



# **Audio Visual Performers' rights – Beijing and beyond**

**a look at rights for AV performers' rights in the UK, Europe, the Rest of the World and the question of performers' rights inequality**

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# **International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

**Done at Rome on October 26, 1961**

## **Article 3**

### **Definitions: (a) Performers;**

For the purposes of this Convention:

(a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;

# WIPO Performances and Phonograms Treaty (WPPT)

(adopted in Geneva on December 20, 1996)

## Article 2

### Definitions

For the purposes of this Treaty:

(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 expressions of folklore;

## Article 3

### Beneficiaries of Protection under this Treaty<sup>4</sup>

(1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.

# WIPO Performances and Phonograms Treaty (WPPT)

(adopted in Geneva on December 20, 1996)

## Article 15

### Right to Remuneration for Broadcasting and Communication to the Public

(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.





**Why were Audio visual performers  
excluded ?**

**What were the consequences?**



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## **Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886,**

### **Article 4**

#### **Criteria of Eligibility for Protection of Cinematographic Works, Works of Architecture and Certain Artistic Works**

The protection of this Convention shall apply, even if the conditions of [Article 3](#) are not fulfilled, to:

(a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;

### **Article 7**

#### **Term of Protection:**

##### ***2. For cinematographic works;***

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

# What were the consequences?

- Less rights – No moral, communication to the public or broadcast rights
- Poor Contracts – Producers use all rights contracts
- Less Money – due to poor contracts and lack of remuneration right
- Shorter Protection (Europe) – Audio 70 years  
Audio Visual 50 years

# Will Beijing Change This



# Beijing Treaty on Audiovisual Performances

Beijing, on June 24, 2012

[Article 5:](#)

Moral Rights

[Article 6:](#)

Economic Rights of Performers in  
their Unfixed Performances

[Article 7:](#)

Right of Reproduction

[Article 8:](#)

Right of Distribution

[Article 9:](#)

Right of Rental

[Article 10:](#)

Right of Making Available of Fixed  
Performances

[Article 11:](#)

Right of Broadcasting and  
Communication to the Public

## Beijing Treaty on Audiovisual Performances

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### Article 12

#### Transfer of Rights

(1) A Contracting Party **may provide** in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.

(2) A Contracting Party **may require** with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.

(3) Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements **may provide** the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.



## 2015 Analysis presented to SCAPR General Assembly

	National	% Total
Radio Broadcasting	266,237,095	22.85%
Public Performances of Sound Recording	183,134,741	15.72%
Webcasting of Sound Recordings	262,323,987	22.52%
Private Copying of Sound Recordings	70,108,023	6.02%
Private Copying of Audiovisual Recordings	70,605,235	<u>6.06%</u>
TV Broadcasting of Sound Recording	101,353,131	8.70%
TV Broadcasting of Audiovisual Recording	52,823,707	<u>4.53%</u>
Cable Communication of Sound Recordings	44,811,839	3.85%
Others	39,284,036	3.37%
Simultaneous Cable Retransmission of TV Broadcasts	21,551,250	<u>1.85%</u>
Rental and lending of Sound Recordings	13,762,808	1.81%
Making available on demand	15,094,982	<u>1.30%</u>
Cable Communication of Audiovisual Recordings	13,856,463	<u>1.19%</u>
Simultaneous cable Retransmission of Radio Broadcasts	5,130,860	0.44%
Public Performance of Audiovisual Recordings	3,997,353	<u>0.34%</u>
Rental and lending of Audiovisual Recordings	1,004,371	<u>0.09%</u>
Webcasting of Audiovisual Recordings	24,773	<u>0.00%</u>
	<b>1,165,104,655</b>	<b>100.00%</b>

# Total National Collection of SCAPR Members 2015

## €1,165,104,655

AUDIO

84.64%

Audio Visual

15.36%

Global Recorded Music Revenues US\$ 42.9 Billion

Source Statistica.com

Global Box Office Revenues US\$ 38 Billion

Source Statistica.com

Global TV and Film Revenue US\$ 286 Billion

Source Statistica .com

# Beijing CAN change this - BUT

- Only if ratified – currently only 20 Countries have ratified the treaty with 30 required before the treaty becomes international law.

## AND

- If implemented into National Legislation in a way that supports performers

# Ratifying Countries

- Algeria
- Belize
- Botswana
- Burkina Faso
- Cambodia
- Chile
- China
- Cook Islands
- DPR Korea
- Dominican Republic
- El Salvador
- Gabon
- Moldova
- Nigeria
- Qatar
- Russia
- St Vincents
- Samoa
- Slovakia
- Syria
- Tunisia
- UAE

# FIA Guide to Beijing Treaty

<http://fia-actors.com/resources/publications/fia-publications/>



# Thank You

For More details about BECS see:

[www.equitycollecting.org.uk](http://www.equitycollecting.org.uk)

For More details about SCAPR see:

[www.scapr.org](http://www.scapr.org)