



**Authors'  
Licensing and  
Collecting  
Society**

Amanda Solloway MP  
Minister for Science, Research and Innovation  
Department for Business, Energy & Industrial Strategy  
1 Victoria Street  
London SW1H 0ET

16 June, 2021

Dear Amanda

**Re. The Beijing Treaty on Audiovisual Performances: Call for views**

Many thanks for publishing the 'Call for Views' regarding the UK's ratification of the Beijing Treaty and I am now writing to set out the views of the Authors' Licensing and Collecting Society (ALCS).

ALCS is a not-for-profit organisation, with 112,000 members, which collects and distributes money for licensed secondary uses of authors' works from around the world, with £38m paid out in the last year and over £570m since its foundation in 1977.

In addition to our wide network of international agreements, we also work with the Society of Audiovisual Authors (SAA) in Europe and the International Authors Forum (IAF) overseas to ensure that UK authors' voices are heard across the world and their interests are represented.

As such, as you know, we are part of an effective international network of Collective Management Organisations (CMOs), which is underpinned by the UK's robust copyright system. We also have a strong commitment to championing appropriate and proportionate remuneration for creators and fair and modern contract rights, suited to the digital age.

Signed by the UK in 2013, ratification of the Beijing Treaty offers the opportunity to address an anomaly in the international framework in that audio-visual (AV) performers do not receive the same level of protection, as musicians have done for sound recordings since the 1996 WIPO Performances and Phonograms Treaty.

In the approach we adopt on ratification, to achieve the Treaty's underlying aims, it also gives the UK the chance to lead by example in adopting the best options for protecting and fairly rewarding AV performers, setting standards for others to follow around the globe in this important sector of our creative economy.

Furthermore, in the way we address the issues of equitable remuneration and international reciprocity in the Treaty, we can optimise the effectiveness of CMOs in the creative sector in ensuring that performers receive their dues from all identified exploitations. This accords with another of the underlying aims of the Treaty: to foster the development of representative groups to enhance AV performers' standing and ability to exercise their rights.

And, as we are second only to the US in film and TV exports, UK AV performers have the chance to be a strong net beneficiary, without disrupting the way we sell our productions around the world.

As the then Minister for Intellectual Property Lord Younger of Leckie said in the Explanatory Memorandum, when the accord was laid before Parliament in 2013: *'The Treaty could be of significant benefit to UK performers by strengthening their position in overseas markets and ensuring that protection applies to new technological methods of exploiting audio-visual performances.'*

To turn now to the specific questions asked in the Call for Views, ALCS would make the following observations:

### **Moral rights (Questions 1-4)**

The guiding principle, to achieve the Treaty's fundamental aims, should be that the moral rights of performers in AV fixations should not receive any lesser protection than those for performers in sound recordings. This can be accomplished by suitable changes to the Copyright, Designs and Patents Act 1988 (CDPA) to include performers in relation to AV productions.

Levelling the field in this respect, with the balances already included in the legislation, will not result in problems for the normal use or production of AV performances, nor for freedom of expression, and will take the necessary steps needed to support ratification of the Treaty.

We have seen the submission to the Call for Views submitted by the British Copyright Council (BCC), and support its comments and suggested approach regarding Questions 1-4.

### **Broadcasting and communication to the public of performances in AV fixations (Q 5-9)**

In the UK, collective bargaining agreements provide a framework governing the exploitation of AV performers' rights. Ratification, however, gives the opportunity to provide for statutory protection as regards equitable remuneration beyond contracts governed by collective bargaining agreements. This provides the opportunity to protect rights in the evolving, fast-moving markets for broadcast and digital exploitation, to enhance international reciprocity and ensure that UK performers are fairly remunerated for use of their work overseas.

Some Treaty signatories are likely to implement an approach requiring organisations such as streaming platforms and broadcasters to make remuneration payments to performers via a CMO. Due to the high quality of UK productions and the advantage of their being in the English language, a significant proportion of those payments could relate to the use of UK audio-visual content.

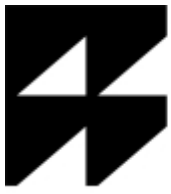
If an equivalent regime for AV performers is not recognised in the UK, however, there may be a failure of reciprocity, resulting in a lack of certainty and transparency as to how certain overseas payments due to UK performers are made.

In terms of the overall approach to UK ratification, we agree with the view expressed in the BCC submission regarding the need to strike a balance between contractual agreements and CMO systems. This entails an approach to ratification, whereby rights to equitable remuneration for AV performers are recognised in UK law. This should be achievable in such a manner as not to disrupt current UK collective bargaining processes, nor impact on sale or distribution of productions.

Where distribution of AV content in the digital world now involves more intermediaries, indeed - making authors, producers and performers more remote from those organisations responsible for distributing works to the public – the use of collective management systems, to monitor use and identify works and contributors, underpinned by equitable remuneration rights, is likely to have a positive impact on the rewards to AV performers.

An unwaivable right to equitable remuneration in UK law, for certain specific uses managed by a CMO, would be effective in achieving this within the ambit of the Beijing Treaty. Furthermore, as a regulated sector, not-for-profit CMOs are subject to specific requirements on transparency, accountability and governance by their membership.

As regards the specific options for UK ratification of the Treaty, we see value in the flexible approach set out in the submission by the British Equity Collecting Society (BECS) to this Call for Views.



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This enables exclusive rights to be granted to AV performers for exploitation under contractual terms within collective bargaining frameworks, subject to the ability for a CMO to manage and collect for further, discrete and specific uses, ensuring that appropriate and proportionate remuneration is received by performers across the board.

Furthermore, and crucially, this approach acknowledges the application of equitable remuneration rights in the UK as part of the Beijing Treaty ratification, to shore up AV performers' reciprocal entitlement to benefit from similar rights and collections operating in the territories of other ratifying states.

In adopting such an approach, the UK could set an international example and be seen to be leading the way in achieving the fundamental aims of the Beijing Treaty, without the opt-outs or erosion taking place in certain signatory countries, notably China itself.

#### **Transfers of Rights and Protection of Foreign Performances (Q 9-11)**

In line with our comments above, we see value in a flexible approach which allows for performers' exclusive rights to be transferred within contractual and collective bargaining frameworks in a way that also recognises and preserves the management of other identified secondary rights through CMOs.

In this way, rights to equitable remuneration recognised in the UK should enable and support reciprocity between the UK and overseas states offering similar protections.

#### **Other issues (Q12)**

To achieve consistency, we believe there should be a 70 year term of protection for AV performers' rights, as the UK and EU currently have for performances fixed in sound recordings.

Once again, thank you for taking this essential step towards ratification of the Beijing Treaty and we would be grateful if our response could be considered as part of the 'Call for Views'.

Yours sincerely and with best regards

*Barbara Ann Hayes*

**Barbara Ann Hayes  
Deputy Chief Executive**