



# HOW CAN AFRICAN COUNTRIES BENEFIT FROM THE BEIJING TREATY?

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# WHY HAVE A SEPARATE TREATY FOR THE AUDIO VISUAL PERFORMANCES?

- The WIPO Performances and Phonograms Treaty (WPPT) provides for protection of performers in relation to the sound recordings (phonograms)
- It does not cover the performers of audio visual works
- It was necessary to have an international instrument that specifically covered the protection of the unfixed and fixed audio visual performances



# Protection of Audio Visual Performances

- The internet has changed the way we create, disseminate and use creative works
- Digitisation of works has made the dissemination and access easier and cheaper
- Convergence in technologies; computers, telecommunications and broadcasting has had a major impact on the creative industries
- It has brought about challenges and opportunities in equal measure



- The internet provides a wider platform for the dissemination of audio visual works
- The increased band width, with the high speed internet has made it easier to upload and download works
- Important to protect the audio visual fixation of the performances
- There is need to ensure that due to the “borderless” nature of the internet, these works are protected

The Beijing Treaty seeks to address this gap and this is clearly stated in the preamble:

- (a) To develop and maintain the protection of performers in their audio visual performances
- (b) Need for a specific international protection of performers for their fixed and unfixed performances
- (c) Need to introduce new international rules in order to provide adequate social, economic, cultural and technological developments



(d) Recognising the profound impact of the Development and convergence of information and communication technologies on the production and use of audio visual performances

(e) Taking into account the need to maintain a balance

Between the rights of the performers in their audio

Visual performances and the larger public interest, Particularly education, research and access to Information



- It is important to note that the protection under the Beijing Treaty does not extend to the underlying copyright works
- Who are the performers whose performances are covered under this treaty?



# Rights Granted

- (a) Moral Rights which are independent of the economic rights
- (b) Economic rights in unfixed performances include the exclusive rights in relation to the broadcasting and communication to the public and fixation of their unfixed performances





# **Economic Rights in the Audio Visual Fixations**

- (a) Right of Reproduction
- (b) Right of Distribution
- (c) Right of Rental
- (d) Right of making available of fixed performances
- (e) Right of Broadcasting and Communication to the Public



## **Transfer of rights**

- Law may, independent of the transfer of the exclusive rights provide for the right to receive royalties or equitable remuneration for any use of the performance

## **Exceptions and Limitations**

- Exceptions similar to those offered for the protection of performers
- The three step test;



# Role of the Beijing Treaty in Developing Countries

- (a) Performers can enjoy the protection of their works in other countries
- (b) Provides for the basis of collective management of their rights for the performers in their audio visual performances
- (c) The performer is entitled to royalties or equitable remuneration for the use of the performances
- (d) Can be used to generate income from the use of the works especially over the digital networks





<http://media0.takealot.com/covers/30051353/culture-zoom.jpg?1383120351>





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