

Eidgenössisches Institut für Geistiges Eigentum  
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 Istituto Federale della Proprietà Intellettuale  
 Swiss Federal Institute of Intellectual Property

## The relevant International Intellectual Property Regime for Contemporary Media

**International Law of Contemporary Media**  
 University of Berne

10 November 2009

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 Swiss Federal Institute of Intellectual Property  
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## Overview

- I. Relevant IPRs for contemporary media
- II. The international legal regime
  - Basic principles of international IP law
  - The relevant international agreements
- III. Current discussions on the international fora
- IV. Challenges and opportunities for IP protection in the context of contemporary media

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## I. IPRs recognized by International Law

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    graph TD
      A[Protection of Intellectual Property] --> B[Intellectual Property Rights]
      A --> C[Unfair Competition]
      B --> D[Industrial Property]
      B --> E[Copyright and Neighboring Rights]
      D --> F[Patents]
      D --> G[Trade Marks]
      D --> H[Designs]
      E --> I[Layout-Designs of Integrated Circuits]
      E --> J[Plant Varieties]
      E --> K[Geographical Indications]
    
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## Copyright

- **Subject matter:**
  - artistic
  - literary
  - scientific
  - photographic/motion picture works
  - computer programs
- **protection period**
  - 70/50 years after death of the author
- **conditions:**
  - creation done by human beings
  - individual character
- **no formalities**
- **Protection does NOT apply to the contents of a work**



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## Copyright: Rights conferred

- **The author shall have the exclusive right to decide whether, when and how his work is to be used.**
- **The author shall have the right, in particular:**
  - to **manufacture** copies of the work, such as printed matter, phonograms, videograms or data carriers;
  - to **offer for sale, sell or otherwise distribute copies** of the work;
  - to **deliver or perform** the work either directly or through any kind of medium or to make it perceivable in a place other than where it is presented;
  - to **broadcast** the work by radio, television or similar means, including either electromagnetic waves or cable or other means of conduction;
  - to **rent** the work
  - etc.

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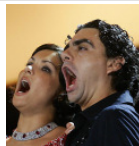
## Neighboring rights

Rights of:

- Performers (Musicians, Actors) in their **performances**
- Producers of Phonograms/Videograms in their **recordings** (CD, DVD etc.)
- Broadcasting Organizations in their **broadcasts**

Term of protection:

50 years after Performance/Publication or broadcast



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## Trademarks



- Names to identify goods and/or services
- Protection period
  - 10 years, indefinitely renewable
- Conditions
  - not public domain/misleading/ morality (**absolute** grounds for exclusion)
  - no identity/similarity with existing TM (**relative** grounds for exclusion)
- Rights conferred: Right to prevent others from using identical or similar signs for similar or identical goods or services
- Formalities
  - examination

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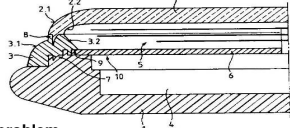
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## Patents

- Technical solution of a technical problem
- Conditions
  - new (absolute)
  - industrial application
  - a part of technique (inventive step)
- Rights conferred: Prevent others from making, using, offering for sale, selling, importing
- Protection period
  - up to 20 years
- Formalities
  - examination
  - annual fees



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<http://www.manager-magazin.de>

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## Industrial Designs

- Aesthetic design of products or of elements of products (NOT: designs dictated essentially by technical or functional considerations)
- Conditions:
  - New (within Switzerland)
  - original/characteristics (clearly distinctive from existing designs)
- Protection period 5 x 5 years
- Rights conferred: Prevent others from selling, making, importing, exporting articles bearing or embodying a design
- simple formalities



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## Basic Principles of the international IP regime

- National Treatment
- Most-favored nation Treatment
- Territoriality
- Right of Priority
- Exhaustion

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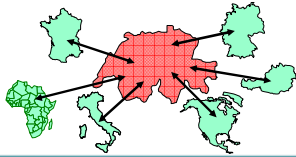
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## National Treatment

- Treatment of nationals of foreign countries no less favorable than own nationals  
⚠ Difference to GATT/GATS: nationals not products/services
- Long standing principle of international IP Treaties (Paris Convention 1883)
- Important as IP protection is part of national law



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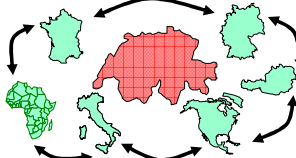
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## Most-favored Nation Treatment

- Same treatment of nationals of foreign countries  
⚠ Difference to GATT/GATS: nationals not products/services
- Achievement of the TRIPS Agreement
- Minor relevance than National Treatment



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## Principle of territoriality

- protection rights **only** in the country where you claim it
- information is published **worldwide**

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## Right of Priority

term of priority: 6/12 months

The right of priority allows an applicant for registration of an IPR to obtain priority of his application in any State Party of the Paris Convention against other applicants as well as against facts that destroy novelty.

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## Principle of Exhaustion of rights

Principle of free movement of goods

↔

Need for intellectual property protection

Solution

↓

**Exhaustion of intellectual property rights**

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An IPR is 'exhausted' by the 'first sale' (US doctrine) or 'placing on the market' of the good or the service by the right holder or with his consent → The purchaser of the good or service is entitled to use and dispose of it without further restriction

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## The International Treaties on IPR

- **WTO TRIPS Agreement**
- **23 Treaties administered by WIPO** (see: <http://www.wipo.int/treaties/en/>)
  - IP Protection (harmonization)
  - Global right obtention (coordination of national registration)
  - Classification
- **UNESCO Universal Copyright Convention**

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## Most relevant WIPO Treaties in the context of Media

- Berne Convention
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty
- Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Phonogram Convention)

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## Linkages between the Treaties

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### III. Current discussions on the international fora

- WTO TRIPS Council
- WIPO Special Committee on Copyright (SCP)
- other fora

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### WIPO Special Committee on Copyright (SCP)

- Protection of Broadcasting Organizations
- Protection of audiovisual Performances
- Limitations and exceptions

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### Protection of Broadcasting Organizations

- Objective: Establishment of a new updated, modernized and balanced standard for the international protection of broadcasting and cablecasting organizations
- State of play:
  - Calling of Diplomatic Conference failed in 2007
  - Willingness to continue work on a signal-based approach, according to the mandate of the 2007 General Assembly.
  - Secretariat to organize seminars upon the request of Member States on the objectives, specific scope and object of protection of a possible draft treaty.

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## Protection of audiovisual Performances

- **Objective: Extend copyright harmonization of WPPT to audiovisual performances.**
- **Diplomatic Conference failed**
- **SCP decided in May 2009:**
  - Issue remains on Agenda
  - Secretariat to prepare a background document on the main questions and positions.
  - Secretariat to organize informal, open-ended consultations among all members of the Committee on possible solutions to the current deadlock.



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## Limitations and Exceptions

- **Limitations and Exceptions = cases in which protected works may be used without the authorization of the rightholder and with or without payment of compensation.**
- **Objective: Recalibrated balance between various stakeholders' interests needs. Debate focused mainly on three groups of beneficiaries or activities in relation to exceptions and limitations:**
  - Educational activities;
  - Libraries and archives and
  - disabled persons, particularly visually impaired persons.
- **Phase of studies and exchange of national experiences**
- **<http://www.wipo.int/copyright/en/limitations/index.html>**



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## Other fora

- **WIPO Development Agenda**
  - Established in October 2007 by WIPO General Assembly. **45 recommendations** to enhance the development dimension of the Organization's activities. Establishment of a **Committee on Development and Intellectual Property (CDIP)**.
- **Anti-Counterfeiting Trade Agreement (ACTA)**
  - Plurilateral approach



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#### IV. Challenges and opportunities for copyright protection in the context of contemporary media

##### The Situation:

- Improved possibilities for creation of work, using pre-existing works
- Highly improved quality of private copying
- Highly improved possibilities of legal and illegal distribution of copyrighted material
- Facilitation of distortion of works

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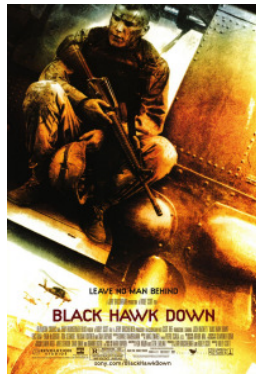
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