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**PERMANENT COMMITTEE ON COOPERATION FOR
DEVELOPMENT RELATED TO INTELLECTUAL PROPERTY**

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**THE DIGITAL AGENDA: IMPLEMENTATION OF THE WIPO COPYRIGHT
TREATY (WCT) AND THE WIPO PERFORMANCES
AND PHONOGRAMS TREATY (WPPT)**

Document prepared by the International Bureau

I. INTRODUCTION

1. Two Treaties were concluded in 1996 at the World Intellectual Property Organization (WIPO) in Geneva. One, the WIPO Copyright Treaty (WCT), deals with protection for authors of literary and artistic works, such as writings; musical works; audiovisual works; works of fine art; photographs; computer programs and original databases. The other, the WIPO Performances and Phonograms Treaty (WPPT), protects certain “related rights,” namely the rights of performers and producers of phonograms. The intention of this paper is:

- to explain the impact of the Treaties, and their attractiveness to, WIPO Member States, including developing countries;
- to show the progress that has been made in bringing this updated international protection system into effect, as well as the outlook for the future; and
- to recall the continuous availability of WIPO cooperation in this respect, in particular assistance in establishing modern national copyright legislation which implements the Treaties.

2. The purpose of the two Treaties is to update and supplement the major existing WIPO Treaties on copyright and related rights, namely the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), primarily to respond to developments in technology and in the marketplace. Since the Berne and Rome Conventions were adopted or last revised more than thirty years ago, new types of works, new markets, and new methods of use and dissemination have evolved. Among other things, both the WCT and the WPPT address the challenges posed by today’s digital technologies, in particular the dissemination of protected material over digital networks such as the Internet. For this reason, they have often been referred to as the “Internet Treaties.” In addition, the WPPT offers a potentially wider geographic coverage than the Rome Convention, which has, so far, failed to attract a number of countries very active in the copyright field.

3. The WCT and WPPT were adopted by consensus, by more than 100 countries, the majority of which were developing countries. They therefore reflect a broad international agreement as to how copyright and related rights should be handled in today’s environment, including the context of digital technologies. This is due to the fact that during the negotiation process, the demands of countries seeking strong rights for creators and those seeking greater benefits for users were taken into consideration, and safeguards for the public interest and corresponding flexibility for policy options were left to national legislation. The ultimate result has been widely acknowledged as being balanced and fair.

4. WIPO is committed to working towards the broadest possible adherence to the Treaties around the world in order to ensure global protection for creativity. This objective is a key item of the WIPO Digital Agenda, adopted by the Member States in September 1999.

II. BENEFITS OF ADHERENCE TO WCT AND WPPT

5. The Treaties provide important economic incentives to creative individuals and companies in traditional areas of creative production and in the new digital environment, as well as a substantial legal basis for a healthy electronic commerce. They sustain existing, and encourage the establishment of new, national copyright industries, attract investment and protect local creativity.

(a) International Protection of National Right Holders

6. First and foremost, the Treaties will require other countries to provide full protection within their territories for right holders from developing countries when their creations are exploited abroad, thereby protecting their interests and ensuring that local creators and enterprises enjoy the economic rewards from outside the country. These benefits are particularly important in the era of global digital networks, in which the distinction between domestic and foreign markets is blurring, if not disappearing, as the dissemination of works and other subject matter cannot be limited to take place within national borders.

7. The Treaties benefit both developed and developing countries. They contain numerous provisions that protect local creators in both the traditional and the digital environment. To the extent that they clarify and strengthen rights in the digital environment, they may be more immediately critical to countries that already have extensive use of digital networks. But they will assist creators from all countries when their works and other subject matter are used in digital form without their authorization — a danger for all creators, wherever they are located.

8. Implementation of the Treaties could be beneficial for developing countries in particular in that it encourages foreign investment and puts in place a legal framework that will enable competition on a level playing field once the threshold of initial access to digital networks is passed. Such a framework provides incentives for local creators, performers and producers, facilitating the capacity building and development of cultural expression. With the support of an adequate system of rights, creators of all varieties will be able to safely exploit their creations on the Internet, marketing them to consumers in countries around the world without the need for the costs of foreign intermediaries, transportation facilities or physical manufacturing infrastructure.

9. At this point in time, due to the current state of Internet technology, the need for protection in the digital environment is greatest in the areas of recorded music, text, computer programs, photos and graphic art. Unauthorized use is, however, rapidly extending to other types of works and subject matter, for instance audiovisual works, as bandwidth and the quality of telecommunications systems improve. Unless legislators take action against it soon, the latter categories of copyright industries would face, in the near future, problems as serious as those already faced nowadays by the music and information industries. The Treaties provide tools to discourage unauthorized copying and dissemination of works and other subject matter in the traditional form and on digital networks.

10. Finally, protection of foreign works and subject matter will allow domestic creators to compete on a fair basis. The adverse effect of protecting only domestic works and not recognizing foreign copyright and related rights has been observed in many cases. When a domestic work is protected by copyright, license fees should be paid to the creators, unlike

unprotected foreign works which can be used freely without payment. It is therefore not surprising that these domestic rightholders have often become the strongest advocates of extending protection for foreign rightholders.

(b) Promotion of Electronic Commerce

11. The Treaties will promote the development of electronic commerce, both within a country's borders and through international trade.

12. Digital technologies enable the transmission and use of all of the materials protected by copyright and related rights in digital form over interactive networks. While the transmission of text, sound, images and computer programs over the Internet is already a common place, this will soon be true for transmission of audiovisual works such as feature films, as the technical constraints of narrow bandwidth begin to disappear. Materials protected by copyright and related rights, spanning the range of information and entertainment products, constitute much of the valuable subject matter of electronic commerce.

13. Given the capabilities and characteristics of digital network technologies, electronic commerce has a tremendous impact on the system of copyright and related rights, and the scope of copyright and related rights, in turn, has an effect on how electronic commerce will evolve. If legal rules are not set and applied appropriately, digital technology may be used to undermine the basic principles of copyright and related rights. The old technologies of photocopying and tape recording allow mechanical copying by individual consumers, but in limited quantities, requiring considerable time, and of a lower quality than the original. Moreover, the copies are physically located in the same place as the person making the copy. Over the Internet, in contrast, one can make an unlimited number of copies, virtually instantaneously, without degradation in quality. These copies, in turn, can be transmitted to locations around the world in a matter of minutes. The Internet has been described as "the world's biggest copy machine." The result could be the disruption of legitimate markets for computer programs, music, art, books and movies.

14. It is therefore critical to adjust the legal system to respond to the new technological environment in an effective and appropriate way both at national and international levels, as the Internet is a borderless medium; and to do so quickly, through adherence to, and implementation of, the Treaties, because technologies and markets evolve increasingly rapidly. The legislative and political mechanisms necessary to engage in treaty ratification and implementation are by their nature relatively slow. One advantage of not waiting until the digital networks do become a domestic reality is that the country will be prepared at the point in time when they do.

15. Trade in copyrighted works, performances and phonograms can become a major element of global electronic commerce, which will grow and thrive along with the value of the material that is traded. If rightholders are secure in their ability to sell and license their property over the Internet, they will exploit this market fully and make more and more valuable works available through this medium. Appropriate limitations and exceptions will continue to safeguard public interest uses. The result will be a benefit to consumers, a benefit to rightholders and a benefit to national economies.

(d) Contribution to the National Economy

16. The cultural and information industries, which produce and disseminate products and services of the mind, depend for their sustenance on effective and well-enforced copyright legislation. For this reason these industries came to be known as copyright industries. Over the past few decades, copyright-based products increasingly have become a major contributor in driving the growth of national economies and the overall global economy. Copyright industries also create hundreds of thousands of jobs all over the world, not just for developed countries, but also for developing countries and for many related economic sectors that contribute to manufacturing, sales and service of these products.

17. The economic importance of copyright industries in developed market economies has been well documented. The Commission of the European Communities estimates that the market for copyright goods and services ranges Community-wide between 5 and 7% of the gross national product (GNP) of the European Communities Member States.¹ The United States of America's core copyright industries such as publishing, broadcasting, sound recording and audiovisual, accounted for 5.24% of the gross domestic product (GDP) in 2001, according to a study undertaken by the International Intellectual Property Alliance. If one enlarges this to the total copyright industries, including other industries which distribute or depend upon copyrighted products (retail trade, the doll and toy industry and computer manufacturing, for example), it accounted for approximately 7.75% of GDP. Over the last 24 years (1977-2001) the core copyright industries grew at an estimated compound annual growth rate of 7.0% while the rest of the economy grew at an annual rate of 3.0%.² Likewise, in Japan, the copyright industry reached an estimated scale of some 2.3% of the GDP in terms of value added in 1998, on par with or higher than the corresponding figures for other trunk industrial fields such as electrical power, steel and automobiles. The copyright industries grew at an average rate of 5.9% between 1994 and 1998 in comparison with a lower general trend.³

18. Although few such studies have been undertaken in developing countries, it cannot be disputed that copyright industries can make significant contribution to the economies of developing countries. The knowledge-based services sector in developing countries is growing. According to a WIPO study undertaken in member countries of the Southern Common Market (MERCOSUR) and Chile, the value added by the copyright industries to the GDP in Argentina was 6.6% in 1993, 6.7% in Brazil in 1998, 6% in Uruguay in 1997, an average of 2% for Chile between 1990-1998, and an average of 1% for Paraguay between 1995-1999.⁴

¹ Commission of the European Communities, Follow-up to the Green Paper on Copyright and the Information Society (1996)

² International Intellectual Property Alliance, *Copyright Industries in the U.S. Economy: The 2002 Report*

³ Japan Copyright Institute, *Copyright White Paper*, March 2001

⁴ Draft WIPO Study on Economic Importance of Activities Protected by Copyright in Countries of MERCOSUR and Chile, 2002

19. The future market of products and services protected by copyright and related rights will increasingly concern online sale and delivery of digitized contents. The legal adjustment through implementation of the Treaties is crucial in providing full support to copyright industries. Failure to address these needs could have negative economic consequences, and would increase, instead of reduce, the development divide (“digital divide”) between countries.

(e) Protection of Local Creativity and of Folklore

20. Implementation of the Treaties will provide stronger incentives to creators to produce new creations, and will promote the development of expressions of local culture.

21. While some argue that the high level of copyright protection would only result in outflow of revenues to foreign right owners, strong local taste is observed in consumption of cultural products. Taking music as an example, local language music has a large domestic market share in many parts of the world. “World music” or music originating in various parts of the world with specific style, still does not represent a very large share in the international sound recording market. The share of this category of music, however, is reported to be growing. International legal protection as provided by the WCT and the WPPT is one important element in encouraging local creators and industries to benefit from domestic as well as foreign markets.

22. As to protection of folklore, which is currently the subject of examination in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, certain creators and performers of folklore enjoy improved protection under the WCT and WPPT. In particular, the definition of “performers” in the WPPT explicitly includes “actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform... *expression of folklore*” (emphasis added), which means that performers enjoy international protection under the WPPT for their performances of expressions of folklore.

III. STATUS OF ADHERENCE TO THE TREATIES

23. Both Treaties entered into force in 2002. Each of them currently have 36 Contracting States (see list in Annex I).

24. Most remarkably, more than half of the present Contracting Parties to each Treaty are developing countries, with approximately two thirds of them from Latin America and the Caribbean. Developing countries have thus strongly contributed to the timely entry into force of the updated international copyright protection system.

25. It deserves also to be underlined that the countries with the economies in transition from centrally-planned to market economy, in the region stretching from Central Europe to Central Asia, have also made an important contribution to this achievement, constituting approximately half of the first thirty Contracting Parties of each of the Treaties.

26. It is not worthy that in addition to the adherence by the United States of America and Japan, the European Community and its fifteen Member States have already taken a mutually binding decision to adhere to both Treaties, and the instruments of ratification or accession are expected to be deposited jointly, once the harmonized implementing legislation, due in late 2002, is in place in all Member States.

IV. EXPECTATIONS WITH RESPECT TO FURTHER ADHERENCES BY DEVELOPING COUNTRIES

27. The WIPO Secretariat and, in particular, the Regional Bureaus for Development Cooperation, have been in contact with numerous Member States, as regards expected adherences. Currently, more than 20 developing countries are involved in very active and advanced internal discussions and, in most cases, concrete preparations, concerning adherence to the Treaties.

28. It should also be noted that a number of other developing countries have recently modernized their copyright legislation to a level equivalent to the requirements of the Treaties.

V. WIPO'S COOPERATION FOR DEVELOPMENT PROGRAM AND IMPLEMENTATION OF THE WCT AND WPPT

29. Implementation of the Treaties in national legislation does not change the fundamental policy or structure of the international copyright protection system, whose pillars are today the Berne Convention and the TRIPS Agreement. Broadly speaking, existing exploitation rights may need to be clarified, so that their scope includes the digital environment, and additional exploitation rights for performers and sound recording producers may need to be established, as well as moral rights for performers. Existing limitations and exceptions may also need to be revisited, or new ones introduced, in the light of developments in digital technologies. Finally, to ensure efficient exercise of the substantive rights in the Internet environment, legal remedies against the circumvention of technical protection measures and against deletion or alteration of electronic rights management information systems would be required.

30. Since 1997, WIPO has organized innumerable fora, workshops or seminars, at worldwide, regional, subregional and national levels, in addition to individual expert missions, to familiarize all Member States and their constituencies with policy issues and options as well as legal questions and legislative devices related to the implementation of the Treaties. Since 1997, 78 developing countries have received individual legislative assistance from WIPO concerning modernization of their copyright legislation, including implementation of the WCT and the WPPT (see list in Annex II). Ten out of the twenty developing countries which have so far acceded to the Treaties had requested and received such assistance.

31. This assistance has been, and will continue to be, delivered in various forms, based on the request of the developing country concerned, whether a Member of WIPO or not. It varies from the preparation of a fully fledged new draft copyright law, adapted to the legal tradition and developmental situation of the country, to written comments and/or consultation missions on a new draft copyright law or draft amendment, prepared by the authorities of the requesting country. The assistance is aimed at empowering the legislators of the requesting country to take all legal – technical as well as policy decisions on an informed basis.

32. Assistance is offered to cover all subsequent steps in the legislation process, including support in interministerial or parliamentary meetings on all policy and drafting issues. The expertise is provided either by WIPO officials or by external consultants, upon request of the Member States.

33. Individual assistance from WIPO for modernizing national legislation is provided to all developing countries, whether in the field of copyright and related rights or in areas of industrial property, and whatever may be the policy objectives of the intended legislation. Any country requesting such assistance remains free to follow the advice or not to do so and/or to consult with other advice resources. The International Bureau continues to maintain the confidentiality of the communication process with the requesting country's authorities.

34. The Permanent Committee is invited to comment on, and not the information contained in this document.

[Annex I follows]

ANNEXI

Contracting Parties to WCT and WPPT**1. WIPO Copyright Treaty**

(Geneva, 1996)

Status on July 15, 2002

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Argentina	March 6, 2002	Kyrgyzstan	March 6, 2002
Belarus.....	March 6, 2002	Latvia	March 6, 2002
Bulgaria.....	March 6, 2002	Lithuania	March 6, 2002
Burkina Faso	March 6, 2002	Mali.....	April 24, 2002
Chile.....	March 6, 2002	Mexico	March 6, 2002
Colombia.....	March 6, 2002	Panama.....	March 6, 2002
Costa Rica	March 6, 2002	Paraguay.....	March 6, 2002
Croatia	March 6, 2002	Peru	March 6, 2002
Czech Republic	March 6, 2002	Philippines	October 4, 2002
Ecuador	March 6, 2002	Republic of Moldova	March 6, 2002
El Salvador	March 6, 2002	Romania	March 6, 2002
Gabon.....	March 6, 2002	Saint Lucia	March 6, 2002
Georgia	March 6, 2002	Senegal	May 18, 2002
Guinea.....	May 25, 2002	Slovakia	March 6, 2002
Honduras.....	May 20, 2002	Slovenia	March 6, 2002
Hungary	March 6, 2002	Ukraine.....	March 6, 2002
Indonesia.....	March 6, 2002	United States of America	March 6, 2002
Jamaica	June 12, 2002		
Japan	March 6, 2002		

(Total: 36 States)

2. WIPO Performances and Phonograms Treaty

(Geneva, 1996)

Status on July 15, 2002

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Albania.....	May 20, 2002	Japan.....	October 9, 2002
Argentina	May 20, 2002	Kyrgyzstan	August 15, 2002
Belarus.....	May 20, 2002	Latvia	May 20, 2002
Bulgaria.....	May 20, 2002	Lithuania	May 20, 2002
Burkina Faso	May 20, 2002	Mali.....	May 20, 2002
Chile.....	May 20, 2002	Mexico	May 20, 2002
Colombia.....	May 20, 2002	Panama.....	May 20, 2002
Costa Rica	May 20, 2002	Paraguay.....	May 20, 2002
Croatia	May 20, 2002	Peru	July 18, 2002
Czech Republic	May 20, 2002	Philippines	October 4, 2002
Ecuador	May 20, 2002	Republic of Moldova	May 20, 2002
El Salvador	May 20, 2002	Romania	May 20, 2002
Gabon.....	May 20, 2002	Saint Lucia	May 20, 2002
Georgia	May 20, 2002	Senegal	May 20, 2002
Guinea.....	May 25, 2002	Slovakia	May 20, 2002
Honduras.....	May 20, 2002	Slovenia	May 20, 2002
Hungary	May 20, 2002	Ukraine.....	May 20, 2002
Jamaica	June 12, 2002	United States of America	May 20, 2002

(Total: 36 States)

[Annex II follows]

ANNEXII

**Developing Countries and Territories having received WIPO assistance
concerning their national copyright legislation,
including implementation of WCT and WPPT**

-Status: July 2002 -

Algeria	Gambia	Nicaragua
Anguilla	Ghana	Niger
Antigua&Barbuda	Grenada	Oman
Bahamas	Guinea	Pakistan
Bangladesh	Haiti	Palau
Barbados	Honduras	Palestinian National Authority
Belize	Indonesia	Papua New Guinea
Benin	Iran	Qatar
Bermuda	Jamaica	Saint Kitts and Nevis
Bolivia	Jordan	Saint Lucia
Botswana	Kenya	Saint Vincent and the Grenadines
Brazil	Kiribati	Sao Tome and Principe
Brunei Darussalam	Kuwait	Saudi Arabia
Burkina Faso	Lao People's Democratic Republic	Sudan
Burundi	Lebanon	Suriname
Cambodia	Madagascar	Swaziland
Cameroon	Malawi	Togo
Chad	Malaysia	Tonga
Côte d'Ivoire	Maldives	Trinidad and Tobago
Djibouti	Mali	Uganda
Dominica	Marshall Islands	United Arab Emirates
Egypt	Mexico	United Republic of Tanzania
El Salvador	Mongolia	Vanuatu
Eritrea	Morocco	Zambia
Ethiopia	Nepal	Zimbabwe
Fiji	Namibia	
Gabon		Total: 79 countries

[End of Annex II and of document]