

WIPO



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**DIPLOMATIC CONFERENCE
ON
CERTAIN COPYRIGHT AND NEIGHBORING RIGHTS QUESTIONS**

Geneva, December 2 to 20, 1996

PARTLY CONSOLIDATED TEXT OF TREATY N° 1

prepared by the Chairman of Main Committee I

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* In this partly consolidated text of Treaty N° 1, words which have been deleted are stricken out, and words which have been added are underlined.

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

Recognizing the need to maintain a balance between the interests of the authors and the larger public interest, particularly education, research and access to information,

Have agreed as follows:

Article 1

Relation to the Berne Convention

(1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.

(3) Hereinafter, “Berne Convention” shall refer to the Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works.

(4) Contracting Parties ~~that are not countries of the Union established by the Berne Convention~~ shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.

Article 2

Application of Articles 3 to 6 of the Berne Convention

(1) Contracting Parties shall apply the provisions of Articles 3 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.

(2) When “nationals” are referred to in the provisions mentioned in paragraph (1), they shall be deemed, in the case of a separate customs territory party to this Treaty, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

Article 3

Notion and Place of Publication

(1) When literary or artistic works are made available to the public by wire or wireless means with the consent of their authors in such a way that members of the public may access these works from a place and at a time individually chosen by them, so that copies of these works are available, Contracting Parties shall, under the conditions specified in Article 3(3) of the Berne Convention, consider such works to be published works, for purposes of applying the provisions of the Berne Convention.

(2) When applying Article 5(4) of the Berne Convention, Contracting Parties shall consider works referred to in paragraph (1) of the present Article to be published in the Contracting Party where the necessary arrangements have been made for availability of these works to members of the public.

Article 4

Computer Programs

Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to ~~the expression of a computer program in any form~~ computer programs, whatever may be the mode or form of their expressions.

Article 5

Collections Compilations of Data (Databases)

~~Collections~~ Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any ~~rights~~ copyright subsisting in the data or material contained in the ~~collection~~ compilation.

Article 6

Abolition of ~~Certain~~ Non-Voluntary Broadcasting Licenses

~~(1) Within three~~ Within five years of ratifying or acceding to this Treaty, Contracting Parties shall no longer provide for non-voluntary licenses under Article 11~~bis~~(2) of the Berne Convention in respect of the broadcasting of a work.

~~(2) Within three years of ratifying or acceding to this Treaty, Contracting Parties shall no longer apply the provisions of Article 13 of the Berne Convention.~~

Article 7

Scope of the Right of Reproduction

(1) The exclusive right accorded to authors of literary and artistic works in Article 9(1) of the Berne Convention of authorizing the reproduction of their works ~~shall include~~ , in any manner or form, includes direct and indirect reproduction of their works, whether permanent or temporary, ~~in any manner or form~~.

(2) ~~Subject to the provisions of~~ to the conditions under, and without prejudice to the scope of applicability of, Article 9(2) of the Berne Convention, it shall be a matter for legislation in Contracting Parties to limit the right of reproduction in cases where a temporary reproduction has the sole purpose of making the work perceptible or where ~~the~~ a temporary reproduction is of a transient or incidental nature, provided that such reproduction takes place in the course of use of the work that is authorized by the author or permitted by law in accordance with the Berne Convention and this Treaty.

Article 8

Alternative A

Right of Distribution and Right of Importation

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the making available to the public of the original and copies of their works through sale or other transfer of ownership;

(ii) the importation of the original and copies of their works, even following any sale or other transfer of ownership of the original or copies by or pursuant to authorization.

(2) National legislation of a Contracting Party may provide that the right provided for in paragraph (1)(i) does not apply to distribution of the original or any copy of any work that has been sold or the ownership of which has been otherwise transferred in that Contracting Party's territory by or pursuant to authorization.

(3) The right of importation in paragraph (1)(ii) does not apply where the importation is effected by a person solely for his personal and non-commercial use as part of his personal luggage.

Alternative B

Right of Distribution

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

(2) A Contracting Party may provide that the right provided for in paragraph (1) does not apply to distribution after the first sale or other transfer of ownership of the original or copies of works by or pursuant to authorization.

Article 9

Right of Rental

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the commercial rental of the original and copies of their works even after distribution of them by or pursuant to authorization by the author.

[Article 9 continues]

[Article 9, continued]

(2) Except in the case of computer programs, ~~collections~~ compilations of data or other material in machine-readable form subject to the protection under Article 5, and musical works embodied in phonograms, specific types of works may be excepted from the provisions of paragraph (1) unless the rental of such works has led to widespread copying that materially impairs the exclusive right of reproduction. In the case of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

(3) Contracting Parties may provide in their national legislation that the provisions of paragraph (1) and paragraph (2) do not apply in respect of architectural works or in respect of works of applied art.

Article 10

Right of Communication

Without prejudice to the rights provided for in Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii) and 14*bis*(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, including the making available to the public of their works, by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Article 11

Duration of the Protection of Photographic Works

In respect of photographic works, the Contracting Parties shall apply the provisions of Articles 7(1), 7(3), 7(5), 7(6), 7(7) and 7(8) of the Berne Convention and shall not apply the provisions of Article 7(4).

Article 12

Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty ~~only~~ in certain special cases that do not conflict with ~~the~~ a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

~~(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.~~

Article 13

Obligations concerning Technological Measures

(1) Contracting Parties shall make unlawful the importation, manufacture or distribution of protection-defeating devices, or the offer or performance of any service having the same effect, by any person knowing or having reasonable grounds to know that the device or service will be used for, or in the course of, the exercise of rights provided under this Treaty that is not authorized by the rightholder or the law.

(2) Contracting Parties shall provide for appropriate and effective remedies against the unlawful acts referred to in paragraph (1).

(3) As used in this Article, “protection-defeating device” means any device, product or component incorporated into a device or product, the primary purpose or primary effect of which is to circumvent any process, treatment, mechanism or system that prevents or inhibits any of the acts covered by the rights under this Treaty.

Article 14

Obligations concerning Rights Management Information

(1) Contracting Parties shall make it unlawful for any person knowingly to perform any of the following acts:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution or communicate to the public, without authority, copies of works from which electronic rights management information has been removed or altered without authority.

(2) As used in this Article, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, and any numbers or codes that represent such information, when any of these items of information are attached to a copy of a work or appear in connection with the communication of a work to the public.

Article 15

Application in Time

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

Article 16

Special Provisions on Enforcement of Rights

Alternative A

(1) Special provisions regarding the enforcement of rights are included in the Annex to the Treaty. [See the Annex of Document CRNR/DC/4.]

(2) The Annex forms an integral part of this Treaty.

[Article 16 continues]

[Article 16, continued]

Alternative B

Contracting Parties shall ensure that the enforcement procedures specified in Part III, Articles 41 to 61, of the Agreement on Trade-Related Aspects of Intellectual Property Rights, ~~Including Trade in Counterfeit Goods~~, Annex 1C, of the Marrakesh Agreement Establishing the World Trade Organization, concluded on April 15, 1994 (the “TRIPS Agreement”), are available under their national laws so as to permit effective action against any act of infringement of the rights provided under this Treaty, including expeditious remedies to prevent infringements, and remedies that constitute a deterrent to further infringements. To this end, Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 41 to 61 of the TRIPS Agreement.

Alternative C

(1) Contracting Parties undertake to adopt, in accordance with their constitutions, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

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