



Celebrating the 25th Anniversary of the 1996 WIPO Copyright Treaties

After several years of preparatory work and a [Diplomatic Conference](#) held over a period of three weeks in December 1996 under the auspices of the World Intellectual Property Organisation (WIPO) in Geneva, two new international copyright treaties were born shortly before midnight on 20 December 1996: The WIPO Copyright Treaty ([WCT](#)) protecting the rights of authors and the WIPO Performances and Phonograms Treaty ([WPPT](#)) governing the rights of performers and phonogram producers. In his [closing speech](#), the then Director General of WIPO Dr Arpad Bogsch predicted the immense impact of the two Treaties on the future of copyright and neighbouring rights. Indeed, just like their older relative, the Berne Convention, the WIPO Treaties have stood the test of time.

Objective

The objective pursued by the international legislator was to clarify and update the existing protection of copyright and related rights at the international level and to respond to the changing technological environment. At the time, international protection of copyright and neighbouring rights was afforded primarily by the [Berne Convention](#) for authors and by the [Rome Convention](#) for performers, producers of phonograms and broadcasting organisations. While the Agreement on Trade-Related Aspects of Intellectual Property Rights ([TRIPs](#)) adopted in 1994 updated the protection under Berne and Rome to a certain extent and expanded large parts of it to all [WTO members](#) as of 1 January 1995, it did not as such result in a complete

overhaul of the copyright and related rights system at the international level.

Achievements

The adoption of two new international treaties, negotiated over a period of three weeks, was certainly an achievement, particularly in view of the fact that most meaty substantive issues were only discussed in the last week of the Diplomatic Conference. The principal achievements of the two Treaties that were considered innovative law-making at the time are:

- an exclusive online making available right which enables rightholders to license the use of their works, performances and phonograms in interactive online services; and

- the legal protection of both technological measures and rights management information, aiming at digital rights management used to protect the rights of authors, performers and producers.

As these benefits are related to the Internet, the Treaties are often referred to as the “WIPO Internet Treaties”. However, the Treaties have a much broader reach than the Internet. All three beneficiaries of the Treaties saw their protection strengthened in more [general terms](#).

The WIPO Treaties do not contain specific limitations and exceptions. Instead they rely on a more general formula to maintain a balance between the protection granted under the Treaties and the public interest which gives national legislators flexibility to devise new or extend existing limitations and exceptions against the benchmark of the so-called three-step test.





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Leftovers

Despite best efforts, not everything could be solved in the short timeframe that was available.

A draft treaty on intellectual property rights in respect of databases, which the Diplomatic Conference had also been called upon to negotiate, became a victim of those time constraints. As a result, a [Recommendation](#) was adopted, advocating the continuation of the debate on the protection of databases. However, the proposed database treaty never saw the light of day.

Audiovisual performances were another leftover from the Diplomatic Conference. No consensus could be reached on the rights of performers in audiovisual fixations of their performances. As a result, a [Resolution](#) with a view to continuing work towards a protocol to the WPPT concerning audiovisual performances to be completed no later than in 1998 was adopted. After a missed opportunity in December 2000, the Beijing Treaty on Audiovisual Performances ([BTAP](#)) was adopted on 24 June 2012, 16 years after the Recommendation at the 1996 Diplomatic Conference.

Finally, there was recognition that the protection of expressions of folklore and broadcasters' rights should also be revisited. While broadcasters are beneficiaries of the Rome Convention and the TRIPs Agreement, they were left out of the modernisation process in the run-up to the Diplomatic Conference. 25 years later, discussions are still ongoing at WIPO, both with regard to

broadcasters' rights and traditional cultural expressions.

Still fit for purpose?

There is no denying that, compared with today, the technological environment in 1996 was strikingly different. Back then, rightholders were concerned with subscription, multichannel and emerging internet mail order services, and there was talk of a mysterious jukebox in the sky.

Times have moved on: today, recorded music is primarily consumed by way of streaming which plays an increasingly important role also in the audiovisual sector. Electronic publishing has become an essential feature in the print sector, even though books in tangible formats remain omnipresent. Technology has turned passive consumers into active users whose involvement with creative content is no longer limited to the making of a private copy. Online platforms of various shapes and sizes have emerged that do not only allow the delivery of creative material in unprecedented ways, but in many cases have empowered users to become the active players they now are.

The lawmakers at the Diplomatic Conference were well aware that they were legislating for a situation which was in flux. Their endeavour was to create a set of rules which could move with the times. Like the much older Berne Convention, the WIPO Treaties have been conceived as flexible instruments which must be brought to life through implementation choices at the national level.

Over time, adjustments to the international copyright framework may become necessary, not only broadcasters' rights and traditional cultural expressions, but also to clarify specific legal concepts or to respond to new challenges. The situation is continuously monitored by WIPO, particularly through the work of its Standing Committee on Copyright and Related Rights ([SCCR](#)). For the time being, national legislators may avail themselves of the flexibilities under the Treaties and make proof of creative and innovative law-making within the parameters of the existing international copyright and neighbouring rights framework.



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