

**WIPO/DA/MVD/00/5**  
**ORIGINAL:**English  
**DATE:**September6,2000



COPYRIGHTCOUNCIL  
MINISTRYOFEDUCATIONANDCULTURE



WORLDINTELLECTUAL  
PROPERTYORGANIZATION

## **REGIONALWORKSHOPON COPYRIGHTANDRELAT EDRIGHTS INTHEINFORMATIONA GE**

organizedby  
theWor ldIntellectualPropertyOrganization(WIPO)  
incooperationwith  
theCopyrightCouncil  
oftheMinistryofEducationandCultureoftheEasternRepublicofUruguay

**Montevideo,September13and14,2000**

ECONOMIC,POLITICAL ANDLEGALIMPORTANCE OF  
COPYRIGHTANDRELATEDRIGHTSIN INTERNATIONAL  
COMMERCE:THEPRESE NTSITUATIONANDFUTURE  
DEVELOPMENTS

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1. The title of this presentation is the “economic, political and legal importance of copyright and related rights in international commerce, the present situation and future developments”. It seems to me that the three factors referred to in the title – economic, political and legal – are interlinked in various ways so that it would not be sensible for me to try to address each of them separately. But I would like to begin from an economic standpoint.
2. I would like to look first at a statement made by a national parliament about the principle aims and purposes of copyright legislation when it enacted this [Slide 1]. The parliament said that among the main objectives of the legislation were:
 

“the encouragement of learning, the prevention of the practice of piracy and the encouragement of learned men to write and compose useful books”.
3. The body which made this statement was the English Parliament of the early 18th century which enacted the first real copyright legislation of the United Kingdom, the 1709 Statute of Queen Anne, said also to be the first copyright law, as such, anywhere in the world. It seems to me that this statement, although made nearly 300 hundred years ago, captures the essence of why copyright and related rights are granted to authors and other creators, and remains as true today as it was then.
4. The 1709 copyright Statute of Queen Anne recognized that unless authors have rights enabling them to control use of their works and obtain economic rewards from this, there is little or no incentive for the continued creation of works. In the words of the English Parliament of the time, without these rights there would be no “encouragement of learned men to write and compose useful books”. Nor would there be any incentive to disseminate works to the public at large, and society as a whole would be the losers since it would not be able to benefit from the ideas and knowledge of others. Again in the words of the 18th century English parliament, there would be no “encouragement of learning”. Of course, in the 18th century printing was virtually the only way of exploiting works on a mass scale, and since then copyright has had to develop on the same basic principles so as to encompass new technologies unknown at the time, such as cinema and broadcasting, and this process continues.
5. I think it true to say that economic reasons for protecting authors played a greater role in the development of copyright in the common law system of the English-speaking world than in those countries following the civil law or ‘droit d’auteur’ tradition. There, the fundamental reason for protecting authors is perhaps first and foremost a view that basic human rights or natural justice demand that authors have exclusive rights in their property, both the economic and moral. However, while there may be philosophical distinctions between the two systems, it seems to me there is much less difference in their operation in practice and that the protection of economic interests is of key concern in both.
6. It is interesting to note the reference to “prevention of the practice of piracy” in the statements of the English Parliament when it enacted the 1709 law. That law was accompanied by quite severe penalties for infringement of copyright. Infringing books were subject to forfeiture and a fine of one penny for every page copied. This resulted in fines which were high for the time in cases where many copies of a book were pirated, and illustrates that the 18th century legislators recognized that it is not only the grant of legal rights which is important in protecting the interests of authors and other creators, but also

effective enforcement of those rights. This also remains a struggle today as it was nearly three centuries ago.

7. I would now like to bore you with some statistics. In recent years, the government department in the UK responsible for cultural matters has endeavored to estimate the value of what it has termed the 'creative industries' to the UK. By 'creative industries' is meant, in particular, fields such as writing and publishing, music, sound recordings, films, and broadcasting. The department has estimated [Slide 2] that, collectively, the creative industries account for some 4-5% of UK Gross Domestic Product (GDP). To put this in context, it is more than the contribution of many elements of UK manufacturing industry. Employment in the creative industries is about 1.4 million people. Estimates were also made of the contribution of individual parts of the creative sector. Here, we see that the UK is particularly strong in the fields of leisure software (computer games and the like), music and publishing, all of which produced greater exports than there were imports into the UK, resulting in positive annual trade balances of between 225 and 900 million pounds sterling (£). In contrast, there were negative balances of trade in the film and broadcasting sectors, where the major player is the United States.

8. Overall, therefore, the UK is an net exporter of material protected by copyright and related rights, and this, of course, means that there is every incentive for us to ensure firstly that copyright is properly protected at home, and secondly that comparable standards of protection apply elsewhere in the world where UK creative material finds a market. I appreciate that matters may seem different from the perspective of any country which is an net importer of copyright material. But I would suggest that proper protection of copyright is important in these circumstances also, for a number of reasons. Firstly, failure to protect intellectual property acts as a disincentive to the creation and dissemination of material of cultural, educational or other social value within that country, irrespective of any external considerations. Secondly, it seems to me that without proper protection of intellectual property at home, it is difficult for a country to become an net exporter of copyright material and matters are capable of change in this respect. Currently, as I have said, the UK is an net importer of film and television material, but who knows whether one day we may find whatever that something is which would give UK productions a larger market in these fields. Conversely, the UK is at present relatively strong in the music sector, particularly popular music, but this was not always so. I will remember that in my early teens, just before the advent of the 'Beatles', that the dominant force in this sector was the United States.

9. By the mid-nineteenth century the UK had entered into a number of bilateral agreements with other European countries such as Belgium, France, Italy and Spain, providing for reciprocal protection of the authors of the respective countries, for there was increasing recognition in the UK that copyright protection is not only important at home but also elsewhere where there is a market for UK works. But arrangements such as these were inconsistent, and protection for authors abroad varied according to the precise terms of each bilateral treaty. This, coupled with a growing view in the UK and other European countries that it would be desirable to deter piracy on a universal scale as possible, led to the adoption in 1886 of the first international copyright treaty, the Berne Convention. Under this, countries joining the treaty would apply common standards of protection to each other's nationals. As everyone knows, the Berne Convention has been extremely successful, has steadily grown in membership, and has developed to cater for developments in technology through successive revisions first at Berlin in 1908 and latterly at Paris in 1971. Moreover, other international treaties have been adopted in the field, notably the Rome Convention applying to related rights.

10. However, while these treaties were, and will continue to be, extremely important in setting internationally recognized standards of rights and protection which should apply to authors and other creators, there is another key aspect in relation to trade which came to be incorporated in the 1994 GATT 'TRIPS' Agreement on Trade-Related Aspects of Intellectual Property Rights. This goes back to what I said earlier, that the grant of rights is one thing, but for proper protection of intellectual property there must also be effective enforcement of those rights.

11. As you will know, the TRIPS Agreement, in addition to requiring a number of rights to be granted to authors, phonogram producers, performers and broadcasters, also contains a number of obligations on enforcement of these rights. These commence with a general requirement to provide for effective action against infringement, including expeditious remedies which prevent infringements and act as a deterrent to further infringement, and go on to cover more detailed matters such as court procedures, injunctions, damages, disposal or destruction of infringing goods, provisional and border measures, and criminal procedures and penalties. As I indicated in my previous presentation, the TRIPS Agreement also gives member states the ability to take action if they consider that the obligations under the Agreement are not being fulfilled by other members, and for sanctions to be applied if this is the case. This is a major difference between TRIPS and previous copyright treaties, and indicates that countries were not prepared to enter into an agreement conferring wider trade benefits without proper recognition and enforcement of intellectual property rights.

12. TRIPS continued trends in international commerce that had already been seen. For example, in Europe, there are a number of countries either seeking to join the European Union or to have favorable trade arrangements with it, such as regarding agricultural products. Even prior to TRIPS, the EU had been making comparable standards of protection and enforcement of intellectual property rights to those in the EU a condition of trade or association agreements with third countries. The United States has also long placed high importance on proper protection of intellectual property in its trade relations with other countries. In deed, it would be difficult for many governments to do otherwise, not only because of considerations relevant to their economies but also because of high political pressure they are under from right owners, who naturally wish to see their interests protected abroad as well as at home.

13. The TRIPS Agreement is, of course, very relevant to the main ways in which material protected by copyright or related rights has been exploited to date, such as by the production and distribution of tangible copies, public performance and broadcasting. However, it was the product of lengthy negotiations begun at a time when the new digital environment, and in particular the Internet, while foreseen, were not a reality, and does not really reflect this. This new environment is now well established and clearly has major implications for international commerce, in that it will permit many transactions to take place electronically rather than in the older ways of dealing in tangible goods. In theory at least, it will, for example, be possible for, say, a publisher in the UK to market books throughout the world entirely electronically. 'Electronic commerce', as an alternative to trade in physical goods, has become a reality.

14. Clearly, creators and disseminators of intellectual property wish to see their material properly protected in the new environment just as in the old, and the economic reasons for this, and political pressures to ensure that it is the case, are unchanged. But legally do copyright and related rights remain the right way to achieve the necessary protection? A few years ago a number of articles appeared in intellectual property journals in the UK predicting

the demise of copyright in the digital environment, chiefly, it seems to me, because it was thought that even if appropriate rights were granted it would be so difficult to enforce them that in practice they would be meaningless. However, in government circles in the UK, there has never been any doubt that copyright would remain relevant, and that the issue was one of how best to ensure that it would continue to function effectively in the digital environment. In other words, the question was one of adapting copyright to new technology, as has always been necessary over the years, such as, for example, when the gramophone, broadcasting, tape recorders, photocopiers and the computer came along.

15. The view that copyright would not become redundant, but rather that it required development to ensure that rights continue to apply and are enforceable in the new environment, was evidently widely shared around the world. This is important given the global nature of the Internet, which means that only an approach on a world-wide scale can ensure that authors and other rights owners remain properly protected. In the early 1990's, work therefore began under the auspices of WIPO, first on a possible protocol to the Berne Convention, aimed at updating this to cope with the latest developments in technology. This work expanded, and, as you will know, culminated in 1996 with the adoption at the Diplomatic Conference in December that year of two new international treaties: the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

16. The two new treaties, sometimes referred to as the 'Internet treaties' are an extremely important step in protecting copyright and related rights in the digital environment on an international scale, and it is clearly vital that as many countries as possible around the world ratify them as soon as they can. It is a source of regret to me in the UK that we have not yet been able to do so because of the relatively lengthy process of formulating EU legislation, the draft Directive on copyright and related rights in the Information Society, that will enable the EU and its member states to ratify the treaties.

17. Among the key aspects of the new treaties for electronic commerce [Slide 3] is their recognition that reproduction rights apply in the digital environment, as is reflected in the Agreed Statement to Article 1(4) of the WCT, and in Articles 7 and 11 of the WPPT and the Agreed Statement to these articles. A second extremely significant aspect is the introduction of a new right, the so-called 'making available' right, which is to be found in Article 8 of the WCT and Articles 10 and 14 of the WPPT, and enables authors and other right owners to control use of their material in 'on-demand' services supplying material to individual consumers on request. This is obviously a key right in the new environments since, for example, the sound recording and film industries envisage business models based on supplying products to consumers at a time they wish, either for simply listening to or viewing at home, or for making copies to retain for domestic use. In other words, on-demand services could replace some activities such as going to a store to buy sound recordings or videos, or to rent a video. It is therefore essential that there are communication and reproduction rights which enable the use of material in on-demand services to be controlled.

18. But it is not only the developments in rights which make the 1996 WIPO treaties of vital importance. Both treaties also recognize that it is not only rights, but also the use of technology, which is key to the protection of copyright and related rights in the digital environment. Digital technology also offers right owners the possibility of physically protecting their material against misuse through devices such as copy-preventing or limiting devices. Clearly, however, even this would be of little value if a situation developed where technical measures could be defeated without any possibility of redress for right owners. As you will know, the 1996 treaties therefore require that technical measures are themselves

protected and that appropriate remedies are provided against those whose seek to circumvent these measures in order to infringe copyright and related rights. These aspects are to be found in Article 11 of the WCT and Article 18 of the WPPT.

19. Electronic commerce also means that matters such as contractual arrangements for licensing the use of works and obtaining payment for this will be handled electronically rather than in the old paper form. Another key aspect of the 1996 treaties is therefore that they provide protection for electronic 'rights management information', against those whose seek to remove or alter this in order to induce, enable, facilitate or conceal infringements of copyright or related rights. By 'rights management information' is meant essentially information identifying creators and right owners, works or other protected subject-matter, and terms or conditions of use, or codes representing these things. These aspects are in Article 12 of the WCT and Article 19 of the WPPT.

20. The 1996 WIPO treaties clearly represent a vital foundation for ensuring that copyright and related rights are effectively protected in the electronic world, and therefore that electronic trading in products based on intellectual property can flourish. But, as I have said, the treaties now need to be put into reality in as many countries as possible. Already we are unfortunately seeing the challenge to copyright and related rights in the digital environment also become a reality. It seems to me that, regrettably, there is a culture of "anything goes" among some users of the Internet, and that any attempt to apply ordinary rules of law in some way wrong and an affront to supposed new individual liberties and freedoms offered by the new world of the Internet. This has never been the view of the UK government which believes firmly that the law must generally apply on-line just as it does off-line, not only, of course, where copyright and related rights are concerned, but also in other areas such as defamation, racism, obscenity and so on. Theft of intellectual property is no more acceptable on-line than it is off-line.

21. Some of you may have heard of services such as 'Napster' or 'Gnutella'. Basically, these are services which enable individual members of the public to access and copy each other's entire collections of sound recordings. This sort of behavior was not acceptable in the world of tangible goods: it is even worse in the Internet environment because of the vast numbers of people that services such as 'Napster' allow to access, and illegally copy, material. Services such as 'Napster' do not in our view represent an exciting new 'freedom' which should be made possible by the Internet, but something which is wrong, and tantamount to piracy because of its scale, which has to be controlled.

22. This illustrates that there are matters of practical detail which still have to be resolved in order to make copyright work in the Internet environment. Yes, we may have to take steps to protect the position of innocent service providers or other intermediaries who have little or no idea of, or control over, the use to which their services are being put by the public. But surely we also have to ensure that intermediaries whose business seems to be based on encouraging or facilitating illegal acts cannot flourish.

23. Clearly, a considerable amount still needs to be done to ensure continued and effective protection of intellectual property in the digital environment, and this will be an ongoing task since developments in technology are now so rapid that who knows what as yet unforeseen forms of exploitation will emerge. Work is, of course, continuing at the international level under the auspices of WIPO to ensure that standards of copyright and related rights continue to be appropriate. This year, in December, there will be another Diplomatic Conference in Geneva, with the aim of completing business unfinished in 1996 and bringing standards of

performers' rights in audiovisual performances up to the level of the rights in sound recordings which they already enjoy under the WPPT. As you may know, the 'Basic Proposal' for discussion at this Conference was published by WIPO last month. Work on updating the protection of broadcasters is also under way. Discussions will, I hope, also continue on the protection of databases, since it seems to me that these are significant commodities in the context of the Internet and electronic commerce.

24. It seems to me that WIPO is very conscious of the continued need to develop and adapt copyright to the electronic environment, and is taking welcome leads in this. Last September, WIPO organized an important international conference on Electronic Commerce and Intellectual Property, which resulted in the establishment of a ten-point 'WIPO Digital Agenda' or plan [Slide 4], some aspects of which are summarized in this slide. This Agenda reinforces the important developments to date, such as by seeking entry into force of the 1996 WIPO treaties by December 2001, and completion of international legislative work already in-hand on extending rights similar to those in the WPPT to rights in audiovisual performances and updating the rights of broadcasters. But the 'Agenda' also identifies areas where other worthwhile work remains to be done if electronic trading is to flourish. Some of the points do not concern copyright as such but others significant issues in electronic commerce such as the regulation of domain names. But on the copyright front the Agenda envisages such matters as developing international standards on the liability of on-line service providers, work on the implementation of practical systems for on-line management and licensing of intellectual property, and certification of websites for compliance with intellectual property standards. All, of this, it seems to me, is potentially very valuable in fostering proper functioning of electronic commerce. The WIPO Agenda also envisages work in cooperation with other international organizations on issues which extend beyond copyright and related rights but are highly relevant to successful and secure electronic trading in intellectual property products. I refer here to proposed work on electronic contracts and applicable law.

25. International solutions on these issues may be some way off, but it is nevertheless important that we seek to find them. It seems to me that we may at some point also see a further round of GATT negotiations which leading to greater adaptation of the TRIPS Agreement to the digital environment.

26. This concludes my presentation. I hope that I have given some insights into the importance of copyright and related rights in international trade past, present and future. If there is one message on which I would wish to end it is that, whatever the technological challenges posed by the digital environment and the Internet effective protection of copyright and related rights in this environment is essential if trade in goods and services based on intellectual property is to flourish.

[Annex follows]

ANNEX

**STATEMENT BY A NATIONAL PARLIAMENT  
ABOUT THE PURPOSES OF COPYRIGHT LAW**

“the encouragement of learning, the prevention of the practice of piracy, and the encouragement of learned men to write and compose useful books”

This statement was made by the Parliament of England which enacted the 1709 copyright Statute of Queen Anne.



## ESTIMATED VALUE OF THE CREATIVE INDUSTRIES IN THE UNITED KINGDOM

Overall contribution                      4-5% of GDP to the UK  
economy:

Employment:                                      1.4 million people

<u>Exports</u>	<u>Trade balance</u> (per annum)	
Film:	£500m	-?
Leisure software:	£400m	+ £225m
Music:	£1500m	+ £570m
Publishing:	£1900m	+ £900m
Broadcasting:	£235m	-£282m

## **KEY ASPECTS OF THE 1996 WIPO TREATIES FOR ELECTRONIC COMMERCE**

- Reproduction right applies in the digital environment

Agreed statement to Article 1(4) of WCT  
Articles 7 & 11 of WPPT, and agreed statement

- ‘Making available’ or ‘on-demand’ right

Article 8 of WCT  
Articles 10 & 14 of WPPT

- Protection of technological measures

Article 11 of WCT  
Article 18 of WPPT

- Protection of electronic rights management information

Article 12 of WCT  
Article 19 of WPPT

## WIPO 'DIGITAL AGENDA'

- Entry into force of WCT & WPPT by December 2001
- Completion of work in -hand, such as on audiovisual performances and rights of broadcasters
- Develop international rules on the liability of on -line service providers
- Work on practical systems for on -line management and licensing of copyright and related rights
- Certification of websites for compliance with intellectual property standards
- Work in cooperation with others on electronic contracts and applicable law

[End of Annex and of document]