

WIPO Regional Meeting

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You need actors – actors need rights

Ladies and Gentlemen!

Thank you indeed for inviting me to speak at this important Regional Meeting for Caribbean Countries. I am truly honoured to have the possibility to present the needs of actors and other performing artists to you: Representatives of governments and copyright experts of WIPO: – you are the very group of officials who have it in your powers to promote the ratification and implementation of the Beijing Treaty.

But first let me introduce myself briefly. My name is Mikael Waldorff. I am vice-president of FIA, and for 30 years, I have been the Executive Director of The Danish Actors' Association and I am presently the President of the audiovisual collective management organisation Copy Dan. I have worked to help build the system we have, which protects the rights of actors and promotes indigenous and creative film and TV production in Denmark.

I think you know that Danish drama production is successful. The system we have built has made it strong.

Audiovisual content is what everybody wants, especially fiction, and the players in the chain of dissemination profits from the content. The telekoms, the ISPs, Google, Facebook, YouTube, television distributors, satellite operators: All of them profit from the work of actors.

But only very few actors can make a living from acting in film and television. The sad truth is that 95 percent of the actors in film and television have a difficult life and I am here to speak on behalf of them.

Now, returning to the Beijing treaty, I believe we have come a long way. Personally, I have been working for this treaty for more than 20 years – but actors have been working for a treaty ever since 1961, when severe injustice was inflicted on them, as the Rome Convention ended up deleting all rights for performers in audiovisual productions, and only giving performers' rights to remuneration for the use of commercial phonograms.

Ever since, actors have suffered from being left without economic rights and also from the lack of moral rights.

But instead of me telling you this, I want you to hear it from a prominent member of our international community, an outstanding actor in theatre and film, known by children and adults all over the world as Gandalf the Grey: Ian McKellen!

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Actors need rights; actors need to be remunerated for the use of their performances. This is not just for the benefit of the actors – it is also very much for the sake of cultural diversity: to promote a rich and diversified cultural production, nationally as well as internationally.

To make great films, to make interesting documentary, to make entertaining television – you need actors. All types of actors: The leading stars, the supporting actors, the outstanding actors who can form a special character intuitively, some who make you think they are your neighbour; clowns, lunatics, creepy people, and splendid beauties (male or female), whites, blacks, browns and yellows: You need actors who actually

do reflect the diversity of the global community – this is the raw material for the great stories of the world, whether we talk about fantasy film like Lord of the Rings, or TV series like Friends.

To make it clear: You need actors!

In order to secure that the actors are available, you must secure their livelihood. Because of the nature of the business, actors cannot be permanently employed. This is not like being an industrial worker. There is no offer of permanent employment to the dwarf in Game of Thrones, or to Andy Serkin, who plays the role of Gollum in The Lord of the Rings.

In my union, we assessed a necessary unemployment rate of 25-50 %. Those were the conditions, if the necessary workforce should be available.

So, we must ask ourselves: How can actors survive during the periods without a job? They mustn't leave the industry - they have to be available.

The point is: They need an income from the performances they have created in movies and television productions, if such productions are making a profit. This is the very basis for the industry; this is a kind of a contract – or pact! – between film producers, authors and performers – to secure the survival of all parties.

However, very often, it does not work well!

In some countries – not many – it works. In the US, in the UK, and in the Nordic countries, we have a balance: we have strong trade unions, we have professional associations of producers, and the parties respect each other and they make fair and mutually beneficial agreements.

However, in most countries, actors are not organised; actors are weak, and usually, actors only receive a one-time payment for their performance. A lump sum, for all rights, and for the use of the rights unlimited.

I have often been asked: What is wrong with a lump sum?

The answer is simple:

- 1) The actor is always the weak part. The producer will profit from a lump sum payment. This is basic knowledge!
- 2) More importantly: You never know the value of a cultural product – a film, a TV production – before it is marketed. You cannot predict whether a given AV production is going to be a blockbuster, or whether it is going to fail.

This is why the Anglo-Saxon/Nordic way is to some extent a fair one. The actors – the creators – receive a production fee, it may not be fantastic, but it's ok for the job. But in case you have created a successful movie, you will receive an ongoing payment for the use of the film. You could say that you share the risk with the producer.

Seen from the point of view of cultural policy, from the perspective of cultural diversity, this is a system that facilitates courageous investments, it is an encouragement to create new audiovisual productions that may only reach a small audience, but are still important to your national cultural heritage; but also you sometimes see productions that against all odds may reach a large audience, because it turns out to be valuable to the public generally. Actually, we have seen a large number of such productions in Denmark.

So this is very much about cultural policy, it is very much about promoting cultural diversity, it is very much about protection of indigenous productions, it is very much about national cultural policy.

The conclusion is – like it was in the old days about the authors and with the musicians – you need a system that entails an ongoing payment for the use of audiovisual performances.

Such a system will be fair to the actors – and it will be an incentive to national cultural production.

The Beijing Treaty offers flexible solutions to the remuneration of performers.

Thanks to a very productive cooperation between film producers and performers – it only took 20 years! – the Beijing treaty contains a provision that gives the contracting parties a number of choices regarding the way to transfer rights to the producers and remunerate performers for this transfer.

You can say, that Article 12, par. 3 of the treaty allows contracting parties to introduce a transfer/remuneration system that will be in accordance with your national copyright laws, and with your national infrastructure regarding the management of performers' rights.

This is to say: In some countries you have trade unions, representing actors, that actually can negotiate terms of employment and rights management with the producers. Fine.

In most countries you don't. Performers have no strength to negotiate, and you need to offer other solutions.

This is where the Beijing Treaty is innovative: Where performers - for whatever reason - transfer all their rights to the producer – most likely because they are in a weak bargaining position – national legislation can secure the payment of a remuneration for the use of their performances.

This part of the treaty is extremely important, because it takes into account that in many countries the performers are not organised, and even in spite of their talent and skills they are on their own, and they need the help from the governments, that will potentially profit from the contribution to national cultural production from the cultural workers of the nation.

I shall not give any recommendations to governments in the Caribbean Area on how to transpose the Beijing Treaty into national law. Even though I have the impression that actors have not been able to form efficient trade unions in this area, and therefore would benefit from governmental intervention, it shall be left to your own judgement to seek the best way to protect actors.

But I will allow myself to recommend that all governments – as soon as possible – ratify the Beijing Treaty.

It took us many years to agree on the treaty. The film and television producers and the performers' organisations worked hard to reach a solution. By now, the industry is united in its efforts to create an international environment for legal and fair use of audiovisual productions.

The international community can assist us: You can create the legislative framework for national and cross-border use, you can help to maintain a creative production sector in your countries, and you can help create the foundation for a vibrant, innovative and inventive environment of creators in all of your countries.

Thank you very much for listening