

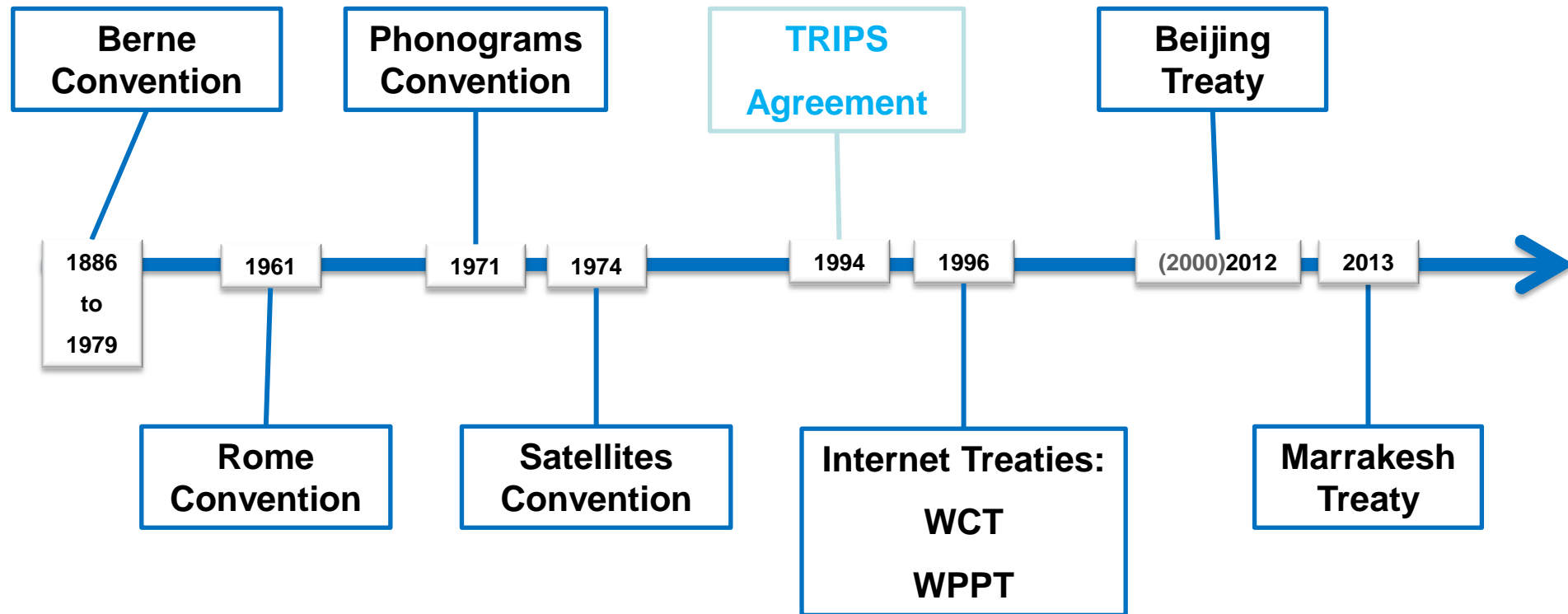


# The Importance of Copyright and Related Rights International Treaties and National Legislation for the Digital Era

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# International Copyright Framework



# WIPO Internet Treaties



# WIPO Internet Treaties (cont.)

- WIPO Copyright Treaty (WCT) protects copyright of authors (1996)
- WIPO Performances and Phonograms Treaty (WPPT) protects related rights of
  - “Sound” performers
  - Producers of phonograms
- Beijing Treaty on Audiovisual Performances (BTAP) protects related rights of audiovisual performers (2012)
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (2013)
- What is not covered? Broadcasting organizations

# WIPO Internet Treaties (cont.)

- Right of reproduction (storage of works in digital form)
- Right of making available
- Right of distribution
- Right of rental
- Limitations and exceptions for the digital age
- Technological protection measures
- Rights management information
- Other key provisions: copyright for software and databases; moral rights for performers; provisions for photographs

# Right of Reproduction = Storage of works in digital form in electronic medium

The reproduction right 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. (Agreed statements to Article 1(4) WCT and Article 7 WPPT )

# Right of Reproduction (cont.)

Agreed Statement that Article 9 of Berne fully applies in the digital environment. Substantive impact:

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

*(Reference : WCT [Article 1(4)] & WPPT [Articles 7 & 11])*

# Right of Making Available

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)*



# Right of Making Available (cont.)

- Interactive transmission of content on the Internet
- International Consensus: exclusive right
- Different views on legal characterization
- “Umbrella Solution”
- Neutral description of the act of transmission over interactive network

# Limitations and Exceptions

Three-Step Test (3ST or TST) as a common rule:

- Article 9(2) Berne Convention, Article 13 TRIPS Agreement, Articles 10 WCT and 16 WPPT:
  - certain special cases
  - do not conflict with normal exploitation
  - do not prejudice the legitimate interests of right holders
- Agreed statements to Article 10 WCT and Article 16 WPPT : Existing exceptions can be kept or extended to the digital environment and new exceptions are possible

# Limitations and Exceptions (cont.)

Examples of new limitations and exceptions:

- Temporary electronic copies which occur as part of the technical process of making Internet transmission
- Caching and browsing: temporary reproduction which occurs at the point of reception to enable the view of the accessed material
- Making available of content in the premises of a cultural institution

# Digital Rights Management

**TPM + RMI = DRM**

**“The answer to the machine is in the machine”**

© Charles Clark

# 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 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.”

# TPM and RMI

Obligation to provide adequate legal protection and remedies against:

- circumvention of technological measures that restrict unauthorized acts
- removal/alteration of electronic rights management information

*(Ref : WCT Articles 11 & 12, WPPT Articles 18 & 19)*

# Internet Intermediaries

## Agreed Statement on Article 8 WCT:

*It is understood that the mere provision of physical facilities for enabling or making communication does not in itself amount to communication within the meaning of this Treaty or Berne Convention.*

(Liability of Access and Service Providers)

# Internet Intermediaries (cont.)

## Articles 14 WCT and 23 WPPT: Provisions on Enforcement

*“(1) Contracting Parties undertake to adopt, in accordance with their legal systems, 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.”*



# Beijing Treaty on Audiovisual Performances (BTAP)

- Complements WPPT
- **Audiovisual** performances (unfixed and fixed)
- **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. 2 (a) BAPT)

# Definition of Audiovisual Fixation

“audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device (Article 2(b) BTAP)

# Performers' Rights Under BTAP

- Moral Rights (Article 5)
- Economic Rights in Unfixed Performances (Article 6)
- Economic Rights in Fixed Performances
  - Right of Reproduction (Article 7)
  - Right of Distribution (Article 8)
  - Right of Rental (Article 9)
  - Right of Making Available (Article 10)
  - Right of Broadcasting and Communication to the Public (Article 11)

# Transfer of Rights

“A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.” (Article 12 (1) BTAP)

## Transfer of rights (cont.)

“A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties. . . .(Article 12 (2) BTAP)

Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.”  
(Article 12 (3) BTAP)

# Limitations and Exceptions

- Scope: May provide same kinds of limitations or exceptions as provided in national legislation in connection with copyright protection
- Application of three-step test: “*Contracting Parties shall confine any limitation of or exceptions to rights provided for in this Treaty to **certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer.***”
- See Article 13 BTAP and Agreed Statement: same conditions as L&Es under WCT and WPPT

# Article 15 Agreed Statement on Technological Protection Measures

“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.”

# Marrakesh Treaty

- Domestic and cross-border limitations and exceptions for persons with print disabilities
- Accessible Books Consortium (ABC) contributes to practical solutions for implementing Marrakesh
- Authorized Entities (AEs) joining the ABC Global Book Service get access to digital catalogues of other participating AEs
- The more countries join Marrakesh and ABC, the more works in special formats become available to more persons with print disabilities around the world



# Why join WIPO Internet Treaties

- Adhere to internationally agreed standards for protecting and accessing creative content in the global digital marketplace
- International copyright framework provides for balanced and flexible solutions tailored to national legal systems and domestic interests
- Protect your local authors, performers and producers in foreign markets
- Adopt modern copyright law promoting creation of and access to art, entertainment and software in digital era
- Contribute to social, cultural and economic development

# Status in countries of the region

- WCT and WPPT: 5 out of 18 countries present at the workshop; 3 expected soon; 6 have updated their copyright law to the digital era but have not joined
- BTAP: 1 out of 18 ratified; 6 others expressed interest
- Marrakesh Treaty: 4 out of 18 are members; 5 others have taken concrete steps
- Not member of Berne Convention: 2/18
- No Collective Management Organization (CMO): 3/18
- Diversity: treaties; national copyright laws; CMOs

# Broadcasting Organizations

- Rights of broadcasting organizations are recognized because their financial and organizational resources are necessary to disseminate content to the public
- Following BTAP, last Rome Convention section not updated
- Different national legal solutions for protecting broadcasting organizations
- Long-standing negotiations ongoing at WIPO Standing Committee on Copyright and Related Rights (SCCR)
- Common understanding on core principles and objectives is making progress, agreement on some key issues still outstanding

# 2007 General Assembly Mandate

- *“...[T]o negotiate and conclude a WIPO Treaty on the protection of broadcasting organizations, including cablecasting organizations. The scope of the Treaty will be confined to the protection of broadcasting and cablecasting organizations in the traditional sense.”*
- *The “SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection.”*

# Broadcasting Organizations (cont.)

- SCCR 36 recommendation to 2018 General Assembly

*In view of the progress made in recent SCCR sessions, the General Assembly is invited to consider appropriate action towards convening a Diplomatic Conference for the adoption of a treaty on the protection of broadcasting organizations, subject to reaching consensus on fundamental issues, that is, objectives, specific scope and object of protection.*

# Limitations and exceptions

- Libraries and archives and museums
- Education and research
- Persons with other disabilities



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**SCCR/31/4**  
**ORIGINAL: ENGLISH**  
**DATE: DECEMBER 1, 2015**

## **Standing Committee on Copyright and Related Rights**

**Thirty-First Session**  
**Geneva, December 7 to 11, 2015**

**PROPOSAL FOR ANALYSIS OF COPYRIGHT RELATED TO THE DIGITAL  
ENVIRONMENT**

*Document presented by the Group of Latin American and Caribbean Countries (GRULAC)*

# Analysis of copyright related to the digital environment

- Next steps: study focused on digital music services, which could be followed later by complementary studies on audiovisual and literary works



# WIPO mandate and assistance

- Promote the international Intellectual Property system
- Technical assistance for joining WIPO Internet Treaties
- Legislative advice for updating national copyright laws
- Technical assistance, capacity building and infrastructure for efficient collective copyright management
- Accessible Books Consortium and Publishers Circles
- Possible treaty on the protection of broadcasting organizations
- SCCR ongoing negotiations and discussions on issues related to copyright in the digital era



Thank you!

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