

**WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT)**

**(RATIFICATION AND ENFORCEMENT) BILL, 2016**

**ARRANGEMENT OF CLAUSES**

*Clause:*

1. Ratification of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)
2. Enforcement of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)
3. Citation

# A BILL

## FOR

AN ACT TO GIVE EFFECT IN THE FEDERAL REPUBLIC OF NIGERIA TO THE  
WIPO COPYRIGHT TREATY (WCT) AND THE WIPO PERFORMANCES AND  
PHONOGRAMS TREATY (WPPT) AND FOR RELATED MATTERS

*Sponsored by Hon. Muhammed Sani Abdu*

|            | Commencement

ENACTED by the National Assembly of the Federal Republic of  
Nigeria:

1            1. Ratification of the WIPO Copyright Treaty (WCT) and the  
2            WIPO Performances and Phonograms Treaty (WPPT)

3            2. Enforcement of the WIPO Copyright Treaty (WCT) and the  
4            WIPO Performances and Phonograms Treaty (WPPT)

5            As from the commencement of this Bill, the WIPO Copyright Treaty (WCT)  
6            and the WIPO Performances and Phonograms Treaty (WPPT) set out in the  
7            ~~First Schedule and Second Schedule~~ to this Bill, shall subject as thereunder  
8            provided have the force of law in the Federal Republic of Nigeria and shall  
9            be given full recognition and effect and be applied by all authorities and  
10           persons exercising legislative, executive or judicial powers in Nigeria.

11           3. This Bill may be cited as the WIPO Copyright Treaty (WCT)      Citation  
12           and the WIPO Performances and Phonograms Treaty (WPPT) (Ratification  
13           and Enforcement) Bill, 2016.

### SCHEDULE

#### FIRST SCHEDULE

#### WIPO COPYRIGHT TREATY (WCT)

17           *Preamble:*

19           The Contracting Parties,

20           Desiring to develop and maintain the protection of the rights of authors in

1 their literary and artistic works in a manner as effective and uniform as  
2 possible,

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

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

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

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

15 Have agreed as follows:

Relation to the  
Berne Convention

16 1.-(1) This Treaty is a special agreement within the meaning of Article  
17 20 of the Berne Convention for the Protection of Literary and Artistic Works, as  
18 regards Contracting Parties that are countries of the Union established by that  
19 Convention. This Treaty shall not have any connection with treaties other than  
20 the Berne Convention, nor shall it prejudice any rights and obligations under  
21 any other treaties.

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

25 (3) Hereinafter, "Berne Convention" shall refer to the Paris Act of July  
26 24, 1971, of the Berne Convention for the Protection of Literary and Artistic  
27 Works.

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

1	2. Copyright protection extends to expressions and not to ideas,	Scope of
2	procedures, methods of operation or mathematical concepts as such.	Copyright
3	3. Contracting Parties shall apply mutatis mutandis the provisions	Application of
4	of Articles 2 to 6 of the Berne Convention in respect of the protection	Articles 2 to 6 of
5	provided for in this Treaty.	the Berne
6	4. Computer programs are protected as literary works within the	Convention
7	meaning of Article 2 of the Berne Convention. Such protection applies to	
8	computer programs, whatever may be the mode or form of their expression.	Computer
9	5. Compilations of data or other material, in any form, which by	Programs
10	reason of the selection or arrangement of their contents constitute	
11	intellectual creations, are protected as such. This protection does not extend	Compilations of
12	to the data or the material itself and is without prejudice to any copyright	Data (Databases)
13	subsisting in the data or material contained in the compilation.	
14	6.-(1) Authors of literary and artistic works shall enjoy the	
15	exclusive right of authorizing the making available to the public of the	Right of
16	original and copies of their works through sale or other transfer of	Distribution
17	ownership.	
18	(2) Nothing in this Treaty shall affect the freedom of Contracting	
19	Parties to determine the conditions, if any, under which the exhaustion of the	
20	right in paragraph (1) applies after the first sale or other transfer of	
21	ownership of the original or a copy of the work with the authorization of the	
22	author.	Right of Rental
23	7.-(1) Authors of:	
24	(i) computer programs;	
25	(ii) cinematographic works; and	
26	(iii) works embodied in phonograms, as determined in the national	
27	law of Contracting Parties, shall enjoy the exclusive right of authorizing	
28	commercial rental to the public of the originals or copies of their works.	
29	(2) Paragraph (1) shall not apply:	
30	(i) in the case of computer programs, where the program itself is	

1 not the essential object of the rental; and

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

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

Right of  
Communication  
to the public

11 **8.** Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i)  
12 and (ii),

13 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary  
14 and artistic works shall enjoy the exclusive right of authorizing any  
15 communication to the public of their works, by wire or wireless means,  
16 including the making available to the public of their works in such a way that  
17 members of the public may access these works from a place and at a time  
18 individually chosen by them.

Duration of the  
protection of  
photographic  
works

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

Limitations and  
exceptions

21 **10.**-(1) Contracting Parties may, in their national legislation, provide  
22 for limitations of or exceptions to the rights granted to authors of literary and  
23 artistic works under this Treaty in certain special cases that do not conflict with  
24 a normal exploitation of the work and do not unreasonably prejudice the  
25 legitimate interests of the author.

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

- 1                   **11.** Contracting Parties shall provide adequate legal protection and  
2 effective legal remedies against the circumvention of effective  
3 technological measures that are used by authors in connection with the  
4 exercise of their rights under this Treaty or the Berne Convention and that  
5 restrict acts, in respect of their works, which are not authorized by the  
6 authors concerned or permitted by law.
- 7                   **12.-(1)** Contracting Parties shall provide adequate and effective  
8 legal remedies against any person knowingly performing any of the  
9 following acts knowing, or with respect to civil remedies having reasonable  
10 grounds to know that it will induce, enable, facilitate or conceal an  
11 infringement of any right covered by this Treaty or the Berne Convention:  
12                   (i) to remove or alter any electronic rights management  
13 information without authority;  
14                   (ii) to distribute, import for distribution, broadcast or communicate  
15 to the public, without authority, works or copies of works knowing that  
16 electronic rights management information has been removed or altered  
17 without authority.
- 18                   (2) As used in this Clause, "rights management information"  
19 means information which identifies the work, the author of the work, the  
20 owner of any right in the work, or information about the terms and  
21 conditions of use of the work, and any numbers or codes that represent such  
22 information, when any of these items of information is attached to a copy of  
23 a work or appears in connection with the communication of a work to the  
24 public.
- 25                   **13.** Contracting Parties shall apply the provisions of Article 18 of  
26 the Berne Convention to all protection provided for in this Treaty.
- 27                   **14.-(1)** Contracting Parties undertake to adopt, in accordance with  
28 their legal systems, the measures necessary to ensure the application of this  
29 Treaty.
- 30                   (2) Contracting Parties shall ensure that enforcement procedures
- Obligations concerning technological measures
- Obligations concerning rights management information
- Application in time
- Provisions on enforcement of rights

1 are available under their law so as to permit effective action against any act of  
2 infringement of rights covered by this Treaty, including expeditious remedies  
3 to prevent infringements and remedies which constitute a deterrent to further  
4 infringements.

Assembly

5 **15.-(1)(a)** The Contracting Parties shall have an Assembly:

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

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

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

18 (b) The Assembly shall perform the function allocated to it under  
19 Clause 17(2) in respect of the admission of certain intergovernmental  
20 organizations to become party to this Treaty;

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

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

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

1 of its Member States exercises its right to vote and vice versa.

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

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

8 **16.** The International Bureau of WIPO shall perform the  
9 administrative tasks concerning the Treaty.

International  
Bureau

10 **17.**-(1) Any Member State of WIPO may become party to this  
11 Treaty.

Eligibility for  
becoming party  
to the treaty

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

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

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

Rights and  
obligations under  
the treaty

24 **19.** This Treaty shall be open for signature until December 31,  
25 1997, by any Member State of WIPO and by the European Community.

Signature of the  
treaty

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

Entry into Force  
of the Treaty

29 **21.** This Treaty shall bind:

Effective date of  
becoming party  
to the treaty

30 (i) the 30 States referred to in Clause 20, from the date on which



1 this Treaty has entered into force;

2 (ii) each other State, from the expiration of three months from the date  
3 on which the State has deposited its instrument with the Director General of  
4 WIPO;

5 (iii) the European Community, from the expiration of three months  
6 after the deposit of its instrument of ratification or accession if such instrument  
7 has been deposited after the entry into force of this Treaty according to Clause  
8 20, or, three months after the entry into force of this Treaty if such instrument  
9 has been deposited before the entry into force of this Treaty;

10 (iv) any other intergovernmental organization that is admitted to  
11 become party to this Treaty, from the expiration of three months after the  
12 deposit of its instrument of accession.

No reservations  
to the treaty

13 **22.** No reservation to this Treaty shall be admitted.

Denunciation of  
the Treaty

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

Languages of  
the Treaty

18 **24.**-(1) This Treaty is signed in a single original in English, Arabic,  
19 Chinese, French, Russian and Spanish languages, the versions in all these  
20 languages being equally authentic.

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

Depositary

29 **25.** The Director General of WIPO is the depositary of this Treaty.

1        *Note:*

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

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

12               2. Agreed statement concerning Clause 3: It is understood that, in  
13       applying Clause 3 of this Treaty, the expression:  
14       "country of the Union" in Articles 2 to 6 of the Berne Convention will be  
15       read as if it were a reference to a Contracting Party to this Treaty, in the  
16       application of those Berne Articles in respect of protection provided for in  
17       this Treaty. It is also understood that the expression "country outside the  
18       Union" in those Articles in the Berne Convention will, in the same  
19       circumstances, be read as if it were a reference to a country that is not a  
20       Contracting Party to this Treaty, and that "this Convention" in Articles 2(8),  
21       2bis(2), 3, 4 and 5 of the Berne Convention will be read as if it were a  
22       reference to the Berne Convention and this Treaty. Finally, it is understood  
23       that a reference in Articles 3 to 6 of the Berne Convention to a "national of  
24       one of the countries of the Union" will, when these Articles are applied to  
25       this Treaty, mean, in regard to an intergovernmental organization that is a  
26       Contracting Party to this Treaty, a national of one of the countries that is  
27       member of that organization.

28               3. Agreed statement concerning Clause 4: The scope of protection  
29       for computer programs under Article 4 of this Treaty, read with Article 2, is  
30       consistent with Article 2 of the Berne Convention and on a par with the

1 relevant provisions of the TRIPS Agreement.

2 4. Agreed statement concerning Clause 5: The scope of protection for  
3 compilations of data (databases) under Clause 5 of this Treaty, read with Clause  
4 2, is consistent with Article 2 of the Berne Convention and on a par with the  
5 relevant provisions of the TRIPS Agreement.

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

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

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

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

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

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

4 10 Agreed statement concerning Clause 12: It is understood that  
5 the reference to "infringement of any right covered by this Treaty or the  
6 Berne Convention" includes both exclusive rights and rights of  
7 remuneration. It is further understood that Contracting Parties will not rely  
8 on this Article to devise or implement rights management systems that  
9 would have the effect of imposing formalities which are not permitted under  
10 the Berne Convention or this Treaty, prohibiting the free movement of goods  
11 or impeding the enjoyment of rights under this Treaty.

## 12 SECOND SCHEDULE

### 13 THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT)

14 The Contracting Parties.

15 Desiring to develop and maintain the protection of the rights of performers  
16 and producers of phonograms in a manner as effective and uniform as  
17 possible,

18 Recognizing the need to introduce new international rules in order to  
19 provide adequate solutions to the questions raised by economic, social,  
20 cultural and technological developments,

21 Recognizing the profound impact of the development and convergence of  
22 information and communication technologies on the production and use of  
23 performances and phonograms,

24 Recognizing the need to maintain a balance between the rights of performers  
25 and producers of phonograms and the larger public interest, particularly  
26 education, research and access to information,

27 Have agreed as follows:

#### 28 CHAPTER I - GENERAL PROVISIONS

29 1.-(1) Nothing in this Treaty shall derogate from existing  
30 obligations that Contracting Parties have to each other under the

Relation to other  
Conventions

1 International Convention for the Protection of Performers, Producers of  
2 Phonograms and Broadcasting Organizations done in Rome, October 26, 1961  
3 (hereinafter the "Rome Convention").

4 (2) Protection granted under this Treaty shall leave intact and shall in  
5 no way affect the protection of copyright in literary and artistic works.  
6 Consequently, no provision of this Treaty may be interpreted as prejudicing  
7 such protection.

8 (3) This Treaty shall not have any connection with, nor shall it  
9 prejudice any rights and obligations under, any other treaties.

Definitions

10 2. For the purposes of this Treaty:

11 (a) "performers" are actors, singers, musicians, dancers, and other  
12 persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform  
13 literary or artistic works or expressions of folklore;

14 (b) "phonogram" means the fixation of the sounds of a performance or  
15 of other sounds, or of a representation of sounds, other than in the form of a  
16 fixation incorporated in a cinematographic or other audiovisual work;

17 (c) "fixation" means the embodiment of sounds, or of the  
18 representations thereof, from which they can be perceived, reproduced or  
19 communicated through a device;

20 (d) "producer of a phonogram" means the person, or the legal entity,  
21 who or which takes the initiative and has the responsibility for the first fixation  
22 of the sounds of a performance or other sounds, or the representations of  
23 sounds;

24 (e) "publication" of a fixed performance or a phonogram means the  
25 offering of copies of the fixed performance or the phonogram to the public,  
26 with the consent of the right holder, and provided that copies are offered to the  
27 public in reasonable quantity;

28 (f) "broadcasting" means the transmission by wireless means for  
29 public reception of sounds or of images and sounds or of the representations  
30 thereof; such transmission by satellite is also "broadcasting"; transmission of

1 encrypted signals is "broadcasting" where the means for decrypting are  
2 provided to the public by the broadcasting organization or with its consent;

3 (g) "communication to the public" of a performance or a  
4 phonogram means the transmission to the public by any medium, otherwise  
5 than by broadcasting, of sounds of a performance or the sounds or the  
6 representations of sounds fixed in a phonogram. For the purposes of Clause  
7 15, "communication to the public" includes making the sounds or  
8 representations of sounds fixed in a phonogram audible to the public.

9 3.-(1) Contracting Parties shall accord the protection provided  
10 under this Treaty to the performers and producers of phonograms who are  
11 nationals of other Contracting Parties.

Beneficiaries of  
protection under  
this Treaty

12 (2) The nationals of other Contracting Parties shall be understood  
13 to be those performers or producers of phonograms who would meet the  
14 criteria for eligibility for protection provided under the Rome Convention,  
15 were all the Contracting Parties to this Treaty Contracting States of that  
16 Convention. In respect of these criteria of eligibility, Contracting Parties  
17 shall apply the relevant definitions in Clause 2 of this Treaty.

18 (3) Any Contracting Party availing itself of the possibilities  
19 provided in Article 5(3) of the Rome Convention or, for the purposes of  
20 Article 5 of the same Convention, Clause 17 thereof shall make a  
21 notification as foreseen in those provisions to the Director General of the  
22 World Intellectual Property Organization (WIPO).

23 4.-(1) Each Contracting Party shall accord to nationals of other  
24 Contracting Parties, as defined in Clause 3(2), the treatment it accords to its  
25 own nationals with regard to the exclusive rights specifically granted in this  
26 Treaty, and to the right to equitable remuneration provided for in Clause 15  
27 of this Treaty.

National Treatment

28 (2) The obligation provided for in paragraph (1) does not apply to  
29 the extent that another Contracting Party makes use of the reservations  
30 permitted by Clause 15(3) of this Treaty.

1 right in paragraph (1) applies after the first sale or other transfer of ownership  
2 of the original or a copy of the phonogram with the authorization of the  
3 producer of the phonogram.

Right of Rental

4 13.-(1) Producers of phonograms shall enjoy the exclusive right of  
5 authorizing the commercial rental to the public of the original and copies of  
6 their phonograms, even after distribution of them, by or pursuant to.  
7 authorization by the producer.

8 (2) Notwithstanding the provisions of paragraph (1), a Contracting  
9 Party that, on April 15, 1994, had and continues to have in force a system of  
10 equitable remuneration of producers of phonograms for the rental of copies of  
11 their phonograms, may maintain that system provided that the commercial  
12 rental of phonograms is not giving rise to the material impairment of the  
13 exclusive rights of reproduction of producers of phonograms.

Right of making  
available of  
phonograms

14 14. Producers of phonograms shall enjoy the exclusive right of  
15 authorizing the making available to the public of their phonograms, by wire or  
16 wireless means, in such a way that members of the public may access them  
17 from a place and at a time individually chosen by them.

#### 18 CHAPTER IV - COMMON PROVISIONS

Right of  
remuneration  
for broadcasting  
and communication  
to the public

19 15.-(1) Performers and producers of phonograms shall enjoy the right  
20 to a single equitable remuneration for the direct or indirect use of phonograms  
21 published for commercial purposes for broadcasting or for any communication  
22 to the public.

23 (2) Contracting Parties may establish in their national legislation that  
24 the single equitable remuneration shall be claimed from the user by the  
25 performer or by the producer of a phonogram or by both. Contracting Parties  
26 may enact national legislation that, in the absence of an agreement between the  
27 performer and the producer of a phonogram, sets the terms according to which  
28 performers and producers of phonograms shall share the single equitable  
29 remuneration.

30 (3) Any Contracting Party may, in a notification deposited with the

1 Director General of WIPO, declare that it will apply the provisions of  
2 paragraph (1) only in respect of certain uses, or that it will limit their  
3 application in some other way, or that it will not apply these provisions at all.

4 (4) For the purposes of this Article, phonograms made available to  
5 the public by wire or wireless means in such a way that members of the  
6 public may access them from a place and at a time individually chosen by  
7 them shall be considered as if they had been published for commercial  
8 purposes.

9 16.-(1) Contracting Parties may, in their national legislation,  
10 provide for the same kinds of limitations or exceptions with regard to the  
11 protection of performers and producers of phonograms as they provide for,  
12 in their national legislation, in connection with the protection of copyright in  
13 literary and artistic works.

Limitations and  
exceptions

14 (2) Contracting Parties shall confine any limitations of or  
15 exceptions to rights provided for in this Treaty to certain special cases which  
16 do not conflict with a normal exploitation of the performance or phonogram  
17 and do not unreasonably prejudice the legitimate interests of the performer  
18 or of the producer of the phonogram. 14, 15.

19 17.-(1) The term of protection to be granted to performers under  
20 this Treaty shall last, at least, until the end of a period of 50 years computed  
21 from the end of the year in which the performance was fixed in a phonogram.

Term of protection

22 (2) The term of protection to be granted to producers of  
23 phonograms under this Treaty shall last, at least, until the end of a period of  
24 50 years computed from the end of the year in which the phonogram was  
25 published, or failing such publication within 50 years from fixation of the  
26 phonogram, 50 years from the end of the year in which the fixation was  
27 made.

28 18. Contracting Parties shall provide adequate legal protection  
29 and effective legal remedies against the circumvention of effective  
30 technological measures that are used by performers or producers of

Obligations  
concerning  
technological  
measures



1 phonograms in connection with the exercise of their rights under this Treaty  
2 and that restrict acts, in respect of their performances or phonograms, which  
3 are not authorized by the performers or the producers of phonograms  
4 concerned or permitted by law.

Obligations  
concerning rights  
management  
information

5 **19.-(1)** Contracting Parties shall provide adequate and effective legal  
6 remedies against any person knowingly performing any of the following acts  
7 knowing, or with respect to civil remedies having reasonable grounds to know,  
8 that it will induce, enable, facilitate or conceal an infringement of any right  
9 covered by this Treaty:

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

12 (ii) to distribute, import for distribution, broadcast, communicate or  
13 make available to the public, without authority, performances, copies of fixed  
14 performances or phonograms knowing that electronic rights management  
15 information has been removed or altered without authority.

16 (2) As used in this Clause, "rights management information" means  
17 information which identifies the performer, the performance of the performer,  
18 the producer of the phonogram, the phonogram, the owner of any right in the  
19 performance or phonogram, or information about the terms and conditions of  
20 use of the performance or phonogram, and any numbers or codes that represent  
21 such information, when any of these items of information is attached to a copy  
22 of a fixed performance or a phonogram or appears in connection with the  
23 communication or making available of a fixed performance or a phonogram to  
24 the public.

Formalities

25 **20.** The enjoyment and exercise of the rights provided for in this  
26 Treaty shall not be subject to any formality.

Reservations

27 **21.** Subject to the provisions of Article 15(3), no reservations to this  
28 Treaty shall be permitted.

Application in  
time

29 **22.-(1)** Contracting Parties shall apply the provisions of Article 18 of  
30 the Berne Convention, mutatis mutandis, to the rights of performers and

1 producers of phonograms provided for in this Treaty.

2 (2) Notwithstanding paragraph (1), a Contracting Party may limit  
3 the application of Clause 5 of this Treaty to performances which occurred  
4 after the entry into force of this Treaty for that Party.

5 23.-(1) Contracting Parties undertake to adopt, in accordance with  
6 their legal systems, the measures necessary to ensure the application of this  
7 Treaty.

Provisions on  
enforcement of  
rights

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

13 CHAPTER V - ADMINISTRATIVE AND FINAL CLAUSES

14 24.-(1)(a) The Contracting Parties shall have an Assembly.

Assembly

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

17 (c) The expenses of each delegation shall be borne by the  
18 Contracting Party that has appointed the delegation. The Assembly may ask  
19 WIPO to grant financial assistance to facilitate the participation of  
20 delegations of Contracting Parties that are regarded as developing countries  
21 in conformity with the established practice of the General Assembly of the  
22 United Nations or that are countries in transition to a market economy.

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

26 (b) The Assembly shall perform the function allocated to it under  
27 Article 26(2) in respect of the admission of certain intergovernmental  
28 organizations to become party to this Treaty.

29 (c) The Assembly shall decide the convocation of any diplomatic  
30 conference for the revision of this Treaty and give the necessary instructions

1 to the Director General of WIPO for the preparation of such diplomatic  
2 conference.

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

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

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

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

International  
Bureau

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

Eligibility for  
becoming party  
to the Treaty

18 26.-(1) Any Member State of WIPO may become party to this Treaty.

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

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

Rights and  
obligations under  
the Treaty

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

- 1                   28. This Treaty shall be open for signature until December 31,     Signature of the  
2                   1997, by any Member State of WIPO and by the European Community.     Treaty
- 3                   29. This Treaty shall enter into force three months after 30     Entry into Force  
4                   instruments of ratification or accession by States have been deposited with     of the Treaty  
5                   the Director General of WIPO.
- 6                   30. This Treaty shall bind:     Effective date of  
7                   (i) the 30 States referred to in Article 29, from the date on which     becoming party  
8                   this Treaty has entered into force;     to the Treaty
- 9                   (ii) each other State from the expiration of three months from the  
10                  date on which the State has deposited its instrument with the Director  
11                  General of WIPO;
- 12                  (iii) the European Community, from the expiration of three months  
13                  after the deposit of its instrument of ratification or accession if such  
14                  instrument has been deposited after the entry into force of this Treaty  
15                  according to Article 29, or, three months after the entry into force of this  
16                  Treaty if such instrument has been deposited before the entry into force of  
17                  this Treaty;
- 18                  (iv) any other intergovernmental organization that is admitted to  
19                  become party to this Treaty, from the expiration of three months after the  
20                  deposit of its instrument of accession.
- 21                  31. This Treaty may be denounced by any Contracting Party by     Denunciation of  
22                  notification addressed to the Director General of WIPO. Any denunciation     the Treaty  
23                  shall take effect one year from the date on which the Director General of  
24                  WIPO received the notification.
- 25                  32.-(1) This Treaty is signed in a single original in English, Arabic,     Languages of the  
26                  Chinese, French, Russian and Spanish languages, the versions in all these     Treaty  
27                  languages being equally authentic.
- 28                  (2) An official text in any language other than those referred to in  
29                  paragraph (1) shall be established by the Director General of WIPO on the  
30                  request of an interested party, after consultation with all the interested

1 digital form. It is understood that the storage of a protected performance or  
2 phonogram in digital form in an electronic medium constitutes a reproduction  
3 within the meaning of these Clauses.

4 10. Agreed statement concerning Clauses 2(e), 8, 9, 12, and 13: As  
5 used in these Clauses, the expressions "copies" and "original and copies."  
6 being subject to the right of distribution and the right of rental under the said  
7 Clauses, refer exclusively to fixed copies that can be put into circulation as  
8 tangible objects.

9 11. Agreed statement concerning Clauses 2(e), 8, 9, 12, and 13: As  
10 used in these Clauses, the expressions "copies" and "original and copies."  
11 being subject to the right of distribution and the right of rental under the said  
12 Clauses, refer exclusively to fixed copies that can be put into circulation as  
13 tangible objects.

14 12. Agreed statement concerning Clause 15: It is understood that  
15 Clause 15 does not represent a complete resolution of the level of rights of  
16 broadcasting and communication to the public that should be enjoyed by  
17 performers and phonogram producers in the digital age. Delegations were  
18 unable to achieve consensus on differing proposals for aspects of exclusivity to  
19 be provided in certain circumstances or for rights to be provided without the  
20 possibility of reservations, and have therefore left the issue to future resolution.

21 13. Agreed statement concerning Clause 15: It is understood that  
22 Clause 15 does not prevent the granting of the right conferred by this Clause to  
23 performers of folklore and producers of phonograms recording folklore where  
24 such phonograms have not been published for commercial gain.

25 14. Agreed statement concerning Clauses 7, 11 and 16: The  
26 reproduction right, as set out in Clauses 7 and 11, and the exceptions permitted  
27 thereunder through Clause 16, fully apply in the digital environment, in  
28 particular to the use of performances and phonograms in digital form. It is  
29 understood that the storage of a protected performance or phonogram in digital

1 form in an electronic medium constitutes a reproduction within the meaning  
2 of these Clauses.

3 15. Agreed statement concerning Clause 16: The agreed statement  
4 concerning Clause 10 (on Limitations and Exceptions) of the WIPO  
5 Copyright Treaty is applicable mutatis mutandis also to Clause 16 (on  
6 Limitations and Exceptions) of the WIPO Performances and Phonograms  
7 Treaty. [The text of the agreed statement concerning Article 10 of the WCT  
8 reads as follows: "It is understood that the provisions of Article 10 permit  
9 Contracting Parties to carry forward and appropriately extend into the  
10 digital environment limitations and exceptions in their national laws which  
11 have been considered acceptable under the Berne Convention. Similarly,  
12 these provisions should be understood to permit Contracting Parties to  
13 devise new exceptions and limitations that are appropriate in the digital  
14 network environment.

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

18 16. Agreed statement concerning Clause 19: The agreed statement  
19 concerning Clause 12 (on Obligations concerning Rights Management  
20 Information) of the WIPO Copyright Treaty is applicable mutatis mutandis  
21 also to Clause 19 (on Obligations concerning Rights Management  
22 Information) of the WIPO Performances and Phonograms Treaty. [The text  
23 of the agreed statement concerning Article 12 of the WCT reads as follows:  
24 "It is understood that the reference to 'infringement of any right covered by  
25 this Treaty or the Berne Convention' includes both exclusive rights and  
26 rights of remuneration.

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

- 1   impeding the enjoyment of rights under this Treaty."]

EXPLANATORY MEMORANDUM

The Bill provides for the ratification and enforcement of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)

If desired, the provisions of this treaty may be incorporated into the Nigerian Copyrights Act Cap C28 LFN, 2004.