

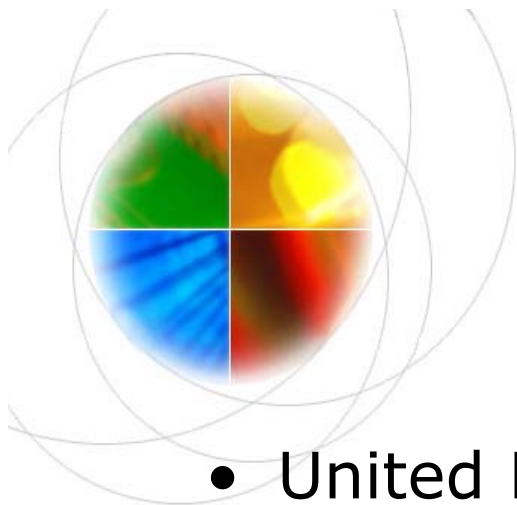
AXMEDIS 2007

Barcelona, 29 November 2007

**Copyright & Technology:
Legal, Political and Market Challenges
A View from WIPO**

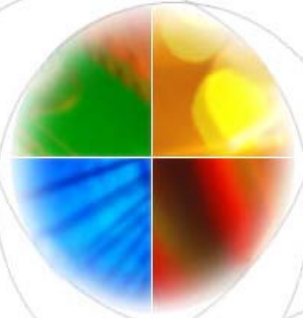
Richard Owens

Director, Copyright E-Commerce Division
World Intellectual Property Organisation



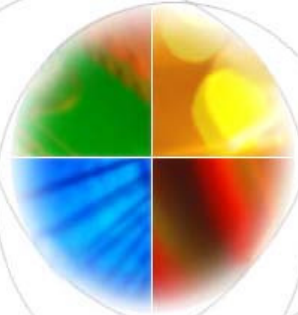
Introducing WIPO

- United Nations specialized agency
- members - 184 Member States
- observers - 222 non-governmental organizations, 66 international organizations
- over 900 staff members
- headquarters in Geneva (offices in Singapore, New York, Brussels, Tokyo)



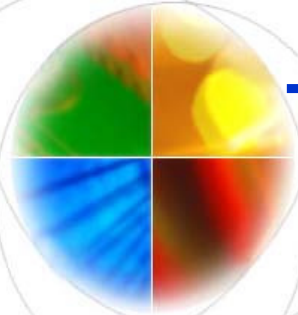
WIPO's main activities

- **Normsetting**
 - treaty-making processes
- **Providing international IP services to private sector**
 - registration services for patents, trademarks & designs
 - dispute resolution (WIPO Arbitration & Mediation Center)
- **Enhancing access to the IP system**
 - assist developing country members, as well as SMEs to use IP as a tool for economic, cultural & social development
 - distance learning programs (WIPO Worldwide Academy)
 - seminars, conferences, studies and documents



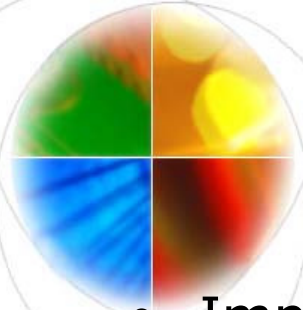
IP in the information society

- **'knowledge economy'**
- **growing importance & value of IP**
 - 80% of value of S&P 500 companies is IP
- **World Summit on the Information Society**
 - Two phases: Geneva 2003, Tunis 2005
 - Declaration of Principles, Plan of Action, Agenda for the Information Society
 - Follow up: Internet Governance Forum (Rio, 11/07)
- *WIPO Online Forum on Intellectual Property in the Information Society (2005)*
 - Report at <http://www.wipo.int/ipisforum/en/>



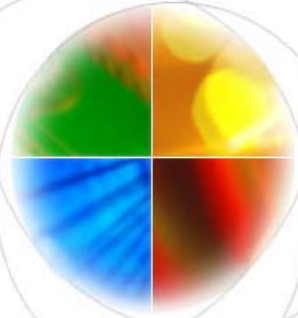
The international copyright framework

- **WIPO Copyright Treaty (WCT) (1996)**
 - In force March 6, 2002 (64 States party)
- **WIPO Performances and Phonograms Treaty (WPPT) (1996)**
 - in force May 20, 2002 (62 States party)
- Membership mostly developing countries, but also Japan, Singapore, United States of America and Belgium; 2007 accessions – China, Australia and Liechtenstein
- Complex interplay among legal, political and market factors
- **WTO/TRIPS (1994)**



Legal challenges

- Implementation of 1996 Treaties:
 - General framework for the dissemination of content online
 - “Making available” right, limitations and exceptions
 - DMCA and European Directive as “prototype” laws
 - Public policy flexibilities in sensitive areas
- DRM: Technical Protection Measures (TPMs) and Rights Management Information (RMI)
 - Legal remedies against circumvention of access and copy controls, misuse of RMI
 - A variety of approaches, circumvention + trafficking in devices, civil and criminal sanctions
 - Laws attempt to balance TPMs with specific exceptions, consumer expectations



Legal challenges ...

- Intermediary Liability
 - “internet intermediaries” include ISPs, peer-to-peer (P2P) file sharing services, portals, search engines (Google), auction sites (eBay), UGC sites
 - Different rules, direct vs. secondary liability, existence/effect of notice-and-takedown procedures
 - self-regulatory approaches (eg, User-Generated Content Principles (10/07), EU Film Online Charter) are in their infancy
 - lack of harmonized international rules impedes development of legitimate digital commerce
- Implementing Free Trade Agreements (FTAs)
 - More than 300 FTAs worldwide concluded or under negotiation, similar but not identical IPR provisions
 - Trilaterals, bilaterals and harmonization talks
 - Provisions on DRM, notice-and-takedown, limitations/exceptions



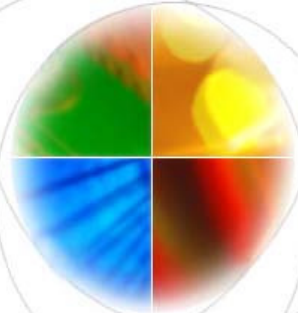
Legal challenges: the proposed WIPO broadcast treaty

- **Purpose:**

- to provide remedies against piracy of broadcast signals
- Would cover cable and satellite transmissions

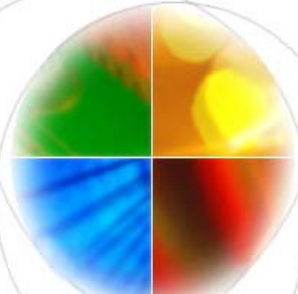
- **Issues:**

- what transmissions should be protected, and what rights granted?
- duration or term of protection?
- who should be protected (traditional broadcasters, cablecasters, webcasters?)
- protection of pre-broadcast signals
- how to include principles of access to information, cultural diversity, public domain
- TPM provisions (broadcast flag?)



Legal challenges: limitations & exceptions to copyright

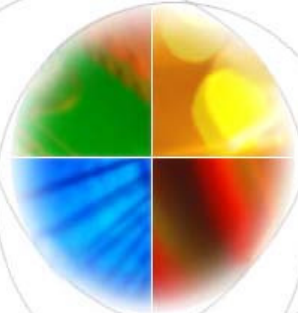
- **The Three-Step Test for Exceptions (Berne, TRIPS, WCT/WPPT)**
 - Special cases
 - Do not conflict with normal exploitation
 - Do not prejudice legitimate interests of creator
- **Proposal of Chile**
 - ▲ Proposal on the Analysis of Exceptions and Limitations (SCCR/13/5, 2005)
http://www.wipo.int/meetings/en/details.jsp?meeting_id=9289
- **Define minimum exceptions at international level in three areas:**
 - Educational uses
 - Libraries and archives
 - Handicapped persons



Legal challenges: limitations & exceptions to copyright

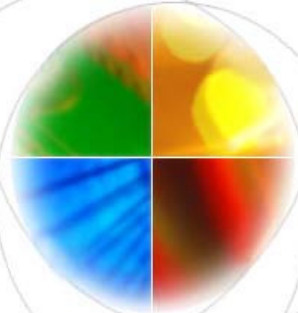
WIPO studies dealing with exceptions & limitations:

- ▲ Study on Limitations and Exceptions to Copyright and Related Rights in the Digital Environment (Ricketson, 2003)
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805
- ▲ Study on Current Developments in the Field of Digital Rights Management (Cunard, Hill, Barlas, 2004)
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=29478
- ▲ Automated Rights Management Systems and Copyright Limitations and Exceptions (Garnett, 2006)
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59952
- ▲ Study on Copyright Limitations and Exceptions for the Visually Impaired (Sullivan, 2007)
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696



Political challenges: copyright is under scrutiny

- Horizontal alliances against expansion of rights
 - Among developing countries
 - Developing countries, NGOs representing civil society and user interests, and most recently, telcos/consumer electronics manufacturers (b'cast treaty negotiations)
- The "WIPO Development Agenda"
 - 14 countries + other developing and LD countries
 - Parallel and cross-cutting agendas (patents, TMs, copyright, WIPO governance and supervision)
 - 110+ proposals
 - 45 recommendations adopted by WIPO Assemblies September 28, 2007



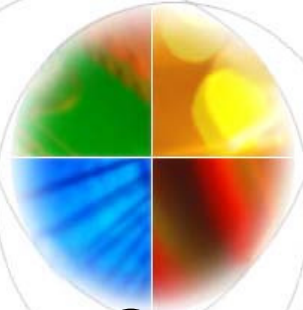
Market challenges

- New means of digital content delivery and licensing
 - Legal digital download services: iTunes
 - DRM-free music (EMI)
 - User-generated content: YouTube, MySpace, Second Life
 - Growing variety of digital licenses
 - Offered by collecting societies
 - EC DG Competition, InfoSoc pushing multi-territorial licensing from single collecting society (“one-stop shop”)
 - Open licensing, eg Creative Commons: choice of royalty-free licensing models (200+) for growing variety of creators (ranging from ‘all rights reserved’ to public domain dedications)



Market challenges ...

- Rapid development of pervasive or enabling technologies
 - Peer-to-peer networks (P2P): Napster to Kazaa to BitTorrent
 - The Google phenomenon: search, digitization, publication (is this fair use outside the US?)
 - Net Neutrality debate
- Exponential growth in the number of Internet users, service providers, and information sources
 - broadband access, mobile telephones (3G), digital satellite radio and television (IPTV)
- Convergence of traditional content, media and communications providers and telcos
 - Google's purchase of YouTube, News Corp purchase of MySpace, Mixi listed on Tokyo stock exchange, Warner Bros' deal with BitTorrent



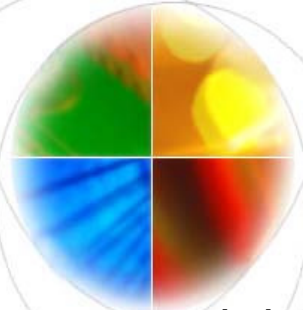
Market challenges ...

- Open source (OS) software
 - More than 55 different OS licenses, 3 main varieties: Free-for-all or academic licenses, keep-open licenses, share-alike licenses (eg GPL -- most popular)
 - Interplay between OSS and proprietary software
 - Growth of mixed platforms (OS + proprietary code)
 - Copyright and patent issues
 - The 'viral effect' of GPL
 - New issues under GPL v3
 - Limit application of DRMs to GPL-licensed code
 - Prevent assertion of software patents in relation to GPL-licensed code



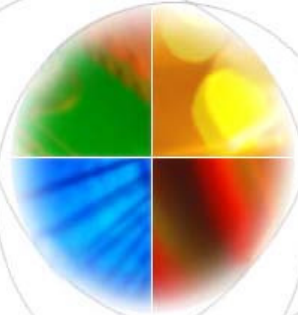
Market challenges ...

- DRM
 - Interoperability
 - Relationship between DRM and exceptions (including fair use/dealing)
 - DRM and private-copying levies (EU)
 - TPMs \neq RMI: emerging identifiers for content, parties, licensing terms (music, publishing, AV industries, Creative Commons)
- Standards and Interoperability
 - ICT standard setting bodies (SSOs like MPEG, ISO, W3C)
 - Interoperable rights management technologies (French 'iPod' legislation, 2005-6)
 - 'Open standards', 'essential IPRs' - IPR policies of SSOs
 - IPR licensing terms (RAND, FRAND, RF)
 - Competition issues, different approaches (US vs EU, eg *Microsoft* decision)
 - Trade dimension -- Chinese position in WTO/TBT Committee, Internet Governance Forum discussions in Rio (11/07)



Issues for WIPO copyright agenda

- Liability of Internet intermediaries
- Interoperability and standards for TPMs and RMI
WIPO Seminar on Rights Management Information (17/09/07)
(www.wipo.int/meetings/en/2007/sem_cr_ge)
- Further work to improve protection of audiovisual performers
- Expanding choice of licensing models, business models and tools to support them
- Enhanced access to public domain material, orphan works
- Copyright guidance for cultural heritage institutions



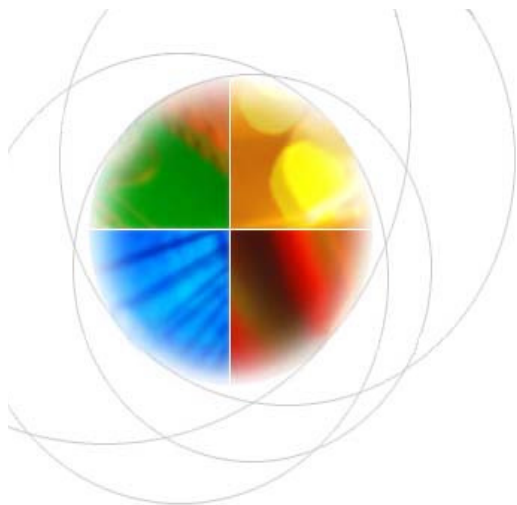
Words of cautious optimism

- Copyright is not a business model, but a tool for digital content delivery, for commercial and non-commercial uses
- Creators have more choice than ever before (to collaborate, put works in public domain, share content)
- More content is available now than ever before, a lot for free, more and more under new digital licenses
- Creators' choices should be based on full awareness of the consequences for both present **and future** opportunities.



More cautious optimism

- New limitations & exceptions should be consistent with the three-step test in Berne and TRIPS:
 - WTO *Fairness in Music* Panel Report (07/2000):
 - *future opportunities* for exercise of rights must be taken into account
 - emerging markets for licensed content delivery should be given a chance to develop
- TPMs/RMI: how to apply technologies *sustainably*, to provide interoperability, acceptable security and enforcement for rightsholders as well as delivery of content to satisfy users.
 - Content ID technologies becoming a focus for copyright policy-makers
 - Standards-setting becoming a major policy battleground
 - “Open” standards hold promise, but no guarantees, and not free!
- Law and technology are not sufficient, self- and co-regulatory approaches should be given policy support



Thank you

<http://www.wipo.int/copyright>

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