

Marrakesh Note 2

The evolution of the definition of a work, since June 2011.

Before reviewing the treaty text, it is useful to review how works are defined in the Berne Convention and the WCT. In Article 2(1) of the Berne Convention, “literary and artistic works” are defined as follows:

The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

In 1996, the WIPO Copyright Treaty included an Article 4, which said that:

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.

Agreed statements concerning Article 4: The scope of protection for computer programs under Article 4 of this Treaty, read with Article 2, is consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

2008

The original WBU 2008 proposal defined work as follows:

http://www.keionline.org/misc-docs/tvi/tvi_en.html

‘Work’ means any work of a type in which copyright could subsist whether or not such protection is provided by national laws or was provided but has expired, and includes literary, dramatic, musical and artistic works, databases and films.

June 2011

In June 2011, a proposal was made in SCCR 22 by Argentina, Australia, Brazil, Chile, Colombia, Ecuador, the European Union and its Member States, Mexico, Norway, Paraguay, the Russian Federation, the United States of America and Uruguay.

The definition of a work covered any “protected work within the meaning of the Berne Convention . . . in any media.”

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=170957

WIPO Document Code SCCR/22/15 REV. 1, JUNE 22, 2011

Title: Proposal on an international instrument on limitations and exceptions for persons with print disabilities

Proposed by : Argentina, Australia, Brazil, Chile, Colombia, Ecuador, the European Union and its Member States, Mexico, Norway, Paraguay, the Russian Federation, the United States of America and Uruguay

"work"

means a protected work within the meaning of the Berne Convention, whether published or otherwise made publicly available in any media.

December 2011

In December 2011, SCCR 23 produced a new draft of the text. The definition of the work was rewritten, but included "any literary and artistic work in which the copyright remains valid . . . in any media."

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=195021

WIPO Document Number: SCCR/23/7

Date: December 16, 2011

Title: Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities

Proposed by: the Committee

"work"

means a literary or artistic work protected by copyright and includes any literary and artistic work in which the copyright remains valid, whether published or otherwise made publicly available in any media.

July 2012

During the SCCR 24 in July 2012, a revised working document was published. The definition of a "work" now included three brackets, two of which were efforts to significantly narrow the works covered. One set of brackets was designed to limit the type works covered. The United States proposed this text: [in the form of text, notation and/or related illustrations], which, among other things, excluded audio books and audiovisual works, including videos used in education and training. There were also brackets around [in any media], and an attempt to add: [or scientific].

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=213482

WIPO Document Number SCCR/24/9

Title: Revised Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities adopted by the Committee Jul 26, 2012

"work"

means a literary and artistic [or scientific] work within the meaning of the Berne Convention, [in

the form of text, notation and/or related illustrations], whether published or otherwise made publicly available [in any media].

October 2012

There were minor changes in the text in October 2012.

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=219488

WIPO Document Number: WIPO/IS/VIP-PPD/GE/12/REVWKGDOC

Title: Revised Working Document on an International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons With Print Disabilities - WORKING TEXT October 19, 2012

"work"

means literary and artistic works within the meaning of Article 2.1 of the Berne Convention, [in the form of text, notation and/or related illustrations], whether published or otherwise made publicly available [in any media].

November 2012

At the November 2012 SCCR 25, the brackets were removed from the definition of a work, as part of a deal to approve a diplomatic conference. The USA threatened to block the consensus to hold a diplomatic conference unless the brackets were removed from the next that narrowed the types of works to "text, notation and/or related illustrations." But a footnote was added to say that "An Interpretative Understanding/Agreed Statement will be drafted to clarify that audiobooks are included in the definition of a work."

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=230442

WIPO Document Code: SCCR/25/2 Rev

Title: Draft Text of an International Instrument/Treaty on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities.

Sponsored by: the Committee

"work"

means literary and artistic works within the meaning of Article 2.1 of the Berne Convention, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media 2

2 An Interpretative Understanding/Agreed Statement will be drafted to clarify that audiobooks are included in the definition of "work".