

**BACKGROUND AND SUMMARY OF
THE 2012 WIPO AUDIOVISUAL PERFORMANCES TREATY**

On June 26, at a Diplomatic Conference in Beijing, China, the United States joined countries from around the world in signing the WIPO Audiovisual Performances Treaty (AVP Treaty). This treaty will guarantee rights to film and television actors around the world in a form compatible with U.S. law and on a par with the rights accorded to musicians under the 1996 WIPO Performances and Phonograms Treaty (WPPT).

HISTORY

- The United States was a leading force in the 1996 Diplomatic Conference (Dipcon) that produced the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties updated international copyright laws in critical ways, including rights of distribution and making available on the internet, and the safeguarding of technological protection measures.
- Language not included in the 1996 negotiations would have addressed audiovisual performers rights in the WPPT, but agreement could not be reached on how to bridge the differences in difficult countries systems.
- Instead, it was agreed that separate negotiations on the AVP would be conducted aimed at producing either a Protocol to the WPPT or a stand-alone agreement. Negotiations continued starting in 1997.
- In October 1998, Congress passed the Digital Millennium Copyright Act (DMCA) implementing the WCT and WPPT. The United States Senate gave its consent to ratification of the WCT and WPPT on October 21, 1998; the United States deposited its instruments of ratification for both treaties with WIPO on September 14, 1999.
- The United States strongly advocates these treaties and their adoption and implementation as part of bilateral and plurilateral trade and intellectual property agreements.
- In December 2000, another Dipcon was convened to negotiate the AVP. The U.S. delegation included members from USPTO, Copyright Office, and State as well as representatives of the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTA) and the Motion Picture Association of American (MPAA).
- The 2000 Dipcon completed all substantive provisions of the AVP except one relating to transfers of rights from performers to producers. The U.S., supported by India, insisted on a "transfer of rights" provision that major film producers felt was needed to ensure their ability to distribute films globally; the European Union opposed all proposals for such a provision. The Dipcon deadlocked on this issue.
- For the next decade, the incomplete AVP languished on the agenda of WIPO's Standing Committee on Copyright and Related Rights (SCCR).

BREAKTHROUGH IN 2011, DIPLOMATIC CONFERENCE IN 2012

- In 2010, WIPO Member States were invited to submit proposals for the AVP transfer of rights provision in order to complete the treaty.

- The United States submitted a proposal, developed with substantial input from SAG-AFTA and MPAA. Mexico and India also submitted proposals and the three countries (IN, MX, US) were tasked with finding a compromise solution.
- The United States, Mexico, and India delegations achieved compromise language, working closely with the delegations of other major film-producing jurisdictions, particularly the EU, Brazil, and Nigeria. [Attached on page three as an Annex.]
- Based on this agreement, in September 2011 the WIPO General Assembly decided to convene a Dipcon to complete the AVP Treaty.
- The Chinese Government offered to host the Dipcon and this was supported by the United States as a means to strengthen China's commitment to copyright.
- The Dipcon to complete the WIPO AVP Treaty was held in Beijing, June 20-26.

COMPATIBILITY WITH U.S. LAW

- Under U.S. law, actors and musicians are considered to be “authors” of their performances providing them with copyright rights.
- Just as the rights established in U.S. law already provide the protection for musical performers mandated by the WPPT, U.S. law is already generally compatible with the AVP provisions. (This was also the Administration’s view in 2000.)
- Nonetheless, implementation of the AVP may require some technical amendments of the Copyright Act, in particular where Title 17 refers to existing international copyright obligations (“points of attachment” for parties to this treaty under U.S. law).
- Assuming the negotiations are successful, then subject to authorization by the Secretary of State to sign the treaty and the Administration’s final determination, the AVP, like the WCT and WPPT, would be submitted for the advice and consent of the Senate.

IMPORTANCE TO U.S. STAKEHOLDERS

- The AVP Treaty is important to American actors—represented by SAG/AFTRA—as a way of increasing global protection for performers by ensuring updated and consistent standards of protection for performers in audiovisual works.
- With the now acceptable “transfer of rights” provisions, the AVP Treaty represents a win-win for labor and industry, allowing them to work even more closely in fighting global piracy.
- Ratification by the United States and key trading partners will give U.S. stakeholders another mechanism to promote protection of the intellectual property in their films.

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ANNEX – Compromise Article 12 to complete the AVP

Article 12

Transfer of rights

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.

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.

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.