

## Article 19 : APPLICATION IN TIME

### Immediate application of the instrument is not retroactivity

It has been wrongly said that the text of the basic proposal in its article 19 par 2 was a proposal in order to avoid its “retroactive application” .

**This analysis is built on a confusion between “retroactivity” and immediate application of the new provisions.**

**Proposals referring to article 18 of the Bern convention, similar to the provisions adopted in article 22 of the WPPT, will only provide for a protection for acts of exploitation realised after the entry into force of the new instrument.**

This will of course include the fixations realised before this entry into force, but for the future acts of exploitation only. For instance, broadcasting and making available of audiovisual programmes would be subject to the new rights only from the entry into force of the future instrument.

Moreover, if these acts of exploitation have been dealt with in contracts concluded before the entry into force of the instrument, the content of this contracts and their application will be taken into consideration

This is clearly stated in different submissions, including the last proposal entitled “working paper on article 19 n° 1”, according to which the protection provided for in the instrument “**shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force**” of this instrument.

Then, rental of films or of other audiovisual product will continue according to contracts concluded before its entry into force.

To oppose protection of future exploitations of pre-existing recordings will generate confusion and distortion in the field of competition

**A solution allowing different member states to protect only recordings made after the entry into force of this instrument would fail to protect audiovisual fixations created for almost one century and would create a total confusion in this field.**

For instance, this alternative would generate **a serious and durable discrimination** between pre-existing audiovisual fixations and new audiovisual productions. This solution would generate serious distortion in competition between new and past products, to the detriment of new productions, and thus to employment of performers. This will be detrimental to small producers, and this to small countries making such productions. **The whole logic would seriously be detrimental to cultural diversity, and to authors of audiovisual productions.**

Television would be encouraged to include in their programmes old productions in order to escape the protection. This would prejudice new productions and employment of performers. In the same way, on the Internet, the making available would be made in priority for products realised before the entry into force of the instrument.

**In the context for instance of the application of article 10 – making available on demand –for exploitation through the Internet, this would encourage “legal system shopping”.**

Making available to the public will be organised from Contracting Parties using the possibility not to protect already existing recordings, covering the whole world without any legal obligations.

This is certainly not the aim of the Diplomatic Conference.

**WE SUPPORT THE PROPOSAL N° 1 INCLUDED IN THE WORKING DOCUMENT ON ARTICLE 19 RESULTING IN A SOLUTION SIMILAR TO ARTICLE 22 OF THE WPPT.**