

# Beijing and Marrakesh Treaties: Overview

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Photo: WIPO

# Why?

- WPPT did not cover audiovisual performances
- Great disagreement in Transfer of rights
- Need to update rights for audiovisual performers

# Definitions

- Performers
- Audiovisual fixations
- Broadcasting
- Communication to the public

# Definition of performers

- 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

# Definition of performers: agreed statement

- It includes improvisation
- “created in the course of a performance”

# Beneficiaries

- Performers from MC
- Foreign performers who have habitual residence in a MC

# National treatment

- For exclusive rights and
- for right of remuneration for the broadcasting and communication to the public
- Exception: Reciprocity in the case of both exclusive right and right of remuneration for the broadcasting and communication to the public.



# Moral rights

- Paternity
- Integrity

# Agreed statement on modifications of a performance

Those made in the normal course of exploitation

- editing,
- compression,
- dubbing, or
- formatting, in existing or new media or formats,

made in the course of a use authorized by the performer,

Changes considered are those objectively prejudicial to the performer's reputation in a substantial way.

Mere use of new or changed technology or media, as such, is not modification.

# Rights in unfixed performances

- Fixation
- Broadcasting and communication to the public

# Rights in fixed performances

- Reproduction
- Distribution
- Rental
- Making available
- Broadcasting and communication to the public

# Reproduction

- Storage in digital format in an electronic medium is reproduction

# Distribution

- Fixed copies
- Freedom to determine exhaustion of rights

# Rental

- Commercial rental for the public
- When commercial rental has led to a widespread copying of fixations of audiovisual performances

# Making available

- By wire or wireless means
- When time and place of access is chosen by each one of the members of the public



# Broadcasting and communication to the public

- Right to authorize
- Alternative: Right of remuneration
- Condition: Notification
- Declaration of application to specific types of use, or for limits in its application or of no application.

# Transfer of rights

- After acceptance of fixation of the audiovisual performance
- Fixed performances
- Option A: Owned by the producer
- Option B: Exercised by the producer
- Option C: Transferred to the producer
- Subject to contract

# Formalities

- Consent or contract in writing
- Requirement of signature

# Optional condition

- Independent of the transfer of exclusive rights
- Equitable Remuneration
- Right to receive royalties
- By:
  - National law
  - Individual contracts
  - Collective agreements

# Advantages

Flexibility

Respect for different legal systems and practices,

# Disadvantages

Loss of rights

Asymmetry in power of negotiation

Optional nature

# Some points to take in account

- Association of performers
- Negotiation.
- Contract conditions.
- Necessity of statutory obligations

# Balanced approach

- Incentives for production: Transfer of exclusive rights
- Ensuring adequate compensation for performers: equitable remuneration independent of rights-



# Exceptions and limitations

- Provision of the same kind of exceptions and limitations than those provided for copyright
- Three step test.
- Application to the digital environment

# Term of protection

- 50 years from fixation

# Technological protection measures

## TPM

- adequate legal protection and effective legal remedies
- against the circumvention of effective technological measures
- that are used by performers in connection with the exercise of their rights under this Treaty
- and that restrict acts, in respect of their performances, which are **not authorized** by the performers concerned **or permitted by law**

# Agreed statement for TPM

- to ensure that a beneficiary may enjoy
- limitations and exceptions provided in that Contracting Party's national law
- 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.

# Other Agreed statement for TPM 2

- Not applicable to public domain
- Not applicable to unprotected audio-visual performances

# Rights Management Information

- To remove or alter any electronic rights management information without authority;
- To distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances or copies of performances fixed in audiovisual fixations knowing that electronic rights management information has been removed or altered without authority



# Reservations

Only for broadcasting and communication to the public

# Notifications

Right to equitable remuneration for broadcasting and communication to the public and its conditions

(Art. 11.2)

About declarations non applying previously fixed performances (Art.19.2 )



# Marrakesh Treaty



# Definitions

- Works
- accessible format copy
- Authorized entities

# Beneficiary person

- “A beneficiary person is a person who:
  - (a) is blind;
  - (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
  - (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;regardless of any other disabilities”

# Examples of AFC

- Braille
- Audiobooks
- Daysi
- Full-text templates
- Large print

# The need of cross-border exchange

- Lack of national infrastructure
- Asymmetric production of technology
- Low percentage of books in AFC

# Advantages of cross-border exchange

- Immediate Access to Works for beneficiary persons
- Transfer of technology
- Incentive for further cooperation: production of AFC of Works created by national authors
- Networking
- Dissemination of national culture

# Legal cross-border exchange

- “Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party”
- Art. 5,1 Marrakesh Treaty

# How to do it?

- Authorized entity to Authorized entity
- Authorized entity to Beneficiary person



# With one condition

“(...) provided that prior to the distribution or making available the originating authorized entity did not know or have reasonable grounds to know that the accessible format copy would be **used for other than beneficiary persons**”

Art. 5,2, Marrakesh Treaty

# If the receiving country is not part of Berne Convention

- The AE has to ensure that the AFC are **only reproduced, distributed or made available for the benefit of beneficiary persons** in that jurisdiction.
- In consistency with its own legal system and practices.

# Limited distribution and MA to a jurisdiction

- Default rule.
- Exceptions:
  - Party to the WIPO Copyright Treaty or
  - Applies the Three step test.

# Other limitations and exceptions for cross border exchange of AFC

- It is possible if they comply with the following conditions:

(see next slide)



Yes, but with some conditions depending...

- If the country is part of Berne Convention.
- If the country is part of TRIPS Agreement.
- If the country is part of WCT

# Options for implementation

- L & E for beneficiaries of the treaty
- Other L & E
- Combination of both
- Judicial, administrative or regulatory determinations.
- Respect for national legal systems and practices.

# Conclusions

- There is flexibility to implement the Marrakesh Treaty
- Consistency with differentiated international obligations of the countries.
- It is necessary to ensure the use of L & E under this Treaty will be limited to beneficiaries.
- Respect for different national legal systems and practices.

## And now?

- It is time to sign, ratify and implement the Treaty.
- Our nationals with visual impairment are waiting for us.



# They are waiting for us!!!!



Bronwen Jones. Children of Fire.

<http://www.firechildren.org/index2.asp?include=beka.htm&catID=5>

**Muchas gracias !!!!!**

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