



# Copyright and Related Rights Introduction to the International Legal Framework

**WIPO Regional Workshop on the Opportunities and Challenges in the  
Implementation of the Beijing and Marrakesh Treaties**

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Copyright Law Division

# International Legal Framework – General Principles

- It is the result of a historical process...
- ...driven by technological development.
- It has universal scope.
- It is based on the principles of minimum protection...
- ...national treatment...
- ... absence of formalities...
- ...and balance...

# Related Rights

- RELATED RIGHTS protect the legal interest of certain persons and/or Organizations, who either contributes to:
  - **making works available to the public** or
  - **produce subject matter, that does not qualify as “works”, but express creativity or technical and organizational skill** sufficient to justify recognition of a copyright-like property right.
- Performing Artists.
- Phonograms Producers.
- Broadcasting Organizations.

# Performer -

- **Actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore (Art. 9 RC, Art. 2(a) WPPT).**



# Why Broadcasting Organizations?

Rights of broadcasting organizations are recognized because their **financial and organizational resources** are necessary to disseminate contents to the public.

They also have a legitimate interest in having the **legal resources necessary to take action against unauthorized retransmissions of their own programs by other similar organizations**

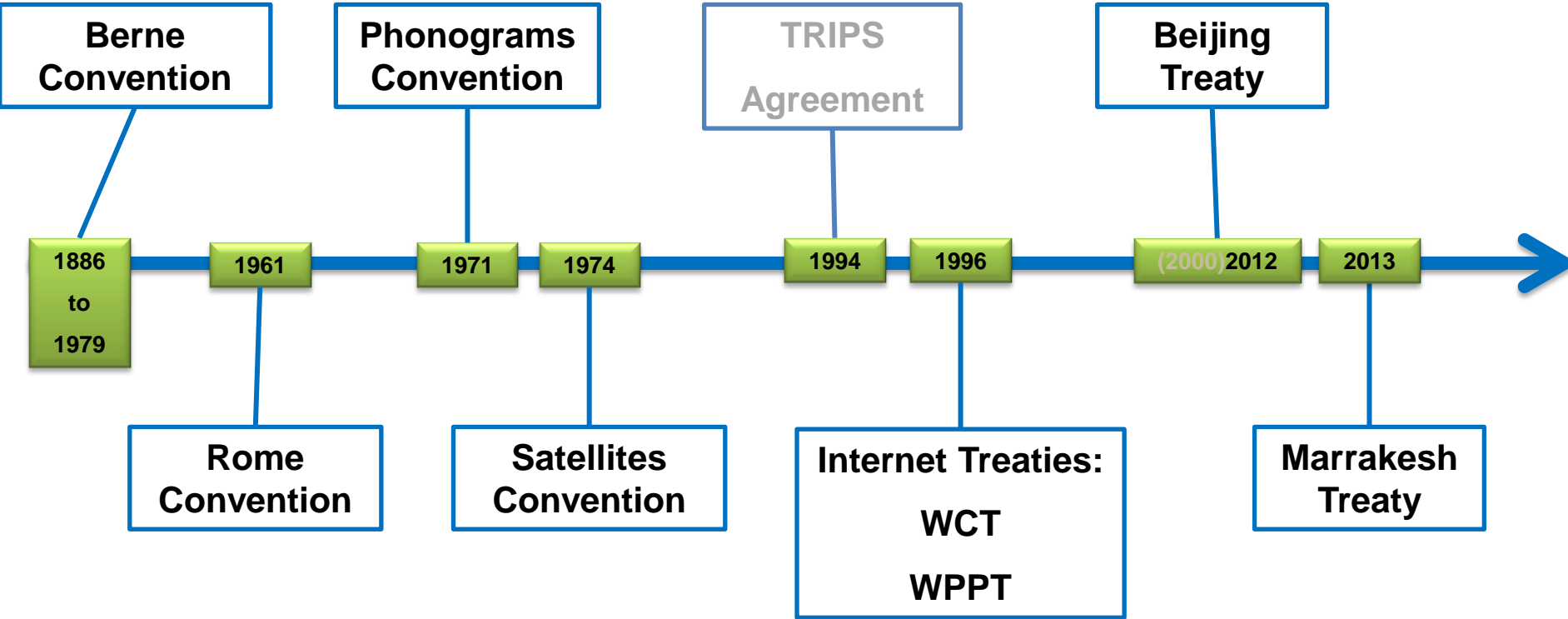


# Why phonogram producers?

Rights of producers of phonograms are recognized because their **creative, financial and organizational resources** are necessary to make recorded sound available to the public in the form of commercial phonograms, and because of their legitimate interest in having the **legal resources necessary to take action against unauthorized uses**



# International Framework in Copyright



# The Berne Convention for the Protection of Literary and Artistic Works (1886)

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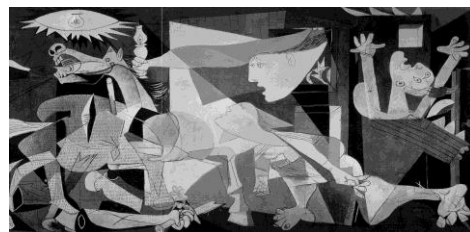
- Beneficiaries

Authors in literary and artistic works, which includes every production  
In the literary, scientific and artistic domain.

Chosen examples from the convention text Art. 2(1) which contains a non-exclusive list of literary and artistic works:

The expression “literary and artistic works” shall include **every production** in the literary, scientific and artistic domain, whatever may be the **mode or form of its expression**,

such as ...books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments ...





# Berne Convention /Rights Addressed

- Automatic protection of minimum economic and moral rights,
- The enjoyment and the exercise of [the rights which the respective laws of Union countries grant to their nationals, as well as the rights specially granted by the Convention] shall not be subject to any formality;...' (Art. 5(2) BC)
- based on national treatment, independent from the protection in the country of origin
- But ORIGINALITY work = materialization of the author's individual personality
- originality test = central threshold for determining eligibility for protection

# The Berne Convention for the Protection of Literary and Artistic Works (1886)

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- Key Provisions

Article 5; (1) “National Treatment”

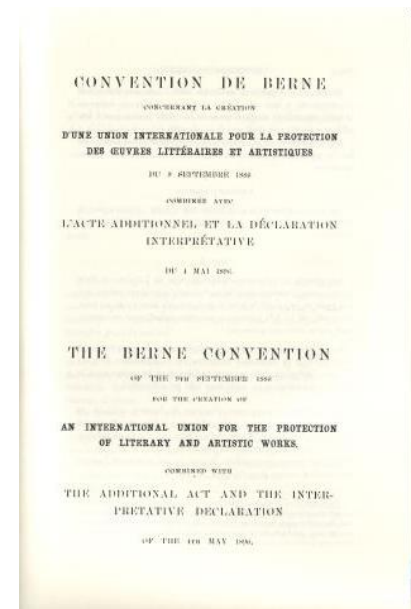
“Formality-free Protection”

Article 6bis; “Moral Rights”

Article 7; “Term of Protection”

Article 9; (1) “exclusive right of Reproduction ”but reproduction allowed in certain cases :

(2) “The Three Step Test”. Such reproduction should be limited to special cases, not conflict with normal exploitation of the work and does not unreasonably prejudice the normal exploitation of the wk.



# TERM OF PROTECTION

- The term of protection [...] shall be the life of the author and fifty years after his death.’
  - in many countries: 70 years post mortem
- cinematographic works
  - making available + 50 years (optional)
- anonymous or pseudonymous works
  - making available + 50 years
- photographic works, works of applied art
  - making of the work + 25 years (minimum)

# Copyright

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graph TD; Copyright[Copyright] --> MoralRights[Moral Rights]; Copyright --> EconomicRights[Economic Rights]; MoralRights --> MoralRightsList["• Paternity<br>• Integrity"]; EconomicRights --> EconomicRightsList["▪ Reproduction (Art 9 BC)<br>▪ Translation (Art 8 BC)<br>▪ Adaptation, Alterations (Art 12 BC)<br>▪ Public Performance and Public Communication (Art 11 BC)<br>▪ Public Recitation (Art 11ter BC)<br>▪ Broadcasting (Art 11bis BC)<br>▪ Related to Cinematographic Works (Art 14, 14bis BC)<br>▪ Droite de Suite (Art 14ter BC)"]
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## Moral Rights

- Paternity
- Integrity

## Economic Rights

- Reproduction (Art 9 BC)
- Translation (Art 8 BC)
- Adaptation, Alterations (Art 12 BC)
- Public Performance and Public Communication (Art 11 BC)
- Public Recitation (Art 11ter BC)
- Broadcasting (Art 11bis BC)
- Related to Cinematographic Works (Art 14, 14bis BC)
- Droite de Suite (Art 14ter BC)

# Limitations and exceptions

- *Rationale*: need to balance the rights of authors of creative works and the public interest, by allowing some uses of copyrighted material to be exempted from the requirement to seek authorization from the right-holder or to pay royalties.
- quotations, press summaries (art. 10(1) BC)
- articles on current topics (art. 10bis(1) BC)
- lectures, addresses, works of the same nature delivered in public (art. 2bis(2) BC)
- reporting of current events (art. 10bis(2) BC)
- illustrations for teaching (art. 10(2) BC)
- compulsory licenses concerning broadcasting, and wireless or loudspeaker communications (art. 11bis(2) BC)
- ephemeral recordings made by broadcasting organizations (art. 11bis(3) BC)

# The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961)

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- Beneficiaries

Performers of literary and artistic works:

*“actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works.” Art. 3 (a)*

Producers of phonograms:

*“person, or the legal entity which, first fixes the sounds of a performance or other sounds;” Art. 3 (c)*

Broadcasting Organisations : least explicit

- Rights Addressed

Copyright related rights;

Performing artists in their performances, producers of phonograms in their recordings and those of broadcasters in their radio and television programs.

# The Rome Convention (1961)

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## ■ Key Provisions

Article 4 – 5 – 6 Performances, Phonograms and broadcasts protected. “Definitions”

Article 7 – “minimum protection” refers to the possibility of preventing

- i. Recording of unfixed performances
- ii. The broadcasting or communication to the public of unfixed performances
- iii. Reproduction of an unauthorized fixation of the performance
- iv. Reproduction of a fixation of the performance if the reproduction is made for different purposes from those the performers gave their consent

**NB : the protection is limited to aural fixations.**

Article 12 – “If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both.

Article 15 – “permitted exceptions”- private use, excerpts, ephemeral fixations

Article 19 –inclusion of performance in an audiovisual fixation, no possibility of exercising rights of article 7.

# Rome Convention/Term of protection

The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

(a) the fixation was made—for phonograms and for performances incorporated therein;

(b) the performance took place—for performances not incorporated in phonograms;

(c) the broadcast took place—for broadcasts.



# WIPO Copyright Treaty (1996)

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**Member States recognized the need “to provide adequate solutions to the questions raised by the new economic, social, cultural and technological developments”; and to address “the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works”.**

## ■ **Beneficiaries**

Authors in literary and artistic works, which includes every production  
In the literary, scientific and artistic domain.

The treaty grants rights to all authors recognized by the Berne Convention, adding two subject matters to be protected.

- Computer programs
- Compilations of data or other material (databases)

## ■ **Rights Related**

The right of distribution, the right of rental, a broader right of communication to the public, and all rights otherwise recognized by the Berne Convention.

# Key provisions: The digital agenda

- Reproduction right
- *The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.*”

Article 9 of Berne fully applies in the digital environment. Hence:

- Art. 9(1)-Reproduction in ‘any manner or form’ irrespective of duration; and whether of a temporary nature
- Art. 9(2)-Justified exceptions, such as for transient and incidental copies, provided they comply with the 3-step test

# Key provisions: The digital agenda

- Article 8 – “Right of communication to the public”

“Authors of literary and artistic works given exclusive right *of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access from a place and time individually chosen by them.*”

(Article 8, WCT)

*(Similar provision for performers and phonogram producers in Articles 10 & 14, WPPT)*

# Agreed statement

It is understood that the provisions of Article 10 permit Contracting Parties to **carry forward and appropriately extend** into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention.

Similarly, these provisions should be understood to permit Contracting Parties to **devise new exceptions and limitations** that are appropriate in the digital network environment.'

## The Digital agenda (4)

Technological measures ‘

...effective technological measures that are used by authors in connection with the exercise of their rights [...] and that restrict acts [...] which are not authorized by the authors or permitted by law.’ (Art. 11 WCT)

- protected against circumvention

# Rights management information

‘...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...’

(Art. 12 WCT)

- protected against removal or altering
- facilitation of e-commerce

# The WIPO Performances and Phonograms Treaty (1996)

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- Beneficiaries

- performers (“actors, singers, musicians, dancers and other persons who act, sing deliver, disclaim, play in, interpret or otherwise perform literary or artistic works or expressions of folklore”)
- producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds.)

- Rights Related /Performers

As to performances fixed in phonograms; The right of reproduction, the right of distribution, the right of rental and the right of making available to the public.

As to unfixed (live) performances; the right of broadcasting (except in the case of rebroadcasting), the right of communication to the public (except where the performance is a broadcast performance) and the right of fixation.

Right of remuneration for broadcasting and communication to the public

**NB Protection applies only to aural recordings not audiovisual**

# The WIPO Performances and Phonograms Treaty (1996)

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## - Producers of phonograms

The treaty grants producers of phonograms economic rights in their phonograms, as follows; the right of fixation, reproduction, the right of distribution, the right of rental and the right of making available to the public.

## ■ **Key Provisions**

Article 5 – “moral rights of performers”

Article 16 - incorporation of the “three step test”

Article 17- 50 years from the end of the year the performances was fixed in a phonogram

Article 18 – “Obligations concerning Technological Measures”

Article 19 – “Obligations concerning Rights Management Information”



# Beijing Treaty on Audiovisual Performances (2012)

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- **Beneficiaries**

Performers in Audiovisual performances.

- **Rights Related**

The Treaty grants economic rights for performers in their performance fixed in audiovisual fixations, as follows; the right of reproduction, the right of distribution, the right of rental and the right of making available.

As to unfixed (live) performances; the right of broadcasting (except in the case of rebroadcasting), the right of communication to the public (except where the performance is a broadcast performance) and the right of fixation.

The treaty also grants performers moral rights.

# Beijing Treaty on Audiovisual Performances (2012)

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- **Key Provisions**

Article 2 (b) – Definition of “audiovisual fixation”

Article 5 – “Moral Rights”

Article 12 – “Transfer of Rights”

Article 14 – “Term of Protection”

# Marrakesh Treaty (2013)

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- **Beneficiaries**

Persons who are blind, visually impaired, or otherwise print disabled.

- **Rights Related**

- Limitations or exceptions in order to facilitate access to published works for the beneficiaries.
- Limitations and exceptions allowing the cross-border transfer of such works under defined circumstances.

# Marrakesh Treaty (2013)

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- **Key Provisions**

Article 2 (b) “Definition; accessible format copy”

Article 3 – “Definition; beneficiary persons”

Article 4 – “National Law Limitations and Exceptions Regarding Accessible Format Copies”

Article 5 – “Cross-Border Exchange of Accessible Format Copies”

# Membership

- Berne Convention: 168 members including Bhutan, China, India, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Republic of Korea, Singapore, Thailand and Viet Nam;
- Rome Convention: 92 members including Republic of Korea and Viet Nam;
- WIPO Copyright Treaty: 93 members including China, Indonesia, Mongolia, Philippines, Republic of Korea and Singapore;
- WIPO Performances and Phonogram Treaty: 94 members including China, Indonesia, Mongolia, Philippines, Republic of Korea and Singapore.
- Beijing Treaty 6 including Japan and China
- Marrakesh VIP 8 including India and Singapore



Thank you!

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