

WIPO Copyright Treaty by Hassan El sheshetawy*

Introduction

The copyright treaty gives the owner the exclusive right to reproduce, distribute, perform, display, or license his work¹. The owner also receives the exclusive right to produce or license derivatives of his or her work. Limited exceptions to this exclusivity exist for types of "fair use", such as book reviews. To be covered by copyright a work must be original and in a concrete "medium of expression²".

The necessity to introduce international rules to protect the right of authors in their literary and artistic works is become more important because of the new economy, technology development and its impact on the creation and use of literary and the artistic works.³ In the 1970 to 1980s, many of important new technological developments took place. Here are few examples:

- Literary works: books, poems, reprography,
- Dramatic works: films, videos technology, compact cassette systems facilitating "home taping," satellite broadcasting, cable television, the increase of the importance of computer programs, computer storage of works and electronic databases.⁴
- Musical works: composition that consist of both words and music or music only
- Artistic work: painting, drawing, maps, sculptures and architectural works.

Consequentiality, the treaty was concluded in1996 at the world intellectual Property organization (WIPO) in Geneva. The WIPO Copy right treaty (WCT), conventions

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1 . Exclusive rights in copyrighted works, <http://uscode.law.cornell.edu/uscode/html/uscode>

² Exclusive rights in copyrighted works, <http://uscode.law.cornell.edu/uscode/html/uscode>

3 "WIPO Copyright Treaty , "Preamble"

http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#preamble. The advantages of adherence to theWIPO copyright treaty(WCT)

⁴ , "WIPO Handbook on Intellectual Property "Chapter 5 - International Treaties and Conventions on Intellectual Property p 269

protection to the authors of literary and artistic works, like writings and computer programs, original databases, musical works, audiovisual works, fine art and photographs.

- The Legal nature of the WCT and its relationship with other international treaties.

In the last few years, interest of intellectual property protection has increased dramatically, pushed by the “marriage of convenience”⁵ between the trade laws and intellectual property rights⁶ in the developing countries. Under the threat of trade retaliations, many countries have begun to reevaluate their intellectual property system.⁷

The purpose of the (WCT) is to update and supplement the major existing WIPO treaties on copyright and the related right like the BREN convention for the protection of the literary and artistic works⁸ since the BREN convention was adapted and revised⁹ many times because of the new types of work such as new markets ,new technology, and internet.

⁵, Pual Goldstein, “International Intellectual Property law cases and materials” second edition, Carlos Primo,” Economics, Technology, and Development Intellectual property : Who benefits ?Who payes?”, page 71

⁶ Pual Goldstein, “International Intellectual Property law cases and materials” second edition, Carlos Primo,” Economics, Technology, and Development Intellectual property : Who benefits ?Who payes?”, page 71

⁷, Pual Goldstein, “International Intellectual Property law cases and materials” second edition, Carlos Primo,” Economics, Technology, and Development Intellectual property : Who benefits ?Who payes?”, page 72

⁸ ,Article one, “Relation to the Berne Convention” (1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties, [http:// www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#preamble](http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#preamble)
THE ADVANTAGES OF ADHERENCE TO THE WIPO COPYRIGHT TREATY (WCT)

⁹ http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html, THE ADVANTAGES OF ADHERENCE TO THE WIPO COPYRIGHT TREATY (WCT) of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1971.

The (WCT) was adopted by more than 100 countries to protect and explain how copyright should be handled in today's environment, especially in the digital technology. The main issues in the (WIPO) negotiation process between countries were same of those countries asked for stronger rights, while the other demands greater protections for users and for intermediaries. As a result, the (WCT) adopt a policy for balance and fair between the countries demands.

-Why copyright treaty is important.

Provisions relating to the so-called "digital agenda"

The (WCT) treaty is required countries to provide a framework of the basic rights, which allowing the creators to manage the various way in which their creations are used and enjoyed by other. The (WCT) treaty guarantee that the owners of those rights will stay to be adequately and effectively protected, when their works are disseminated through new technology and communication systems like the internet.¹⁰

The treaty therefore explains the existing rights continue to apply in the digital environment. The treaty clarify that countries are responsible flexibility in recognized the exceptions and the limitations to the right in the digital environment.¹¹ Countries may, under certain conditions, give exceptions for the uses deemed to be in the general interest, like education and research purposes which will be explain later.

The provision of the WCT relating to the agenda covers the following issues.

A) Storage of Works in Digital Form in an Electronic Medium

The WIPO recognized that the storage of works in an electronic medium is reproduction. The reproduction right rest in Article 9 of BREN Convention and the

¹⁰ http://www.wipo.int/copyright/en/activities/wct_wppt/pdf/advantages_wct_wppt.pdf , The advantages of adherence to the WIPO copyright treaty(WCT)

¹¹, Article 10 , "limitation and exceptions", (1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P86_11561, The advantages of adherence to the WIPO copyright treaty(WCT)

exceptions permitted there under in exacting to the use of works in digital form. The WCT adapt a specific solution for the transmission on digital Networks, limitations and exceptions in the digital environment

B) Transmission on the Digital Networks

The WCT, is an convention emerged that the podcasting of work on the internet and in similar net work must be the object of an exclusive right of the authorization of the author or the copyright owner, with appropriate exceptions.¹²

There was no convention concerning the right of communication to the public and distribution was recognized as the two major possibilities,¹³ even Bern convention does not offer full coverage for those rights. One of the most important issues had been solved by the WCT when, it realized that the right of communication to the public and the right of distribution — should be covered. This solution was referred to as the “umbrella solution.”¹⁴ by extending applicability of the right of communication to the public to all categories of works, and clarifies that right also covers transmissions in interactive systems described in a manner free of legal characterization¹⁵. Other rights are provided by the WCT like the right of distribution and the right to make works available to the public.

Technological Measures of Protection and Rights Management Information.

¹² The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 269.

¹³, The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 5, 270 Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

¹⁴, The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 272.

¹⁵The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 272.

There is no right could be protected without the support of technological measures of protection and rights management information needed to license and monitor uses¹⁶. The request of such measures and information are given to the right holder, according to the article 11 and 12 from the WCT treaty.

-Subject Matter and the scope of protection.

The WCT contains specific provision on computer program and databases¹⁷ The WCT scope of the subject matter covered by copyright, mainly in relation to the computer programs and databases was explored in the WCT. Moreover the WCT explanation concerning the protection of computer programs as literary works and of compilations of data (databases), which are similar to those included in Article 10 of the TRIPS Agreement.¹⁸ Furthermore, Article 4 and 5 of the WCT specific that countries that are contracting parties of the WCT and that are not members of TRIPs will accord protection to software and databases to the same extent as countries that do already adhere to TRIPs.¹⁹ The scope of protection in the world copyright treaty is based on three factors, rights have to be protected, duration of protection, and limitations.

1) Rights to be protected

1, 1 -Right of distribution.

According to the article 6 the WCT provide an exclusive right to authorize the making available to the public of originals and the copies of works through sale or other transfer of ownership while Article 6(2) of the Treaty deals with the issue of the exhaustion of the right of distribution. It does not oblige Contracting States to choose national/regional

¹⁶ <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#wct>

¹⁷, Melvin Simensky, lanning Bryer,” International Property Marketplace “, volume one , thomas c. vinje, Esq ,” New international copyright. Rules: The WIPO copyright treaty 17.3

¹⁸ The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 274

¹⁹ Melvin Simensky, lanning Bryer,” International Property Marketplace “, volume one , thomas c. vinje, Esq ,” New international copyright. Rules: The WIPO copyright treaty 17.3

exhaustion²⁰ or international exhaustion — or to regulate at all the issue of exhaustion — of the right of distribution after the first sale or other first transfer of ownership of the original or a copy of the work, with the authorization of the author.

1.2 -Right of rental

The rental right of article 7, is substances identical to those of the TRIPs. To subject potential national limitations to the three- step test in the WCT²¹. Accordingly does not change the situation but merely reiterates the rules set fourth in TRIPs.²²

1.3 -Right to communication.

Exposed in article 8 of the WCT, which is without example in TRIPs, extends to all categories of works the right of communication to the public.²³As emphasized by the commentary accompanying the basic Proposal for the WCT²⁴, that right established according to the article 8 of the WCT applies to the “initial act of making the work available, not the mere provision of server space, communication connection or facilities for the carriage and routing of signals.”²⁵

2 -Duration of protection of photographic works

The WCT removes the unfair discrimination against photographic works because of the duration of protection.²⁶ It obliges Contracting Parties not to apply Article 7(4) of the

²⁰The WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter

²¹,Martin R.F. Senftleben, “Copyright, limitations, and the three –step test” page 120

²² Martin R.F. Senftleben, “Copyright, limitations, and the three –step test”page 121

²³, Melvin SImensky, lanning Bryer,” *International Property Marketplace* “, volume one , thomas c. vinje, Esq ,” *New international copyright. Rules: The WIPO copyright treaty* 17.3

²⁴, Melvin SImensky, lanning Bryer,” *International Property Marketplace* “, volume one , thomas c. vinje, Esq ,” *New international copyright. Rules: The WIPO copyright treaty* 17.5

²⁵ Par.10.10, Memorandum prepared by the charmain of the committees of Experts, Basic Proplsal for the substantive provision of the treaty on certain question concerning theprotection for literary and artistic works to Be considered by the Diplomatic conference ,WIPO, CRNR/DC/4,August30,1996

²⁶ , WIPO Copyright Treaty (WCT),” *International Treaties and Conventions on Intellectual Property*” chapter 275

Berne Convention²⁷, which, as also for works of applied art, prescribes a shorter term 25 years for photographic works than for the general 50-year term²⁸.

3- Limitations and Exceptions in the Digital Environment

The WCT has permit contracting parties to determine into a digital environment limitation and exceptions in their domestic laws. According to the article 10 the counteracting parties have the right to create new exception and limitations that are suitable in the digital network environment.

Paragraph (1) of Article 10 determines the types of limitations on, or exceptions to, the rights granted under the Treaty which may be applied, while paragraph (2) of that Article provides criteria for the application of limitations of, or exceptions to, the rights under the Berne Convention²⁹.

That article used the three- step tests, which included in article (9) from the BERNE conventions to clarify the limitation and exceptions allowed.³⁰Determine the limitations

²⁷ Paul Goldstein, Edmond w kitach, ' ' unfair competition, trademark, copyright and patent''page 510

²⁸ WIPO Copyright Treaty (WCT),'' *International Treaties and Conventions on Intellectual Property*'' chapter 275

²⁹ The WIPO Copyright Treaty (WCT),'' *International Treaties and Conventions on Intellectual Property*'' chapter 272

³⁰http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P140_25350 Article 10 Certain Free Uses of Works: 1. *Quotations*; 2. *Illustrations for teaching*; 3. *Indication of source and author* (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries. (2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice. (3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

and exceptions allowed. According to the article 10 of WCT, the contracting parties can carry out the limitations and exceptions to the rights granted to authors of literary and artistic works. Numerous countries adapt the copy right treaty in their domestic laws.

For example the Canadian Copy Right ACT has adapted the fair dealing and exceptions³¹ principle to distinguish the difference between the fair dealing and infringement where only the court can decide whether fair dealing or infringement is involved or not .

The Canadian act as example has exception for the different categories of users. One category is non-profit educational institutions for education or training purpose. Educational institutions may copy news and news commentary³² from radio and television broadcasts only for educational purposes otherwise they have to pay royalties for the copy right holder. Second category is user having exceptions such as non profit libraries, archives and museums. Third category is the copies are not commercially available in a medium or to the public. Last category of user to benefit from exceptions is persons with a "perceptual disability"³³. This term refers to someone who has difficulty reading or hearing. Persons with a perceptual disability, or at the request of a person with a perceptual disability,

-Enforcement of right

The WCT provided that all the Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.” However, the Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement³⁴. Numerous countries adapted a very strong policy for enforcement of rights into their domestic laws for instance the Canadian Copy Right prevent infringements illegal copyrights.

³¹,<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00506.html#no6>

³², <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00506.html#no6>

³³ <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00506.html#no6>

³⁴, Unfair competition, trademark, copyright and patent, “ Selected statutes and international agreements”, 2007 Edition , foundation press, wipo copyright treaty page 511

In conclusion, world copyrights treaty offers many benefits for countries anyhow of their right stage of development. It provides important economic incentives to creative individuals and companies in the new digital environment.

The treaties provide a substantial legal basis for healthy electronic commerce. They sustain the national copyright industries, attract investment, and protect local creativity. WCT provide an International protection of national right holders. It required countries to provide full protection inside their territories to the local right holders and to the foreign right holders. The WCT benefit both developed and developing countries by protecting local creators in both the traditional and the digital environment, but it will assist creators from all countries when their works and other subject matter are used in the digital form without their authorization.

Finally, protection of foreign works and subject matter will allow domestic creators to compete on a fair level. The WCT has encouraged the electronic commerce plus clarified the important of copyright and related rights as a tool for economic, social and cultural growth. The WCT has encouraged investment by protected the intellectual property rights. Lastly the WCT has provided a stronger incentive to creators to produce new creations by protecting of local creativity and folklore.

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