

<http://www.towson.edu>

<http://www.wipo.int/about-ip/en/iprm/>

http://www.wipo.int/edocs/pctndocs/en/2008/pct_news_2008_5.pdf

<http://www.wipo.int/portal/index.html.en>

<http://www.wto.org/>





MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF INDONESIA represented by the **MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY**

AND

PT MICROSOFT INDONESIA

As a follow-up of the meeting between President of the Republic of Indonesia, Susilo Bambang Yudhoyono and Chairman of Microsoft Corporation Bill Gates in Redmond, U.S.A., on 27th May 2005, regarding the partnership in Information and Communication Technology between the Government of the Republic of Indonesia and Microsoft Corporation, this Memorandum of Understanding (MOU) dated 14th November 2006 is made between:

1. **GOVERNMENT OF INDONESIA** represented by the **MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY**, ('the Government'), having its principal address at Jalan Medan Merdeka Barat No. 9, Jakarta 101100, Indonesia; and
2. **PT MICROSOFT INDONESIA**, ('Microsoft') a wholly-owned subsidiary of **Microsoft Corporation**), having its principal address at Jakarta Stock Exchange Building, Jalan Jend. Sudirman kav. 52-53, Jakarta 12190, Indonesia

(together, the "Parties").

BACKGROUND:

- A. The Government of Indonesia recognizes that Information and Communication Technology ("ICT") is a key enabler for economic growth and for accelerating research, education, and social and economic development in Indonesia.
- B. Microsoft Corporation is a developer, manufacturer, distributor and publisher of software technologies, and PT. Microsoft Indonesia, its wholly owned subsidiary, markets those software technologies in Indonesia.
- C. The Government of Indonesia recognizes that Governments play an important leadership role in adopting and promoting ICT. The Government has demonstrated this leadership through the implementation and enforcement of laws relating to intellectual property rights and wishes to take additional steps to set an example to industry in Indonesia on the importance of the use of genuine licensed software. To this end the Government has reached an understanding with Microsoft that will enable government desktops across the country to be genuinely licensed and this understanding is reflected in this MOU.

- D. In addition the Government recognizes the importance and benefit in collaborating with the private sector to create and develop a sustainable and productive ICT industry. To this end, the Government has been in discussions with Microsoft relating to a Public Private Partnership and has reached an understanding on proposals in support of this partnership, terms of which are set out in this MOU.
- E. The Parties have entered into this MOU to record their present state of understanding in principle in respect of the matters covered by this MOU.

THE PARTIES AGREE AS FOLLOWS:

Article 1 Objectives

This MOU sets out the understanding that has been reached between the Parties with respect to the following (the 'Proposals'):

- (a) a proposal for the licensing and use of genuine copies of Microsoft Windows and Microsoft Office across the Ministries, departments and agencies of the Government of Indonesia; and
- (b) key initiatives intended to (i) support various 'flagship' ICT projects identified by the newly created National ICT Council; and (ii) support the growth of the ICT industry in Indonesia.

The Parties, through their duly appointed representatives, have been engaged in discussions and negotiations relating to the Proposals and recognize that they have reached a common understanding on the material terms of those Proposals. The objective of this MOU is to set out the understanding of those material terms, to provide a basis for implementation of the Proposals and to record the intent of the parties, subject to compliance with applicable laws and governmental policies, to enter into binding commitments that reflect the Proposals.

Microsoft may procure its affiliates to fulfill its contributions under this MOU and/or any of the transaction documents created to implement the Proposals.

Article 2 Licensing of Microsoft Software

The Parties have been engaged in discussions and negotiations to identify the basis on which the Government could license genuine copies of Microsoft Office and Microsoft Windows for use across all Ministries, departments and agencies of the Government.

The Parties acknowledge that the Government's ability to enter into binding contracts relating to any licensing agreement on this basis is subject to:

- appropriation by the Government of sufficient funding to enable the Government to meet its payment obligations under transaction documents for the licensing of such software; and
- compliance by the Government with Presidential Decree No.80 relating to the procurement of goods and services by the Government.

The Parties have reached a common understanding on the material terms and conditions relating to the proposed licensing arrangement, details of which are set out in Appendix A to this MOU. In

addition, Microsoft has proposed to provide the Government with all reasonable and appropriate assistance in relation to the framing of the terms of reference for the selection and appointment of a reseller in accordance with the Government's prescribed procurement procedures.

The Parties recognized that the Total PC count identified in Appendix A is an assumed number for the first year of the term of the proposed licensing agreement based on currently available data published in reports from the World Bank, IDC and Intel Corporation. The Parties are of the understanding that during the first year of the proposed licensing agreement the Government is intending to initiate a census of the PC population within the Government and as a consequence the Total PC count may need to be adjusted following completion of this census for the subsequent remaining years of the term of the proposed licensing agreement.

The Parties confirm their intent that by no later than 31 March 2007, following completion of due process and subject to compliance with appropriation and other laws, the Parties will enter into binding contracts that incorporate and give effect to the understandings set out in Appendix A. The Parties agree to work in good faith and to take all steps reasonably necessary to successfully complete and conclude contracts consistent with the intent of this MOU in an expeditious manner in accordance with the timeframes contemplated in this MOU.

Article 3 Public Private Partnership Proposal

In recognition of the desire by the Government to build a knowledge economy in Indonesia and in support of the newly formed National ICT Council, the Parties have been discussing projects and initiatives through which Microsoft could continue to contribute to the growth and development of the ICT industry and to the broader adoption of ICT in the Indonesian economy.

The discussions have related to:

- (a) Microsoft support for various 'flagship' ICT projects identified by the newly created National ICT Council; and
- (b) the potential expansion of programs that Microsoft is already supporting in the areas of improving access to information technology education, bridging the digital divide in rural communities and developing a local software economy in Indonesia.

The Parties have reached an understanding in relation to a number of initiatives, an overview of which are set out in Appendix B, in which greater and more significant collaboration would be of mutual benefit. Following completion of the licensing arrangements proposed in Article 2 of this MOU, the Parties intend to engage to implement such initiatives and to continue to explore ways in which Microsoft may assist the Government in its pursuit of ICT objectives.

Article 4 Non-binding MOU

Nothing in this MOU will be deemed to constitute or create a joint venture, partnership or other formal business entity or fiduciary relationship between the Parties. This MOU in no way gives rise to any legal obligations on either Party or on any third party. Neither Party shall assert any claim for damages or injury arising from this MOU or in reliance on any of the provisions of this MOU.

**Article 5
Term and Termination**

Subject to the following paragraph, this MOU will commence on the day this MOU is signed and will continue in force until the earlier of: (i) the date of execution of a licensing transaction in accordance with Article 2 of this MOU; and (ii) 31 March 2007.

The Parties waive Article 1266 of the Indonesian Civil Code (*KUH Perdata*) to the extent that prior judicial approval is required for cancellation or early termination of this MOU.

**Article 6
Non-exclusivity**

This MOU is non-exclusive and the Parties shall be free to enter into agreements with other parties covering cooperation within the scope of this MOU.

**Article 7
Confidentiality**

The Parties must keep confidential the terms and conditions of this MOU and other information disclosed during the course of the Parties' cooperation, unless otherwise agreed in advance by the Parties.

**Article 8
Right to Use Name/Public Announcements**

Neither Party may use the name of the other Party:

- (a) as a reference in negotiations with third parties; or
- (b) in press releases or other public notifications,

except:

- (i) with the prior written consent of the other Party; or
- (ii) to the extent required by applicable law.

**Article 9
Governing Law**

The validity and interpretation of this MOU shall be governed by the laws of the Republic of Indonesia.

**Article 10
Dispute**

Any dispute arising between the Parties concerning the interpretation and/or during the implementation of this MOU will be first resolved on the basis of the principle of deliberation to reach consensus (*musyawarah untuk mufakat*).

If such dispute cannot be so resolved despite the best efforts of the Parties, it shall be resolved and finally decided under the administrative and procedural Rules of Arbitration of *Badan Arbitrasi Nasional Indonesia* (BANI) by three arbitrators appointed in accordance with the BANI Rules. One arbitrator shall be appointed by the Government and another shall be appointed by Microsoft. The third arbitrator who shall be the chairman shall be jointly appointed by the first and second arbitrators. The place of arbitration shall be Jakarta and the language of the arbitral proceedings shall be English.

**Article 11
Amendment**

This MOU may be amended in writing if deemed necessary by both Parties.

**Article 12
Counterpart**

This MOU may be executed in any numbers of counterparts, all of which taken together shall constitute one and the same instrument and which has been made in two copies.

IN WITNESS WHEREOF, the undersigned, acting as representatives of their respective Government/Party, have signed this MOU.

**FOR THE GOVERNMENT OF INDONESIA
as represented by THE MINISTRY OF
COMMUNICATION AND INFORMATION
TECHNOLOGY**

FOR PT MICROSOFT INDONESIA



Seryan A. Djalil, Ph.D.
Minister of Communication and
Information Technology

Chris Atkinson
President, Microsoft South East Asia

| | | |
|-----------------------------|--|---|
| License Purchase | Microsoft Windows | 35,496 licenses |
| | Microsoft Office | 177,480 licenses The purchase of Microsoft Office includes Software Assurance for this number of licenses during the term of the proposed licensing agreement. Software Assurance includes upgrade rights for these licenses as well as a number of additional benefits including training vouchers and home use rights. |
| License Grant | Microsoft Windows | 266,220 licenses |
| | Microsoft Office | 266,220 licenses |
| Final Price | The Government's reseller will provide final product pricing and order details. Final prices and payment will be determined, following due compliance with a tender process, by agreement between the Government and its appointed reseller. | |
| Payment Terms | The appointed reseller will be invoiced for your initial order in three equal annual installments. The first invoice will be issued by no later than 30 June 2007. | |
| Participating Organizations | All Ministries, departments and agencies of the Government of Indonesia. State-owned enterprises and schools are not eligible to participate under the proposed licensing agreement. The parties agree to use good faith efforts to finalise the definition of 'eligible entities' for the purpose of further defining the organizations eligible to participate under the proposed licensing agreement. | |
| License Grant Conditions | <p>The grant of the number of licenses set out in the License Grant section above is subject to Microsoft receiving payment for your initial order and to the following additional conditions:</p> <ul style="list-style-type: none"> • Licenses may only be used on devices that are used by or for the benefit of Government and which are using a processor which is not greater in terms of functionality and processing speed than a Pentium 3 processor (a 'qualifying device'). • The license grant is for a license of the version of Microsoft Windows (up to Microsoft Windows XP) and Microsoft Office (up to Microsoft Office 2003) being used on a qualifying device as at the effective date of the proposed licensing agreement. • The licenses grant will continue from the effective date until the earlier of: <ul style="list-style-type: none"> ○ the date the qualifying device is transferred or otherwise disposed of by Government; ○ the date of decommissioning of the qualifying device; or ○ the date on which the Governments Microsoft Enterprise Enrollment expires or is terminated. • The grant applies only to Microsoft Windows and Microsoft Office, not to any other Microsoft products. • The grant does not apply to any qualifying device that is using a processor that is greater, in terms of functionality and processing speed, than a Pentium 3 type processor or equivalent (i.e. not to any Pentium 4, 5, or later devices); • Licenses granted are not transferable; • Any breach of any of the agreements will result in termination of the grant. • The Government will ensure that all future Microsoft software products used by it will be provided with licenses; • If the Government upgrades or replaces a qualifying device | |

| | |
|---|---|
| | <p>with a PC that uses a processor greater, in terms of functionality and processing speed, than a Pentium 3 type process or equivalent, the Government agrees with respect to that qualified desktop:</p> <ul style="list-style-type: none"> o to purchase a legal bootable operating system preloaded for that qualified desktop; and o to true-up the qualified desktop under the Microsoft Enterprise Agreement, as an additional qualified desktop |
| <p>Intellectual Property Commitments</p> | <p>In recognition of the licenses granted to the Government, the Government agrees to undertake reasonable efforts to:</p> <ul style="list-style-type: none"> • educate government officials on the importance of respect for intellectual property laws and the use of legal software within the government of Indonesia; • educate all participating Government organizations on the valid use of the licensed software within the terms of the proposed licensing agreement; and • promote across Government the commitments under this agreement to use and purchase genuine Microsoft software and to purchase legal bootable operating systems preloaded for all new qualified desktops. <p>Microsoft agrees, where appropriate, to provide reasonable assistance in relation to the awareness and training efforts identified above.</p> <p>The Parties intend that the Government will implement, subject to approval of appropriate funding, a software asset management process that complies with ISO/IEC 19770-1 published by the International Standards Organization, to manage software assets.</p> <p>Microsoft agrees to provide reasonable assistance, where such assistance shall be further discussed and agreed with the Government, in designing an effective software asset management system for this purpose including know-how transfer and train the trainer courses for local third party vendors appointed by the Government (including potentially the Government's reseller) to deploy the software asset management system across Government. Microsoft further agrees to use reasonable efforts to work with the duly appointed reseller of the Government to deliver and manage such a system.</p> |

APPENDIX B
Public Private Partnership Proposal

The projects identified below represent the current understandings between the Parties. Both Parties recognise and will continue to discuss and explore in good faith the details and implementation particulars for these projects and such other initiatives that the Parties may agree warrant their exploration.

A. Flagship Projects

National Single Window

Microsoft is proposing to support the National Single Window Project by offering its e-Forms generator InfoPath, which has been used in a joint development effort with the United Nations, to produce 12 UNeDocs. UNeDocs are electronic documents based on a standard to be adopted by ASEAN for the Single Window Project.

As InfoPath is one of the products included in Office 2003, any SME/SOHO with MS Office 2003 will be able to participate in the National Single Window Project and send electronic forms to service providers or directly to Customs, through an affordable connection.

e-Education

Microsoft's Partners in Learning (PIL) Program includes an ICT curriculum component which has been successfully used to train/reach 2.2 million students in 18,000 schools throughout Indonesia. These results were achieved by Microsoft providing support for and/or training 19,000 teachers and assisting 120 schools to set up student helpdesks.

Consistent with the objectives of the PIL Program, Microsoft proposes to work with the Ministry of National Education to support the **One School One Computer Lab Initiative**. Based on an investment by the Ministry of National Education of approximately 500,000 PCs into schools each year, Microsoft proposes to enable the use of Microsoft software on these PC's by providing access to affordable software for each new PC into the schools. Microsoft estimates that if an additional 15 ICT Training Centres are established with Government support over time, and with each centre having the capacity to train 250 Master ICT Teachers per year, then over a period of 5 years, 16,500 Master Teachers could be trained, to coach 196,500 teachers to deliver the ICT curriculum to the targeted 50% of the student population each year.

Microsoft would also like to support the e-Learning environment for pilot schools selected by the Ministry of National Education as Smart Schools of the Future, by providing these schools with the Microsoft Learning Gateway (MLG), a framework that removes barriers in education that inhibit the effective use of technology and facilitates communication among all stakeholders in education.

B. Expansion of existing Microsoft programs

Unlimited Potential Program

Microsoft started its Unlimited Potential program in 2003, to work with non-government organisations as operators of Community Technology Learning Centres (CTLCs). The CTLC provides an ICT curriculum at a nominal tuition fee, and the 39 existing CTLCs reflects the success of this rural outreach project.

For the next phase of this program, Microsoft will invest in customising the Unlimited Potential Bahasa Indonesia curriculum for the farming and related SME community through our non-government organisation partner, the ASEAN Foundation. The curriculum will be distributed to

additional CTLCs, training centres, universities and government departments through which over 11,000 people will be trained in the first year, ultimately reaching an estimated 175,000 or more citizens in the next three years.

Bina-Independent Software Vendor (ISV) Program

The Bina-ISV program is an incubation program in its first phase designed to help small software companies secure development work from large corporations. By hosting a cluster of ISVs in a university which is renowned for information technology, these ISVs have a better chance of gaining confidence from multinationals to outsource development work to them.

Following the initial success of this program with the Bandung Institute of Technology and Sepuluh Nopember Institute of Technology, each of whom are also teamed up with a multinational, Microsoft is planning to extend the program to the University of Indonesia and the Gadjah Mada University to add another two ISV clusters.



**WIPO Copyright Treaty
(WCT)*
(adopted in Geneva on December 20, 1996)**

CONTENTS

| | <i>Article</i> |
|--|----------------|
| Preamble | |
| Relation to the Berne Convention | 1 |
| Scope of Copyright Protection | 2 |
| Application of Articles 2 to 6 of the Berne Convention | 3 |
| Computer Programs | 4 |
| Compilations of Data (Databases) | 5 |
| Right of Distribution | 6 |
| Right of Rental | 7 |
| Right of Communication to the Public | 8 |
| Duration of the Protection of Photographic Works | 9 |
| Limitations and Exceptions | 10 |
| Obligations concerning Technological Measures | 11 |
| Obligations concerning Rights Management Information | 12 |
| Application in Time | 13 |
| Provisions on Enforcement of Rights | 14 |
| Assembly | 15 |
| International Bureau | 16 |
| Eligibility for Becoming Party to the Treaty | 17 |
| Rights and Obligations under the Treaty | 18 |
| Signature of the Treaty | 19 |
| Entry into Force of the Treaty | 20 |
| Effective Date of Becoming Party to the Treaty | 21 |
| No Reservations to the Treaty | 22 |
| Denunciation of the Treaty | 23 |
| Languages of the Treaty | 24 |
| Depositary | 25 |

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation,

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

Have agreed as follows:

Article 1 Relation to the Berne Convention

(1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.

(3) Hereinafter, “Berne Convention” shall refer to the Paris Act of July 24, 1971, of the Berne Convention for the Protection of Literary and Artistic Works.

(4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.¹

Article 2 Scope of Copyright Protection

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 3 Application of Articles 2 to 6 of the Berne Convention

Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.²

Article 4 Computer Programs

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.³

Article 5 Compilations of Data (Databases)

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.⁴

Article 6

Right of Distribution

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.⁵

Article 7

Right of Rental

(1) Authors of

- (i) computer programs;
- (ii) cinematographic works; and
- (iii) works embodied in phonograms, as determined in the national law of Contracting Parties,

shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.

(2) Paragraph (1) shall not apply

(i) in the case of computer programs, where the program itself is not the essential object of the rental; and

(ii) in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.

(3) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms is not giving rise to the material impairment of the exclusive right of reproduction of authors.^{6,7}

Article 8

Right of Communication to the Public

Without prejudice to the provisions of Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁸

Article 9

Duration of the Protection of Photographic Works

In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention.

Article 10

Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.⁹

Article 11

Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Article 12

Obligations concerning Rights Management Information

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

- (i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.¹⁰

Article 13 **Application in Time**

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

Article 14 **Provisions on Enforcement of Rights**

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

Article 15 **Assembly**

(1)(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as “WIPO”) to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3)(a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 16 International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 17 Eligibility for Becoming Party to the Treaty

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 18 Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 19

Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

Article 20

Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 21

Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (i) the 30 States referred to in Article 20, from the date on which this Treaty has entered into force;
- (ii) each other State, from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 20, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 22

No Reservations to the Treaty

No reservation to this Treaty shall be admitted.

Article 23

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 24

Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.



(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 25 Depositary

The Director General of WIPO is the depositary of this Treaty.

* *Entry into force:* March 6, 2002.

Source: International Bureau of WIPO.

Note: The agreed statements of the Diplomatic Conference that adopted the Treaty (WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions) concerning certain provisions of the WCT are reproduced in endnotes below.

¹ *Agreed statement concerning Article 1(4):* The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.

² *Agreed statement concerning Article 3:* It is understood that, in applying Article 3 of this Treaty, the expression “country of the Union” in Articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty, in the application of those Berne Articles in respect of protection provided for in this Treaty. It is also understood that the expression “country outside the Union” in those Articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that “this Convention” in Articles 2(8), 2bis(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in Articles 3 to 6 of the Berne Convention to a “national of one of the countries of the Union” will, when these Articles are applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization.

³ *Agreed statement 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.

⁴ *Agreed statement concerning Article 5:* The scope of protection for compilations of data (databases) under Article 5 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.

⁵ *Agreed statement concerning Articles 6 and 7:* As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

⁶ *Agreed statement concerning Articles 6 and 7:* As used in these Articles, the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

⁷ *Agreed statement concerning Article 7:* It is understood that the obligation under Article 7(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who, under that Contracting Party’s law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with Article 14(4) of the TRIPS Agreement.



⁸ *Agreed statement concerning Article 8:* It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11*bis*(2).

⁹ *Agreed statement concerning Article 10:* It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

¹⁰ *Agreed statement concerning Article 12:* It is understood that the reference to “infringement of any right covered by this Treaty or the Berne Convention” includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.

