

WIPO Digital Agenda: The Last 20 Years

**IX CODAIP
November 3, 2015
Curitiba, Brazil**



**KNOWLEDGE ECOLOGY
INTERNATIONAL**

What is WIPO?

WIPO is a global forum for intellectual property services, policy, information and cooperation. It is a self-funded agency of the United Nations, with 188 member states.

The mission is “to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all.” It provides technical assistance and work on norm settings as well as administers existing treaties.

The mandate, governing bodies and procedures are set out in the WIPO Convention, which established WIPO in 1967.

188 Member States, 250 non-governmental organizations, (NGOs) and intergovernmental organizations (IGOs) have official observer status at WIPO meetings.

WIPO has a yearly expenditure of 611 Million CHF for 2012-2013 (2420417793.98 in Brazilian real). The Organization generated a surplus of 68.9 million Swiss francs.

Copyright-related treaties administered by WIPO

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (2013)

Beijing Treaty on Audiovisual Performances (2012)

WIPO Copyright Treaty (WCT) (1996)

WIPO Performances and Phonograms Treaty (WPPT) (1996)

Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974)

Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

Berne Convention for the Protection of Literary and Artistic Works (1886-1979)

Standing Committee on Copyright and Related Rights (SCCR)

The SCCR was set up in 1998-1999 to examine matters of substantive law or harmonization in the field of copyright and related rights.

The Committee is composed of all member states of WIPO and/or of the Berne Union; and, as observers, certain member states of the United Nations (UN) which are non-members of WIPO and/or the Berne Union, as well as a number of intergovernmental and non-governmental organizations. The member states are organized in Groups. Grulac, Group B, the Africa Group, the Baltic States, China...

The Standing Committee does not vote but is supposed to reach consensus and makes recommendations for the WIPO General Assembly or a Diplomatic Conference. It discusses and drafts treaties. It is organized in groups.

The Committee is currently engaged in discussing:

- Limitations and exceptions for libraries, archives and educational institutions
- Protections of broadcasting, cablecasting and webcasting organizations

After the WCT and WPPT- the Internet Treaties of 1996:

The agenda of the SCCR was to draft :

- a sui generis database protection treaty,
- a treaty to protect performers in audiovisual works,
- a proposed treaty to protect the broadcasting, cablecasting and webcasting organizations.

The protection of databases discussions died in 2003 at SCCR 9. Since it had been on the agenda since 1997 with no results:

"The Delegation of Brazil shared the views expressed by the Delegations of India, Senegal and Egypt and questioned the need to maintain the item on the Agenda of the Committee. It had attempted to reach understanding on that subject and to that effect had undertaken consultations with the private sector of its country, which did not display an interest in the issue. There was little agreement at the international level on what kind of protection had to be granted. That showed that the topic was not mature for discussions at the international level, and accordingly the Delegation supported the suggestion to remove the item from the Agenda until a suitable time in the future."

"The Delegation of the United States of America stated that, while it understood the sentiments of several delegations with respect to the little progress achieved, it continued to attach importance to the subject, and noted that the U.S. Congress was devoting attention to the issue during its current session in order to arrive at suitable legislative solutions to the protection of such databases."

Treaty for Performers in Audiovisual Works (AV)

The AV treaty diplomatic conference in 2000, stalled over one provision, Article 12, on the transfer of rights.

The US, supported by India, insisted on a transfer of rights provision -- film producers "needed it" to ensure their ability to distribute films globally).

The European Union opposed such a provision.

Negotiations must have continued in some ways and in 2012...

Beijing Treaty on Audiovisual Performances (1)

Adopted at the Diplomatic Conference in Beijing June 20-26, 2012 (10 ratifications for 30 needed for entry into force)

The treaty deals with the economic and moral rights of performers in audiovisual performances:

-for fixed performances: right of reproduction, right of distribution, right of rental and right of making available

-for unfixed or live performances: right of broadcasting (not if rebroadcasting), right of communication to the public (except if it is a broadcast performance) and right of fixation

-they have the right to claim to be identified and the right to object to distortion, mutilation that would be prejudicial

Beijing Treaty on Audiovisual Performances (2)

contracting parties may:

- notify that instead of right to authorize, they establish a right to equitable remuneration or make a reservation to deny this right

- may stipulate in national laws that once a performer has consented to the fixation of a performance, the exclusive rights are transferred to the producers of the audiovisual fixation

- the term must be at least 50 years and no formalities

- legal remedies for circumventions

Limitations and exceptions incorporate the so-called 3 step test (Article 13 of Beijing).

Still on the table: Protection of Broadcasting, Cablecasting and Webcasting Agenda

The SCCR continued discussions on the protection broadcasting organizations but a parallel track on limitations and exceptions slowed progress starting in 2003-2004...

The protection of broadcasting organizations stayed on the table although almost died many times due to the overreach of the demandeurs, the broadcasters, cablecasters ...and webcasters.

Put on the “back burner” until 2013, the treaty came back with force this year.

Protection of broadcasting in brief

Rational #1? No update since Rome in 1961

Rational #2 e? Piracy. The Internet.

Signal piracy can be physical (recording or USB sticks) or virtual (over the air or online).

BUT hacking already illegal in most places. The real issue is live sport and unauthorized retransmission over the internet

No agreement since content is already protected under copyright but since 2007 the GA agreed to pursue a signal-based approach without adding new rights to casters.

2011 a new workplan including a new draft treaty. Diplomatic conference in 2017?

Issues

Who are the beneficiaries?

What transmission should be protected?

new technologies? new recording or time-shifting? Internet protocol TV?

2006 webcasting was put aside but still in the proposals (all means of transmissions)

Over the air and cable only?

And what rights? post fixation rights too?

For how long? Would a re-broadcast trigger a new term?

Opposed by copyright owners and consumers.

The Limitations and Exceptions Agenda

The issue of limitations and exceptions has been discussed officially by the SCCR since its 12th session. Note that Ricketson Study was presented at the 9th Session (June 2003)

At the November 17-19, 2004 SCCR 12, Proposal by Chile on the Subject "Exceptions and Limitations to Copyright and Related Rights"

At SCCR 16, March 10 to March 12, 2008, Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations

Informative Sessions on Limitations and Exceptions and on Audiovisual Performances, Study on Copyright Limitations and Exceptions for Libraries and Archives...The SCCR examined questions of limitations and exceptions regarding education, libraries and disabled persons, particularly visually-impaired persons.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT)

Adopted June 27, 2013 in Marrakesh it is the first treaty dealing directly about user rights. Its entry into force requires 20 ratifications or accessions.

First treaty for limitations and exceptions.

It requires parties:

- 1) to provide a standard set of L&E to copyright rules to permit the reproduction, distribution and making available of published works in accessible formats,
- 2) to permit exchange of these works across borders by organizations serving the beneficiaries (authorized entities as defined by national laws),
- 3) the MVT leaves the parties the freedom to implement its provisions taking into account their own legal system and practices, including determinations of fair dealings, fair practices or fair uses.

11/20 Ratification or Accession of MVT

No 11 Ratification by the Republic of Korea October 8, 2015

No 10 Ratification by Mongolia September 23, 2015

No 9 Ratification by the United Mexican States July 29, 2015

No 8 Ratification by the Argentine Republic April 1, 2015

No 7 Accession by the Republic of Singapore March 30, 2015

No 6 Ratification by the Republic of Paraguay January 20, 2015

No 5 Ratification by the Republic of Mali December 16, 2014

No 4 Ratification by the Eastern Republic of Uruguay December 1, 2014

No 3 Accession by the United Arab Emirates October 15, 2014

No 2 Ratification by the Republic of El Salvador October 1, 2014

No 1 Ratification by the Republic of India June 24, 2014

What is next for WIPO SCCR Digital Agenda?

for The next 20 years?

New Rights: Resale rights?

Limitations and Exceptions:

- Libraries?
- Archives and digitization?
- Distance education and training?
- Text and Data Mining?

Update of the Tunis Model law?

The 1976 Tunis Model Law

Drafted by experts for member states of WIPO and UNESCO, it provides a Berne-consistent template for developing countries that accommodate the common law and civil law traditions.

It addressed a number of the most important issues in copyright, including issues such as:

- the protection of folklore,
- limitations and exceptions to rights, such as those in Section 7, entitled “Fair use,” Section 3 on “Works not protected,” or Section 10 on the limitation of the right of translation.
- It provided a foundation for the protection of author’s rights, including extensive provisions on licensing of works and enforcement of rights,
- It proposed language on the treatment of domaine public payant in Section 17.
- Find the Tunis Model Law on Copyright for Developing Countries (1976) Arabic, English, French, Portuguese and Spanish Other languages available upon request at rsy@unesco.org (11/01/13)

Thank You

Manon Ress

manon.ress@keionline.org

