

EXPLANATORY MEMORANDUM ON THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES

Title of Agreement:

Beijing Treaty on Audiovisual Performances

Command Paper Number: 8699

Subject Matter

1. The purpose of the Treaty is to establish a new set of minimum international standards for the protection and remuneration of audiovisual performers (eg actors, dancers, singers and musicians) whose performances are incorporated in an audiovisual fixation (eg an actor's performance in a film, television programme or a DVD). The Treaty is the first multilateral instrument to be adopted in the area of copyright since 1996 and complements earlier agreements including the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention)¹ and the WIPO Performances and Phonograms Treaty (WPPT).²
2. The Treaty updates the protection of audiovisual performers at the international level and modernises this protection by recognising performers' rights in the digital environment. It is designed to provide a clearer legal basis for the international use of audiovisual productions and to safeguard the rights of performers against the unauthorised use of their performances in audiovisual media, such as television, film and audio. It also addresses the disparity in the international framework by providing actors and other performers with equivalent rights to those available to musicians and recording artists under the WIPO WPPT adopted in 1996. The provisions of the Treaty are similar to those of the WPPT which the EU and the UK signed and ratified.
3. Under the provisions of the Treaty, contracting parties are required to accord protection to audiovisual performers on a national treatment only basis as regards the rights specifically covered by the Treaty, and not in respect of any additional rights granted in national law or where other contracting parties have made reservations in relation to the rights covered by the Treaty (Articles 4 and 11).
4. The Treaty requires performers to be granted moral rights as regards live performances or performances fixed in audiovisual fixations. These include the right to be identified as the performer and the right to object to any distortion, mutilation or other modification of the performance that would be prejudicial to the performer's reputation (Article 5). Moral rights are intended to protect the personality of the performer rather than his or her economic interests.

¹ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41998A0126\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41998A0126(02):EN:HTML)

² http://www.wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html

5. The Treaty also grants performers exclusive rights with respect to their live performances and performances fixed in audiovisual fixations. It requires performers to have exclusive rights to authorise the broadcasting and communication to the public of their live performances, and to authorise the recording of their live performances (Article 6). It also requires that performers are granted exclusive rights to authorise the direct or indirect reproduction of their performances fixed in audiovisual fixations (Article 7), their distribution (Article 8) and the commercial rental to the public of the original and copies of the performances (even after authorising their distribution (Article 9)). Performers are granted the exclusive right of authorising the making available to the public of recordings of their audiovisual performances electronically (eg the on-line downloading of a film incorporating their performance) in such a way that members of the public may access them from a place and at a time individually chosen by them (Article 10) and the right to authorise the broadcasting and communication to the public of their performances (Article 11). Contracting parties can replace the right provided by Article 11 by a right to equitable remuneration or may derogate from this right entirely.
6. The provision relating to the transfer of performers' rights to producers of audiovisual works (Article 12) does not impose any obligations on contracting parties. Contracting parties may provide for the same kinds of limitations or exceptions in their national legislation as they provide in respect to the protection of copyright in literary and artistic works (Article 13). The Treaty provides that term of protection granted to performers shall last until at least 50 years after the fixation of the audiovisual performance (Article 14).
7. The Treaty requires that contracting parties ensure that appropriate remedies are provided against the circumvention of technological protection measures used by performers in connection with the exercise of their rights (Article 15) and that they provide adequate and effective legal remedies against the removal or alteration of electronic rights management information attached to a performance fixed in an audiovisual fixation (Article 16). Contracting parties are also required to ensure that appropriate provisions are available in national laws for the effective enforcement of the rights covered by the Treaty (Article 20). The final part of the Treaty deals with administrative and procedural provisions. Article 23 provides that the European Union may become a party to the Treaty.

Ministerial Responsibility

8. The Secretary of State for Business, Innovation and Skills has primary responsibility for policy in respect to the Treaty and for the implementation of its provisions in the UK.

Policy Considerations

(i) General

9. The Treaty constitutes a shared agreement – some of the matters covered fall within the competence of the EU and others fall within the competence of
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Member States. The majority of the issues covered are already harmonised at EU level. However moral rights fall with the competence of Member States.

10. The Treaty represents a significant step forward in the international protection of performers' rights. The UK Government welcomes the important work that has been undertaken at WIPO and that has led to the adoption of the Treaty. The Government supports the desire for clarity in the international framework and attaches importance to a Treaty that recognises and strengthens the economic and moral rights of audiovisual performers, addresses the disparity between the protection of sound and audiovisual performances and provides for flexibility in terms of the transfer of rights from performers to producers. The UK signed the Treaty on 11 June 2013.
 11. The UK has a significant interest in the audiovisual industry, through its film and television industry whose programmes are exported worldwide, and in ensuring that its performers receive satisfactory protection in overseas markets. The Treaty could be of significant benefit to UK performers by strengthening their position in overseas markets and ensuring that protection applies to new technological methods of exploiting audiovisual performances.
 12. British performing artists (actors, singers, musicians and dancers) would like to see performers' rights and moral rights in their audiovisual performances (eg an actor's performance on film or DVD) receive the same level of international protection as is currently given to their sound performances. For their part, broadcasters and film-makers want the business certainty provided by, for example, the protection of current arrangements for the transfer of rights. The Treaty represents a good compromise in this area as it allows contracting parties to retain their current systems. In the UK, rights are usually assigned by means of standard clauses agreed contractually between the two sides (broadcasters and film-makers and their representatives on the one side and performers and their representative organisations on the other).
- (ii) *Impact of the Treaty on UK law*
13. The main legislation in the UK is the Copyright, Designs and Patents Act 1988 as amended (CDPA).³ The CDPA already provides for a range of rights - economic rights and moral rights - for performers in respect to their sound and audiovisual performances. As a result, most of the rights covered by the Treaty are already granted in UK law. However some changes would be needed before the Treaty could be ratified.
 14. The main impact would be in the area of moral rights. UK authors⁴ have enjoyed these particular rights for some time. The CDPA also provides for moral rights for performers in their live performances and in their sound

³ <http://www.legislation.gov.uk/ukpga/1988/48/contents>

⁴ 'Author' is defined in section 9 of the CDPA as the person who creates a copyright work. The CDPA provides authors and directors of films with the right to be named when a work is copied or communicated (the right of attribution – section 77), the right not to be named as the author of a work which they did not create (the right to object to false attribution – section 84), and the right to object to derogatory treatment of the work (section 80).

performances – but not in respect of performances incorporated into audiovisual fixations. Providing audiovisual performers with similar rights to those currently enjoyed by performers in their sound performances is both logical and desirable and would ensure that the law is consistent in respect to performers' rights.

15. The CDPA does not provide performers with the exclusive right of authorising the broadcasting and communication to the public of their performances in audiovisual fixations as provided in Article 11(1) of the Treaty. However, instead of these exclusive rights, the Treaty provides that contracting parties may 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 (Article 11(2)). Contracting parties may reserve partially or completely from the provisions in Article 11. The CDPA currently provides a right to equitable remuneration but only in relation to sound recordings.⁵

(iii) Financial

16. The financial implications lie predominantly in the substantial benefits to the UK audiovisual performances industry which should flow from increased protection in other countries ratifying or acceding to the Treaty. Any increases in costs, for example, for producers, are likely to be balanced by increased benefits to UK performers.

(iv) Reservations and Declarations

17. The EU and its Member States, will examine the extent to which it will be necessary to make a reservation under Article 11(3) of the Treaty on the basis of financial consequences for EU performers and users. This is in line with the UK's intention to consult further with stakeholders (eg performers and producers) prior to introducing any legislative changes.

(v) Implementation

18. No timetable has been agreed for the introduction of any legislative change.

(vi) Consultations

19. Consultations have been held with key stakeholders (eg representatives of producers and performing artists) at various stages since preparatory work on the Treaty began. In 2000, the Government sought stakeholders' views on WIPO's basic proposals for a treaty. Stakeholders were contacted again in 2009, given the renewed interest for an international agreement Treaty. Informal contact suggested that stakeholders continued to support a treaty in

⁵ Section 182D of the CDPA provides a right to equitable remuneration for exploitation of a sound recording. Where a commercially published sound recording of the whole or any substantial part of a qualifying performance is played in public or communicated to the public (other than by making it available), the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording (section 182D).

this area. Prior to the 2012 Diplomatic Conference on the Protection of Audiovisual Performances, the Intellectual Property Office held an Open Meeting to seek views on certain aspects of the treaty. The meeting was positive and constructive and indicated general support for the treaty.

20. BIS will consult the Overseas Territories and Crown Dependencies as to whether they would want the Treaty extended to them.

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Mayor of Cochin*