or the owner of any right in the performance, or information about the terms and conditions of use of the performance, and any numbers or codes that represent such information, when any of these items of information is attached to a performance fixed in an audiovisual fixation¹².

Article 17 **Formalities**

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

¹² **Agreed statement concerning Article 16:** *The Agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WCT is applicable mutatis mutandis also to Article 16 (on Obligations concerning Rights Management Information) of the Treaty.*

Article 18
Reservations and Notifications

- (1) Subject to provisions of Article 11(3), no reservations to this Treaty shall be permitted.
- (2) Any notification under Article 11(2) or 19(2) may be made in instruments of ratification or accession, and the effective date of the notification shall be the same as the date of entry into force of this Treaty with respect to the Contracting Party having made the notification. Any such notification may also be made later, in which case the notification shall have effect three months after its receipt by the Director General of WIPO or at any later date indicated in the notification.

Article 19
Application in Time

- (1) Contracting Parties shall accord the protection granted under this Treaty to fixed performances that exist at the moment of the entry into force of this Treaty and to all performances that occur after the entry into force of this Treaty for each Contracting Party.
- (2) Notwithstanding the provisions of paragraph (1), a Contracting Party may declare in a notification deposited with the Director General of WIPO that it will not apply the provisions of Articles 7 to 11 of this Treaty, or any one or more of those, to fixed performances that existed at the moment of the entry into force of this Treaty for each Contracting Party. In respect of such Contracting Party, other Contracting Parties may limit the application of the said Articles to performances that occurred after the entry into force of this Treaty for that Contracting Party.
- (3) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.
- (4) Contracting Parties may in their legislation establish transitional provisions under which any person who, prior to the entry into force of this Treaty, engaged in lawful acts with respect to a performance, may

undertake with respect to the same performance acts within the scope of the rights provided for in Articles 5 and 7 to 11 after the entry into force of this Treaty for the respective Contracting Parties.

Article 20

Provisions on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

Article 21

Assembly

(1) (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2) (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 23(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3) (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(4) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

(5) The Assembly shall endeavor to take its decisions by consensus and shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 22

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 23
Eligibility for Becoming Party to the Treaty

- (1) Any Member State of WIPO may become party to this Treaty.
- (2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
- (3) The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 24
Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 25
Signature of the Treaty

This Treaty shall be open for signature at the headquarters of WIPO by any eligible party for one year after its adoption.

Article 26
Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 eligible parties referred to in Article 23 have deposited their instruments of ratification or accession.

Article 27
Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (i) the 30 eligible parties referred to in Article 26, from the date on which this Treaty has entered into force;
- (ii) each other eligible party referred to in Article 23, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

Article 28
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 29
Languages of the Treaty

- (1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
- (2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 30
Depositary

The Director General of WIPO is the depositary of this Treaty.

I hereby certify that the foregoing is a true copy of
the original text, in English, of the Beijing Treaty on
Audiovisual Performances, adopted on June 24, 2012.



Francis Gurry
Director General
World Intellectual Property Organization

July 17, 2015

