

## **Agreed Statements concerning the Beijing Treaty on Audiovisual Performances**

adopted by the Diplomatic Conference on the Protection of Audiovisual Performances in Beijing, on June 24, 2012

**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.

**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.

**Concerning Article 2(a):** 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.

**Concerning Article 2(b):** It is hereby confirmed that the definition of "audiovisual fixation" contained in Article 2(b) is without prejudice to Article 2(c) of the WPPT.

**Concerning Article 5:** For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, 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 within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

**Concerning Article 7:** The reproduction right, as set out in Article 7, and the exceptions permitted thereunder through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.

**Concerning Articles 8 and 9:** As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

**Concerning Article 13:** The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable mutatis mutandis also to Article 13 (on Limitations and Exceptions) of the Treaty.

**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.

**Concerning Article 15:** The expression "technological measures used by performers" should, as this is the case regarding the WPPT, be construed broadly, referring also to those acting on behalf of performers, including their representatives, licensees or assignees, including producers, service providers, and persons engaged in communication or broadcasting using performances on the basis of due authorization.

**Concerning Article 16:** The Agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WCT is applicable mutatis mutandis also to Article 16 (on Obligations concerning Rights Management Information) of the Treaty.