

The importance of the WCT and the WPPT

Advantages and
disadvantages

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The background in the mid-1990s

- The Berne Convention, revised in 1967 and 1971
 - Can only be revised in unanimity (Art. 27(3))
 - Permits only special agreements at same or higher level of protection (Art. 20)
- The Rome Convention, adopted in 1961
 - Modest level of protection
 - Modest level of adhesion
 - Cumbersome revision procedure (Art. 29)
 - Permits only special agreements at same or higher level of protection (Art. 22)
- The TRIPS Agreement, adopted in 1994
 - Updated economic rights and clarified limitations and exceptions, from a trade-oriented perspective
 - Technologically behind, due to the upcoming internet

Specific issues regarding literary and artistic works

- Computer programs and data bases (WCT Art.s 4 and 5)
- Rights of distribution and rental (WCT Art.s 6 and 7)
- Very short term of protection for photographic works (WCT Art. 9)
- Uncertainty regarding flexibilities outside the right of reproduction (WCT Art. 10)
 - The three-step test (BC Art. 9(2))
 - The minor reservations (Brussels and Stockholm Records)

Specific issues regarding related rights

- Performers' reproduction right very narrow (WPPT Art. 7)
- No moral rights of performers (WPPT Art. 5)
- No rights of distribution and rental (WPPT Art.s 8, 9, 12 and 13)
- Very short term of protection, commercial life of old recordings lasted much longer than foreseen (Art. 17)
- Very limited rights for performers in audiovisual fixations (later, the BTAP)
- Controversial right of equitable remuneration for broadcasting and communication to the public (WPPT Art. 15)

Common issues: digital technology and the internet, slide 1

- Reproduction
 - Digital formats (WCT Art. 1(4) referring to BC Art. 9; WPPT Art.s 7 and 11)
 - temporary reproduction (WCT Art. 10; WPPT Art. 16)
- Interactive transmissions
 - Close gaps in communication right in BC (WCT Art. 8)
 - Clarify protection against making available in interactive network (WCT Art. 8)
 - Grant exclusive making available right for performers and producers of phonograms (WPPT Art.s 10 and 14)
- Limitations and exceptions (WCT Art. 10; WPPT Art. 16)
 - Extension of existing rules into the digital environment
 - Devising new rules for the digital environment

Common issues: digital technology and the internet, slide 2

- Technological protection measures (WCT Art. 11; WPPT Art. 18)
 - Adequate legal protection and effective legal remedies
 - against circumvention
 - of effective technological measures used by rights owners [...]
 - that restrict acts which are not authorized [...] or permitted by law
- Exemptions from the protection
 - The protection does not cover "acts [...] permitted by law"
 - The protection must be 'adequate' and provide 'effective legal remedies'
 - Core issue: The dissemination of circumvention tools to the general public

Common issues: digital technology and the internet, slide 3

- Rights management information (RMI) (WCT Art. 12; WPPT Art. 19)
 - Adequate and effective legal remedies [...]
 - remove or alter electronic RMI without authority
 - criminal remedies: knowingly; civil remedies: with reasonable grounds to know
 - distribute, import, broadcast, communicate or make available without authority items where RMI has been removed or altered without authority
 - knowing that RMI has been removed or altered without authority

Why join the "Internet Treaties" WCT and WPPT?

- Digital technology and the internet are here to stay
 - Important supplements to existing outlets for arts, information and entertainment, profoundly influencing our daily lives
 - Not dealt with adequately in existing international instruments
 - International challenges calling for international solutions
 - Copyright infringers have also other agendas
- International politics – a matter of give and take
 - International protection is important for national culture
 - Generous provisions in BC are being taken over by increasing demands for legal reciprocity
 - Political pressure for adequate protection is mounting
- The Treaties offer tested and workable solutions
 - Technology neutral solutions have worked well for 20 years +
 - The treaties give a recognized stand in regional FTA talks

