TUNISIA RATIFIES THE BEIJING TREATY ON AUDIOVISUAL PERFORMANCES

On 26 June 2012, Tunisia became a signatory of The Beijing Treaty on Audiovisual Performances (“Treaty”) and thereafter ratified the Treaty on 21 July 2016. All Contracting Parties (being those countries which are members of the Treaty) shall provide protection of the performer’s rights to all performers who are nationals of other Contracting Parties.

Performances which enjoy protection

The Treaty aims at protecting the rights of performers which it defines as singers, musicians, dancers, actors and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore\(^1\) in audiovisual performances. The Treaty incorporates performances of actors in different media such as film and television and includes musicians when their performances are recorded on DVD or any other audiovisual fixation. Audiovisual fixations are defined as:

“the embodiment of moving images, whether or not accompanies by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device.”\(^2\)

Furthermore, the Treaty makes provision for performer’s performances which are performed ‘live’ and not in a fixed platform.

As such, the Treaty aims at providing performers with the following rights which are highlighted below:

1. Economic rights in fixed and unfixed performances; and
2. Moral rights in respect of their performances.

1. Economic rights in fixed audiovisual fixations
The Treaty identifies four rights afforded to performers for their performances:

*The right of reproduction* – which is the right to authorise direct or indirect reproduction of the audiovisual fixations in any manner or form\(^3\)

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\(^1\) Article 2 of the Treaty
\(^2\) Article 2(b) of the Treaty
\(^3\) Article 7 of the Treaty
The right of distribution— which is the right to authorize the making available to the public of the original and copies of the performance fixed in an audiovisual fixation through sale or other transfer of ownership\(^4\)

The right of rental - which is the right to authorize the commercial rental to the public of the original and copies of the performance fixed in an audiovisual performance\(^5\); and

The right of making available - which is the right to authorize the making available to the public by wire or wireless means pf any performance fixed in an audioviusal fixation that the public may access the performance from a place and time convenient and chosen by them\(^6\)

**Economic rights in unfixed (live) performances**

The Treaty also grants three different types of economic rights in relation to the unfixed (live) performances:

The right to broadcast- this is the right to transmit sounds or images or sounds and images to the public by wireless means

The right to communication to the public- which means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance or of a performance fixed in an audiovisual fixation\(^7\)

The right to fixation- which is the right to have fixed their unfixed performances

2. **Moral rights**

The Treaty affords the performer Moral rights being:

1. The right to claim to be identified as the performer of their performances, except where omission is dictated by the manner of the use of the performance\(^8\); and

2. The rights to object to any distortion, mutilation or other modification of their performances that would be prejudicial to their reputation, taking due account of the nature of audiovisual fixations\(^9\)

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\(^4\) Article 8 of the Treaty  
\(^5\) Article 9 of the Treaty  
\(^6\) Article 10 of the Treaty  
\(^7\) Article 2(c) of the Treaty  
\(^8\) Article 5 (1)(i) of the Treaty  
\(^9\) Article 5(1) (ii) of the Treaty
In terms of the Treaty, the Moral rights mentioned above shall, after the death of the performer, be maintained at least until the expiry of the economic rights and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protections is claimed\textsuperscript{10}. Any of the Contracting Parties that do not make provision for the for the protection of the moral rights after the Performer’s death may provide that some of these rights will, after the performer’s death, cease to be maintained\textsuperscript{11}.

**Term of protection**

The term of protection granted to performers by the Treaty in respect of their performances is for a period of 50 years from the end of the year in which the performance was fixed.

**Benefits of the Treaty**

The Treaty will have a positive effect on developed and developing countries which do not have protection for performers in their national laws. Amongst others, the benefits surround economic development, improved status of audiovisual performers as well as cultural diversity.

**Economic development**

The Treaty will protect the rights of performers from the unauthorized use of their performances in audiovisual media such as television, film and video. Furthermore, the Treaty will encourage the development of audiovisual productions in the local market allowing an increase in quality local performances. Most importantly, the Treaty will encourage foreign performers to join local performers, which will increase access for foreign markets in the audiovisual industry. The Treaty will give foreign investors comfort that there is well-enforced legislation that will protect the intellectual property of the performers.

**Improving the status of audiovisual performers**

The Treaty will help in improving the status of performers internationally, as they will be recognised for their performances given the empowerment and protection that the Treaty affords each audiovisual industry.

\textsuperscript{10} Article 5(2) of the Treaty

\textsuperscript{11} Article 5(2) of the Treaty
Protection of culture and folklore

The Treaty encourages the creation of cultural performances which will promote cultural diversity in a protected medium where performers can perform literary or artistic works or expressions of folklore knowing that the performances will be protected internationally.

The Treaty has been well received by Tunisia and it will enter into force once 30 eligible parties have ratified or acceded to it. Member States of WIPO and the European Union may join the Treaty by depositing their ratification or accession with the Director General of WIPO.

For further information or assistance, contact Maureen Makoko (Associate)
Tel. 011 895 1000
Maureen.Makoko@AdamsAdams.Com