

# 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



