



# The Beijing Treaty on Audiovisual Performances

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# Background of the BTAP



# What are the rights granted to Audiovisual Performers?

# Rome Convention (Article 19)

## *cut-off provision*

*“Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio–visual fixation, [Article 7](#) shall have no further application.”*

# History

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions(1996);
- The Diplomatic Conference on the Protection of Audiovisual Performances (2000);
- 22th session of the Standing Committee on Copyright and Related Rights (2011).

Diplomatic Conference  
on the Protection  
of Audiovisual Performances

June 20 to 26, 2012  
Beijing, China

保护音像表演外交会议  
2012年6月20日至26日  
中国北京

Organized by  
the World Intellectual Property Organization (WIPO)

Hosted by  
the National Copyright Administration of China  
and the People's Government of Beijing Municipality  
the People's Republic of China

主办方：世界知识产权组织

承办方：中华人民共和国国家版权局  
中华人民共和国北京市人民政府



# Peculiar Diplomatic Conference

Narrow mandate

Adopt:

- the 19 articles provisionally adopted at the 2000 Dip. Conf.
- the new Article 12 agreed to by consensus at session SCCR/22

Negotiate:

- Three (*actually four*) additional Agreed Statements to be drafted in relation to Articles 1, 2, and 15, respectively, to address specific concerns raised by Member States;
- one additional clause in the Preamble recognizing the importance of the Development Agenda;
- the administrative and final provisions;

# The Beijing Treaty on Audiovisual Performances (BTAP)

Follows the WPPT model:

- Right of Reproduction (7)
- Right of Distribution (8)
- Right of Rental (9) (more similar to TRIPS model)
- Right of Making Available (10)
- Limitations and Exceptions (13)
- Term of Protection (14)
- Technological Protection Measures (15)
- Rights Management Information (16)
- Enforcement Provisions (20)



# BTAP-specific Provisions

# Preamble

## Clause II

*“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, (..)”*

# Relations with other Treaties (Article 1)

## Non derogation clause

*Art. 1(3) This Treaty shall not have any connection with treaties other than the WIPO Performances and Phonograms Treaty, nor shall it prejudice any rights and obligations under any other treaties.*

# Relations with other Treaties (Article 1)

“Agreed statement concerning Article 1:

*It is understood that nothing in this Treaty affects any rights or obligations under the WIPO Performances and Phonograms 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.*

# Relations with other Treaties (Article 1)

“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.”*

## Definitions (Article 2)

(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 expression of folklore.

“Agreed statement: *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.*”

- Improvisations included
- “extras” not included

## Definitions (Article 2)

(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 device;

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

*(Article 2 (b) WPPT “phonogram means the fixation of sounds of a performance or other sound, or representation of sounds, other than in the form of a fixation incorporated in a cinematographic or audiovisual work”)*

# National Treatment (Article 4)

(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.

(= TRIPS, WPPT)

Material reciprocity allowed in certain cases (Articles 11(2), 11(3), 19(2)).



# Moral Rights (Article 5)

## Paternity (= WPPT)

(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;

Bruce Wayne	CHRISTIAN BALE
Joker	HEATH LEDGER
Harvey Dent	AARON ECKHART
Alfred	MICHAEL CAINE
Rachel	MAGGIE GYLLENHAAL
Gordon	GARY OLDMAN
Lucius Fox	MORGAN FREEMAN
Ramirez	MONIQUE GABRIELA CURNEN
Wuertz	RON DEAN
Scarecrow	CILLIAN MURPHY
Lau	CHIN HAN
Mayor	NESTOR CARBONELL
Maroni	ERIC ROBERTS
Chechen	RITCHIE COSTER
Engel	ANTHONY MICHAEL HALL

# Moral Rights (Article 5)

## Integrity

(ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation (not honor), taking due account of the nature of audiovisual fixations.

“Agreed statement: exempts modifications in the normal course of exploitation (e.g. editing, compression, dubbing, formatting); highlights the need for such changes to be objectively prejudicial to performers’ reputation in a substantial way.”

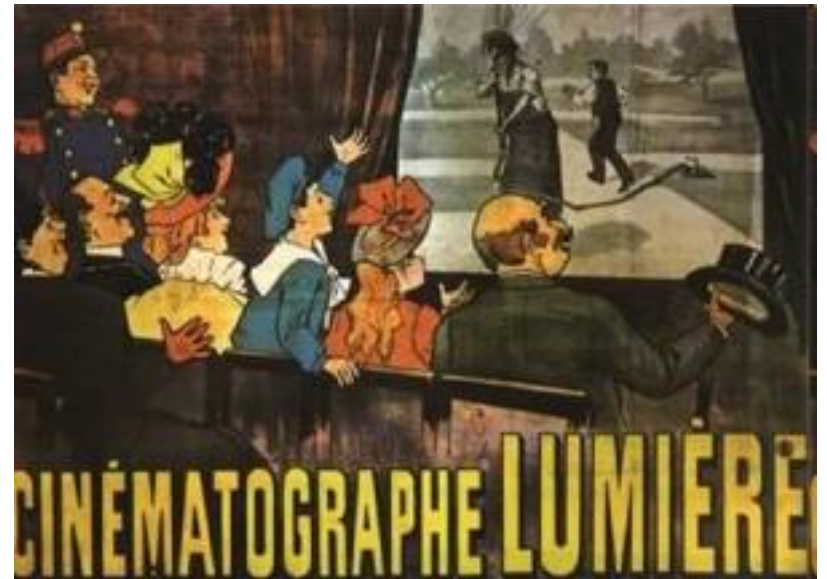
# Broadcast and Communication to the Public of Fixed Performances (Article 11)

Exclusive right to authorize;

Reservations are allowed to establish a right to equitable remuneration + “Contracting Parties may also declare that they set conditions in their legislation for the exercise of the right to equitable remuneration”;

More limiting reservations are possible, but material reciprocity would apply.

# Transfer of Rights



# Article 15 “Technological Protection Measures”

“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.”*

# Notes on Agreed Statement

- “effective and necessary measures” (when necessary / necessary effective measures);
- Priority of voluntary measures;
- Legal access for the beneficiary is a requirement;
- “,in accordance with Article 13,” within commas may extend application of the three-step-test;
- Open exclusion of public domain;
- Importance of post-adoption statements (v. Switzerland “no obligation to provide for any procedure or to establish any organization in order to ensure that beneficiary may enjoy...”; Republic of Korea and reaction of the United States of America and European Union clarifying it cannot affect the interpretation of WCT and WPPT).

# Application in time (Article 19)

- **General rule is the “retrospective protection”** applicable to all protected subject matter, not fallen in the public domain;
- A reservation is possible to grant protection (economic rights Articles from 7 to 11) only to performances not yet fixed at the time of the entry into force of the Treaty.



# Administrative Provisions and final clauses

- Article 26: entry into force three months after 30 eligible parties have deposited their instruments of ratification or accession.

- Article 23: Eligibility for Becoming Party

*“(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.”*



# Signatories (74) of the Treaty

Austria, Belgium, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, El Salvador, Estonia, European Union, Finland, France, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Haiti, Honduras, Hungary, Indonesia, Ireland, Italy, Jamaica, Jordan, Kenya, Luxembourg, Madagascar, Mali, Mauritania, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Namibia, Netherlands, Nicaragua, Peru, Poland, Qatar, Republic of Moldova, Romania, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovenia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Togo, Tunisia, Uganda, United Kingdom, United States of America, Zambia, Zimbabwe

# Ratifications and Accession (19)

Algeria, Botswana, Burkina Faso, Chile, China, Democratic People's Republic of Korea, El Salvador, Gabon, Japan, Nigeria, Qatar, **Republic of Moldova**, Russian Federation, Saint Vincent and the Grenadines, Samoa, Slovakia, Syrian Arab Republic, Tunisia, United Arab Emirates (19).

*Why is the Beijing Treaty  
important?*

# Global Market

- Modern national legislation is essential, however Treaties are the only way to protect your Local Content abroad;
- Treaties provide your Nationals with economic rights to monetize their creativity in the global market;
- The Internet makes works immediately accessible everywhere; a regulation providing a level playing field for national creators and industry is essential.

# Advantages of adhering to BTAP

- Regulating an increasingly important sector - Audiovisual productions are more and more important and popular, especially on TV and in the digital productions. (e.g. Music sector, **videoclips, recordings of concerts**).
- The development of performers' rights could lead to the introduction or consolidation of **performers' organizations**.
- Strengthening the local audiovisual industry and promoting your own cultural diversity.

# FAQs

# How do you become a member?

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*To become member of a treaty, a country needs to deposit an instrument declaring its intention to join. This instrument must be signed alternatively by: the Head of State, the Head of Government or the Minister of Foreign Affairs.*

*WIPO can provide model instrument and information on process upon request*



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# Is it necessary to change national legislation prior to adhering to a treaty?

*Changing national legislation to ensure (in advance) compliance with treaty provisions is not a requirement to become member; as WIPO does not conduct a review of the legislation for this purpose.*

*It is a matter of national regulation; however it is clear that ratifying/acceding to a treaty creates an international obligation to comply with its provisions.*

*BTAP allows for a high degree of flexibility.*

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*As part of its mission, WIPO is always ready to review national legislation in light of treaty provisions, and to propose draft language on a confidential and non-binding basis.*

*WIPO's technical assistance is demand-driven. WIPO acts on the basis of official requests received by Member States.*



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