

# **INTERNATIONAL COPYRIGHT PROTECTION**

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## Topics Covered

- Unit -1 Introduction to Copyright Law.
- International Conventions
- The Berne Convention
- Protection Granted Berne Convention
- TRIPS
- International Conventions in the field of related rights: Rome Convention, Geneva Convention, Satellite Convention
- Internet Treaties.

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## The Berne Convention

- The origins of copyright are closely related to the development of printing, which enabled rapid production of copies of books at relatively low cost. The growth of literacy created a large demand for printed books, and the protection of authors and publishers from unauthorized copying was recognized as increasingly important in the context of this new means of making works available to the public. *The first copyright laws were enacted as a result.*
- **The Statute of Anne**, enacted by the British Parliament in **1710**, was the world's first copyright law. It provided that, after the lapse of a certain period, the privilege enjoyed by the Stationers' Company to make and distribute copies of works, would revert to the authors of the works, who then had the right to assign the privilege to another publisher.

## Contd.

- From this beginning, copyright spread into other countries.
- **Denmark** recognized the rights of authors in an Ordinance of 1741.
- In 1790, the **United States of America** promulgated its first federal copyright statute.
- In pre-Revolutionary **France**, copyright belonged to publishers in the form of a privilege granted by the sovereign.
- During the Revolution, two decrees of 1791 and 1793 established the protection of authors of literary and artistic works.
- In **Germany**, where printing originated, copyright principles first emerged in the form of rules regulating publishing agreements.
- In the mid-nineteenth century, **the various German States** enacted laws recognizing authors as the owners of rights in their works. Around the same time, laws were passed in Austria and Spain.
- National codification also took place in some of **the Latin American** countries following their independence: in Chile (1834), Peru (1849), Argentina (1869) and Mexico (1871).

## Contd.

- It is a well-established principle that *copyright is territorial in nature*, that is, that protection under a given copyright *law is available only in the country where that law applies*.
- Thus, for works to be protected outside the country of origin, it is necessary for the country to conclude bilateral agreements with countries where the works are used.
- In the mid-nineteenth century, such *bilateral agreements* were concluded among European nations, *but they were neither consistent nor comprehensive*.
- As a result of the need for a *uniform system* of protection, **the first international agreement** for protection of the rights of authors was concluded and adopted on *September 9, 1886, in Berne, Switzerland: the Berne Convention for the Protection of Literary and Artistic Works*. The countries which adopted the Convention formed the Berne Union to ensure that the rights of authors in all member countries were recognized and protected. The Berne Convention is administered by the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.

## Protection Granted Under the Convention

- **Basic Elements of the Protection Granted Under the Convention:** There are two basic elements of protection under the Berne Convention: first, “national treatment,” according to which works originating in one of the member States must be protected in each of the member States in the same way that such States protect the works of their own nationals; second, minimum rights, which means that the laws of member States must provide the minimum levels of protection established by the Convention.
- **Formality-Free Protection :** The Berne Convention provides that copyright protection may not be conditioned on compliance with any formality, such as registration or deposit of copies.
- **Works Protected :** Article 2 contains an illustrative, non-exhaustive list of protected works, which include *“any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.” Works based on other works, such as translations, adaptations, arrangements of music and other alterations of a literary or artistic work, are also protected (Article 2(3)).*
- Some categories of works *may be excluded* from protection; thus, member States may deny protection to *official texts of a legislative, administrative and legal nature (Article 2(4)), works of applied art (Article 2(7)), lectures, addresses and other oral works (Article 2bis(2)). Furthermore, Article 2(2) allows States to require that works must be fixed in some material form in order to be protected. For example, in a country with such a fixation requirement, a work of choreography could only be protected once the movements were written down in dance notation or recorded on videotape.*

## Contd.

- **Eligibility for Protection:** Article 3 provides for protection of *authors who are nationals or residents of a State party to the Convention* (that is, a country which is a member of the “Berne Union”); *authors who are not nationals or residents of such a country are protected if they first publish their works in a member country, or simultaneously publish in a non-member and a member country.*
- **Rights Protected:** The exclusive **economic rights** granted to authors under the Convention include the right of translation (Article 8),
- the *right of reproduction* “in any manner or form” (Article 9),
- the *right of public performance* of dramatic, dramatico-musical and musical works (Article 11),
- the *right of broadcasting and communication to the public by wire, by re-broadcasting or by loudspeaker or any other analogous instrument* of the broadcast of the work (Article 11bis),
- *the right of public recitation* (Article 11ter), *the right of adaptation* (Article 12), *the right of making cinematographic adaptation and reproduction of works, and*
- *the right of distribution* of the works thus adapted and reproduced (Article 14).

## Contd.

- **Limitations:**

- In order to maintain an appropriate balance between the interests of copyright owners and users of protected works, the Berne Convention allows certain limitations on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation.

These limitations are commonly referred to as **“free uses”** of protected works,

- quotations and use of works by way of illustration **for teaching purposes,**
- reproduction of newspaper or similar articles and use of works for the purpose of **reporting current events,**
- **ephemeral recordings** for broadcasting purposes.



## The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

- The TRIPS Agreement, concluded in 1994 as part of the Uruguay Round of negotiations under the former GATT (now the World Trade Organization) also contains provisions on copyright protection.
- In addition to its incorporation of Berne Convention standards, the *TRIPS Agreement requires that the laws of member States make clear that*
- computer programs are protected as literary works under the Convention.
- The Agreement also states that compilations of data shall be protected as original creations, provided that they meet the criteria of originality.
- The Agreement provides a right in respect of commercial rental of copies of computer programs and audiovisual works.

## INTERNATIONAL CONVENTIONS IN THE FIELD OF RELATED RIGHTS

- This part of the presentation is devoted to the international conventions in the field of related rights, namely, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961, known as the Rome Convention),
- the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971, known as the Phonograms Convention), and
- the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 1974, known as the Satellites Convention).

## Contd.

- **Rome Convention**
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, known as the "Rome Convention 1961," *provides international protection for record producers, as well as performers and broadcasters.* Producers in treaty countries are protected against unauthorized copying of their recordings, and have a right to payment for broadcast of their recordings, subject to certain exceptions.
- **Geneva Phonograms Convention**
- An additional treaty was adopted in 1971 to *deal with the growing problem of piracy of recorded music.* The Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms, known as the "Geneva Phonograms Convention," *protects against unauthorised duplication of sound recordings, and against unauthorised import and distribution of such copies.*

## Contd.

- The Satellites Convention

- The Satellites Convention was developed in response to the proliferation of satellites in international telecommunications, including broadcasting, since about 1965.
- Under the Rome Convention, “broadcasting” is defined as *the transmission by wireless means for public reception of sounds or of images and sounds.*
- At the time the Satellites Convention was under preparation, there was doubt that satellite transmissions could be considered “broadcasting” because of the “public reception” and “wireless means” aspects of the definition; i.e., *the signals emitted to the satellite (uplink) could not be received directly by the public, and the signals emitted by the satellite (downlink) were received by earth stations prior to distribution to the public, which was often by wire (cable, for example) rather than by wireless means.*
- Thus, the development of the Satellites Convention was undertaken in response to a perceived need to provide *protection for broadcasting organizations in respect of the distribution of program-carrying signals transmitted by satellite.* “Distribution” is defined in the Convention as the operation by which a distributor transmits derived signals to the public; thus, unlike broadcasting, protection under the Convention extends to cable distribution.

## Contd.

- **The TRIPS Agreement**
- The TRIPS Agreement, concluded in 1994 as part of the Uruguay Round of negotiations under the former GATT (now the World Trade Organization) also contains provisions on the protection of related rights. Under the Agreement, related rights are provided to performers, producers of phonograms and broadcasting organizations.
- Performers are granted the rights to ***“prevent”*** (not the right to authorize) the ***fixation of their unfixed performances on phonograms, the wireless broadcasting and communication to the public of such performances, and the reproduction of fixations of such performances.***

## Contd.

- **Producers of phonograms** are provided the right to authorize or prohibit the direct or indirect reproduction of their phonograms. Producers of phonograms also have a right to authorize rental of copies of their phonograms.
- **Broadcasting organizations** are granted the right to prohibit (rather than to authorize) fixation of their broadcasts, the reproduction of such fixations, the wireless rebroadcasting of such broadcasts, and the communication to the public of television broadcasts (but not radio broadcasts).

## THE TWO WIPO “INTERNET” TREATIES

- Introduction
- The Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) was last revised at Paris in 1971 and, in the field of related rights, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) dates back to 1961.
- Technological and commercial developments and practices since then (*such as reprography (in other words, photocopying and printing technologies),*
- *video technology,*
- *compact audio and video cassette systems facilitating home taping, satellite broadcasting,*
- *cable television,*
- *the increase of importance of computer programs, computer generated works and databases, and*
- *digital transmissions systems such as the Internet, etc.)* have profoundly affected the way in which works can be created, used and disseminated.

## Contd.

- As a result, it was recognized at the end of the **1980's** that new binding international norms were needed, and work commenced at WIPO on the preparation of new instruments in the fields of copyright and related rights.
- During the preparatory work that led to the new instruments, it became clear that the most important and pressing task of the drafting committees was to clarify existing norms and to *offer new norms in response to the questions raised by digital technology, and particularly the Internet.* The issues addressed in this context were referred to jointly as the *“digital agenda.”*
- This work culminated in the adoption, at a Diplomatic Conference held from December 2 to 20, 1996, of two new treaties, the WIPO Copyright Treaty (the WCT) and the WIPO Performances and Phonograms Treaty (the WPPT).



## Contd.

- The WCT deals with *protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs;* whereas the WPPT deals with *protection for authors rights of performers and producers of phonograms.*
- The purpose of the two treaties is to update and supplement the major existing WIPO treaties on copyright and related rights, primarily in order to respond to *developments in technology and in the marketplace.*
- Since the Berne Convention and the Rome Convention were adopted or lastly revised more than a quarter century ago, *new types of works, new markets, and new methods of use and dissemination have evolved.* Among other things, both the WCT and the WPPT address *the challenges posed by today's digital technologies, in particular the dissemination of protected material over digital networks such as the Internet.* For this reason, they are often referred to as the "Internet treaties."

## The Parallel Provisions

- The treaties respond directly to the “digital agenda” in their provisions dealing with (1) the application of the reproduction right to the storage of works in digital systems, (2) the limitations and exceptions applicable in the digital environment, (3) technological measures of protection and (4) rights management information.
- *The right of reproduction*
- The WCT provides for *a right of reproduction for authors by incorporating by reference Article 9* of the Berne Convention (Article 1 of the WCT). The WPPT *provides explicitly for exclusive reproduction rights for performers and for phonogram producers* (Articles 7 and 11, respectively).

## Contd.

- *Rights applicable to transmissions in interactive, on-demand networks*
- Perhaps one of the most significant contributions of the WCT and the WPPT is their recognition of the rights of authors, performers and phonogram producers *to authorize the on-line transmission of their works, fixed performances and phonograms, as the case may be.*
- The WCT and WPPT provide that authors, performers and producers of phonograms *must be granted exclusive rights to authorize the making available of their works, performances fixed on phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access those works, performances and phonograms from a place and at a time individually chosen by them* (that is, interactive, on-demand services).
- The WPPT provides this right as a “right of making available to the public” while the WCT includes it in the provision on a general right of communication to the public.

## Contd.

- **Distribution rights:**
- Article 6(1) of the WCT provides for authors to be afforded an exclusive right to authorize the making available to the public of originals and copies of works through sale or other transfer of ownership, that is, an exclusive right of distribution. Under the Berne Convention, it is only in respect of cinematographic works that such a right is granted explicitly, and the TRIPS Agreement does not provide for a right of distribution. Article 6(2) does not oblige Contracting Parties to select any particular form of exhaustion (that is, national, regional or international exhaustion) or, in fact, to deal with the issue of exhaustion at all.
- Performers and phonogram producers are also granted similar exclusive rights of distribution (Articles 8 and 12 of the WPPT).

## Contd.

- Rental rights
- The WCT provides (Article 7) for a right *of commercial rental in respect of computer programs, cinematographic works and, as determined in national law, works embodied in phonograms, subject to certain important exceptions contained in Articles 7(2) and 7(3);*
- The WPPT grants *an exclusive right of commercial rental to, first, as determined in national law, performers in respect of their performances fixed in phonograms and, second, phonogram producers in respect of their phonograms (Articles 9 and 13 respectively).*

- **Technological protection measures and rights management information**
- It was recognized during the preparation of the two treaties that in a digital environment any new rights in respect of digital uses of works would, in order for the new rights to be effective, require the support of provisions dealing with technological measures of protection and rights management information.
- In this regard, the treaties oblige Contracting Parties to provide adequate legal protection and effective remedies against the circumvention of measures used to protect the rights of authors, performers and phonogram producers in their works, performances and phonograms, respectively (examples of such measures would be “copy-protection” or “copy-management” systems, which contain technical devices that either prevent entirely the making of copies or make the quality of the copies so poor that they are unusable). This provision is contained in Article 11 of the WCT and Article 18 of the WPPT.
- In so far as rights management information is concerned, the treaties oblige Contracting Parties to provide under certain conditions adequate remedies against the removal or alteration of rights management information, and certain related acts (Article 12 of the WCT and Article 19 of the WPPT).

## Provisions Specific to the WCT

- The WCT confirms that computer programs are protected as literary works and that databases are protectable as copyright works. These provisions of the WCT merely confirm earlier provisions of the Berne Convention and/or the TRIPS Agreement.
- The WCT extends the minimum term of protection in respect of photographs to 50 years.

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## Provisions Specific to the WPPT

- In general, the WPPT provides for the same level of protection for performers and producers of phonograms as the TRIPS Agreement.
- It should be noted that this also means that the coverage of the rights of performers in the WPPT extends only to live aural performances and performances fixed in phonograms, except for the right of broadcasting and communication to the public of live performances, which extends to all performances.
- However, for the first time at international level, moral rights are conferred upon performers (Article 5 of the WPPT).
- Article 15 of the WPPT provides to performers and producers of phonograms a right of remuneration in respect of the broadcasting and communication to the public of phonograms, with the possibility of reservations, as under the Rome Convention.



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