

# The WIPO Treaties: Bringing Copyright into the New Millennium

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## WHAT ARE THE WIPO TREATIES?

The 'WIPO Treaties' refer to two new international copyright-related treaties adopted at a Geneva diplomatic conference of the UN's World Intellectual Property Organisation (WIPO) in December 1996. These treaties reflect international consensus on the protections that copyright and related rights owners need at the beginning of the new millennium.

These treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and

Phonograms Treaty (WPPT):

- **Confirm protection of traditional copyrighted materials and distribution mechanisms;**
- **Clarify how copyright and related rights apply in the electronic environment;**
- **Protect against the hacking of technical protections applied to copyrighted products.**

The WCT protects authors, composers and other creators of literature, art, music, films, software and other such creative works.

The WPPT protects producers of 'phonograms' including music CDs, cassettes and other recordings produced by entities such as the members of IFPI. It also covers performers, such as singers and musicians.

Approximately 50 countries signed the WCT and the WPPT, which needed 30 formal 'ratifications' in order to come into force. The WCT came into force on 6 March 2002, and the WPPT entered into force on 20 May 2002.

### EXECUTIVE SUMMARY

The two new WIPO Treaties, adopted by the international community in 1996, reflect international consensus as to how copyright needs to adapt in the new millennium. Having entered into force in 2002, the treaties typically require only a limited number of changes to any particular national law.

These treaties provide needed incentives and protections for creative individuals and companies in every country, both to reward and promote national culture and creativity, and to pave the way for electronic commerce in copyrighted works and products.

## WHY ARE THE WIPO TREATIES IMPORTANT?

Like all copyright and related protections, the WIPO Treaties provide important economic incentives to creative individuals and companies. They promote national culture, and discourage counterfeiting and piracy. The treaties also provide a substantial legal basis for healthy electronic commerce.

■ **Economic incentive.** The treaties, and copyright law generally, provide creative people 'exclusive rights' to determine whether and how their works are copied and distributed. This ensures that they enjoy the economic rewards of their creativity, which serves as a powerful incentive to produce and distribute their creative products. This incentive is

real: Intellectual-property based product sales hit \$1 trillion globally in 1998. Sound recording sales were \$33.6 billion world-wide in 2001.

■ **Cultural protection.** Copyright also encourages local and national expressions of culture. Inadequate protections deprive local musicians, producers and other creative people of adequate compensation, and subject them to unfair competition from counterfeit copies of international products.

■ **Piracy deterrent.** Counterfeiting and other forms of piracy (unauthorised copying and distribution) have become a major criminal enterprise. The global pirate music market totalled 1.9 billion units in 2001, worth an estimated US

\$4.3 billion. This not only hurts rights owners, but destroys legitimate jobs and deprives governments of substantial tax revenues. The WIPO Treaties and other copyright laws provide the principal legal tools for fighting piracy.

■ **E-commerce engine.** Electronic commerce in copyrighted products requires a healthy trading environment where only legitimate copies of works are transmitted, under the terms permitted by the rights owner. The WIPO Treaties provide rights owners such legal certainty. As the treaties are adopted world-wide, they will ensure consistent protections and prevent 'piracy havens' from developing across the wide reach of the Internet.



The WIPO Treaties are administered by the World Intellectual Property Organisation, a United Nations organisation based in Geneva.



The recording industry, like all creative enterprises dependent on copyright protection, is evolving rapidly into the Internet and e-commerce age. The WIPO Treaties help create the legal environment in which rights owners can protect against infringement in information networks, and develop new, more sophisticated products and licensing options.

## WHAT DO THE WIPO TREATIES REQUIRE?

The WIPO Treaties ensure authors, producers and performers a minimum set of rights in the traditional and electronic worlds, and provide legal tools to prevent hacking of technological 'locks' applied to their works.

Most countries have found that **only a limited number of copyright-law changes are needed** in order to comply with the WIPO Treaties. This largely depends on how well a country's law already deals with electronic copying and distribution.

In brief, the treaties require copyright laws to provide many protections already af-

forded by national copyright law to authors, 'phonogram' producers and performers:

- **Protection of literary and artistic works, software, databases, phonograms and non-audiovisual performances;**
- **Rights to control reproduction, fixation of performances, physical distribution, and rental; and**
- **Authorisation or remuneration for public communication.**

In addition, the treaties require authorisation by the author, phonogram producer and performer before a work can be **'made available' by interactive communication**, such as when

the work is to be posted on the Internet.

The treaties give non-audiovisual performers the **'moral right'** reasonably to be identified as the performer, and to prevent modifications that damage their reputation.

Finally, the treaties require protection against certain acts of circumvention or removal of **technological protection measures** (including access and copy controls), or **rights-management information** (information about rights ownership or licence terms), that rights owners may apply to their works or recordings.

## FREQUENTLY ASKED QUESTIONS (FAQS)

### Is membership of any other treaty necessary before joining the WIPO Treaties?

No. The WIPO Treaties incorporate Berne Convention obligations by reference, contain Rome-Convention compatible rules for phonograms, and require enforcement procedures that permit WTO TRIPS-standard 'deterrence'.

### What provisions typically need to be adopted in implementing the WIPO Treaties?

Most countries have had to implement new provisions on technological protections, rights-management information, and the 'making available' right. Some have also

had to add moral rights for non-audiovisual performers.

### Do the Treaties require treatment of service-provider liability?

No. The issue of third-party 'contributory' or 'accessory' liability is not dealt with in the treaties, and will depend on national law. Some countries have dealt with this issue in their implementing legislation (e.g. USA), and some have not (e.g. Japan).

### When did the Treaties come into force?

The WCT entered into force on 6 March 2002 and the WPPT came into force on 20 May 2002.

### Which countries have ratified the treaties? (as of March 2003)

Albania	Kyrgyz Republic
Argentina	Latvia
Belarus	Lithuania
Bulgaria	Mali
Burkina Faso	Mexico
Chile	Moldova
Colombia	Mongolia
Costa Rica	Nicaragua
Croatia	Panama
Czech Republic	Paraguay
Ecuador	Peru
El Salvador	Philippines
Gabon	Romania
Georgia	Saint Lucia
Guatemala	Senegal
Guinea	Slovakia
Honduras	Slovenia
Hungary	Togo
Indonesia	Ukraine
Jamaica	United States
Japan	Yugoslavia

IFPI has represented the international recording industry since 1933. Its membership comprises more than 1,400 record producers and distributors in over 70 countries. For more information, please contact

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## PROMPT RATIFICATION IS NEEDED

The WIPO Treaties guide the way for adapting copyright to the age of electronic commerce. The Treaties are critical for creating a legal environment in which rights owners can protect against infringement in information networks, and develop new, more sophis-

ticated products and licensing options.

The Treaties also provide a strong practical support for intellectual property rights by encouraging and protecting the use of technological measures in controlling and administering these rights.

Undoubtedly the single most important task for governments that want to make their copyright and related-rights regimes suitable for the age of electronic commerce is prompt ratification and faithful implementation of both WIPO Treaties.