

IMPROVING ACTORS' SOCIO-ECONOMIC CONDITIONS

CREATIVITY AND ACCESS TO KNOWLEDGE: A SOCIAL AND ECONOMIC IMPETUS FOR AFRICA

ORGANIZED BY WIPO AND JPO IN COOPERATION WITH ARIPO AND GOVERNMENT OF UGANDA

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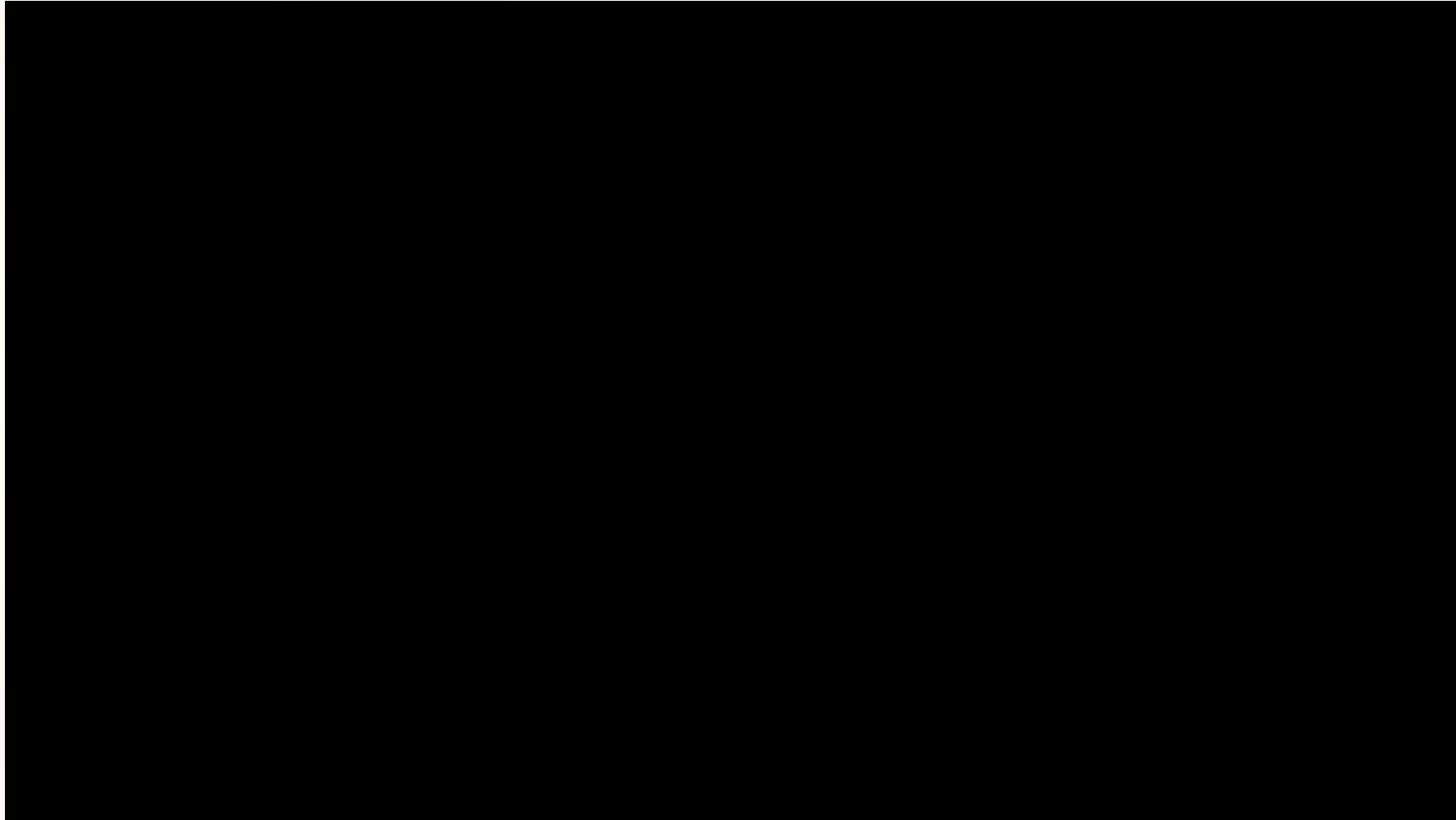
27-03-2015, KAMPALA

BEIJING TREATY ON AUDIOVISUAL PERFORMANCES

PREAMBLE

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments

FROM OSCARS AND PEARLS



TO RAGS AND PITY



(K24 News March 2015)

ACTOR 1:LUPITA NYONGO

- Born March 1, 1983 in Mexico, raised in Kenya.
- Studied in the United States, earning a Bachelor's degree in film and theatre studies from Hampshire College.
- Star in the television series Shuga-MTV (2009). In 2009, she wrote, produced and directed the documentary In my Genes.
- Master's degree in acting in 2012, from the Yale School of Drama.
- First feature film role in Steve McQueen's historical drama 12 Years a Slave (2013), winning an Oscar for it as Best Supporting Actress.

ACTOR 2: MZEE OJWANG

- Born Benson Wanjau in 1937 in then Nyeri district.
- Dropped out of Form Two due to financial constraints.
- Married with two children.
- Worked as a technician at Mater Hospital
- Started acting for *Darubini* on Voice of Kenya (now Kenya Broadcasting Corporation) in 1980.
- In 1985 acted in *Vitimbi* which is airing to date.

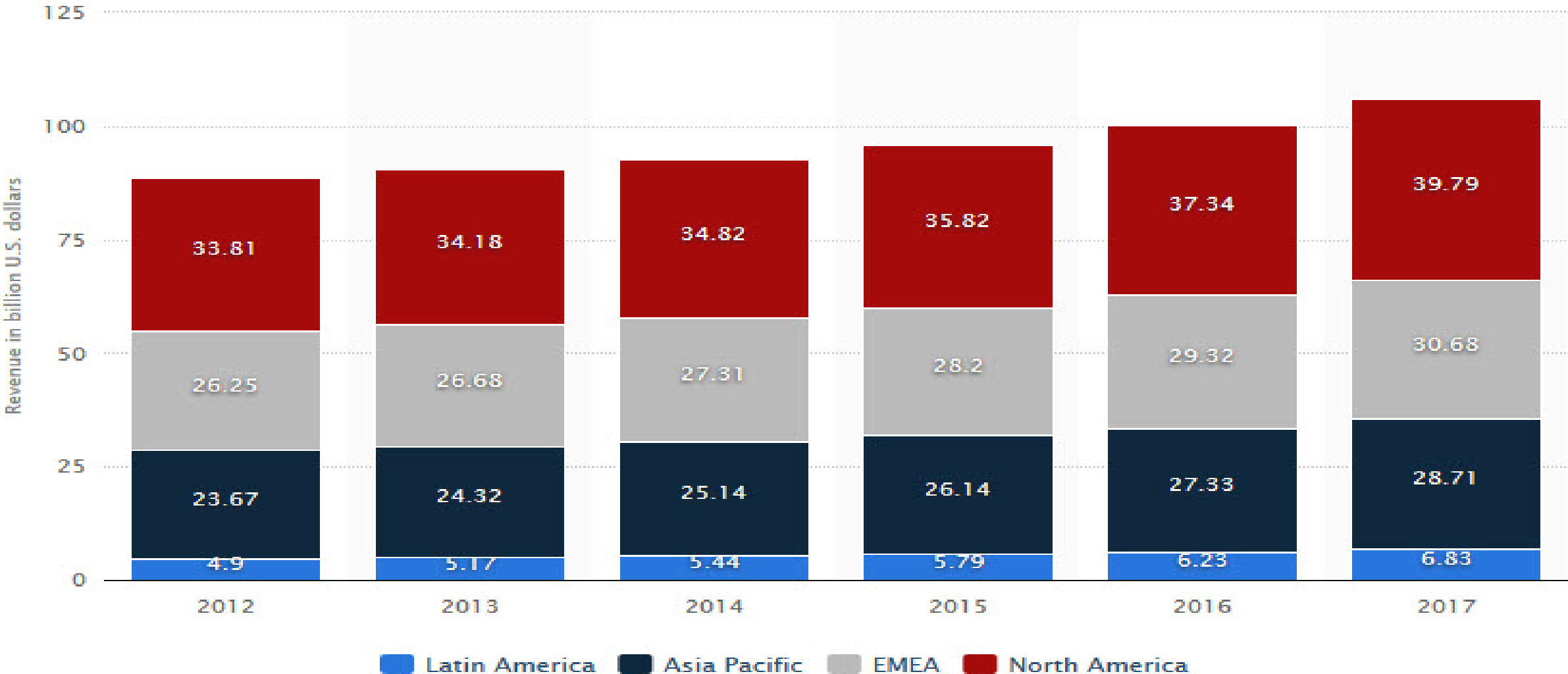
ACTORS' SOCIO-ECONOMIC CONDITIONS

- United Nations Educational, Scientific and Cultural Organization General Conference 1980, Belgrade; *Recommendation concerning the Status of the Artist* identified artist socio-economic issues as including:
 - Employment, working and living conditions of artists.
 - Recognition of the rights of their professional and union organizations.
 - Social status, including measures to ensure equivalent status to other workers in areas such as health and insurance.
 - Protection of freedom of expression and protection of intellectual property rights.
 - The education and training of artists; the importance of arts education.
 - Measures related to income, support during periods of unemployment, and retirement issues.

TO BREAK IT DOWN

- Lack of Support Network/ Administration
- Lack of Respect for the Profession
- Lack of Control in Career
- Stress
- Unsocial Hours
- Under-Funding
- Lack of Work
- Long Working Hours
- Low Income and Pay

FILMED ENTERTAINMENT FORECAST REVENUE BY REGION - PWC



POSSIBLE SOLUTIONS

- Provide legal protection towards actors intellectual property rights
- Extend legal protection concerning work and employment conditions e.g access to social security schemes, health insurance, attain minimum wage.
- Ensure through appropriate legislative means that actors have the freedom and the right to establish professional organizations and trade unions – creates an opportunity for CMOs, Actors Guilds
- Take into account in their taxation system the particular conditions or actors' work and activity e.g. tax exemptions .
- Provide an education designed to nurture artistic talent and training

CONTRACTUAL OR EMPLOYMENT RELATIONS

- Contracts have the potential to translate legal provisions into economic reality and vice versa
- Reduces the unbalanced relationship that actors have individually with their engager or those commercially exploiting their work: Works made for Hire vs Exclusive rights vs Equitable remuneration rights = Rights Contract vs Rights Law
- The "presumption of an employment contract" model for performers and a special status for "intermittent artists“;
- A "quasiemployed" status for self-employed artists who are economically dependent;
- Simplified procedures for freelance artists to create limited partnership companies;

ARTICLE 12 :BTAP

- (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. (Kenya)

SOCIAL SECURITY MEASURES

- Extension of all forms of social insurance including unemployment benefits to all artists;
- Social security funds for all self-employed artists;
- Special social funds for independent artists, for stage professionals;
- Voluntary unemployment insurance for self-employed;
- Social assistance for low-income professionals;
- Adjustment of the qualifying criteria for social insurance.
- Health insurance is also key e.g. the case of Kenyan actress Jastorina

TAXATION

- Flat-rate professional expense deductions;
- The spreading of income and expenditure over several years; Income Smoothing
- Tax exemptions for self-employed artists e.g.
 - Ireland- All earnings derived from sales of artistic works or copyright fees to a maximum of €250,000, only 5% Pay-Related Social Insurance scheme, which provides a minimal level of insurance and pension,
 - arts grants are income tax exempt

BEIJING TREATY ROLE

- Strong intellectual property protection for performers: recognise the right of performers in the audiovisual sector to be granted strong intellectual property protection for the exploitation of their work in all media, which they can exercise collectively regardless of their status
- Beijing Treaty strengthens the precarious position of film and television actors by providing a clearer legal basis for the international use of audiovisual productions. It will contribute to safeguarding the rights of performers against the unauthorized use of their performances.
- Both moral and economic rights
- The term of protection to be granted to performers shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.

BEIJING TREATY ROLE 2

- Includes exclusive rights in:
 - broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and the fixation of their unfixed performances.
 - authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form
 - authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.
 - authorizing the commercial rental to the public
 - making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them

CONCLUSION

- 1. CONDUCT SURVEY/STATISTICS**
- 2. SIGN AND RATIFY BTAP!**
- 3. IMPLEMENT**

PRISK

- Performers Rights Society of Kenya (PRISK) : collective management organisation established in 2009 and licensed by the Kenya Copyright Board.
- Administers equitable remuneration on behalf of performers including actors by collecting license fees and distributing royalties.
- Board of directors comprises of both musicians and actors.
- 1st distribution in 2014 for 2013 collections included actors' remuneration. (AV approx. 20,000USD) Approximate x10 2014
- Currently working on providing members with health insurance KES 200,000/- inpatient annually and Death benefit of KES 50,000/

As human beings, we aren't as individual as we'd like to believe we are. And I think that's what makes acting possible. Despite the fact that I have not experienced something, I have it in my human capacity to imagine it and to put myself in someone else's shoes, and to take someone else's circumstances personally. [Lupita Nyong'o](#)

Let us all put ourselves in actors shoes
Let us all be actors!

