Overview of WIPO-Administered Treaties on Copyright and Related Rights

Regional meeting with Caribbean countries on Beijing and Marrakesh Treaties

WIPO Copyright Law Division
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Kingston
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Contents

- Development of International Copyright Framework
- Berne Convention
- Rome Convention
- Internet Treaties
  - WCT
  - WPPT
Development of International Copyright Framework

- **Berne Convention**: 1886 to 1979
- **Rome Convention**: 1961
- **TRIPS Agreement**: 1994
- **Beijing Treaty**: 2012
- **Internet Treaties**: 1996
- **WCT**: 2013
- **WPPT**: 2012

"Guided Development"
# Development of International Copyright Framework

<table>
<thead>
<tr>
<th>Layer</th>
<th>Copyright</th>
<th>Related rights</th>
<th>Limitations &amp; Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st layer</td>
<td>Berne</td>
<td>Rome</td>
<td></td>
</tr>
<tr>
<td>(1.5th layer)</td>
<td>&quot;Guided Development&quot;</td>
<td></td>
<td>Marrakesh</td>
</tr>
<tr>
<td>2nd layer</td>
<td>TRIPS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd layer</td>
<td>WCT</td>
<td>WPPT + Beijing</td>
<td></td>
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</tbody>
</table>
Berne Convention – Overview
Berne Convention for the Protection of Literary and Artistic Works

- Minimum standard of copyright protection
- 168 Contracting States

Principles
- National treatment
  Works originating in one of the other Contracting States is given the same protection as the works of its own nationals.
- Absence of formalities (Automatic protection)
  Protection is automatic and not be conditional with any formality (e.g. ©).
- Independence of protection (Territoriality)
  Protection is independent of the existence of protection in the country of origin of the work.
Berne Convention – Objects of protection

- Large scope

Every production in the literary, scientific and artistic domain, whatever the mode or form of its expression.

- Originality criteria

  - Sweat of the brow (Common law countries)
  - Reflection of author’s personality (Civil law countries)
Berne Convention – Protected rights

BERNE CONVENTION

Moral Rights

- Attribution Integrity

Economic Rights

- Reproduction
- Translation, Adaptation, Alterations
- Public Performance, Public Communication, Broadcasting
- Droite de Suite (Resale right - optional)

- Distribution right
- Rental right
Berne Convention – Duration

- Economic rights
  - General rule: 50 years after the author’s death
  - Exception: 25 years for photography and applied art

- Moral rights
  - “At least until the expiry of the economic rights”
Berne Convention – Limitations and exceptions

- Certain categories of works
- Particular acts of exploitation
- Three-step test for the reproduction right

“It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works (1) in certain special cases, provided that such reproduction does (2) not conflict with a normal exploitation of the work and does (3) not unreasonably prejudice the legitimate interests of the author”.

⇒ Private use, libraries and archives, use for blind people…
Rome Convention - Overview
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

- First international instrument dedicated to related rights, fixing the minimum standard
- 92 Contracting States
- Any Contracting States of Berne may join.
- Lower economic right protection than Berne; no moral rights
Rome Convention – Beneficiaries

- Beneficiaries
  - Performers
  - Producers of phonograms: Person who first fixes sounds.
  - Broadcasters: Broadcasting amounts to the transmission by wireless means.
Rome Convention – Rights for performers

- May prevent the below actions done without the consent:
  - First fixation of their live performance
  - Reproduction of original fixation
  - Broadcasting and communication to the public of their live performance

- Equitable remuneration right for broadcasting and communication to the public of their fixed performances

- Limited protection:
  - No rental right and distribution right
  - Audiovisual performers: Only the right of fixation.
Rome Convention – Rights for producers of phonograms

- May prohibit or authorize:
  - Direct or indirect reproduction of their phonograms
  + Equitable remuneration right for broadcasting and communication to the public of their phonograms

- Limited protection:
  - No right to control broadcasting and communication to the public: obliged to tolerate it receiving equitable remuneration.
  - No rental right and distribution right
Rome Convention – Rights for broadcasters

- May prohibit or authorize:
  - Rebroadcasting of their broadcasts
  - Fixation of their broadcasts
  - Reproduction of such fixations

- Limited protection:
  - No right of transmission by wire
Rome Convention – Duration

- 20 years from the end of the year in which;
  - Fixation was made (for phonograms and for performances)
  - Performance took place (for performances not incorporated in phonograms)
  - Broadcast took place
Rome Convention – Limitations and exceptions

- Private use
- Use of short excerpts in connection with reporting current events
- Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts
- Use for the purpose of teaching or scientific research
Purpose

Update and supplement of Berne and Rome Conventions especially to reflect the IT technology developments.

Features

- Clarification/creation of on-line rights in the digital environment
- Anti-circumvention measures; rights management information
93 Contracting States

”Special Agreement” of Berne.

Art. 20: “governments … reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention”

Open to any WIPO Member States, irrespective of whether it is a party to Berne
## WCT – Principal changes in WCT from Berne

<table>
<thead>
<tr>
<th></th>
<th>Berne</th>
<th>WCT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer programs and databases as works</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Digital storage as reproduction</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Right of distribution</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Right of rental</td>
<td>No</td>
<td>Yes*</td>
</tr>
<tr>
<td>Right of making available</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Duration of photographs</td>
<td>20 years</td>
<td>50 years</td>
</tr>
<tr>
<td>Three-step test</td>
<td>For reproduction right</td>
<td>For all economic right</td>
</tr>
<tr>
<td>Anti-circumvention; rights management information</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* Only for computer programs, cinematographic works and works embodied in phonograms
WPPT - Overview

- 94 Contracting States
- No legal link to Rome Convention; Open to any WIPO Member States
- Moral rights for live aural performances and performances fixed in phonograms (not for audiovisual performances => Beijing Treaty)
- NOT dealing with broadcasting organizations
<table>
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<th>WPPT</th>
</tr>
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<tbody>
<tr>
<td><strong>Definition of phonogram</strong></td>
<td>Sounds only</td>
<td>Digital representations of sounds also included</td>
</tr>
<tr>
<td><strong>Rights of performers &amp; Rights of producers of phonograms</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Digital storage as right of reproduction</td>
<td>No</td>
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Thank you!

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