

**ARTICLE 12: TRANSFER AND EXERCISE OF  
EXCLUSIVE RIGHTS OF AUTHORISATION**

The proposal of Article 12 provided by the working paper N° 4 dated December 18 (17.15 pm) raise number of questions.

It refers only to one way of exercising the exclusive right provided to performers, which is through the producer, the rights being transferred to the producer or at least the exercise of rights being subject to a global agreement with the producer.

**This proposal could be interpreted as meaning that performers :**

- . could not individually exercise their rights against the users**
- . could not benefit from them through collective management.**

Such consideration is certainly not acceptable by the performers .

Moreover, this proposal present the issue as if it was a global issue, all the exclusive rights being transferred as a whole. This is far from reality, and far from the nature of such intellectual property rights.

**The performer must necessarily be free to authorise or not different uses of his performance, individually or through collective management.**

For instance, an authorization can be given by the performer specifically for the publication on videos or DVDs, but not for the making available on demand.

**The wording proposed is, step by step, making an intellectual property right granted to performers, a minor element of the contract between the performer and the producer.**

We strongly oppose this logic. It is not an issue only for the audiovisual industry. The aim of the Diplomatic Conference is not to adopt a future instrument protecting only this industry.

The link between performers and the users must not be cut. The finality of performers' rights is also to be exercised by themselves or through the organisation representing performers.

As it is drafted, the proposed agreed statement, referring to the law applicable to the transfer, can be in contradiction with rules of public order at national level. The choice by contract of an applicable law, as the application of the "law of the country with which the agreement is most closely connected", would hardly be applicable for instance in the field of labour law.

In a number of countries, performers are employed with a labour contract when they perform. Consequently, rules governing the contract are established by national legislation on the basis of principles of public order, prohibiting for instance the free choice of the applicable law, with a compulsory application priority given to the law of the place of residence of the employee, or of the place of the work. The proposed agreed statement could conflict with these rules of public order.