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WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO SEMINAR FOR ASIA AND THE PACIFIC REGION ON THE INTERNET AND THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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in cooperation with
the Ministry of Law,
the Attorney-General's Chambers,
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III. WIPO COPYRIGHT TREATY

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I. INTRODUCTION

The Berne Convention for the Protection of Literary and Artistic Works (hereinafter: "the Berne Convention"), after its adoption in 1886, was revised quite regularly, approximately every 20 years, until the "twin revisions" which took place in Stockholm in 1967 and in Paris in 1971 ("twin revision," because the substantive provisions of the Stockholm Act did not enter into force, but (with the exception of the protocol to that Act) were incorporated–practically unchanged–by the Paris Act, in which only the Appendix, concerning non-voluntary licenses applicable in developing countries, included new substantive modifications.)

The revision conferences were convened, in general, in order to find responses to new technological developments (such as sound recording technology, photography, radio, cinematography and television).

In the 1970s and 1980s, a number of important new technological developments took place (reprography, videotechnology, compact cassette systems facilitating "home taping," satellite broadcasting, cable television, the increase of the importance of computer programs, computer-generated works and electronic databases, etc.).

For a while, the international copyright community followed the strategy of "guided development,"* rather than trying to establish new international norms.

The recommendations, guiding principles and model provisions worked out by the various WIPO bodies (at the beginning, frequently in cooperation with Unesco) offered guidance to governments on how to respond to the challenges of new technologies. Those recommendations, guiding principles and model provisions were based, in general, on interpretation of existing international norms, particularly the Berne Convention (for example, concerning computer programs, databases, "home taping," satellite broadcasting, cable television); but they also included some new standards (for example, concerning distribution and rental of copies).

The guidance thus offered in the said "guided development" period had an important impact on national legislation, contributing to the development of copyright all over the world.

At the end of the 1980s, however, it was recognized that mere guidance would not suffice any longer; new binding international norms were indispensable.

The preparation of new norms began in two forums. At GATT, in the framework of the Uruguay Round negotiations, and at WIPO, first, in one committee of experts and, later, in two parallel committees of experts.

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* Sam Ricketson used this expression in his book "The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986", Kluwer, London, 1986. He wrote the following: "In essence, 'guided development' appears to be the present policy of WIPO, whose activities in promoting study and discussion on problem areas have been of fundamental importance to international copyright protection in recent years."

For a while, the preparatory work in the WIPO committees was slowed down, since governments concerned wanted to avoid undesirable interference with the complex negotiations on the trade-related aspects of intellectual property rights (TRIPS) then taking place within the Uruguay Round.

After the adoption of the TRIPS Agreement, a new situation emerged. The TRIPS Agreement included certain results of the period of "guided development," but it did not respond to all challenges posed by the new technologies, and, whereas, if properly interpreted, it has broad application to many of the issues raised by the spectacular growth of the use of digital technology, particularly through the Internet, it did not specifically address some of those issues.

The preparatory work of new copyright and neighboring rights norms in the WIPO committees was, therefore, accelerated, leading to the relatively quick convocation of the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions which took place in Geneva from December 2 to 20, 1996.

The Diplomatic Conference adopted two treaties: the WIPO Copyright Treaty (hereinafter also referred to as "the WCT" or as "the Treaty") and the WIPO Performances and Phonograms Treaty (hereinafter referred to as "the WPPT").

II. LEGAL NATURE OF THE WCT AND ITS RELATIONSHIP WITH OTHER INTERNATIONAL TREATIES

The first sentence of Article 1(1) of the WCT provides that "[t]his Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention." Article 20 of the Berne Convention contains the following provision: "The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention." Thus, the above-quoted provision of Article 1(1) of the WCT has specific importance for the interpretation of the Treaty. It makes clear that no interpretation of the WCT is acceptable which may result in any decrease of the level of protection granted by the Berne Convention.

Article 1(4) of the Treaty establishes a further guarantee for fullest possible respect of the Berne Convention, since it includes, by reference, all substantive provisions of the Berne Convention, providing that "Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention." Article 1(3) of the Treaty clarifies that, in this context, the Berne Convention means the 1971 Paris Act of that Convention. These provisions should be considered in light of the provisions of Article 17 of the Treaty, discussed below, under which not only countries party to the said 1971 Paris Act, and, in general, not only countries party to any act of the Berne Convention, but also any member countries of WIPO, irrespective of whether or not they are party to the Convention, and also certain intergovernmental organizations, may adhere to the Treaty.

Article 1(2) of the Treaty contains a safeguard clause similar to the one included in Article 2.2 of the TRIPS Agreement: "Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works." The scope of this safeguard clause differs from the parallel provision in the TRIPS Agreement. The TRIPS safeguard clause also has importance from the viewpoint of at least one article of the Berne Convention which contains substantive provisions–namely Article 6*bis* on moral rights–since that article is not included by reference in the TRIPS Agreement. Article 1(2) of the WCT only has relevance from the viewpoint of Article 22 to 38 of the Berne Convention containing administrative provisions and final clauses which are not included by reference (either in the WCT or the TRIPS Agreement) and only to the extent that those provisions provide obligations for Contracting Parties.

The second sentence of Article 1(1) of the WCT deals with the question of the relationship of the WCT with treaties other than the Berne Convention. It states that "[t]his Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties." The TRIPS Agreement and the Universal Copyright Conventions are examples of such "other" treaties.

It should also be pointed out that there is no specific relationship between the WCT and the WPPT either, and the latter is also an "other " treaty covered by the second sentence of Article 1(1) of the WCT. There is also no such relationship between the WCT and the WPPT equivalent to that between the Berne Convention and the Rome Convention. Under Article 24(2) of the Rome Convention, only those countries may adhere to that Convention which are party to the Berne Convention or the Universal Copyright Convention. While, in principle, any member country of WIPO may accede to the WPPT, it is not a condition that they be party to the WCT (or the Berne Convention or the Universal Copyright Convention). It is another matter that such a separate adherence is not desirable, and, hopefully, will not take place.

III. SUBSTANTIVE PROVISIONS OF THE WCT

A. Provisions relating to the so-called "digital agenda"

During the post-TRIPS period of the preparatory work which led eventually to the WCT and WPPT, it became clear that the most important and most urgent task of the WIPO committees and the eventual diplomatic conference was to clarify existing norms and, where necessary, create new norms to respond to the problems raised by digital technology, and particularly by the Internet. The issues addressed in this context were referred to as the "digital agenda."

The provisions of the WCT relating to that "agenda" cover the following issues: the rights applicable for the storage and transmission of works in digital systems, the limitations on and exceptions to rights in a digital environment, technological measures of protection and rights management information. As discussed below, the right of distribution may also be relevant in respect of transmissions in digital networks; its scope, however, is much broader. Therefore, and, also due to its relationship with the right of rental, the right of distribution is discussed separately below along with that right.

A.1 Storage of works in digital form in an electronic medium: the scope of the right of reproduction

Although the draft of the WCT contained certain provisions intended to clarify the application of the right of reproduction to storage of works in digital form in an electronic medium, in the end, those provisions were not included in the Treaty. The Diplomatic Conference, however, adopted an Agreed Statement which reads as follows: "The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention."

As early as in June 1982, a WIPO/Unesco Committee of Governmental Experts clarified that storage of works in an electronic medium is reproduction, and since then no doubt has ever emerged concerning that principle. The second sentence of the Agreed Statement simply confirms this. It is another matter that the word "storage" may still be interpreted in somewhat differing ways.

As far as the first sentence is concerned, it follows from it that Article 9(1) of the Convention is fully applicable. This means that the concept of reproduction under Article 9(1) of the Convention, which extends to reproduction "in any manner or form" irrespective of the duration of the reproduction, must not be restricted merely because a reproduction is in digital form through storage in an electronic memory, and just because a reproduction is of a temporary nature. At the same time, it also follows from the same first sentence that Article 9(2) of the Convention is also fully applicable, which offers an appropriate basis to introduce any justified exceptions such as the above-mentioned cases of transient and incidental reproductions in national legislation, in harmony with the "three-step test" provided for in that provision of the Convention.

A.2 Transmission of works in digital networks; the so-called "umbrella solution"

During the preparatory work, an agreement emerged in the WIPO committees that the transmission of works on the Internet and in similar networks should be the object of an exclusive right of authorization of the author or other copyright owner; with appropriate exceptions, of course.

There was, however, no agreement concerning the right or rights which should actually be applied, although the rights of communication to the public and distribution were identified as the two major possibilities. It was, however, also noted that the Berne Convention does not offer full coverage for those rights; the former does not extend to certain categories of works, while explicit recognition of the latter covers only one category, namely that of cinematographic works.

Differences in the legal characterization of digital transmissions were partly due to the fact that such transmissions are of a complex nature, and that the various experts considered one aspect more relevant than another. There was, however, a more fundamental reason, namely that coverage of the above-mentioned two rights differs to a great extent in national

laws. It was mainly for this reason that it became evident that it would be difficult to reach consensus on a solution based on one right over the other.

Therefore, a specific solution was worked out and proposed; namely, that the act of digital transmission should be described in a neutral way, free from specific legal characterization, that is, which of the two "traditional" rights mentioned above covers it; that such a description should be technology-specific and, at the same time, should convey the interactive nature of digital transmissions; that, in respect of legal characterization of the exclusive right–that is, in respect of the actual choice of the right or rights to be applied– sufficient freedom should be left to national legislation; and, finally, that the gaps in the Berne Convention in the coverage of the relevant rights– the right of communication to the public and the right of distribution–should be eliminated. This solution was referred to as the "umbrella solution."

The WCT applies this "umbrella solution" in a specific manner. Since the countries which preferred the application of the right of communication to the public as a general option seemed to be more numerous, the Treaty extends applicability of the right of communication to the public to all categories of works, and clarifies that that right also covers transmissions in interactive systems described in a legal-characterization-free manner. This is included in Article 8 of the Treaty which reads as follows: "Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them." As a second step, however, when this provision was discussed in Main Committee I of the Diplomatic Conference, it was stated–and no Delegation opposed the statement–that Contracting Parties are free to implement the obligation to grant exclusive right to authorize such "making available to the public" also through the application of a right other than the right of communication to the public or through the combination of different rights. By the "other" right, of course, first of all, the right of distribution was meant, but an "other" right might also be a specific new right such as the right of making available to the public as provided for in Articles 10 and 14 of the WPPT.

An Agreed Statement was adopted concerning the above-quoted Article 8. It reads as follows: "It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11*bis*(2)." On the basis of discussions within Main - Committee I concerning this issue, it is clear that the Agreed Statement is intended to clarify the issue of liability of service and access providers in digital networks like the Internet.

The Agreed Statement actually states something obvious, since it is evident that, if a person engages in an act not covered by a right provided in the Convention (and in corresponding national laws), such person has no direct liability for the act covered by such a right. It is another matter, that, depending on the circumstances, he may still be liable on another basis, such as contributory or vicarious liability. Liability issues are, however, very complex; the knowledge of a large body of statutory and case law is needed in each country so that a given case may be judged. Therefore, international treaties on intellectual property

rights, understandably and rightly, do not cover such issues of liability. The WCT follows this tradition.

A.3 Limitations and exceptions in the digital environment

An Agreed Statement was adopted in this respect, which reads as follows: "It is understood that the provisions of Article 10 [of the Treaty] 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) [of the Treaty] neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention."
The provisions of Article 10 of the Treaty referred to in the agreed statement are discussed below. It is obvious that extending limitations and exceptions into the digital environment, or devising new exceptions and limitations for such environment, is subject to the three-step test included in that Article.

A.4 Technological measures of protection and rights management information

It was recognized, during the preparatory work, that it is not sufficient to provide for appropriate rights in respect of digital uses of works, particularly uses on the Internet. In such an environment, no rights may be applied efficiently without the support of technological measures of protection and rights management information necessary to license and monitor uses. There was agreement that the application of such measures and information should be left to the interested rights owners, but also that appropriate legal provisions were needed to protect the use of such measures and information. Such provisions are included in Article 11 and 12 of the Treaty.

Under Article 11 of the Treaty, Contracting Parties must provide "adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law."

Article 12(1) of the Treaty obliges Contracting Parties to "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 or the Berne Convention: (i) to remove or alter any electronic rights management information without authority; (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority." Article 12(2) defines "rights management information" as meaning "information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public."

An Agreed Statement was adopted by the Diplomatic Conference concerning Article 12 of the Treaty which consists of two parts. The first part 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." The second part reads as follows: "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."

B. Other substantive provisions

B.1 Criteria of eligibility for protection; country of origin; national treatment; formality free protection; possible restriction of ("backdoor") protection in respect of works of nationals of certain countries not party to the Treaty

The WCT settles the issues listed in the above-mentioned subtitle in a simple way: in Article 3, it provides for the *mutatis mutandis* application of Article 3 to 6 of the Berne Convention. (The reference to the Berne Convention also includes Articles 2 and 2*bis* of the Convention, but those provisions are not relevant in the present context; they are discussed below.)

In the *mutatis mutandis* application of those provisions, a number of issues may emerge; therefore, an Agreed Statement was also adopted by the Diplomatic Conference as guidance, which reads as follows: "It is understood that, in applying Article 3 of this Treaty, the expression 'country of the Union' will be read as if it were a reference to a Contracting Party to this Treaty in the application of those Berne Articles in respect of protection provided for in this Treaty. It is also understood that the expression 'country outside the Union' in those Articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that 'this Convention' in Articles 2(8), 2*bis*(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in Articles 3 to 6 of the Berne Convention to a 'national of one of the countries of the Union' will, when these Articles are 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 member of that organization."

B.2 Subject matter and scope of protection; computer programs; databases

The above-discussed Article 3 of the Treaty also prescribes the *mutatis mutandis* application of Articles 2 and 2*bis* of the Berne Convention. There was some hesitation at the Diplomatic Conference concerning whether a reference to those provisions is really needed, considering that Article 1(4) of the Treaty already obliges Contracting Parties to comply with Articles 1 to 21 of the Berne Convention, that is, also with Articles 2 and 2*bis* of the Convention. However, some delegations were of the view that Articles 2 and 2*bis* are similar in their nature to Articles 3 to 6 of the Convention in the sense that, they regulate a certain aspect of the scope of application of the Convention: the scope of the subject matter covered.

With these provisions of the Treaty, there is no doubt that the same concept of literary and artistic works, and to the same extent, is applicable under the Treaty as the concept and extent of such works under the Berne Convention.

The Treaty, also includes, however, some clarifications in this respect similar to those which are included in the TRIPS Agreement.

First, Article 2 of the Treaty clarifies that "copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such." This is virtually the same as the clarification included in Article 9.2 of the TRIPS Agreement. Nor is the principle reflected in Article 2 new in the context of the Berne Convention, since–as reflected in the records of the diplomatic conferences adopting and revising the Convention– countries party to the Convention have always understood the scope of protection under the Convention in that way.

Second, Articles 4 and 5 of the Treaty contain clarifications concerning the protection of computer programs as literary works and compilations of data (databases). With some changes in wording, those clarifications are similar to those included in Article 10 of the TRIPS Agreement. This is underlined by two Agreed Statements adopted by the Conference concerning the above-mentioned Articles. Those two Statements clarify that the scope of protection for computer programs under Article 4 of the Treaty and for compilations of data (databases) under Article 5 of the Treaty "is consistent with Article 2 of the Berne Convention and on par with the relevant provisions of the TRIPS Agreement."

The only substantive difference between Article 4 and 5 of the WCT, on the one hand, and Article 10 of the TRIPS Agreement, on the other, is that the provisions of the WCT use more general language. Article 10.1 of the TRIPS Agreement provides for the protection of computer programs "whether in source or object code," while Article 4 of the WCT does the same concerning computer programs "whatever may be the mode or form of their expression." It is understood that the scope of protection is the same under the two provisions, but the text of the WCT is less technology-specific. Similarly, Article 10.2 of the TRIPS Agreement speaks about "compilations of data or other material, whether in machine readable or other form," while Article 5 of the WCT refers, in general, to "compilations of data or other material, in any form."

B.3 Rights to be protected; the right of distribution and the right of rental

Article 6(1) of the WCT provides an exclusive right to authorize the making available to the public of originals and copies of works through sale or other transfer of ownership, that is, an exclusive right of distribution. Under the Berne Convention, it is only in respect of cinematographic works that such a right is granted explicitly. According to certain views, such a right, surviving at least until the first sale of copies, may be deduced as an indispensable corollary to the right of reproduction, and, in some legal systems, the right of distribution is in fact recognized on this basis. Other experts are, however, of a different view and many national laws do not follow the solution based on the concept of implicit recognition of the right of distribution. Article 6(1) of the WCT should be considered, as a minimum, a useful clarification of the obligations under the Berne Convention (and also under the TRIPS Agreement which includes by reference the relevant provisions of the Convention). However, it is more justified to consider Article 6(1) as containing a Berne-*plus*-TRIPS-*plus* element.

Article 6(2) of the Treaty deals with the issue of the exhaustion of the right of distribution. It does not oblige Contracting States to choose national/regional exhaustion or international exhaustion–or to regulate at all the issue of exhaustion–of the right of distribution after the first sale or other first transfer of ownership of the original or a copy of the work (with the authorization of the author).

Article 7 of the Treaty provides an exclusive right of authorizing commercial rental to the public in respect of the same categories of works–namely, computer programs, cinematographic works, and works embodied in phonograms, as determined in the national laws of Contracting Parties–as those covered by Articles 11 and 14.4 of the TRIPS Agreement, and with the same exceptions (namely, in respect of computer programs which are not themselves the essential objects of the rental; in respect of cinematographic works unless commercial rental leads to widespread copying of such works materially impairing the exclusive right of reproduction; and in the case where a Contracting Party, on April 15, 1994, had and continues to have in force a system of equitable remuneration for rental of copies of works included in phonograms, instead of an exclusive right (where that Contracting Party may maintain that system provided that commercial rental does not give rise to the material impairment of the exclusive right of authorization)).

An Agreed Statement was adopted by the Diplomatic Conference in respect of Articles 6 and 7 of the Treaty. It reads as follows: "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." The question may emerge whether this Agreed Statement conflicts with the "umbrella solution" for transmissions in interactive digital networks, and, particularly, whether or not it excludes application of the right of distribution to such transmissions. The answer to this question is obviously negative. The Agreed Statement determines only the minimum scope of application of the right of distribution; it does not create any obstacle for Contracting States to exceed that minimum.

B.4 Duration of protection of photographic works

Article 9 of the WCT eliminates the unjustified discrimination against photographic works concerning the duration of protection; it obliges Contracting Parties not to apply Article 7(4) of the Berne Convention (which, as also for works of applied art, prescribes a shorter term–25 years–for photographic works than the general 50-year term).

B.5 Limitations and exceptions

Article 10 of the Treaty contains two paragraphs. Paragraph(1) determines the types of limitations on, or exceptions to, the rights granted under the Treaty which may be applied, while paragraph (2) provides criteria for the application of limitations of, or exceptions to, the rights under the Berne Convention.

Both paragraphs use the three-step test included in Article 9(2) of the Berne Convention to determine the limitations and exceptions allowed (namely, exceptions or and limitations are only allowed (i) in certain special cases; (ii) provided that they do not conflict with a normal exploitation of the work: and further (iii) provided that they do not unreasonably prejudice the legitimate interests of the authors). Under Article 9(2) of the Berne Convention, this test is applicable only to the right of reproduction, while both paragraphs of Article 10 of the Treaty cover all rights provided for by the Treaty and the Berne Convention, respectively. In that respect, the provisions of Article 10 are similar to Article 13 of the TRIPS Agreement which applies the same test for all rights provided for by the TRIPS Agreement either directly or through inclusion by reference of the substantive provisions of the Berne Convention.

B.6 Application in time

Article 13 of the WCT refers simply to Article 18 of the Berne Convention to determine the works to which the Treaty applies at the moment of its entry into force for a given Contracting State, and provides that the provisions of that Article must be applied also to the Treaty.

B.7 Enforcement of rights

Article 14 of the Treaty contains two paragraphs. Paragraph (1) is a *mutatis mutandis* version of Article 36(1) of the Berne Convention. It provides that "Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty."

Paragraph (2) is a *mutatis mutandis* version of the first sentence of Article 41.1 of the TRIPS Agreement. It reads as follows: "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."

IV. ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES

Articles 15 to 25 of the WCT contain the administrative provisions and final clauses of the WCT which cover such issues as the Assembly of Contracting States, the International Bureau, eligibility for becoming party to the Treaty, signature of the Treaty, entry into force of the Treaty, effective date of becoming party to the Treaty, reservations (no reservations); denunciation of the Treaty, languages of the Treaty and depository.

These provisions, in general, are the same as or similar to the provisions of other WIPO treaties on the same issues. Only two specific features should be mentioned, namely the possibility of intergovernmental organizations becoming party to the Treaty and the number of instruments of ratification or accession needed for entry into force of the Treaty.

Article 17 of the Treaty provides for eligibility for becoming party to the Treaty. Under paragraph (1), any member State of WIPO may become party to the Treaty. Paragraph (2) provides that "[t]he 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." Paragraph (3) adds the following: "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."

The number of instruments of ratification or accession needed for the entry into force of the treaties administered by WIPO has been traditionally fixed quite low; five is the most frequent number. The WCT, in its Article 20, fixes this number much higher, namely at 30 instruments of ratification or accession by States.

V. CURRENT STATUS OF THE WCT

Until December 31, 1997, 50 States–from the region to which this Seminar is dedicated: Indonesia and Mongolia–and the European Community have signed the Treaty.

Indonesia and the Republic of Moldova are the only States to have ratified the Treaty up to date.

VI. CONCLUSIONS

As discussed above, the most important feature of the WCT is that it includes provisions necessary for the adaptation of the international copyright norms to the challenges and requirements of digital technology, particularly of global digital networks like the Internet.

The participation in, and the use of, the Global Information Infrastructure based on such technology and such networks is an obvious interest of all countries. The WCT–along with the WPPT–establishes the legal conditions for this.

For this reason, it is also in the clear interest of all countries to accede to the WCT (as well as to the WPPT).

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