

Committee on WIPO Standards (CWS)

Eleventh Session
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PROPOSALS FOR IMPROVEMENT OF COPYRIGHT ORPHAN WORK METADATA IN WIPO STANDARD ST.96

Document prepared by the International Bureau

SUMMARY

1. The International Bureau provides a summary of the feedback on the revised proposal from the Members and Observers of the Committee on WIPO Standards (CWS)¹ and seeks guidance for the next step to prepare a final proposal for copyright orphan work metadata.

INTRODUCTION

2. At its sixth session held in 2018, the CWS agreed to extend WIPO Standard ST.96 to cover copyright orphan works (see paragraph 68 of document CWS/6/34).

3. At its eighth session held in 2020, the CWS noted that XML schema components for copyright orphan works data were published as part of version 4.0 of WIPO ST.96, and the XML4IP Task Force planned for enhancement of some copyright components, and referenced the `cpy:RightsHolderCategory` and `cpy:OrphanWorkKindCode` (see paragraphs 86 and 92 of document CWS/8/24).

¹ Membership of the CWS defines in paragraphs 7 and 8 of the CWS Organizational Matters and Special Rules of Procedure, which is published in WIPO website at: <https://www.wipo.int/cws/en/cws-rules-procedure.html>.

4. At its ninth session held in 2021, the CWS considered a working draft paper presented by the International Bureau which proposed providing a structured means of categorizing the information on rights holder roles and creative work categories captured in the existing WIPO ST.96 components: `cpy:RightsHolderCategory` (category which identifies the type of rights holder) and `cpy:OrphanWorkKindCode` (code list which identifies a kind of orphan work). The main aim of this paper was to improve the interoperability of WIPO ST.96 with other data standards around the world, which are developed or used by cultural industries, collective management organizations in the area of copyright and related rights, as well as with national and university libraries.

5. Also, at its ninth session, the CWS invited its Members to comment on the proposals for copyright orphan work metadata, as reproduced in the Annex to document CWS/9/4, and to liaise with their copyright Office for comments. The International Bureau confirmed that the XML4IP Task Force would reach out to more Copyright Offices and copyright industry groups for assistance with the work. The CWS noted that the International Bureau plans to present the final proposals for consideration at its tenth session. (See paragraphs 21 to 24 of document CWS/9/25.)

6. At its tenth session held in 2022, the CWS noted that the Member States and Observers (including copyright industry groups) of WIPO were invited to provide their comments on the improved proposals through circular C.CWS 156. Nine responses had been received from six Member States and three Observers. The working draft had been revised according to the feedback received and the CWS was invited to comment on the revised working draft for copyright orphan work metadata presented in the Annex to document CWS/10/7. (See paragraphs 50 to 51 of document CWS/10/22.)

7. Also at its tenth session, the CWS discussed the next steps in relation to the improvement of copyright orphan works metadata on the basis of the two following options proposed by the International Bureau:

- *Option 1* would be to create a new Task and a Task Force, i.e., a “Copyright Orphan Works Metadata Task Force”, to prepare final proposals for metadata recommendation on right holders’ role and categories of creative works, to be referenced to as XML components in WIPO Standard ST.96 copyright namespace; and
- *Option 2* would conduct another round of consultation on the revised working draft presented in the Annex to document CWS/10/7 via a CWS circular inviting copyright experts to comment.

The CWS agreed to perform another round of consultation to solicit input from copyright Offices and industry (*Option 2*). The CWS requested the Secretariat to issue a circular inviting its Members and Observers, with explicit reference to Copyright Offices, and institutions as well as international Non-Governmental Organizations (NGOs) representing creative industry stakeholders, to review the revised working draft included in document CWS/10/7 and submit their comments. The CWS requested the Secretariat to present, at its eleventh session, a final proposal reflecting the results of the consultation for consideration and approval by the CWS, or a proposal for next steps, depending on the comments received during the consultation. (See paragraphs 52 to 57 of document CWS/10/22.)

RESPONSES TO REVISED PROPOSAL FOR METADATA MANAGEMENT OF COPYRIGHT ORPHAN WORKS

8. According to the decision at the tenth session of the CWS indicated in paragraph 7 above, the Secretariat issued Circular C.CWS.171 inviting the CWS Members and Observers to review and comment on the revised proposal that was presented in Appendixes I and II of the Annex to document CWS/10/7, particularly in view of:

- Comprehensiveness of the right holder roles and creative work categories;
- Appropriateness of grouping and coding schemes of the right holder roles and work categories; and
- Clarity of descriptions of entries of the right holder roles and work categories.

9. The International Bureau received nine responses to the Circular C.CWS 171 from eight CWS Members: Australia, China, Lithuania, Mexico, Spain, United Kingdom and United States of America, and the African Regional Intellectual Property Organization (ARIPO); and one Observer: LLC (DDEX). Only Mexico and DDEX responded to both Circulars C.CWS 156 and C.CWS 171.

10. Five Respondents said that either they support the suggestions in the revised work draft or have no comments. Their detailed feedback is as follows:

- China and Spain stated that they do not have any comments;
- Australia said that Australian stakeholders have not raised any concerns with regard to the revised proposal on the views listed in paragraph 8 above;
- Lithuania commented that the Lithuanian National Library reviewed the revised proposal, and considers the information provided in the revised proposal comprehensive, appropriate and sufficiently clear; and
- ARIPO commended the progress on the proposal to have structured means of categorizing information on copyright holders roles and categories of copyright orphan works and commented that it is ready to engage constructively and encourage its Member States to contribute constructively. Recently, ARIPO adopted the Kampala Protocol on Voluntary Registration of Copyright and Related Rights and currently has 12 signatories. The Protocol will enter into force once five ratifications/ accessions have been received by the Director General of ARIPO. Once the Protocol is in force they will then investigate the possibilities of leveraging the WIPO's initiative.

11. Four respondents (Mexico, United Kingdom, United States of America and DDEX), provided several suggestions and questions. The summary of their responses is as follows:

- (a) Mexico generally supports the proposals reflected in the Circular and suggests an additional category to the work category that would be named 'Field recordings', which are audio recordings outside of a recording studio, specific to the recording of traditional songs, story tales and others from Mexican indigenous people.
- (b) The United Kingdom considers that the proposal sensibly makes use of best practice by using international standards as its basis for right holder roles and work categories. It suggested expanding the number of work subcategories available for computer programs/software, as these are only represented with one overarching work category ("Information system") and can cover a range of different applications. As an area for future focus, it also suggested developing further categories to cover non-professional right holders and works. Copyright applies to a wide variety of works and may be created by people who are not professionals.

- (c) The United States Patent and Trademark Office (USPTO) in conjunction with the United States Copyright Office (USCO) provided comprehensive feedback and the main points covered are:
- Regarding the scope and objective of the proposal: The revised proposal may exceed its initial parameters and gives rise to concerns about “mission creep.” The proposal is not focused on developing a schema for a data exchange between IP Offices but instead on expanding categories of “roles” and a structured categorization of “kinds” of works related to management and licensing of copyright information by organizations that are not IP offices. The initial orphan works proposal focused on “facilitating mutually-compatible technical standards, should other countries decide to include orphan works on a publicly accessible database and there is a need to exchange data.² The revised proposal seems “focused on copyright metadata management of orphan works,” and incorporates industry input about how some rights holders in some industry or cultural heritage sectors (notably, music and libraries) use works in their various licensing scenarios. It is also not clear how this proposal facilitates data exchange among IP offices, or even between the IP offices and third parties. This separate focus may be a reason for questions and concerns raised (below) related to the appropriateness of the grouping and coding schemes.
 - Regarding appropriateness of grouping and coding schemes for categories of “works”, Copyright law recognizes various types of creative works that may be eligible for protection. Some common examples found in WIPO Treaties and national laws include: literary works, musical works, artistic works, audiovisual works, works of applied art, works of visual arts, and derivative works. The USPTO and USCO notes the existing ST.96 v 7.1 contains 9 primary categories of creative works and no subcategories. The International Bureau proposes (appendix ii) to add four new categories (choreographic work, dramatico-musical work, cartographic work, and information system) to a new `CreativeWorkKindCode`. It is not clear where or how the `CreativeWorkKindCode` is intended to fit within the existing ST.96 structure. In addition, the USPTO and USCO recommend the CWS review the proposal to ensure that the categorization and sub-categorization of works aligns with the categories of works set forth in WIPO treaties and national laws.
 - Regarding the proposed unique “role codes” in the `RightsHolderCategory` do not appear to correspond to categories of rights holders, but instead seem to reflect a long list of different roles that contribute to creative works in the marketplace. The USPTO and USCO are concerned that the proposal will create confusion because, first, it departs from existing industry standards and IP office practices, and second, conflates marketplace-affiliated “roles” with copyright “rights holders.”

² [Proposal for the extension of WIPO Standard ST.96 to incorporate eXtensible Markup Language \(XML\) schema for orphan works submitted by UK IPO for consideration at the fifth session of the CWS \(see document CWS/5/4\)](#)

- Regarding the lack of engagement by stakeholders whose interests may be impacted: It seems that relevant stakeholders have not provided sufficient input to ensure the proposals and the standard is consensus based. It would be appreciated if information about who responded and provided input into the initial proposal and subsequent iterations could be provided. To the extent that WIPO does deem it important to include information relevant to copyright management in WIPO ST.96, then broader input from stakeholders in relevant industry and cultural heritage sectors is recommended. The lack of engagement, despite circulation to relevant sectors, may signal a lack of perceived value or usefulness of this proposal to relevant sectors.
 - Regarding the interoperability with industry standards: The proposal assembles input from and then modifies existing industry standards. This is different than using established existing industry standards (e.g., ISRC codes) to create new, unique schema categories and descriptions of works and of rights holders for WIPO Standard ST.96. One concern is that the resulting proposal is unique and not a voluntary consensus standard, which may potentially diminish the value of this structure for those countries who may need to develop or maintain orphan work databases that depend on this structure. Another concern is that the categorization does not align with categories found in copyright law and the WIPO Copyright Treaties.
 - The USPTO and USCO could not support the revised proposal as currently drafted and has concerns that this proposal ventures beyond the function of the initial orphan works database proposal. It sought additional information about the purpose of the proposal, and the consultations that helped to shape the proposal, including a list of those that WIPO engaged to develop the proposal and those who declined to provide substantive input, to better understand the scope of input received and relevance to the initial proposal.
- (d) The DDEX considered overall that the proposal appears to be a good draft but there are a few issues where the proposed extension might not work as intended in the music space and provided comments on the XML schema components of WIPO Standard ST.96.

PROPOSAL FOR NEXT STEPS

12. Taking into account the responses received to the Circular C.CWS 171, the International Bureau considers that further discussions among relevant stakeholders to determine what the next steps should be seem required in order to prepare the final proposal which was expected to be presented at the current session. The International Bureau proposes to revisit the two Options proposed in document CWS/10/8, which is referred to in paragraph 7 above, to determine next step(s) to prepare the final proposal.

13. *The CWS is invited to:*

(a) note the content of the present document; and

(b) consider and decide the next step(s) to prepare the final proposal as indicated in paragraph 12 above.

[End of document]