

二、委任何敬麟、林倫偉及柯清煌為民政總署諮詢委員會成員，任期自二零一四年一月一日起為期兩年。

二零一三年十二月十一日

行政長官 崔世安

### 第 42/2013 號行政長官公告

中華人民共和國於二零一三年八月二日通知世界知識產權組織總幹事，一九九六年十二月二十日在日內瓦通過的《世界知識產權組織表演和錄音製品條約》（下稱“條約”）適用於中華人民共和國澳門特別行政區，同時聲明：

“……

1. 中華人民共和國澳門特別行政區不受條約第十五條第一款有關錄音製品製作者權利的約束。

2. 就條約第十五條第一款規定的表演者權利，將適用中華人民共和國澳門特別行政區的相關法律。

……”

世界知識產權組織總幹事於二零一三年八月六日以照會確認，條約自二零一三年十一月六日起在中華人民共和國澳門特別行政區生效。

基於此，行政長官根據澳門特別行政區第3/1999號法律第六條第一款的規定，命令公佈上述條約的中文及英文正式文本。

二零一三年十二月十一日發佈。

行政長官 崔世安

世界知識產權組織表演和錄音製品條約  
(WPPT)\*  
(1996年12月20日在日內瓦通過)

#### 序言

締約各方，

出於以儘可能有效和一致的方式發展和維護保護表演者和錄音製品製作者權利的願望，

\* (通過本條約的)外交會議關於WPPT若干條款的議定聲明在各有關條款下以腳註形式印出。

2. São nomeados Ho Kevin King Lun, Lam Lon Wai e O Cheng Wong como membros do conselho consultivo do Instituto para os Assuntos Cívicos e Municipais, pelo período de dois anos, com efeitos a partir de 1 de Janeiro de 2014.

11 de Dezembro de 2013.

O Chefe do Executivo, *Chui Sai On*.

### Aviso do Chefe do Executivo n.º 42/2013

Considerando que a República Popular da China notificou, em 2 de Agosto de 2013, o Director-Geral da Organização Mundial da Propriedade Intelectual (OMPI) sobre a aplicação na Região Administrativa Especial de Macau da República Popular da China do Tratado da Organização Mundial da Propriedade Intelectual sobre Prestações e Fonogramas (WPPT), adoptado em Genebra em 20 de Dezembro de 1996 (doravante designado por «Tratado»), tendo declarado o seguinte:

«(...)

I. A Região Administrativa Especial de Macau da República Popular da China não está vinculada pelo disposto no n.º 1 do artigo 15.º do Tratado no que diz respeito ao direito dos produtores de fonogramas.

II. No que se refere ao direito dos artistas intérpretes ou executantes estabelecido no n.º 1 do artigo 15.º do Tratado são aplicáveis as leis pertinentes da Região Administrativa Especial de Macau da República Popular da China.

(...»

Mais considerando que o Director-Geral da OMPI confirmou, por nota datada de 6 de Agosto de 2013, a aplicação do Tratado na Região Administrativa Especial de Macau da República Popular da China com efeitos a partir de 6 de Novembro de 2013;

O Chefe do Executivo manda publicar, nos termos do n.º 1 do artigo 6.º da Lei n.º 3/1999 da Região Administrativa Especial de Macau, o referido Tratado, nos seus textos autênticos em línguas chinesa e inglesa.

Promulgado em 11 de Dezembro de 2013.

O Chefe do Executivo, *Chui Sai On*.

**WIPO Performances and Phonograms Treaty  
(WPPT)\*  
(adopted in Geneva on December 20, 1996)**

#### Preamble

*The Contracting Parties,*

*Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,*

\* *Note:* The agreed statements of the Diplomatic Conference that adopted the Treaty (WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions) concerning certain provisions of the WPPT, are reproduced in endnotes below.

承認有必要採用新的國際規則，以提供解決由經濟、社會、文化和技術發展所提出的問題的適當辦法，

承認信息與通信技術的發展和交匯對表演和錄音製品的製作與使用的深刻影響，

承認有必要保持表演者和錄音製品製作者的權利與廣大公眾的利益尤其是教育、研究和獲得信息的利益之間的平衡，

達成協議如下：

## 第一章 總則

### 第1條 與其他公約的關係

(1) 本條約的任何內容均不得減損締約方相互之間依照於1961年10月26日在羅馬簽訂的《保護表演者、錄音製品製作者和廣播組織國際公約》(以下稱為“《羅馬公約》”)已承擔的現有義務。

(2) 依本條約授予的保護不得觸動或以任何方式影響對文學和藝術作品版權的保護。因此，本條約的任何內容均不得被解釋為損害此種保護。<sup>1</sup>

(3) 本條約不得與任何其他條約有任何關聯，亦不得損害依任何其他條約的任何權利和義務。

### 第2條 定義

在本條約中：

(a) “表演者”指演員、歌唱家、音樂家、舞蹈家以及表演、歌唱、演說、朗誦、演奏、表現、或以其他方式表演文學或藝術作品或民間文學藝術作品的其他人員；

(b) “錄音製品”係指除以電影作品或其他音像作品所含的

<sup>1</sup> 關於第1條第(2)款的議定聲明：不言而喻，第1條第(2)款澄清本條約規定的對錄音製品的權利與以錄音製品體現的作品的版權之間的關係。在需要以錄音製品體現的作品的作者與對錄音製品持有權利的表演者或製作者許可的情況下，獲得作者許可的需要並非因同時還需獲表演者或製作者的許可而不復存在，反之亦然。

此外，不言而喻，第1條第(2)款的任何內容均不阻止締約方對表演者或錄音製品製作者規定的專有權超出依照本條約需要規定的專有權。

*Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,*

*Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms,*

*Recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,*

*Have agreed as follows:*

## Chapter I

### General Provisions

#### Article 1

#### Relation to Other Conventions

(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the “Rome Convention”).

(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.<sup>1</sup>

(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

#### Article 2

#### Definitions

For the purposes of this Treaty:

(a) “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(b) “phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds,

<sup>1</sup> *Agreed statement concerning Article 1(2):* It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.

It is further understood that nothing in Article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

錄製形式之外，對表演的聲音、或其他聲音、或聲音表現物所進行的錄製；<sup>2</sup>

(c) “錄製”係指對聲音或聲音表現物的體現，從中通過某種裝置可感覺、複製或傳播該聲音；

(d) “錄音製品製作者”係指對首次將表演的聲音、或其他聲音、或聲音表現物錄製下來提出動議並負有責任的自然人或法人；

(e) “發行”錄製的表演或錄音製品係指經權利持有人同意並在以合理的數量向公眾提供複製品的條件下，將錄製的表演或錄音製品的複製品提供給公眾；<sup>3</sup>

(f) “廣播”係指以無線方式的播送，使公眾能接收聲音、或圖像和聲音、或圖像和聲音表現物；通過衛星進行的此種播送亦為“廣播”；播送密碼信號，如果廣播組織或經其同意向公眾提供了解碼的手段，則是“廣播”；

(g) “向公眾傳播”表演或錄音製品係指通過除廣播以外的任何媒體向公眾播送表演的聲音或以錄音製品錄製的聲音或聲音表現物。在第15條中，“向公眾傳播”包括使公眾能聽到以錄音製品錄製的聲音或聲音表現物。

### 第3條

#### 依本條約受保護的受益人

(1) 締約各方應將依本條約規定的保護給予係其他締約方國民的表演者和錄音製品製作者。

(2) 其他締約方的國民應被理解為符合《羅馬公約》規定的標準、有資格受到保護的表演者或錄音製品製作者，如同本條約的全體締約方均假設為該公約締約國的情形。對於這些資格標準，締約各方應適用本條約第2條中的有關定義。<sup>4</sup>

(3) 任何利用《羅馬公約》第5條第(3)款所規定的可能性、或為該公約第5條的目的利用《羅馬公約》第17條所規定的

other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;<sup>2</sup>

(c) “fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(d) “producer of a phonogram” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(e) “publication” of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;<sup>3</sup>

(f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(g) “communication to the public” of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 15, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

### Article 3

#### Beneficiaries of Protection under this Treaty

(1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.

(2) The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in Article 2 of this Treaty.<sup>4</sup>

(3) Any Contracting Party availing itself of the possibilities provided in Article 5(3) of the Rome Convention or, for the purposes of Article 5 of the same Convention, Article 17 the-

<sup>2</sup> 關於第2條(b)項的議定聲明：不言而喻，第2條(b)項規定的錄音製品的定義並不表明對錄音製品的權利因將錄音製品包含在電影作品或其他音像作品中而受到任何影響。

<sup>3</sup> 關於第2條(e)項、第8、9、12和13條的議定聲明：這些條款中的用語“複製品”和“原件和複製品”，受各該條中發行權和出租權的約束，專指可作為有形物品投放流通的固定的複製品。

<sup>4</sup> 關於第3條第(2)款的議定聲明：為了適用第3條第(2)款，不言而喻，錄製係指製作完成原始帶(“母帶”)。

<sup>2</sup> *Agreed statement concerning Article 2(b)*: It is understood that the definition of phonogram provided in Article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

<sup>3</sup> *Agreed statement concerning Articles 2(e), 8, 9, 12, and 13*: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>4</sup> *Agreed statement concerning Article 3(2)*: For the application of Article 3(2), it is understood that fixation means the finalization of the master tape (“bande-mère”).

可能性的締約方，應向世界知識產權組織（WIPO）總幹事作出那些條款所預先規定的通知。<sup>5</sup>

#### 第4條 國民待遇

(1) 在本條約所專門授予的專有權以及本條約第15條所規定的獲得合理報酬的權利方面，每個締約方均應將其給予本國國民的待遇給予第3條第(2)款所定義的其他締約方的國民。

(2) 本條第(1)款規定的義務不適用於另一締約方使用了本條約第15條第(3)款允許的保留的情況。

### 第二章 表演者的權利

#### 第5條 表演者的精神權利

(1) 不依賴於表演者的經濟權利，甚至在這些權利轉讓之後，表演者仍應對於其現場有聲表演或以錄音製品錄製的表演有權要求承認其係表演的表演者，除非使用表演的方式決定可省略不提其係表演者；並有權反對任何對其表演進行將有損其名聲的歪曲、篡改或其他修改。

(2) 根據本條第(1)款授予表演者的權利在其死後應繼續保留，至少到其經濟權利期滿為止，並應可由被要求提供保護的締約方立法所授權的個人或機構行使。但批准或加入本條約時其立法尚未規定在表演者死後保護上款所述之全部權利的締約方，可規定其中部分權利在表演者死後不再保留。

(3) 為保障本條所授予的權利而採取的補救辦法應由被要求提供保護的締約方立法規定。

#### 第6條 表演者對其尚未錄製的表演的經濟權利

表演者應享有專有權，對於其表演授權：

(i) 廣播和向公眾傳播其尚未錄製的表演，除非該表演本身已屬廣播表演；和

reof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization (WIPO).<sup>5</sup>

#### Article 4

#### National Treatment

(1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in Article 15 of this Treaty.

(2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of this Treaty.

### Chapter II

#### Rights of Performers

#### Article 5

#### Moral Rights of Performers

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, 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 protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

#### Article 6

#### Economic Rights of Performers in their Unfixed Performances

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

(i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

<sup>5</sup> 關於第3條的議定聲明：不言而喻，《羅馬公約》第5條(a)項和第16條(a)項第(iv)目中所指的“另一締約國的國民”，在適用於本條約時，對於係本條約締約方的政府間組織，指係該組織成員的國家之一的國民。

<sup>5</sup> *Agreed statement concerning Article 3:* It is understood that the reference in Articles 5(a) and 16(a) (iv) of the Rome Convention to “national of another Contracting State” will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

(ii) 錄製其尚未錄製的表演。

(ii) the fixation of their unfixed performances.

第7條  
複製權

表演者應享有授權以任何方式或形式對其以錄音製品錄製的表演直接或間接地進行複製的專有權。<sup>6</sup>

第8條  
發行權

(1) 表演者應享有授權通過銷售或其他所有權轉讓形式向公眾提供其以錄音製品錄製的表演的原件或複製品的專有權。

(2) 對於在已錄製的表演的原件或複製品經表演者授權被首次銷售或其他所有權轉讓之後適用本條第(1)款中權利的用盡所依據的條件(如有此種條件),本條約的任何內容均不得影響締約各方確定該條件的自由。<sup>7</sup>

第9條  
出租權

(1) 表演者應按締約各方國內法中的規定享有授權將其以錄音製品錄製的表演的原件和複製品向公眾進行商業性出租的專有權,即使該原件或複製品已由表演者發行或根據表演者的授權發行。

(2) 儘管有本條第(1)款的規定,任何締約方如在1994年4月15日已有且現仍實行表演者出租其以錄音製品錄製的表演的複製品獲得合理報酬的制度,只要錄音製品的商業性出租沒有引起對表演者複製專有權的嚴重損害,即可保留這一制度。<sup>8</sup>

<sup>6</sup> 關於第7、11和16條的議定聲明:第7條和第11條所規定的複製權及其其中通過第16條允許的例外,完全適用於數字環境,尤其是以數字形式使用表演和錄音製品的情況。不言而喻,在電子媒體中以數字形式存儲受保護的表演或錄音製品,構成這些條款意義下的複製。

<sup>7</sup> 關於第2條(e)項,第8、9、12和13條的議定聲明:這些條款中的用語“複製品”和“原件和複製品”,受各該條中發行權和出租權的約束,專指可作為有形物品投放流通的固定的複製品。

<sup>8</sup> 關於第2條(e)項,第8、9、12和13條的議定聲明:這些條款中的用語“複製品”和“原件和複製品”,受各該條中發行權和出租權的約束,專指可作為有形物品投放流通的固定的複製品。

Article 7

**Right of Reproduction**

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.<sup>6</sup>

Article 8

**Right of Distribution**

(1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.<sup>7</sup>

Article 9

**Right of Rental**

(1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.<sup>8</sup>

<sup>6</sup> *Agreed statement concerning Articles 7, 11 and 16:* The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>7</sup> *Agreed statement concerning Articles 2(e), 8, 9, 12, and 13:* As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>8</sup> *Agreed statement concerning Articles 2(e), 8, 9, 12, and 13:* As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

## 第10條

提供已錄製表演的權利

## Article 10

**Right of Making Available of Fixed Performances**

表演者應享有專有權，以授權通過有線或無線的方式向公眾提供其以錄音製品錄製的表演，使該表演可為公眾中的成員在其個人選定的地點和時間獲得。

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

## 第三章

## 錄音製品製作者的權利

## Chapter III

**Rights of Producers of Phonograms**

## 第11條

複製權

## Article 11

**Right of Reproduction**

錄音製品製作者應享有授權以任何方式或形式對其錄音製品直接或間接地進行複製的專有權。<sup>9</sup>

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.<sup>9</sup>

## Article 12

**Right of Distribution**

## 第12條

發行權

(1) 錄音製品製作者應享有授權通過銷售或其他所有權轉讓形式向公眾提供其錄音製品的原件或複製品的專有權。

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.

(2) 對於在錄音製品的原件或複製品經錄音製品製作者授權被首次銷售或其他所有權轉讓之後適用本條第(1)款中權利的用盡所依據的條件(如有此種條件)，本條約的任何內容均不得影響締約各方確定該條件的自由。<sup>10</sup>

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.<sup>10</sup>

## Article 13

**Right of Rental**

## 第13條

出租權

(1) 錄音製品製作者應享有授權對其錄音製品的原件和複製品向公眾進行商業性出租的專有權，即使該原件或複製品已由錄音製品製作者發行或根據錄音製品製作者的授權發行。

(1) Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them, by or pursuant to, authorization by the producer.

(2) 儘管有本條第(1)款的規定，任何締約方如在1994年4月15日已有且現仍實行錄音製品製作者出租其錄音製品的複製品

(2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of

<sup>9</sup> 關於第7、11和16條的議定聲明：第7條和第11條所規定的複製權及其通過第16條允許的例外，完全適用於數字環境，尤其是以數字形式使用表演和錄音製品的情況。不言而喻，在電子媒體中以數字形式存儲受保護的表演或錄音製品，構成這些條款意義下的複製。

<sup>9</sup> Agreed statement concerning Articles 7, 11 and 16: The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>10</sup> 關於第2條(e)項，第8、9、12和13條的議定聲明：這些條款中的用語“複製品”和“原件和複製品”，受各該條中發行權和出租權的約束，專指可作為有形物品投放流通的固定的複製品。

<sup>10</sup> Agreed statement concerning Articles 2(e), 8, 9, 12, and 13: As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

獲得合理報酬的制度，只要錄音製品的商業性出租沒有引起對錄音製品製作者複製專有權的嚴重損害，即可保留這一制度。<sup>11</sup>

#### 第14條

##### 提供錄音製品的權利

錄音製品製作者應享有專有權，以授權通過有線或無線的方式向公眾提供其錄音製品，使該錄音製品可為公眾中的成員在其個人選定的地點和時間獲得。

### 第四章

#### 共同條款

#### 第15條

##### 因廣播和向公眾傳播獲得報酬的權利

(1) 對於將為商業目的發行的錄音製品直接或間接地用於廣播或用於對公眾的任何傳播，表演者和錄音製品製作者應享有獲得一次性合理報酬的權利。

(2) 締約各方可在其國內立法中規定，該一次性合理報酬應由表演者、或由錄音製品製作者或由二者向用戶索取。締約各方可制定國內立法，對表演者和錄音製品製作者之間如未達成協議，表演者和錄音製品製作者應如何分配該一次性合理報酬所依據的條件作出規定。

(3) 任何締約方均可在向世界知識產權組織總幹事交存的通知書中，聲明其將僅對某些使用適用本條第(1)款的規定，或聲明其將以某種其他方式對其適用加以限制，或聲明其將根本不適用這些規定。

(4) 在本條中，以有線或無線的方式向公眾提供的、可為公眾中的成員在其個人選定的地點和時間獲得的錄音製品應被認為彷彿其原本即為商業目的而發行。<sup>12 13</sup>

<sup>11</sup> 關於第2條(e)項、第8、9、12和13條的議定聲明：這些條款中的用語“複製品”和“原件和複製品”，受各該條中發行權和出租權的約束，專指可作為有形物品投放流通的固定的複製品。

<sup>12</sup> 關於第15條的議定聲明：不言而喻，第15條並非表示完全解決表演者和錄音製品製作者在數字時代應享有的廣播和向公眾傳播的權利的水平。各代表團未能就關於需在若干情況下規定專有權的幾個方面或關於需在沒有保留可能情況下規定權利的不同提案達成協商一致，因此將此議題留待以後解決。

<sup>13</sup> 關於第15條的議定聲明：不言而喻，第15條不妨礙將本條授予的權利提供給民間文學藝術作品的表演者和錄製民間文學藝術作品錄音製品的製作者，只要這些錄音製品未被以獲得商業利潤為目的而發行。

the exclusive rights of reproduction of producers of phonograms.<sup>11</sup>

#### Article 14

##### Right of Making Available of Phonograms

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

### Chapter IV

#### Common Provisions

#### Article 15

##### Right to Remuneration for Broadcasting and Communication to the Public

(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

(2) Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

(3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

(4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.<sup>12, 13</sup>

<sup>11</sup> *Agreed statement concerning Articles 2(e), 8, 9, 12, and 13:* As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

<sup>12</sup> *Agreed statement concerning Article 15:* It is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusivity to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

<sup>13</sup> *Agreed statement concerning Article 15:* It is understood that Article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

## 第16條

## 限制與例外

(1) 締約各方在其國內立法中，可在對表演者和錄音製品製作者的保護方面規定與其國內立法中對文學和藝術作品的版權保護所規定的相同種類的限制或例外。

(2) 締約各方應將對本條約所規定權利的任何限制或例外限於某些不與錄音製品的正常利用相抵觸、也不無理地損害表演者或錄音製品製作者合法利益的特殊情況。<sup>14 15</sup>

## 第17條

## 保護期

(1) 依本條約授予表演者的保護期，應自表演以錄音製品錄製之年年終算起，至少持續到50年期滿為止。

(2) 依本條約授予錄音製品製作者的保護期，應自該錄音製品發行之年年終算起，至少持續到50年期滿為止；或如果錄音製品自錄製完成起50年內未被發行，則保護期應自錄製完成之年年終起至少持續50年。

## 第18條

## 關於技術措施的義務

締約各方應規定適當的法律保護和有效的法律補救辦法，制止規避由表演者或錄音製品製作者為行使本條約所規定的權利而使用的、對就其表演或錄音製品進行未經該有關表演者或錄音製品製作者許可、或未由法律准許的行為加以約束的有效技術措施。

<sup>14</sup> 關於第7、11和16條的議定聲明：第7條和第11條所規定的複製權及其其中通過第16條允許的例外，完全適用於數字環境，尤其是以數字形式使用表演和錄音製品的情況。不言而喻，在電子媒體中以數字形式存儲受保護的表演或錄音製品，構成這些條款意義下的複製。

<sup>15</sup> 關於第16條的議定聲明：關於《世界知識產權組織版權條約》第10條（涉及限制與例外）的議定聲明，亦可比照適用於《世界知識產權組織表演和錄音製品條約》的第16條（涉及限制與例外）。〔關於WCT第10條的議定聲明原文如下：“不言而喻，第10條的規定允許締約各方將其國內法中依《伯爾尼公約》被認為可接受的限制與例外繼續適用並適當地延伸到數字環境中。同樣，這些規定應被理解為允許締約方制定對數字網絡環境適宜的新的例外與限制。

“另外，不言而喻，第10條第（2）款既不縮小也不延伸由《伯爾尼公約》所允許的限制與例外的可適用性範圍。”〕

## Article 16

**Limitations and Exceptions**

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.<sup>14, 15</sup>

## Article 17

**Term of Protection**

(1) The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

(2) The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

## Article 18

**Obligations concerning Technological Measures**

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

<sup>14</sup> *Agreed statement concerning Articles 7, 11 and 16*: The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

<sup>15</sup> *Agreed statement concerning Article 16*: The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 10 of the WCT reads as follows: “It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

“It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”]



## 第19條

## 關於權利管理信息的義務

(1) 締約各方應規定適當和有效的法律補救辦法，制止任何人明知、或就民事補救而言有合理根據知道其行為會誘使、促成、便利或包庇對本條約所涵蓋的任何權利的侵犯而故意從事以下行為：

(i) 未經許可去除或改變任何權利管理的電子信息；

(ii) 未經許可發行、為發行目的進口、廣播、向公眾傳播或提供明知已被未經許可去除或改變權利管理電子信息的表演、錄製的表演或錄音製品的複製品。

(2) 本條中的用語“權利管理信息”係指識別表演者、表演者的表演、錄音製品製作者、錄音製品、對表演或錄音製品擁有任何權利的所有人的信息，或有關使用表演或錄音製品的條款和條件的信息，和代表此種信息的任何數字或代碼，各該項信息均附於錄製的表演或錄音製品的每件複製品上或在錄製的表演或錄音製品向公眾提供時出現。<sup>16</sup>

## 第20條

## 手續

享有和行使本條約所規定的權利無須履行任何手續。

## 第21條

## 保留

除第15條第(3)款的規定外，不允許對本條約有任何保留。

## 第22條

## 適用的時限

(1) 締約各方應將《伯爾尼公約》第18條的規定比照適用於本條約所規定的表演者和錄音製品製作者的權利。

<sup>16</sup> 關於第19條的議定聲明：關於《世界知識產權組織版權條約》第12條（涉及關於權利管理信息的義務）的議定聲明，亦可比照適用於《世界知識產權組織表演和錄音製品條約》的第19條（涉及關於權利管理信息的義務）。〔關於WCT第12條的議定聲明原文如下：“不言而喻，‘對本條約或《伯爾尼公約》所涵蓋的任何權利的侵犯’的提法既包括專有權，也包括獲得報酬的權利。

“此外，不言而喻，締約各方不會依賴本條來制定或實施要求履行為《伯爾尼公約》或本條約所不允許的手續的權利管理制度，從而阻止商品的自由流通或妨礙享有依本條約規定的權利。”〕

## Article 19

**Obligations concerning Rights Management Information**

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.<sup>16</sup>

## Article 20

**Formalities**

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

## Article 21

**Reservations**

Subject to the provisions of Article 15(3), no reservations to this Treaty shall be permitted.

## Article 22

**Application in Time**

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.

<sup>16</sup> *Agreed statement concerning Article 19*: The agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 19 (on Obligations concerning Rights Management Information) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 12 of the WCT reads as follows: “It is understood that the reference to ‘infringement of any right covered by this Treaty or the Berne Convention’ includes both exclusive rights and rights of remuneration.

“It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.”]

(2) 儘管有本條第(1)款的規定，締約方可將對本條約第5條的適用限制於在本條約對該締約方生效之後進行的表演。

(2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

### 第23條

#### 關於權利行使的條款

### Article 23

#### Provisions on Enforcement of Rights

(1) 締約各方承諾根據其法律制度採取必要的法律措施，以確保本條約的適用。

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) 締約各方應確保依照其法律可以提供執法程序，以便能採取制止對本條約所涵蓋權利的任何侵犯行為的有效行動，包括防止侵權的快速補救和為遏制進一步侵權的補救。

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## 第五章

### 行政條款和最後條款

## Chapter V

### Administrative and Final Clauses

### 第24條

#### 大會

### Article 24

#### Assembly

(1) (a) 締約方應設大會。

(1)(a) The Contracting Parties shall have an Assembly.

(b) 每一締約方應有一名代表，該代表可由副代表、顧問和專家協助。

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) 各代表團的費用應由指派它的締約方負擔。大會可要求世界知識產權組織（以下稱為“本組織”）提供財政援助，以便利按照聯合國大會既定慣例認為是發展中國家或向市場經濟轉軌的國家的締約方代表團參加。

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2) (a) 大會應處理涉及維護和發展本條約及適用和實施本條約的事項。

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) 大會應履行依第26條第(2)款向其指定的關於接納某些政府間組織成為本條約締約方的職能。

(b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) 大會應對召開任何修訂本條約的外交會議作出決定，並給予本組織總幹事籌備此種外交會議的必要指示。

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3) (a) 凡屬國家的每一締約方應有一票，並應只能以其自己的名義表決。

(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) 凡屬政府間組織的締約方可代替其成員國參加表決，其票數與其屬本條約締約方的成員國數目相等。如果此種政府間組織的任何一個成員國行使其表決權，則該組織不得參加表決，反之亦然。

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(4) 大會應每兩年召開一次例會，由本組織總幹事召集。

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) 大會應制定其本身的議事規則，其中包括特別會議的召集、法定人數的要求及在不違反本條約規定的前提下作出各種決定所需的多數。

#### 第25條

##### 國際局

本組織的國際局應履行與本條約有關的行政工作。

#### 第26條

##### 成為本條約締約方的資格

(1) 本組織的任何成員國均可成為本條約的締約方。

(2) 如果任何政府間組織聲明其對於本條約涵蓋的事項具有權限和具有約束其所有成員國的立法，並聲明其根據其內部程序被正式授權要求成為本條約的締約方，大會可決定接納該政府間組織成為本條約的締約方。

(3) 歐洲共同體在通過本條約的外交會議上做出上款提及的聲明後，可成為本條約的締約方。

#### 第27條

##### 本條約規定的權利和義務

除本條約有任何相反的具體規定以外，每一締約方均應享有本條約規定的一切權利並承擔本條約規定的一切義務。

#### 第28條

##### 本條約的簽署

本條約應在1997年12月31日以前開放供本組織的任何成員國和歐洲共同體簽署。

#### 第29條

##### 本條約的生效

本條約應於30個國家向本組織總幹事交存批准書或加入書三個月之後生效。

#### 第30條

##### 成為本條約締約方的生效日期

本條約應自下列日期起具有約束力：

(i) 對第29條提到的30個國家，自本條約生效之日起；

(ii) 對其他各國，自該國向本組織總幹事交存文書之日滿三個月起；

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

#### Article 25

##### International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

#### Article 26

##### Eligibility for Becoming Party to the Treaty

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

#### Article 27

##### Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

#### Article 28

##### Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

#### Article 29

##### Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

#### Article 30

##### Effective Date of Becoming Party to the Treaty

This Treaty shall bind

(i) the 30 States referred to in Article 29, from the date on which this Treaty has entered into force;

(ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;

(iii) 對歐洲共同體，如果其在本條約根據第29條生效後交存批准書或加入書，則自交存此種文書後滿三個月起，或如果其在本條約生效前交存批准書或加入書，則自本條約生效後滿三個月起；

(iv) 對被接納成為本條約締約方的任何其他政府間組織，自該組織交存加入書後滿三個月起。

### 第31條

#### 退約

本條約的任何締約方均可退出本條約，退約應通知本組織總幹事。任何退約應於本組織總幹事收到通知之日起一年後生效。

### 第32條

#### 本條約的語文

(1) 本條約的簽字原件應為一份，以英文、阿拉伯文、中文、法文、俄文和西班牙文簽署，各該文種的文本具有同等效力。

(2) 除本條第(1)款提到的語文外，任何其他語文的正式文本須由總幹事應有關當事方請求，在與所有有關當事方磋商之後制定。在本款中，“有關當事方”係指涉及到其正式語文或正式語文之一的本組織任何成員國，並且如果涉及到其正式語文之一，亦指歐洲共同體和可成為本條約締約方的任何其他政府間組織。

### 第33條

#### 保存人

本組織總幹事為本條約的保存人。

## 第 43/2013 號行政長官公告

中華人民共和國於二零一三年八月二日通知世界知識產權組織總幹事，一九九六年十二月二十日在日內瓦通過的《世界知識產權組織版權條約》（下稱“條約”）適用於中華人民共和國澳門特別行政區。

世界知識產權組織總幹事於二零一三年八月六日以照會確認，條約自二零一三年十一月六日起在中華人民共和國澳門特別行政區生效。

(iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 29, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

### Article 31

#### Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

### Article 32

#### Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

### Article 33

#### Depositary

The Director General of WIPO is the depositary of this Treaty.

## Aviso do Chefe do Executivo n.º 43/2013

Considerando que a República Popular da China notificou, em 2 de Agosto de 2013, o Director-Geral da Organização Mundial da Propriedade Intelectual (OMPI) sobre a aplicação na Região Administrativa Especial de Macau da República Popular da China do Tratado da Organização Mundial da Propriedade Intelectual sobre Direito de Autor, adoptado em Genebra em 20 de Dezembro de 1996 (doravante designado por «Tratado»);

Considerando ainda que o Director-Geral da OMPI confirmou, por nota datada de 6 de Agosto de 2013, a aplicação do referido Tratado na Região Administrativa Especial de Macau da República Popular da China com efeitos a partir de 6 de Novembro de 2013.