

# WIPO International Performer's Right's Treaty revived

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11 years have passed since the last attempt of WIPO to promote an Audiovisual Performance Treaty which would bring the performer's protection to meet the challenges of the digital era. The path to the adoption of such a Treaty seems to be prima facie open after the WIPO's General Assembly Decision of 30th of September to work towards convening a diplomatic conference for the signature of a Treaty. The diplomatic conference will be convened in 2012 and will continue the work of the meeting in 2000.

In 2000, discussions on a draft WIPO Treaty on performers' rights which largely reflected the provisions of the WPPT made noteworthy progress. Indeed, provisional agreement on 19 of the 20 articles under negotiation was achieved. Nevertheless, negotiators at the time did not agree on whether or how should deal with the hot issue of transfer of rights from the performer to the producer and suspended the diplomatic conference. The question of transfer of rights from the performer to the producer is strongly related to the specific copyright culture of the signatory parties and the national industry standards. Since setting high universal standards which promote a wide control of the performer as regards primary and secondary uses of the performance could destabilize existing pro-producer national legal schemes of transfer of rights, not only the content of a universal solution but even the utility of a regulation on this topic were vastly contested. A series of alternative transfer of rights positions were promoted for consideration by the Diplomatic Conference, such as the option of a rebuttable presumption of transfer of the exclusive rights to the producer after the performer consented to the fixation of a specific performance or a presumed entitlement for the producer to exercise the performers' rights in the absence of a written agreement to the contrary.

The adoption of a WIPO Treaty might prove to be highly beneficial for the performers since the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) dates in 1961 and cannot give adequate response to the current challenges brought new ways of Internet distribution of audiovisual works, such as social media. Indeed, while performances in sound recordings are protected by the WPPT, there is no equivalent protection for performers in audiovisual works. Nevertheless, it is a matter of time to discover if the delicate compromise which seems to have been achieved on the wording of the provision dealing with the transfer of rights is able to promote the effective strengthening of the international protection of performers.