

3. International Treaties and Conventions Responding to Digital Environment

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International Treaties and Conventions Responding to Digital Environment

• 应对数字环境的国际条约




Overview and History 概览和历史

- Technological development
- Increase of literacy
- Recognition of value
- First national law
- First international convention
- 技术发展
- 识字率提高
- 对价值的认识
- 第一部国家法
- 第一个国际公约




Works 受保护的作品

- Literary works 文字作品
- Musical works 音乐作品
- Artistic works 美术作品
- Dramatical works 戏剧作品
- Cinematographic works 电影作品
- Photographic works 摄影作品
- Computer program 计算机程序
- Multimedia works 多媒体作品




Rights 权利

- Reproduction 复制
- Translation 翻译
- Public performance 公开表演
- Adaptation 改编
- Broadcasting and ctp 广播
- Distribution 发行
- Rental 出租




Technology and CRR 技术与版权和相关权利

- Printing 印刷
- Sound recording 录音
- Cinematography 电影摄制
- Broadcasting 广播
- Photocopying 影印复制
- Satellite & cable transmission 卫星和电缆传送
- Video recording 录像
- Internet 互联网




International Conventions 国际公约

- Berne 伯尔尼公约
- UCC 世界版权公约
- Rome 罗马公约
- Phonogram 唱片公约
- Satellite 卫星公约
- TRIPs 与贸易有关的知识产权协议





Berne Revision 伯尔尼公约修订历史

- 1908
- 1928
- 1948
- 1967
- 1971



Music Industry and Digital Technology
音乐产业与数字技术

- **Traditional markets:**
 - live performances
 - hard copies
 - broadcasts
- **New markets: Internet**
 - 传统市场:
 - 现场表演
 - 录制品
 - 广播
 - 新市场: - 因特网



Literary Publishing and Digital Technology
文字出版与数字技术

- **Creation**
- **Reproduction**
- **Promotion**
- **Distribution**
 - 创作方式
 - 复制方式
 - 推广方式
 - 发行方式



Challenges and Responses 应对挑战

- **Commercial**
- **Technological**
- **Legal**
 - 商业手段
 - 技术手段
 - 法律手段



Technologies vs. Solutions
技术与相应的解决办法

- Home taping-levy
- Photocopying-RRO
- Reproduction-commercial rental
 - 家庭复制---空白磁带税
 - 影印复制---复制权管理组织
 - 复制---商业出租权



Responses 法律应对

- **National: Legislation (US 1980)**
- **Regional:Harmonization (EU 1991)**
- **International: new treaties (WCT, WPPT 1996)**
 - 国家: 立法 (美国软件保护法 1980)
 - 地区: 协调(欧共体软件保护指南 1991)
 - 国际: 新条约 (WIPO因特网 条约 1996)





WCT & WPPT

- **WCT, Adopted 1996, effective March 2002**
- **WPPT: Adopted 1996, effective May 2002**
- WIPO 版权条约 (WCT)
- 1996年通过, 2002年3月生效
- WIPO 表演和录制品条约 (WPPT)
- 1996年通过, 2002年5月生效




WCT Members (58)

- Africa: Benin, Botswana, Burkina Faso, Gabon, Guinea, Mali, Senegal, Togo
- Arab: Bahrain, Jordan, Oman, Qatar, UAE
- Asia: Indonesia, Japan, Mongolia, Philippines, ROK, Singapore,
- LAC: Argentina, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Lucia,
- North America: USA
- Europe & transition countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Czech republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Poland, Moldova, Romania, Serbia & Mon. Slovakia, Slovenia, TFYRO Macedonia, Ukraine,




WPPT Members (57)

- Africa: Benin, Botswana, Burkina Faso, Gabon, Guinea, Mali, Senegal, Togo
- Arab: Bahrain, Jordan, Oman, Qatar, UAE
- Asia: Indonesia, Japan, Mongolia, Philippines, Singapore,
- LAC: Argentina, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Lucia,
- North America: USA
- Europe & transition countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Czech republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Poland, Moldova, Romania, Serbia & Mon. Slovakia, Slovenia, TFYRO Macedonia, Ukraine,





Purpose 目的

- Clarify existing norms
- Supplement existing protection
- Create new norms
- 明确现行标准
- 补足现行保护
- 制定新标准




Main Issues 解决的主要问题

- Application of reproduction right
- Limitations and exceptions
- Technological measures of protection
- Rights management information
- 复制权的适用性
- 权利的限制和例外
- 保护技术措施
- 管理权利信息

Limitations and Exceptions 限制和例外

- Criteria of application:
 1. Confine to special cases
 2. Do not conflict with normal exploitation of the work
 3. Do not unreasonably prejudice legitimate interest of authors
- 适用标准:
 - 1 限于特殊情况
 - 2 不与作品的正常使用冲突
 - 3 不无故损害作者的合法权益





Technological Measures 技术措施

- Technological measures of protection
- Rights management information

- 保护的技术措施
- 管理权利信息



WCT

- Computer programs
- Databases
- Photographic works

- 计算机程序
- 数据库
- 摄影作品



WPPT

- Performers
- Producers

- 表演者
- 录制者



Current Issues 当前讨论的问题

- Standing Committee on CRR:
 - audiovisual performances
 - non-original databases
 - broadcasting organizations
- 版权和相关权利常设委员会:
 - 音像表演的保护
 - 非原始数据库的保护
 - 广播组织的保护



Future issues 今后讨论的问题

- Responsibilities of Internet Service Providers (ISPs)
- Applicable law in respect of international infringement
- Voluntary copyright recordation systems
- Resale rights (*droit de suite*)

- 互联网服务提供者的责任
- 国际侵权的法律适用
- 自愿版权登录系统
- 再出售权 (*追溯权*)



Future issues 今后讨论的问题

- Ownership of and authorization to use multimedia products
- Implementation of WCT and WPPT: - technological measures of protection - limitations and exceptions
- Economics of copyright

- 多媒体产品的所有权及其授权使用
- WCT 和 WPPT 的实施: 保护的技术措施; 限制和例外
- 版权的经济意义





Challenge and Opportunities 挑战与机遇

- New means of creation
- New ways of distribution
- More works for the public
- A better future for all

- 新的创作手段
- 新的传播方式
- 更多作品提供公众
- 更好的将来




- THANK YOU

—谢 谢



Questions from participants to Ms. GAO

Q. You just now talked about a WIPO report on the impact of cultural industries on GDP. Could you speak in a bit more detail about sectoral statistics and actual calculation ratios?

A. Some countries have conducted research on this topic. WIPO published in 2003 a Guide on how to survey the economic contribution of copyright-based industries. The WIPO Guide introduced how it was done in some countries and provided some information and methodologies for reference. To my knowledge, this sort of research or survey has been carried out in about 30 countries, including the USA, Singapore, and a number of other countries with developed cultural industries. Let me give a brief introduction to the content of the survey done in Singapore using the above-mentioned methodologies.

While doing the survey, experts in Singapore categorized the copyright-based industries into the following four sectors based on the degree of their dependence on copyright protection:

1. Core copyright industries: Development of these industries depends on effective copyright protection measures. Creative industries such as music, software, cinema, and publishing etc. constitute the principal core copyright industries.

2. Interdependent industries: These industries are not dependent on copyright protection as direct as the core industries, but development of core copyright industries can spur development of these industries. The main examples in this category

include industries providing hardware support for creative industries, such as equipment manufacture, music equipment and audio-visual display equipment etc. Development in the core copyright industries can spur development in these industries.

3. Partial copyright industries: These industries are less dependent on copyright compared to the first two but their development is helped by effective copyright protection. Only part of their activities are somewhat related to copyright. The textile and toys are examples.

4. Non-dedicated support industries: Retailing, wholesaling and transport are considered as such industries.

In fact, different countries may categorize the related industries in different ways, and the particular conditions in each individual country may mean that core copyright industries and partial copyright industries account for differing proportions of GDP in different countries. Core copyright industries account for a relatively high percentage of GDP in Singapore, for example, while these industries may account for a higher or smaller proportion in other nations.

Q. Since an important international organization like the EU has not joined the WCT or WPPT, what is the practical significance to China of acceding to these two treaties? Also, once China decides to exercise tighter monitoring of royalties for digital cultural products, how should it set royalty standards?

CHAPTER II

A. With regard to your first question, the fact that the EU hasn't joined the WCT or WPPT does not, in my opinion, render these treaties not important. Actually EU member countries have for years been making preparations towards joining these two treaties, but the issue is that all the 25 member countries have to accede at the same time. That takes time. As far as China is concerned, in my view, China's accession into these treaties is important for the better protection of China's creativity and copyright industries. It is my understanding that the National Copyright Administration of China has almost completed the preparations for joining the WCT and WPPT.

As for your second question, I don't think there is a single standard for royalties, nor are there any specific requirements. Each company and right holder should set its own royalty standards based on specific situation and conditions in the market place.

Q. The Rome Convention and the WPPT provide comprehensive protection only for neighbouring rights holders in phonograms; they do not have specific provisions regarding the rights of performers over the reproduction, rental, and network distribution rights of videograms. In contrast, China's Regulations for Implementation of the Copyright Law provide for phonogram and videogram rights and unify the protection of phonograms and videograms, thereby providing more comprehensive protection of the rights of performers in videograms, just like the phonogram rights enjoyed by other copyright holders. Can you say something about the reason why this problem came about, or explain a bit about the background?

A. The protection standards set out in the Rome Convention, the Berne Convention, and other international conventions, including the WPPT, are minimum protection standards for member countries. This means that they do not prevent member countries from adopting higher standards of protection based on their needs in their own laws. I think this maybe one of the reasons for the situation regarding the provisions set out in the Regulations for Implementation of the Copyright Law.

Also, this explains, in my view, why it is important for China to seek membership in the WCT and WPPT. Under the rules by which international conventions are formulated, a country has to be a member to have a voice there and have its views on legal issues reflected in the conventions.

Q. A lot of copyright agencies representing many high-quality copyrighted works reap exorbitant profits by charging high royalties. How do we deal with this situation? And agents frequently defraud users by issuing fake licenses, or by engaging in double and triple licensing. How can this activity be countered? Also, a lot of ISPs are starting to collect royalties from users without actually having obtained a license, or without there even being a license source. How do we deal with this?

A. The questions you raised are probably all concrete cases. Concrete matters require concrete analysis. Generally speaking, it depends on whether there are related laws and regulations available to govern these issues and how such issues are regulated. As for issues concerning fake licenses and confirmation of the origin of licensing rights, for example, they can also be decided in the contract. It is therefore advisable to consult in advance with lawyers, and the best is to try to avoid such issues from occurring. Copyright protection laws and their implementation are not yet fully developed in some areas, and will have to be continually improved in the course of actual practice.