

INTERNATIONAL PROTECTION OF COPYRIGHTS AND RELATED RIGHTS

I. International treaties on the protection of copyrights and related rights

1. Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886

a) important principles of Berne Convention

- national treatment - exceptions
- minimum standard of protection
- formality-free protection
- protection by the law of country in which the protection is sought
- eligibility for protection (Art. 3) - authors from Contracting Parties (unpublished works) and from non-contracting countries (only published works in Berne country or simultaneously in both Berne and non-contracting country)

b) subject of protection (works protected) – demonstrative list (Art. 2)

c) rights protected

i. moral rights (Art. 6bis)

- right to claim authorship of the work (right of paternity/attribution)
- right of integrity

ii. economic rights

- right of translation (Art. 8)
- right of reproduction– any manner or form (Art. 9)
- right of public performance of dramatic, dramatico-musical and musical works (Art. 11)
- 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 (Art. 11bis)
- right of public recitation (Art. 11ter)
- right of adaptation (Art. 12)
- right of making cinematographic adaptation and reproduction of works, and the right of distribution of the works thus adapted and reproduced (Art. 14)
- resale royalty right (droit de suite) - original works of art and original manuscripts (based on reciprocity) (Art. 14ter)

d) limitations of economic rights – especially: three step test (only right of reproduction - Art. 9 (2)), quotations (Art. 10), reproduction of newspaper or similar articles and use of works for the purpose of reporting current events (Art. 10bis)

e) duration of protection – life of the author + 50 years

2. Universal Copyright Convention (1952; UNESCO)

- overcoming of differences between continental-European and Anglo-American conception of copyright
- copyright notice – © the name of the copyright proprietor the year of first publication (art. III(1))
- duration of protection – life of the author + 25 years

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

a) definition of a phonogram (Art. 3(b))

b) protected rights

i. performers (Art. 7) – right to prohibit:

- 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.

ii. phonogram producers (Art. 10 and 12):

- right to authorize or prohibit the direct or indirect reproduction of their phonograms,
- right to a single equitable remuneration in case of broadcasting or communication to the public in any form of phonograms published for commercial purposes (belongs also to performers if a national legislation requires)
- notice of phonogram producer - (P) the year date of the first publication the name of the owner of the rights of the producer (Art. 11)

iii. broadcasting organizations (Art. 13) - right to authorize or prohibit:

- 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

c) limitations and exceptions – especially: private use, reporting of current events, ephemeral fixation, teaching + the same exceptions as for copyrights (Art. 15)

d) term of protection - 20 years (Art. 14)

4. TRIPS Agreement

a) copyrights

- duty to obey Articles 1-21 of the Berne Convention (except for moral rights - Art. 6bis) (Art. 9(1))
- scope of protection (Art. 9(2))
- computer programs (Art.10(1))
- databases (Art.10(2))
- right of rental of computer programs and cinematographic works (Art. 11)
- term of protection – life + 50 years (Art. 12)
- limitations and exceptions – three step test (Art. 13)

b) related rights (Art. 14)

- similar list of rights as in the Rome Convention + right of rental (Art. 14(4)) – provisions of the Rome Convention are not incorporated
- term of protection – 50 years for performers and phonogram producers, 20 years for broadcasting organizations (Art. 14(5))
- exceptions – reference to the Rome Convention
- differences from the Rome Convention

5. WIPO Copyright Treaty (1996)

a) relation to the Berne Convention (Art. 1 and 3)

b) rights recognized by WCT

- scope of protection (Art. 2)
- computer programs and databases (Art. 4 and 5)
- right of distribution and right of rental (Art. 6 and 7)
- scope of right of reproduction and storage in an electronic medium – definition in Art. 9 of the Berne Convention is sufficient
- transmission of works in digital networks – right of communication to the public, including right of making available to the public (Art. 8)
- technological measures of protection and rights management information (Art. 11 and 12)

c) limitations and exceptions - three step test applicable also to rights under the Berne Convention (Art. 10)

d) other principles

6. WIPO Performances and Phonograms Treaty (1996)

a) relation to other international treaties (Art. 1)

b) definitions (Art. 2)

c) rights protected by WPPT

a. rights of performers

i. moral rights (Art. 5)

- right to claim to be identified as the performer of his performances - except where omission is dictated by the manner of the use of the performance
- protection against any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation

ii. economic rights to unfixed performances (Art. 6)

- right of broadcasting and communication to the public and right of fixation of unfixed performances

b. rights of performers and phonogram producers

- right of reproduction (Art. 7/11) – covers storage in digital form in an electronic medium
 - right of distribution (Art. 8/12)
 - right of rental (Art. 9/13)
 - right to equitable remuneration for broadcasting and communication to the public (Art. 15)
 - transmission over computer networks – right of making available to the public (Art. 10/14)
 - technological measures of protection and rights management information (Art. 18 and 19)
 - term of protection – 50 years (Art. 17)
- d) limitations and exceptions - the same exceptions as for copyrights + three step test (Art. 16)
- e) other principles