

## Summary of the prevailing International Treaties for contemporary media<sup>1</sup>

### Berne Convention for the Protection of Literary and Artistic Works (1886)

Parties: 164

The [Convention](#) rests on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries which want to make use of them.

- (1) The three basic principles are the following:
  - (a) Works originating in one of the contracting States (that is, works the author of which is national of such a State or works which were first published in such a State) must be given the same protection in each of the other contracting States as the latter grants to the works of its own nationals (principle of “national treatment”)<sup>2</sup>.
  - (b) Such protection must not be conditional upon compliance with any formality (principle of “automatic” protection)<sup>3</sup>.
  - (c) Such protection is independent of the existence of protection in the country of origin of the work (principle of the “independence” of protection). If, however, a contracting State provides for a longer term than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases<sup>4</sup>.
- (2) The minimum standards of protection relate to the works and rights to be protected, and the duration of the protection:
  - (a) As to works, the protection must include “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression” (Article 2(1) of the Convention).
  - (b) Subject to certain permitted reservations, limitations or exceptions, the following are among the rights which must be recognized as exclusive rights of authorization:
    - the right to translate,
    - the right to make adaptations and arrangements of the work,
    - the right to perform in public dramatic, dramatico-musical and musical works,
    - the right to recite in public literary works,
    - the right to communicate to the public the performance of such works,
    - the right to broadcast (with the possibility of a contracting State to provide for a mere right to equitable remuneration instead of a right of authorization),

<sup>1</sup> Source: [WIPO-Administered Treaties](#). More detailed information can be found under: <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf>

<sup>2</sup> Under the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement), the principles of national treatment, automatic protection and independence of protection also bind those World Trade Organization (WTO) Members which are not party to the Berne Convention. In addition, the TRIPS Agreement imposes an obligation of “most-favored-nation treatment,” under which advantages accorded by a WTO Member to the nationals of any other country must also be accorded to the nationals of all WTO Members. It is to be noted that the possibility of delayed application of the TRIPS Agreement does not apply to national treatment and most-favored-obligations.

<sup>3</sup> Idem.

<sup>4</sup> Idem.

- the right to make reproductions in any manner or form (with the possibility of a contracting State to permit, in certain special cases, reproduction without authorization provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and with the possibility of a contracting State to provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work<sup>5</sup>.

The Convention also provides for “moral rights,” that is, the right to claim authorship of the work and the right to object to any mutilation or deformation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to the author’s honor or reputation.

- (c) As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author’s death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author’s identity or if the author discloses his identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public (“release”) or—failing such an event—from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of such a work<sup>6</sup>.
- (3) Countries regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations may, for certain works and under certain conditions, depart from these minimum standards of protection with regard to the right of translation and the right of reproduction.

The Berne Union has an Assembly and an Executive Committee. Every country member of the Union which has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member ex officio.

The establishment of the biennial program and budget of the WIPO Secretariat—as far as the Berne Union is concerned—is the task of its Assembly.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO<sup>7, 8</sup>.

---

<sup>5</sup> Under the TRIPS Agreement, an exclusive right of rental must be recognized in respect of computer programs and, under certain conditions, audiovisual works.

<sup>6</sup> Under the TRIPS Agreement, any term of protection which is calculated on a basis other than the life of a natural person, must be at least 50 years from the first authorized publication of the work, or—failing such an event—50 years from the making of the work. However, this rule does not apply to photographic works, or works of applied art.

<sup>7</sup> It is to be noted that WTO Members, even if they are not party to the Berne Convention, must comply

## **Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)**

Parties: 33

The [Convention](#) provides for the obligation of each contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. The distribution is unauthorized if it has not been authorized by the organization—typically a broadcasting organization—which has decided what the programme consists of. The obligation exists in respect of organizations that are nationals of a contracting State.

The provisions of this Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

The Convention does not provide for the institution of a Union, any governing body or a budget.

It is open to any State that is a member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

## **Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971)**

Parties: 77

The [Convention](#) provides for the obligation of each contracting State to protect a producer of phonograms who is a national of another contracting State against the making of duplicates without the consent of the producer, against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public, and against the distribution of such duplicates to the public. “Phonogram” means an exclusively aural fixation (that is, it does not comprise, for example, the sound tracks of films or videocassettes), whatever be its form (disc, tape or other). Protection may be provided as a matter of copyright law, sui generis (related rights) law, unfair competition law or penal law. Protection must last for at least 20 years from the first fixation or the first publication of the phonogram. (However, national laws ever more frequently provide for a 50-year term of protection.)

The Secretariat of WIPO exercises the function of secretariat for this Convention.

The Convention does not provide for the institution of a Union, any governing body or a budget.

The Convention is open to any State that is a member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.

---

with the substantive law provisions of the Berne Convention, except that WTO Members not party to the Convention are not bound by the moral rights provisions of the Convention.

<sup>8</sup> It is to be noted that least developed countries may until July 1, 2013, delay the application of most of the obligations provided for in the TRIPS Agreement (Article 65). Naturally, States party to the Berne Convention cannot delay the application of their obligations provided for in the Berne Convention.

## Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)

Parties: 91

The [Convention](#) secures protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations:

- (1) Performers (actors, singers, musicians, dancers and other persons who perform literary or artistic works) are protected against certain acts they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent.
- (2) Producers of phonograms enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Rome Convention as meaning any exclusively aural fixation of sounds of a performance or of other sounds. When a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, or to the producers of phonograms, or to both; contracting States are free, however, not to apply this rule or to limit its application.
- (3) Broadcasting organizations enjoy the right to authorize or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows exceptions in national laws to the above-mentioned rights as regards private use, use of short excerpts in connection with the reporting of current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases—except for compulsory licenses that would be incompatible with the [Berne Convention](#)—where the national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

Protection must last at least until the end of a period of 20 years computed from the end of the year in which:

- (a) the fixation was made, for phonograms and for performances incorporated therein;
- (b) the performance took place, for performances not incorporated in phonograms;
- (c) the broadcast took place, for broadcasts. (However, national laws ever more frequently provide for a 50-year term of protection, at least for phonograms and for performances.)

WIPO is responsible, jointly with the ILO and UNESCO, for the administration of the Rome Convention. These three organizations constitute the Secretariat of the Intergovernmental Committee set up under the Convention and consisting of the representatives of 12 Contracting States.

The Convention does not provide for the institution of a Union or a budget. It establishes an Intergovernmental Committee composed of Contracting States, that considers questions concerning the Convention.

This Convention is open to States party to the [Berne Convention for the Protection of Literary and Artistic Works \(1886\)](#) or to the Universal Copyright Convention. Instruments of ratification or

accession must be deposited with the Secretary-General of the United Nations. States may make reservations with regard to the application of certain provisions.

## **WIPO Copyright Treaty (WCT) (1996)**

Parties: 71

The WCT is a special agreement under the Berne Convention. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the [Berne Convention for the Protection of Literary and Artistic Works](#) (1886) . Furthermore, the [Treaty](#) mentions two subject matters to be protected by copyright,

- (i) computer programs, whatever may be the mode or form of their expression, and
- (ii) compilations of data or other material (“databases”), in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)

As to the rights of authors, the Treaty deals with three:

- (i) the right of distribution,
- (ii) the right of rental, and
- (iii) the right of communication to the public.

Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of the limitations or exceptions are mentioned in the following:

- the right of distribution is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership,
- the right of rental is the right to authorize commercial rental to the public of the original and copies of three kinds of works:
  - (i) computer programs (except where the computer program itself is not the essential object of the rental),
  - (ii) cinematographic works (but only in cases where commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction), and
  - (iii) works embodied in phonograms as determined in the national law of the Contracting Parties (except for countries that since April 15, 1994, have in force a system of equitable remuneration for such rental),
- the right of communication to the public is the right to authorize any communication to the public, by wire or wireless means, including “the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them.” The quoted expression covers in particular on-demand, interactive communication through the Internet.

The Treaty obliges the Contracting Parties to provide legal remedies against the circumvention of technological measures (e.g., encryption) used by authors in connection with the exercise of their rights and against the removal or altering of information, such as certain data that identify works or their authors, necessary for the management (e.g., licensing, collecting and distribution of royalties) of their rights (“rights management information”).

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, the Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include

expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to deal with matters concerning the maintenance and development of the Treaty, and it entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty entered into force on March 6, 2002. The Director General of WIPO is the depositary of the Treaty.

This Treaty is open to States members of WIPO and to the European Community. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty.

### **WIPO Performances and Phonograms Treaty (WPPT) (1996)**

Parties: 69

The [Treaty](#) deals with intellectual property rights of two kinds of beneficiaries:

- (i) performers (actors, singers, musicians, etc.), and
- (ii) producers of phonograms (the persons or legal entities who or which take the initiative and have the responsibility for the fixation of the sounds).

They are dealt with in the same instrument because most of the rights granted by the Treaty to performers are rights connected with their fixed, purely aural performances (which are the subject matter of phonograms).

As far as performers are concerned, the Treaty grants performers four kinds of economic rights in their performances fixed in phonograms (not in audiovisual fixations, such as motion pictures):

- (i) the right of reproduction,
- (ii) the right of distribution,
- (iii) the right of rental, and
- (iv) the right of making available.

Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of those limitations and exceptions are mentioned in the following:

- the right of reproduction is the right to authorize direct or indirect reproduction of the phonogram in any manner or form,
- the right of distribution is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership,
- the right of rental is the right to authorize the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except for countries that since April 15, 1994, have in force a system of equitable remuneration for such rental),
- the right of making available is the right to authorize the making available to the public, by wire or wireless means, of any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

The Treaty grants three kinds of economic rights to performers in respect of their unfixed (live) performances:

- (i) the right of broadcasting (except in the case of rebroadcasting),
- (ii) the right of communication to the public (except where the performance is a broadcast performance), and
- (iii) the right of fixation.

The Treaty also grants performers moral rights: the right to claim to be identified as the performer and the right to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation.

As far as producers of phonograms are concerned, the Treaty grants them four kinds of rights (all economic) in their phonograms:

- (i) the right of reproduction,
- (ii) the right of distribution,
- (iii) the right of rental, and
- (iv) the right of making available.

Each of them is an exclusive right, subject to certain limitations and exceptions. Not all of those limitations and exceptions are mentioned in the following:

- the right of reproduction is the right to authorize direct or indirect reproduction of the phonogram in any manner or form,
- the right of distribution is the right to authorize the making available to the public of the original and copies of the phonogram through sale or other transfer of ownership,
- the right of rental is the right to authorize the commercial rental to the public of the original and copies of the phonogram as determined in the national law of the Contracting Parties (except for countries that since April 15, 1994, have in force a system of equitable remuneration for such rental),
- the right of making available is the right to authorize making available to the public the phonogram, by wire or wireless means, in such a way that members of the public may access the phonogram from a place and at a time individually chosen by them. This right covers, in particular, on-demand, interactive making available through the Internet.

As far as both performers and phonogram producers are concerned, the Treaty obliges—subject to various exceptions and limitations not mentioned here—each Contracting Party to accord to nationals of the other Contracting Parties with regard to the rights specifically granted in the Treaty the treatment it accords to its own nationals (“national treatment”).

Furthermore, the Treaty provides that performers and producers of phonograms enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms, published for commercial purposes, for broadcasting or for communication to the public. However, any Contracting Party may restrict or—provided that it makes a reservation to the Treaty—deny this right. In the case and to the extent of a reservation by a Contracting Party, the other Contracting Parties are permitted to deny, *vis-à-vis* the reserving Contracting Party, national treatment (“reciprocity”).

The term of protection must be at least 50 years.

The enjoyment and exercise of the rights provided in the Treaty cannot be subject to any formality.

The Treaty obliges the Contracting Parties to provide legal remedies against the circumvention

of technological measures (e.g., encryption) used by performers or phonogram producers in connection with the exercise of their rights and against the removal or altering of information, such as the indication of certain data that identify the performer, the performance, the producer of the phonogram and the phonogram, necessary for the management (e.g., licensing, collecting and distribution of royalties) of the said rights (“rights management information”).

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, the Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to deal with matters concerning the maintenance and development of the Treaty, and it entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty entered into force on May 20, 2002. The Director General of WIPO is the depositary of the Treaty.

The Treaty is open to States members of WIPO and to the European Community. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty.