

The WIPO Treaties: Protection of Rights Management Information

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WHAT IS RIGHTS MANAGEMENT INFORMATION?

Rights management information (RMI) is information that identifies content protected by copyright or related rights, the rights owners in such content and the terms and conditions of use associated with it.

RMI often takes the form of an electronic **watermark** placed in protected content. Watermarks can exist on their own simply as a rights owner's 'label'.

Watermarks may also interact with devices that receive or play content and determine the conditions of use of such content. They may provide the basis for **additional user services**, such as information accompanying a radio broadcast that gives artist, track and purchase

details about particular songs.

In copyright terms, RMI frequently serves as a means of compliance with the **moral right of attribution**, in that it identifies the author and performer of a work.

One of its most important uses is the **digital management of rights**. Automated digital rights management systems provide a fast and easy tool for users to secure licences for the use of particular content, and for rights owners to collect information about such usage.

The WIPO Treaties protect all such RMI: **information about works, phonograms and performances**, as well as the **identification of authors, phonogram**

producers, performers or other rights owners.

Protection also extends to information about **terms and conditions of use** of content. This may be either details of a licence already granted or information about how and under what conditions a licence can be obtained.

To enjoy protection, RMI must be **attached to or embodied in a copy** of the work, phonogram or fixed performance or—for intangible means of use—**appear in connection with the use of the work**, phonogram or performance. It can appear either in the clear in machine-readable form.

WHY IS THIS RIGHT IMPORTANT?

Rightholders need RMI to label their works, and to let users identify the works and their conditions of use—particularly in the digital environment where activities move quickly and often leave few residual traces.

Works that appear in a digital form can easily be changed, mutilated, misappropriated, reproduced and put into distribution channels without the consent of the rights owner.

The information found on the copy, booklet or cover of a copyrighted product helped

rights owners track and prove such illegal activity in the analogue world. RMI fulfils this function in the electronic environment.

RMI also benefits consumers. Digital watermarks give consumers confidence in the authenticity of the source of a work or phonogram, and certainty as to the conditions for its use. The manipulation of RMI can lead consumers to draw wrong conclusions about permitted uses, and thus can have an economic effect equivalent to common fraud.

As with technological protection measures generally, the integrity of RMI is vulnerable to attack. It therefore relies on legal protection in order to prevent deliberate manipulation and distortion.

In order to enable confidence in the authenticity of works, and the integrity of information about the identity of rights owners and the conditions of use, it is essential to protect RMI itself and to prevent the distribution of copies where such information has been removed or manipulated.

EXECUTIVE SUMMARY

Rights management information (RMI) is the basis for new licensing systems, and can certify the integrity and authenticity of works and phonograms. Combined with other technology, they also prove to be a powerful tool against copyright infringements. The WIPO Treaties require effective legal protection of RMI.



Rights management information gives businesses and consumers confidence to engage in e-commerce in copyrighted content.

HOW SHOULD THIS BE IMPLEMENTED?

WIPO TREATY TEXT

WPPT Art. 19.

(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:

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

(ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms 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 performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.

Most countries are finding that their copyright laws require some modernising to deal adequately with the legal protection of RMI. There are several elements that governments and right holders have found crucial to ensure the effective legal protection of RMI:

■ **Definition of RMI.** The starting point is the definition of RMI. The treaties themselves provide a clear and useful definition, which may be useful to include in implementing legislation.

The definition must include the required categories of protected information (information on works, phonograms or performances; on the identity of the author, the phonogram producer or the performer; or on the terms and conditions of use).

It should also indicate that the information must be attached to a work, a fixation of a performance or a phonogram, or must appear in connection with any intangible type of use including the communication to the public, broadcasting, or 'making available'.

■ **Protection against manipulation of RMI.** One of the treaties' main aims of protection is the prohibition of manipulation of RMI. The treaties explicitly mention the **unauthorised removal and alteration** of RMI.

Another type of manipulation of RMI having equivalent effect is the **unauthorised addition**

of information. This activity can mislead users and businesses as to permitted uses and discourage the use of RMI, just as much as the removal or alteration of RMI does.

■ **Protection against dissemination of copies in which RMI has been manipulated.** The second main element of protection is the prohibition of activities relating to copies as to which RMI has been removed or altered without authorisation.

To enable rights owners to take such copies out of circulation and prevent further harm, it is important to provide a complete list of prohibited activities including **distribution, export, import for distribution, broadcasting, communication to the public, and the making available to the public of such copies.**

■ **Knowledge requirement regarding the impact of the activity on copyright infringement.** Activities relating to RMI need not lead to legal proceedings if they have been performed accidentally and innocently.

The knowledge test established by the treaties varies depending on the type of activity. As regards the removal or alteration of RMI without authorisation, the test is whether the person knew, or in the case of civil proceedings had reasonable grounds to know, that such manipulation would induce, enable, facilitate, or conceal infringement of copyright or neighbouring rights.

As regards the dissemination without authorisation of content where RMI has been manipulated or removed, the test is whether the person knew that RMI has been manipulated or removed, as well as whether the person knew, or in the case of civil proceedings had reasonable grounds to know, that the dissemination of content without RMI (or with manipulated RMI) would induce, enable, facilitate, or conceal an infringement.

■ **Prohibition of 'watermark washing' devices.** In parallel to the protection of technological measures, meaningful protection against RMI manipulation and removal should extend to **devices designed or adapted to manipulate or remove RMI.**

There is a substantial danger that devices that systematically 'wash out' watermarks while leaving the content unchanged will undermine the confidence of rights owners and legitimate users, which is essential to the use of rights management information in the first place.

The protection required by the treaties can be achieved best by also prohibiting the manufacture, importation, distribution, offer to the public, provision or otherwise trafficking in devices designed or adapted to manipulate or remove RMI, and means with equivalent effect.

FREQUENTLY ASKED QUESTIONS (FAQS)

Must countries adapt their laws to implement this protection?

Yes, virtually all countries have to change their law in order to implement the protection of RMI. Protections already pro-

vided under criminal law (computer fraud), moral rights, media law, trademark law, personality right or competition law typically provide only limited aspects of the required protection.

Must this protection be implemented in copyright law?

No. This is a new protection regime that could be enacted under other types of legislation.

SAMPLE IMPLEMENTING LEGISLATION

IFPI Model Legislation:

- (1) It shall be unlawful to remove, alter or add rights management information without authority knowing, or with respect to civil remedies having reasonable grounds to know, that this will induce, enable, facilitate or conceal an infringement of copyright or neighbouring rights.
- (2) It shall be unlawful to distribute, export, import for distribution, broadcast, communicate or make available to the public without authority copies of works, fixed performances or phonograms knowing that rights management information has been removed, altered or added without authority and knowing, or with respect to civil remedies having reasonable grounds to know, that this will induce, enable, facilitate or conceal an infringement of copyright or neighbouring rights.
- (3) It shall be unlawful to manufacture, import, distribute, export, sell, rent, possess for commercial purposes, offer to the public, advertise, communicate or otherwise provide without authority any device, product or component that is designed or adapted to remove, alter or add rights management information.
- (4) 'Rights management information' means
 - (a) information that identifies the work or other protected matter, the author, the performer, the producer of a phonogram or any other rights owner, or
 - (b) information about the terms and conditions of use of the work, phonogram or performance, and
 - (c) any number or code that represents such information, when any of these is attached to a copy of a work, phonogram or fixed performance, or appears in connection with the broadcast, communication or making available to the public of the work, phonogram or fixed performance.

Other Sample Legislation: Belarus Copyright Act, Article 39:

5. The following shall also be deemed infringements of copyright or related rights. . . .
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 - the removing or altering of any electronic rights management information without the consent of the holder of copyright or related rights;
 - the distribution, importing for the purposes of distribution, broadcasting or communication to the public without the authorisation of the holder of copyright or related rights of works, recorded performances, phonograms or broadcast or cabled programs with respect to which electronic rights management information has been removed or altered without the authorisation of the rightholder.
6. Any copy of a work, a recorded performance, a phonogram or a broadcast or cabled program on which rights management has been removed or altered without the authorisation of the holder of copyright or related rights or which has been manufactured without the authorisation of the holder by means of a device used in an unlawful manner as referred to in the second indent of paragraph 5 of this Article, shall be deemed an infringing copy in accordance with paragraphs 2 and 3 of this Article.

WIPO TREATY TEXT

WCT Art. 12.

(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.

IFPI has represented the international recording industry since 1933. Its membership comprises more than 1,400 record producers and distributors in over 70 countries. For more information, please contact

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