



# International Copyright Legal Framework

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# Copyright and Related Rights Multilateral Treaties

- Berne Convention (1886-1971)
- Rome Convention (1961)
- Phonograms Convention (1971)
- Satellites Convention (1974)
- TRIPS Agreement (1994)
- **WIPO Copyright Treaty (1996)**
- **WIPO Performances and Phonogram Treaty (1996)**
- **Beijing Treaty on Audiovisual Performances (2012)**
- **The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (2013)**



# Membership

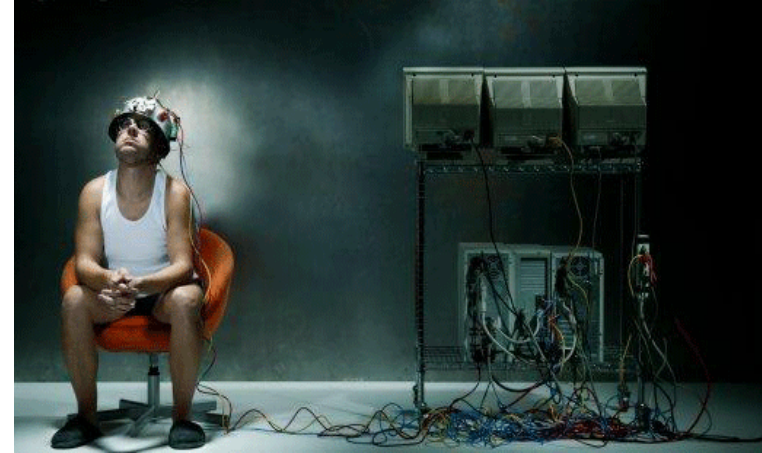
- Angola: TRIPS
- Brazil: Berne, Rome, TRIPS, *MVT Signature*
- Cabo Verde: Berne, Rome, TRIPS
- Equatorial Guinea: Berne
- Guinea-Bissau: Berne, TRIPS
- Mozambique: Berne, TRIPS, *MVT Signature*
- Portugal: Berne, Rome, TRIPS, WCT, WPPT
- Sao Tome and Principe: *BTAP and MVT Signature*
- Timor Leste

# Outline

- Rights granted: update/clarification of existing ones and provision of new ones
- Technological Protection Measures
- Limitations and Exceptions
- Relationship between treaties
- Rules of interpretation

# WIPO Internet Treaties

Member States: 93 WCT; 94 WPPT;  
(and 74 BTAP signatures)



<http://www.thousandtyone.com/blog/default,month,2007-01.aspx>

..ensure that copyright applies in the digital environment facilitating access to and use of creative content. They introduced:

- Right of making available;
- Technological protection measures;
- Rights management information;
- Limitations and exceptions for the digital age;
  
- General updates: software and databases; distribution and rental rights; economic and moral rights for performers; economic rights for producers of phonograms; photos.

# Right of Making Available to the Public

## Interactive transmission of Content

- Exclusive right;
- Different views on legal characterization, but freedom on how to implement it (*“Umbrella solution”*);
- Neutral description of the act of transmission over interactive network: *“...the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them”*.



The Internet offers users the ability to easily copy material; however, by doing so we may be breaking the law. Keep in mind that being able to copy others work does not give us the right to.

<http://www.state.sc.us/newsletter/ciocs/200712636403028.3416.jpg>

# Digital Rights Management



- **Technological Protection Measures (TPM):** “any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts in respect of works or objects of related rights, which are not authorized by the owner of rights or **permitted by the law.**”
- **Rights Management Information (RMI):** “information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.”

# BTAP, Article 15. Relation between L&Es and TPMs

“Agreed statement concerning Article 15 as it relates to Article 13: *It is understood that nothing in this Article prevents a Contracting Party from adopting **effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions** provided in that Contracting Party’s national law, **in accordance with Article 13**, where technological measures have been applied to an audiovisual performance and the beneficiary has **legal access** to that performance, in circumstances such as **where appropriate and effective measures have not been taken by rights holders** in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party’s national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, it is further understood that the obligations under Article 15 are **not applicable to performances unprotected or no longer protected** under the national law giving effect to this Treaty.”*



# Limitations and Exceptions

## Article 10 WCT

- Application of 3-step test to rights granted by the Treaty;
- Application of 3-step test in relation to all rights granted by the Berne Convention;
- (Agreed statement) Member States can extend existing L&Es or create new ones to adapt national legislation to the digital environment.

# Relationship between Treaties

- TRIPS Article 9.1 imposes respect of Berne Convention Articles 1 – 21 Berne (except 6bis);
- WCT is a special agreement within the meaning of Berne Convention Article 20 (i.e. more extensive rights or other provision not contrary to this Convention);
- BTAP and MVT are stand-alone treaties (but..)

# Interpretation of International Treaties



# Vienna Convention on the Law of Treaties

## Art. 31 General Rule of Interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their **context** and in the light of its **object and purpose**.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition **to the text, including its preamble** and annexes:
  - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;**
  - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
  - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) any relevant rules of international law applicable in the relations between the parties.
4. (..)

# Vienna Convention on the Law of Treaties

## Article 32 Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including **the preparatory work of the treaty and the circumstances of its conclusion**, in order **to confirm** the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.



Obrigado!

[www.wipo.int/copyright](http://www.wipo.int/copyright)

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