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THE BEIJING TREATY

THE PERFORMERS' PERSPECTIVE

I. FIM: A SHORT PRESENTATION

- Founded in 1948 – Headquarters in Paris, France
- Objectives
 - ✓ Unite professional musicians organizations worldwide
 - ✓ Protect and promote their economic and social right
- Members in 65 countries (unions, guilds, associations)
- 3 Regional groups (Africa, Latin America, Europe)
- Accredited NGO (WIPO, UNESCO, ILO)
- Lobbying, training, networking

II. AUDIOVISUAL & MUSICIANS

The AV sector depends on music

- ✓ Music = key component of any audiovisual work
- ✓ A few famous exceptions (Hitchcock's "The Birds")
- ✓ Protect and promote their economic and social right
- ✓ Music can be
 - Embodied for the specific purpose of an audiovisual product
 - A pre-existing sound recording that is later synchronized with images
 - Both (video music and CD)
- ✓ Musicians can be hired to perform on TV shows...

II. AUDIOVISUAL & MUSICIANS (2)

Musicians may be “audiovisual performers” but...

- ✓ They do not necessarily have a contractual relationship with the AV producer
- ✓ 3 possibilities:
 - Simultaneous fixation of sound and image
 - Fixation for the purpose of an audiovisual work
 - Re-use of existing sound fixation
- ✓ Audio legal framework / AV legal framework
- ✓ Terms and conditions need to be carefully arranged

III. PRODUCERS AND MUSICIANS PERSPECTIVES

- Producers say that they need to own the performers' exclusive rights in order to secure an adequate exploitation of their productions
- May be true in the AV sector where investments are massive
- Most performers live in precarious social condition
 - ✓ Short terms contracts
 - ✓ Uneasy or no access to social security, pension or unemployment schemes
 - ✓ Low wages
- **IP remuneration is needed** to make ends meet
- Weak bargaining position: contractual arrangements do not provide for fair remunerations

IV. THE INTERNATIONAL PROTECTION FOR PERFORMERS

Renewed international IP norms were needed in order to adapt the stakeholders' protection to technological changes

- Rome Convention, 1961
- WPPT, 1996
- Both treaties combine exclusive rights + a right to equitable remuneration
- In practice, remuneration rights (Art.12, Rome Convention & Art.15, WPPT) are vital to performers
- The WPPT was a significant step forward to meet the challenges of the Internet, but failed to achieve a protection for AV performances

V. THE BEIJING TREATY (BTAP)

The Beijing Treaty closed an unfair gap. It is a crucial step forward and needs to be massively ratified. However, ratification without proper implementation would be meaningless

- This treaty is about the protection of **AV performances**. It would make no sense if performers did not receive adequate remuneration whilst other stakeholders do
- With the exception of a few famous artists, performers do not have the bargaining power to negotiate a fair remuneration in exchange for the transfer of their exclusive rights
- In countries without a strong tradition of social dialogue and robust CBAs, remuneration rights may be the only way to achieve a fair balance between stakeholders

VI. WHAT MUSICIANS EXPECT FROM THE BEIJING TREATY (1)

- Clarifying the legal status of a pre-existing phonogram that is embodied in a AV product, in particular, what should be a “fair” result of combination of art. 1 of BTAP and art. 2b of WPPT
- Art.11 of BTAP refers to the same right as art.12 of the RC and Art. 15 of the WPPT. However, it provides for an entirely “*à la carte*” solution, with an exclusive right as the default option
 - ✓ A transposition based on art. 11.2 is the fair way to go, except in a few countries where performers are covered by solid CBAs
 - ✓ A mere systematic transposition of art. 11.1 would result in most of the performers being deprived from any remuneration

VI. WHAT MUSICIANS EXPECT FROM THE BEIJING TREATY (2)

- In 2000, a fierce opposition regarding the wording of Article 12 on the transfer of rights was the main reason for the failure of the Diplomatic Conference
- After years of discussions, parties agreed upon a balanced solution, with options aimed to fit different national contexts
- Option 12-1 reflects on the US system, in which trade unions hold a strong bargaining position
- Option 12-2 provides a minimum guarantee to performers when trade unions are able to conclude CBAs, which is a minority
- Option 12-3, which provides for the payment of royalties or an equitable remuneration is relevant for the vast majority of countries, as a means to ensure that the objectives of the treaty are reached

VI. WHAT MUSICIANS EXPECT FROM THE BEIJING TREATY (3)

- Art.12-3 may also be combined with Art.10 of the BTAP (right of making available of fixed performances)
- In practice, such a measure would allow performers to enjoy an unwaivable right to receive a royalty or an equitable remuneration when their performances are made available on demand, even after the transfer of their exclusive right
- Given the changes in music consumption and the absence of fair compensation when the performers' right of the making available is transferred, FIM considers Art.12-3 provides for an adequate mechanism and should therefore be transposed into all national legislations

THANK
YOU!



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