

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

WIPO COPYRIGHT TREATY (WCT)

ASSEMBLY

**First (1st Extraordinary) Session
Geneva, September 23 to October 1, 2002**

MATTERS CONCERNING THE WIPO COPYRIGHT TREATY

Memorandum prepared by the Secretariat

1. The present document contains information and proposals on procedural questions and the future work relative to the inaugural session of the WIPO Copyright Treaty Assembly (herein the "WCT Assembly"). It is proposed that the WCT Assembly adopt rules of procedure, elect officers, and consider its future work during this session.

2. It is noted that the WIPO Copyright Treaty (WCT) came into force on March 6, 2002, and that the WIPO Performances and Phonograms Treaty (WPPT) came into force on May 20, 2002, based on each having received the minimum number of 30 ratifications or accessions. The WCT and the WPPT each contain several similar provisions, and both deal with many identical questions and issues. Reference is therefore made to Rule 42 of the *WIPO General Rules of Procedure* ("When two or more bodies of the Organization or of the Unions must examine questions of common interest to them, they shall hold joint meetings.") With the foregoing in mind, it is suggested that the WCT Assembly and the WPPT Assembly conduct their inaugural sessions in joint session.

ADOPTION OF RULES OF PROCEDURE

General Rules of Procedure

3. WCT Article 15(5) states:

“Assembly

...

“(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.”

4. It is proposed that, in order to fulfill the above WCT obligation, the WCT Assembly adopt as its own Rules of Procedure the *WIPO General Rules of Procedure* (WIPO publication number 399(FE) Rev.3), as has every other body within WIPO, with the further understanding that certain Special Rules to those *WIPO General Rules of Procedure*, as hereinafter fully specified, also be contemporaneously adopted.

Special Rules

5. Being among the most recent expressions of the will of the Member States of WIPO with respect to international legal instruments, the WCT contains certain provisions which somewhat break away from practices in other prior WIPO treaties and conventions. As a consequence, it is necessary to consider certain Special Rules to the *WIPO General Rules of Procedure*.

6. Amendment of the *WIPO General Rules of Procedure* is expressly authorized.¹

(a) Officers

7. Rule 9 of the *WIPO General Rules of Procedure* states that officers shall be elected in the first meeting of each ordinary session.²

8. The general rule for officers of WIPO bodies is that they serve from their election at an ordinary session, up to but not including the next ordinary session, generally a period of two

¹ “Rule 56: Amendment of General Rules of Procedure

“(1) These General Rules of Procedure may be amended, as far as each body which has adopted them is concerned, by a decision of that body, provided that the said decision is taken as far as possible in joint meeting and that the said body accepts the amendment according to the procedure laid down for amendment of its own rules of procedure.

“(2) Any amendment to these General Rules of Procedure shall enter into force for each body which has adopted these General Rules of Procedure when that body has accepted the amendment.”

² “Rule 9: Officers

“(1) In the first meeting of each ordinary session, each body shall elect a Chairman and two Vice-Chairmen.

“(2) Officers shall remain in office until the election of new officers.

“(3) The outgoing Chairman and Vice-Chairmen shall not be immediately eligible for re-election to the office which they have held.”

years.³ The present meeting of the WC T Assembly presents a question as to whether it is meeting in ordinary or extraordinary session, and as to the term of the officers to be elected, in that the WIPO General Assembly is meeting in extraordinary session in 2002. It is the current practice that, as a rule, all bodies when meeting together with the WIPO General Assembly do so in either a common extraordinary or ordinary session (in even and odd years, respectively). Thus, they are in 2002 also meeting in extraordinary sessions (except for the Coordination Committee). It is also to be noted that the Madrid Assembly, the PCT Assembly, the IPC Assembly, the Locarno Assembly and the Budapest Assembly meet in extraordinary sessions for their inaugural meetings.

9. With the foregoing in mind, it is proposed that the WCT Assembly meets in extraordinary session in 2002 and in ordinary session in 2003. It is also proposed that the Chairman and Vice-Chairmen of the WCT Assembly be elected for a period of one year, i.e., for the period of the one year from this inaugural session (2002) up to but not including the session next year (2003), which will be an ordinary session in line with all other WIPO bodies which then will be meeting. By designating the first session of the WCT Assembly as extraordinary, and by establishing an initial term for the officers presently being elected at one year, the WCT Assembly, and its initial officers, will thus be placed in alignment with the other bodies within WIPO.

(b) Delegations

10. The *WIPO General Rules of Procedure* specify that delegations are comprised of only Member States.⁴ The *WIPO General Rules of Procedure* also specify that intergovernmental organizations shall be observers.⁵

11. Notwithstanding the foregoing, the WCT defines the status of certain intergovernmental organizations within the context of the WCT Assembly. That status differs from the observer status which the *WIPO General Rules of Procedure* give to intergovernmental organizations. In that regard, WCT Article 17 states:

“Eligibility for Becoming Party to the Treaty

“(1) Any Member State of WIPO may become party to this Treaty.

³ See *Convention Establishing the World Intellectual Property Organization* (Stockholm, 1967), Rule 6(4)(a) and (b): “(a) The General Assembly shall meet once in every second calendar year in ordinary session, upon convocation by the Director General. (b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one fourth of the States members of the General Assembly.” However, the WIPO Coordination Committee meets in ordinary session every year.

⁴ “Rule 7: Delegations
“(1) Each State member of a body shall be represented by one or more delegates, who may be assisted by alternates, advisors, and experts[...].”

⁵ “Rule 8: Observers
“(1) The Director General shall invite such States and intergovernmental organizations to be represented by observers as are entitled to observer status under a treaty or agreement.”

“(2) The 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.

“(3) 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.”

12. Rule 7 of the *WIPO General Rules of Procedure* should therefore be replaced by a Special Rule, such that the definition of “Delegations” is expanded to include those intergovernmental organizations which become Contracting Parties in accordance with Article 17(2) or (3) of the WCT.

13. It is proposed to replace the current Rule 7 of the *WIPO General Rules of Procedure* with the following Special Rule:

Rule 7: Delegations

(1) Each State member of a body shall be represented by one or more delegates, whom may be assisted by alternates, advisors, and experts.

(2) Any intergovernmental organization which becomes a party to the WCT in accordance with Article 17(2) or (3) of that Treaty shall be deemed a delegation, and shall accrue the same benefits as a State delegation, in accordance with the provisions of these rules.

(3) Each delegation shall have a head of delegation.

(4) Any alternate, advisor or expert may act as delegate by orders of the head of his delegation.

(5) Each delegate or alternate shall be accredited by the competent authority of the State or intergovernmental organization which he represents. The Director General shall be notified of the appointment of delegates and alternates in a letter, note or telegram, issuing preferably from the Ministry of Foreign Affairs, or the competent authority of the intergovernmental organization.

(c) Voting

14. The *WIPO General Rules of Procedure* specify that only delegations may vote:

“Rule 25: Voting

“Proposals and amendments submitted by a delegation shall be put to the vote only if they are supported by at least one other delegation.

“Rule 39: Observers

“Observers shall not have the right to vote.”

15. However, WCT Article 15(3)(b) states:

“Assembly

...

“(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organizations shall participate in the vote if anyone of its Member States exercises its right to vote and vice versa.”

16. In view of the WCT provisions allowing certain intergovernmental organizations to become parties, to be delegations, and to vote in the WCT Assembly, it is proposed to replace Rule 25 of the *WIPO General Rules of Procedure*, with the following Special Rule:

Rule 25: Voting

(1) Proposals and amendments submitted by a delegation shall be put to the vote only if they are supported by at least one other delegation.

(2) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organizations shall participate in the vote if anyone of its Member States exercises its right to vote and vice versa.

17. The WCT Assembly is invited to consider and:

(i) approve the proposal contained in paragraph 9, above;

(ii) adopt as its own Rules of Procedure the WIPO General Rules of Procedure referred to in paragraph 4, above;

(iii) adopt the Special Rules contained in paragraphs 13 and 16, above.

FUTURE WORK

18. The future work of the WCT Assembly can be divided into two main areas:

(i) promoting further ratifications and accession to the Treaty; and (ii) working towards effective implementation of the Treaty.⁶ Towards that end, the Secretariat will organize meetings in some States on adherence to and implementation of the Treaty. In addition, the Secretariat will also render, as appropriate, legal advice, especially in preparing national legislation, participate in relevant seminars and meetings, and produce studies and other information publications in this area.

⁶ See *WIPO Program and Budget 2002-2003* (WIPO Publication No. WO/PBC/4/2), pages 76 and 77.

19. The WCT Assembly is invited to take note of the information contained in paragraph 18, above.

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