

Max Planck Institute
for Innovation and Competition

Copyright and Related Rights: Beijing and Marrakesh Treaties

Overview of WIPO-Administered Treaties on Copyright and Related Rights

WIPO in cooperation with the Copyright Directorate of the
Ministry of Culture of Albania

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Overview

I. Authors' rights treaties

1. Berne Convention for the Protection of Literary and Artistic Works
2. WIPO Copyright Treaty (WCT)

II. Treaties on related rights

1. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
2. WIPO Performances and Phonograms Treaty (WPPT)
3. Beijing Treaty on Audiovisual Performances

III. Treaty on access to works by visually impaired people:

Marrakesh VIP Treaty



Overview

I. Why do we need such treaties?

1. National copyright laws usually only apply to national situations
2. Works “travel”, are exploited beyond national borders
3. Without an international obligation in a treaty, such works often would not be protected beyond national borders

II. Relation between treaties



I. Authors' rights treaties

1. The Berne Convention

a. History and objective

- After initial network of various bilateral treaties on authors' rights: need for one multilateral treaty
- Entry into force: September 9, 1886
- Revisions since then: 5 (latest in Paris, 1971)
- Number of member states: 175

- **Objective:** international system granting protection for works of authors in international situations



I. Authors' rights treaties

1. The Berne Convention

b. Three principles of protection

- National treatment (Art. 5(1), 5(3) BC)
 - Authors of works protected under the BC enjoy the rights under respective laws of each member state where protection is sought
- Minimum rights (Art. 5(1) BC)
 - Every member state grants specifically defined “minimum standards” to eligible authors/works of BC members
- “No formalities” may be required for the enjoyment and exercise of the rights provided (Art. 5(2) BC)

→ All 3 principles only apply in the international context



I. Authors' rights treaties

1. The Berne Convention

c. **Minimum standards** relate to the following:

- **Works protected:**
 - specific kinds of works mentioned in list of examples (Art. 2(1) BC)
 - (see also general clause: “every production in the literary, scientific and artistic domain, whatever mode or form of its expression”, for national treatment)

- **Rights protected** : moral rights (Art. 6bis BC) and exclusive rights of translation, adaption, reproduction, different ways of public communication, right to cinematographic adaptation



I. Authors' rights treaties

1. The Berne Convention

c. Minimum standards (continued) :

- **Permitted Exceptions and Limitations:**
 - System
 - Individual limitations in favour of the public interest, or of specific groups (Art. 2bis(2), 9(2), 10, 10bis, 11bis(3) phr. 2 BC) and 11bis(2), 13(1) BC; implied E&L
- **Duration of protection:** author's lifetime plus 50 years after his death (Art. 7(1) BC) + specific durations



I. Authors' rights treaties

2. WIPO Copyright Treaty (WCT)

a. History and objective

- Need for updating international protection; problem of BC-unanimity
- Special agreement in the meaning of Art. 20 of the Berne Convention
- Entry into force: March 6, 2002
- Number of contracting parties: 96
- **Objective:** updating, adapting the protection to the digital environment

b. Principles of protection

- All principles of protection guaranteed under the Berne Convention (Art. 3 WCT) apply "*mutatis mutandis*"



I. Authors' rights treaties

2. WIPO Copyright Treaty (WCT)

c. Minimum standards under the WCT

- Standards of the Berne Convention 1971 (Art. 1(4) WCT)
- Additional kinds of works:
 - Computer programs (Art. 4 WCT)
 - Databases (Art. 5 WCT)
- Rights granted to authors:
 - (i) Reproduction right also in digital environment (AS to Art. 1(4))
 - (ii) Right of distribution (Art. 6 WCT)
 - (iii) Right of rental (Art. 7 WCT)
 - (iv) (Broader) right of communication to the public , including making available (Art. 8 WCT)
- TPM and RMI protection
- Duration: 50 years after the death of the author for any kind of work (Art. 1(4) + BC; Art. 9 WCT (photographs!) in conjunction with Art. 7(4) BC)



II. Treaties on related rights

1. Rome Convention 1961

a. History and objective

- Several attempts to achieve international protection of related rights
- Entry into force: May 18, 1964
- Number of contracting states: 93
- **Objective:** protection of performances, phonograms and broadcasts

b. Principles of protection: similar to BC principles:

- National treatment, minimum standards, but:
- limited formalities permitted, Art. 11 RC



II. Treaties on related rights

1. Rome Convention 1961

c. Rights:

- minimum rights separately defined for performers (Art. 7, 12 RC), phonogram producers (Art. 10, 12 RC), and broadcasters (Art. 13 RC)
- For performers: only “possibility of preventing” certain acts
- Art. 19 (for audiovisual performers): after consent to audiovisual fixation, rights under Art. 7 no longer apply

d. Limitations and exceptions (Art. 15)

- permitted as regards: (i) private use, (ii) use of short excerpts, (iii) ephemeral fixation, (iv) teaching or scientific research, and
- Same limitations/exceptions as in national laws for authors’ rights



II. Treaties on related rights

1. Rome Convention 1961

- c. **Duration (Art. 14):** at least 20 years after the end of the year when...
 - (i) the fixation was made (for phonograms and incorporated performances)
 - (ii) the performance took place
 - (iii) the broadcast took place

- d. **Ratification** of the Rome Convention is open to parties of the Berne Convention or to the Universal Copyright Convention



II. Treaties on related rights

2. The WIPO Performances and Phonograms Treaty (WPPT)

a. History and objective

- Need for updating international protection; problem of revising RC
- Entry into force: May 20, 2002
- Number of contracting parties: 96

- **Objective:** updated protection of (mainly aural) performances and phonograms in particular in the digital environment



II. Treaties on related rights

2. The WIPO Performances and Phonograms Treaty (WPPT)

b. Principles of protection:

- **National treatment, Art. 4**
 - Limited scope; reciprocity in case of reservations
- **Minimum rights, Art. 3**
 - Criteria of eligibility of Rome Convention apply by analogy (Art. 3(2) WPPT); similar definitions, Art. 2 WPPT
- **No formalities, Art. 20 WPPT**



II. Treaties on related rights

2. The WIPO Performances and Phonograms Treaty (WPPT)

c. Minimum standards under the WPPT

- **Protected subject matter:**
 - Performances and phonograms
- **Rights:**
 - Similar as under the WCT, and moral rights for performers (broader than RC),
 - Equitable remuneration for broadcasting and communication to the public (Art. 15 WPPT)
 - Mostly limited to aural performances/fixations on phonograms
- **Permitted limitations and exceptions:** same as under national law re authors' rights, plus three-step-test regarding all rights (Art. 16 WPPT)
- **Duration:** 50 years (longer than RC)
- **TPM, RMI** as under WCT (beyond RC)



II. Treaties on related rights

3. Beijing Treaty on Audiovisual Performances (BTAP)

a. History and objective

- After AV performers were largely excluded from WPPT: attempts to achieve international protection in separate treaty
- Adoption: June 24, 2012
- **Objective:** protection of related rights of audiovisual performers

b. Principles of protection

- National treatment, Art. 4 (limited extent)
- Minimum rights (Art. 3(1))
- No formalities (Art. 17)



II. Treaties on related rights

3. Beijing Treaty on Audiovisual Performances (BTAP)

c. Minimum standards under the BTAP (similar to WPPT standards)

- **Protected subject matter:** Performances
- **Rights:**
- Very similar as under the WPPT, including moral rights
- Different options for broadcasting and communication to the public (Art. 11)
- Specific options regarding transfer rules, written form, equitable remuneration (Art 12)
- **Permitted limitations and exceptions:** same as under national law re authors' rights, plus three-step-test regarding all rights (Art. 13), as under WPPT
- **Duration:** 50 years after fixation (Art. 14)
- **TPM, RMI** as under WPPT



III. Treaty on the limits of intellectual property rights

1. Marrakesh Treaty (MVT)

a. History and objective

- Adoption: June 27, 2013
- Entry into force: September 30, 2016
- **Objective:** facilitation of access to published works for blind, visually impaired or otherwise print disabled persons (VIPs)

b. Means of realization

- Certain limitations and exceptions to copyright in order to:
 - (i) permit certain acts regarding protected works, in particular to make them available in accessible formats for beneficiaries
 - (ii) permit exchange of accessible format copies cross-border, mostly involving authorized entities





Thank you for your attention!

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