

## **Beijing Treaty on Audiovisual Performances**

### **Assembly**

**First (1<sup>st</sup> Ordinary) Session  
Geneva, September 21 to 25, 2020**

#### REPORT

*adopted by the Assembly*

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/61/1): 1, 2, 3, 4, 5, 6, 8, 10(ii), 11, 17, 21 and 22.
2. The reports on the said items, with the exception of item 17, are contained in the General Report (document A/61/10).
3. The report on item 17 is contained in the present document.
4. Mr. Yan Xiaohong (China), Chair of the Assembly, presided over the meeting.

## ITEM 17 OF THE CONSOLIDATED AGENDA

### BEIJING TREATY ON AUDIOVISUAL PERFORMANCES (BTAP)

5. The Chair thanked members for electing him as the first Chair of the Beijing Treaty Assembly. The Chair assured that he would live up to their expectations, respect the equal rights of all Member States, and guarantee the efficiency of the work. The inaugural session of the new Assembly signified a momentous occasion for WIPO and the progress of intellectual property (IP). The Beijing Treaty was adopted in Beijing in June 2012. Following the accession of the 30<sup>th</sup> contracting party, it entered into force on April 28, 2020. The Beijing Treaty was designed to protect the rights of audiovisual performers and its entry into force would support audiovisual performers such as television and film actors, musicians and dancers. Many of them lived in precarious economic circumstances, particularly with performances cancelled due to the COVID-19 pandemic. The Treaty would give performers more international protection of their rights, expand their performance-related rights, and allow them to receive more income from that protection. Progress was very much welcomed by the audiovisual performers. The Chair encouraged other WIPO Member States to join the Beijing Treaty in order to continue supporting the work of audiovisual performers.

6. The Director General emphasized the instrumental role the Chair of the Beijing Treaty Assembly had played in concluding the Beijing Treaty text when he was the Vice-Minister and Chair of the Beijing Treaty Diplomatic Conference in 2012. The Director General stated that he was delighted to witness the entry into force of the Beijing Treaty and emphasized what an important role the entry into force of a new Treaty was in the life of the Organization. As had already been outlined by the Chair, the Beijing Treaty was extremely important in respect of the substantive provisions it had introduced into international law. It represented the conclusion of negotiations that began in 1996, as part of the original agenda for the diplomatic conference that led to the conclusion of the two WIPO Internet Treaties in 1996. Those discussions were revisited again in 2000 in a diplomatic conference, but without success. It was a great breakthrough in 2012 to see the new Beijing Treaty concluded successfully thanks to the efforts of all Member States. The Director General thanked the Chinese authorities in particular for their role in the Beijing Diplomatic Conference, recalling vividly the warmth of the welcome, the cooperation with all delegations and the short time required to reach a successful conclusion. All of the Chinese authorities deserved the thanks of the Assembly, including the National Copyright Administration of China, the Minister at the time, Vice Minister Yan (the first Chair of the Beijing Treaty Assembly), the Beijing Municipality, and the Mayor of Beijing. The Director General noted that it was another historic occasion, the first WIPO Assembly with a remote Chair, and congratulated the Chair on another pioneering role.

#### Rules of Procedure

7. Discussions were based on document BTAP/A/1/1.

8. The Secretariat highlighted a few important aspects of document BTAP/A/1/1, entitled "Rules of Procedure." The provisions of the proposed rules of procedure were based on the General Rules of Procedure of WIPO, with some modifications that were made in consultation with the Office of the Legal Counsel to take into account specific aspects of the Beijing Treaty. The text also incorporated provisions relating to extraordinary sessions and to the quorum, two standard provisions in the rules for other assemblies of WIPO-administered treaties.

9. The Beijing Treaty Assembly considered and adopted, as its own Rules of Procedure, the WIPO General Rules of Procedure with Rules 7, 9 and 25 amended as provided in paragraphs 8, 11 and 13 of document BTAP/A/1/1, as well as with the two additional special Rules of Procedure as provided in paragraph 14 of the same document.

## Status of the Beijing Treaty

10. Discussions were based on document BTAP/A/1/2.

11. The Secretariat listed the initial 30 contracting parties of the Beijing Treaty that made the entry into force possible and announced that, since the entry into force, four additional countries had acceded to the Treaty: the Central African Republic, the Republic of Korea, Switzerland and Vanuatu. The Secretariat had organized numerous national, subregional, and regional events to promote the Treaty and to facilitate its implementation. Furthermore, legal support activities were also being conducted nationally, and the Secretariat was endeavoring to respond to all Member States' requests. The Secretariat was delighted to work with Assembly Members as well as with Member States that planned to ratify or accede to the Beijing Treaty. The Secretariat attached great importance to cooperation with partners and stakeholders helping to promote that important Treaty whether during the ratification, accession, or implementation phases. Given the exceptional circumstances faced by the performing arts sector as a whole, and especially those in the audiovisual sector who had been affected by the consequences of the pandemic, the Beijing Treaty was more relevant than ever. In that context, the Secretariat would do its utmost to raise awareness about and promote the benefits of the Treaty. The Secretariat thanked the National Copyright Administration of China as well as the Permanent Mission of China in Geneva and other international organizations in Switzerland for its very interesting exhibit on the development of the Beijing Treaty offered during the Assembly.

12. The Delegation of Zimbabwe stated that the Government of Zimbabwe deposited its instrument of ratification of the Beijing Treaty on Audiovisual Performances in 2019 because the protection of the rights of performers and artists was central to the development of the national arts sector. Efforts were underway to amend the domestic legislation to incorporate the provisions of the Treaty in the Copyright Act. The Delegation thanked WIPO for providing an expert to assist with legislative alignment and noted the need for assistance to raise awareness among artists on the benefits of the Treaty. Thirty-three Member States had thus far ratified the Treaty and the Delegation urged more Member States to accede to the Treaty. The Beijing Treaty should be added to the many successes and the legacy of the Director General, Mr. Francis Gurry. The Delegation commended the Secretariat for the promotion activities for the Treaty and urged continued work on raising awareness on the importance of the Treaty to artists.

13. The Delegation of El Salvador commended the Secretariat for all the work conducted remotely to support Member States in promoting the adoption and implementation of the Beijing Treaty. Despite the effects of the COVID-19 pandemic, people adapted and IP was there to support innovators, artists, and entrepreneurs as well as small and medium-sized enterprises (SMEs). IP helped to support everyone during long weeks and months of confinement, including with technologies to support the delivery of supplies to houses, continued contact with loved ones, and the ability to stay informed, as well as to work and pursue academic activities. The Delegation asked what would have happened without access to films, television series and music during such unprecedented times. The entry into force of the Beijing Treaty during the period was appropriate as an historic moment to protect and thank performers. Within the strategic plans and programs of El Salvador, protecting and promoting audiovisual performances was a key issue. El Salvador would continue to support audiovisual performers, because they were vital to the development of the country, particularly during the economic crisis caused by the pandemic. The Delegation stated that it would continue to support the protection of audiovisual performers at the multilateral level.

14. The Delegation of the Russian Federation, speaking on behalf of the Group of Central Asian, Caucasus, and Eastern European Countries (CACEEC), welcomed the entry into force of the Beijing Treaty and the expansion of the protection available to audiovisual performers. The Group believed that the Treaty was essential given the situation at the time, during which many

performers had to work virtually. The Beijing Treaty made it possible to adapt protection of related rights to the digital environment and thus to encourage the development of the creative industries, which was especially important during that difficult period. The Group supported the adoption of the Rules of Procedure for the Beijing Treaty Assembly. The Group hoped the Beijing Treaty would develop further with additional accessions, and the Group would promote the Treaty within its region.

15. The Delegation of the United Kingdom, speaking on behalf of Group B, welcomed the progress made with respect to the Beijing Treaty. The Group encouraged the Secretariat to continue its activities, including legislative assistance to support the implementation of the Beijing Treaty as well as other WIPO international copyright and related rights treaties.

16. The Delegation of China congratulated the Assembly on the entry into force of the Beijing Treaty and appreciated the efforts of WIPO and the Member States. The Delegation noted that, in the eight years from the conclusion of the Beijing Diplomatic Conference to the entry into force, the audiovisual industry had continued to enrich people's experiences and had strengthened its role in the economic development of countries. This was particularly true during the pandemic, when people were isolated at home and spent more time watching audiovisual works online. The Delegation stated that to be prosperous, the audiovisual industry required a good copyright protection system, and the conclusion and entry into force of the Beijing Treaty was good for the development of the international copyright system. The Delegation expected more Member States to attach importance to the Beijing Treaty in improving the protection of performers' rights, and to ratify or accede to the Treaty, which would make it play a greater role. The Delegation indicated that as the Treaty had been concluded in Beijing, China would continue to strengthen its communication and cooperation with WIPO and all Member States in order to make more contributions to the Beijing Treaty.

17. The Delegation of Botswana noted that it was a celebratory moment to be part of the first Assembly after the Beijing Treaty had entered into force. Botswana had made an instrumental ratification on November 20, 2013, as the second Member State to become a contracting party to the Beijing Treaty, and encouraged others to join so that they could improve the livelihood of performers. The Delegation thanked WIPO for the work carried out in the promotion of the Beijing Treaty and hoped to see the work of WIPO growing in that area. The Delegation announced that Botswana had received input from WIPO for implementation of the Treaty as the country was in the process of amending its Copyright and Neighbouring Rights Act. The Delegation noted that it was eager to work with the Secretariat and other Member States to ensure that the Beijing Treaty was one of the successes of the Organization.

18. The Delegation of Indonesia stated that it was one of the signatories of the Treaty. Indonesia's ratification reflected its belief in a balanced and effective copyright and related rights regime. Indonesia's ratification of the Beijing Treaty enabled the Treaty to enter into force, ensuring economic and moral rights protection for performers throughout the world. With the focus on the creative economy in Asia, the Delegation believed in the importance of protecting the economic and moral rights of performers. Performances were sources of employment and income that supported long-term economic development. Empowering performers was also important because of their contribution to the preservation and development of culture. Without performers performing traditional and modern performing arts, the country would not flourish. The Delegation noted that the Beijing Treaty was especially important because it was the first time that the IP rights of performers in their performances were acknowledged internationally. That was a landmark achievement and one that officially ended discrimination dating from the early 1960s in the protection of audiovisual performances in countries around the world. The implementation of the Beijing Treaty would empower performers around the world, as the 1961 Rome Convention only gave performers the right to oppose the use of their performances. The Beijing Treaty gave performers a comprehensive list of exclusive rights, including the right of making available on demand. In light of the latest technological developments and the digital

distribution of creative works, Indonesia felt the need to ensure that its performers benefitted from the same rights and protections compared to other performers in the world. The Beijing Treaty made this possible and the Delegation welcomed its entry into force.

19. The Delegation of the Republic of Korea expressed support and willingness to work for the expansion of the Beijing Treaty membership in recognition of the significance of protecting the rights of audiovisual performers at the international level. The Delegation stated that the Republic of Korea acceded to the Beijing Treaty in April 2020, and the Treaty entered into force for the Republic of Korea in July 2020. As a party to the Treaty, the Republic of Korea would continue its commitment to the implementation of the Beijing Treaty. In addition, the Delegation indicated that the Republic of Korea would further promote cooperation between parties and closely monitor the fulfillment of responsibilities for the implementation of the Treaty.

20. The Delegation of Switzerland endorsed the statement made by the Delegation of the United Kingdom on behalf of Group B. The Delegation reported that on February 11, 2020, Switzerland became the 31<sup>st</sup> WIPO Member State to ratify the Beijing Treaty. That testified to the importance Switzerland attached to the protection of performers not only nationally but also internationally. The Delegation urged other Member States of WIPO to ratify the Treaty, which was a major copyright treaty.

21. The Delegation of Japan welcomed the fact that the number of contracting parties to the Beijing Treaty had steadily increased, enabling the Treaty to finally come into force. The Delegation extended gratitude to the Secretariat and all concerned for their efforts to promote the Beijing Treaty and invited Member States to accede to it. The Delegation recognized that the Treaty was important in order to grant appropriate rights to audiovisual performers in an increasingly digitized and networked society. The Delegation hoped that more Member States would accede to the Beijing Treaty and that the rights of audiovisual performers would be protected globally.

22. The Delegation of the Russian Federation associated itself with the statement of the CACEEC Group. The Delegation was delighted to see the entry into force of the Beijing Treaty, to which the Russian Federation acceded back in 2015. The Beijing Treaty significantly expanded the possibilities for legal protection to be afforded to audiovisual performances and created a more clear-cut international framework for the protection of rights that made it possible to reach a new level of protection for performers. The Delegation stated that it was equally important that the Beijing Treaty ensured for the first time protection for performers' rights in the digital sphere. It was thus a step forward in the development of the system of legal protection for copyright and related rights. The Delegation did not object to the adoption of the Assembly's Rules of Procedure, based on the General Rules of Procedure of WIPO with the proposed amendments. The Delegation hoped to see a further increase in the number of Member States ratifying or acceding to the Treaty.

23. The Delegation of Nigeria conveyed its deep gratitude to the Director General and the Secretariat for their strenuous efforts in convening the Assemblies and ensuring the innovative continuation of WIPO work during the COVID-19 period. The Delegation extended special thanks to the Director General for his hard work and leadership over the previous 12 years. The Delegation welcomed the entry into force of the Beijing Treaty. The significance of the Treaty in protecting the IP rights of audiovisual performers could not be overstated. It brought performers under the international copyright framework and clearly defined their rights. That clarity was particularly important in the digital age, when the boundaries of IP rights were sometimes blurred. The Delegation was pleased with the potential economic empowerment that the Treaty brought to performers. The Delegation commended all Member States for their commitment, which had enabled the Treaty to come into force, thus enhancing the common good through multilateralism. As Nigeria was a nation widely recognized as one of the three most prolific film producers in the world, the Delegation noted that the Beijing Treaty was a welcome

development to its citizens involved in the audiovisual industry. Nigeria was committed to ensuring that those performers would receive all the rights and benefits of the Treaty. The commitment was underscored by the ongoing modernization of the IP system. The Delegation noted that Nigeria was richly endowed with creative talent and was a major player in all sectors of the copyright industries. The creative sector remained a major factor in economic growth, with experts estimating the potential annual revenue and earnings from the Nigerian film industry to be between 250 and 400 million U.S. dollars. That represented only a fraction of the contribution of the entire creative industry sector to the nation's GDP. In recognition, the Government had provided the sector with the necessary fiscal, infrastructural and institutional support, and the current Copyright Act of Nigeria already made provisions for the protection of performers. However, the new Treaty imposed additional obligations that would require amendments to the present provisions. The Delegation explained that the Government's concern for audiovisual performers had been addressed in the draft copyright bill that had been recently considered and approved by the Federal Government. Those provisions and other far reaching provisions of the proposed bill would strengthen the protection available and enhance the revenue potential of the creative sector in the digital environment. The Delegation reaffirmed Nigeria's commitment to abide by the terms of the Beijing Treaty and looked forward to engaging with WIPO Member States, audiovisual performers and all the other stakeholders to ensure that the Treaty worked for the benefit of all.

24. The Beijing Treaty Assembly took note of the "Status of the Beijing Treaty" (document BTAP/A/1/2).

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