

# Beijing Treaty: Transfer of rights

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# Article 12

- (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.

# Conditions

- Acceptance
- Fixation of the performance
- Option A: Owned by the producer
- Option B: Exercised by the producer
- Option C: Transferred to the producer
- Subject to contract

# Article 12

- (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.

# Formalities

- Consent or contract in writing
- Requirement of signature

# Article 12

- (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.

# 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

Assimetry 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-

# Possible reservations

**National implementation**

# Article 11

- Exclusive Right for broadcasting and communication to the public.
- Performers shall enjoy the exclusive right of authorizing regarding their performances fixed in audiovisual fixations
  - Broadcasting\
  - Communication to the public

# Article 11,2: An alternative to exclusive right of broadcasting and communication to the public

- Notification deposited to DG
- Right to equitable remuneration
- Conditions for the exercise of the right to remuneration.
- Certain uses
- Limitations in their application
- No application of Art. 11

# Article 11: Reservations

- Provisions of Art. 11,1 and 11,2 to certain uses
- Limitations in their application in some other way
- No application of Art. 11,1 and 11,2

# Article 18

- No reservations
- Exception: Article 11,3

# Article 18: Notification

- At the moment of accession
- At the moment of ratification
- Effective day will be the date of entry into force of the Treaty with respect to that CP.
- If made later, three months for being effective or any later date as indicated.

# Application in time

- To fixed performances that exist at the moment of entry into force of the Treaty, except in the case the CP declares that it will not apply some of the provisions (Art. 7 to 11)
- To all performances that occur after that moment.

# Impact on National treatment

- Reciprocity
- Art. 4,2 A CP entitled to limit the extent and term to nationals of other CP, with respect to ART. 11,1 and 11,2 to those rights that its nationals enjoy in that CP.
- Art. 4,3 National Treatment does not apply if a CP makes use of the reservation in 11,3 or if has made such reservation.

**Muchas gracias !!!!**

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