

# Introduction to the Beijing Treaty

on Audiovisual  
Performances

Jørgen Blomqvist  
Honorary Professor  
Centre for Information and  
Innovation Law

UNIVERSITY OF COPENHAGEN



# Introduction

- Art. 19 of the Rome Convention: after the performer has consented to the fixation of his/her performance in an audiovisual recording, the minimum rights shall no longer apply
- Art. 2(c) of the WPPT: "'fixation' means the embodiment of sounds ..."  
i.e. not rights granted regarding audiovisual fixations
- Diplomatic conference in December 2000, agreement on all substantive provisions, except for draft Art. 12 on transfer of rights from performers to producers
- Subsequent collection of information and informal consultations
- Diplomatic conference in Beijing adopted the Beijing Treaty on Audiovisual Performances in June 2012
- Without the Treaty – no international protection of performances recorded in audiovisual media
- Different national systems around the world complicate exchange of films

# Beneficiaries

- Performers, defined as “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 folklore” (Article 2(a))
- Nationals of other Contracting Parties and persons having their habitual residence in other Contracting Parties (Article 3)

# National treatment (Article 4)

- Confined to the exclusive rights accorded to own nationals with regard to the exclusive rights granted in the Treaty and the right of equitable remuneration provided for in Article 11
- Possibility to limit extent and term in accordance with level of protection in right owners' own country as regards broadcasting and communication to the public
- Possibility to limit extent in accordance with level of protection in right owner's own country if that country does not grant retrospective protection (Article 19(2))
- - High degree of flexibility

# Moral rights (Article 5)

- Right to be identified as performer
  - except where omission is dictated by the manner of use
- Right to object to distortion, mutilation or other modification of performance that would be prejudicial to reputation, taking due account of the nature of audiovisual fixations.
  - no reference to “other derogatory action in relation to” the performance
- Agreed statement: Modifications made in the normal course of exploitation 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. Infringements must be objectively prejudicial to the performer’s reputation in a substantial way. Mere use of new or changed technology or media does not as such amount to modification.

# Economic rights

- Unfixed performances (Article 6):
  - broadcasting and communication to the public, except where performance is already broadcast
  - fixation
- Fixed performances:
  - direct or indirect reproduction in any manner or form (Article 7)
  - distribution of the original and copies through sale or other transfer of ownership (Article 8)
  - rental, as determined in national law (with “material impairment of reproduction right” test) (Article 9)
  - making available (Article 10)
  - optional right of broadcasting and communication to the public (Article 11)

## Transfer of rights (Article 12)

- National law may include presumptions of transfer of exclusive right of authorization to the producer of the audiovisual fixation, subject to contract to the contrary, as determined by national law
- National law may require that consent to its national fixations must be in writing and signed
- Independently, national law may provide for royalties or an equitable right of remuneration for use covered by such presumptions

## Limitations and exceptions

- Same limitations as under copyright in literary and artistic works; must be confined to (1) certain special cases which (2) do not conflict with a normal exploitation of the performance and (3) do not unreasonably prejudice the legitimate interests of the performer

## Term of protection

At least 50 years after the end of the year in which the performance was fixed



# Technological protection measures (TPM)

- Protection against circumvention of TPM, but agreed statement clarify that effective and necessary measures may be adopted to ensure that a beneficiary may enjoy limitations provided for in national law, also when technological measures have been applied, when the beneficiary has legal access to the 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. TPM measures are not applicable to performances in the public domain.
- TPM also refers to measures taken by those acting on behalf of performers, including representatives, licensees and assignees, including producers, service providers and authorized parties broadcasting or communicating to the public.

# Rights management information (RMI)

- Protection against removal or alteration of electronic RMI without authority
- Protection against unauthorized distribution, import for distribution, broadcast, communication or making available to the public of performances or copies from which RMI has been removed or altered without authority

