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2010年 2月

碩士學位論文

International protection of copyright and related rights

By

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2010 年 2 月 日

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이 論文을 碩士學位 申請論文으로 提出함

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International protection of copyright and related rights

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Abstract:

Copyright is a legal term used to describe the rights given to creators for their literary and artistic works" The literary and artistic works"shall include every production in the literary, scientific and artistic domain, whatever may be the form or mode of its expression...

' Works covered under this category include novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps, and technical drawings The creators of original works and their heirs have certain important economic rights Copyright is owned by the physical person who created the work (often referred to as" creator" or "author").

But the related rights or "neighbouring rights" is the representatives and performance artists, musicians, singers ,and other persons who are perform literary and artistic works , protecting the producer's audio rights and video, and prohibit the reproduction of their phonograms, either directly or indirectly, and protecting the broadcasting

organizations rights. Those rights come after the author's rights protection, and the related rights holders who are doing publish of creative works of authors and there facilitate of the intellectual creation process by assisting authors to communicate their works to the public.

There are some conventions to protecting those rights such as;

The Berne Convention for the Protection of Literary and Artistic Works, Berne Convention was developed at the instigation of Victor Hugo of the Association Literary and Artistic International. It is the oldest international agreement in the Convention is the most important treaty that governs the area of copyright. Article 7 lays down a minimum term of protection; copyright protection granted by the Convention is the life of the author and fifty years from the end of the year of his death.

Under the Berne Convention member countries offer each other the same protections as they would provide for their own citizens' copyrights. Include any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression"

TRIPS agreement is an international agreement administered by the World Trade Organization (WTO) and there are some Provisions of the Agreement in the field of copyright and related rights.

Roma convention, Convention for the Protection of Performers, The minimum term of protection under the Rome Convention is twenty years from the end of the year in which the fixation was made.

The WIPO Copyright Treaty, adopted by the World Intellectual Property Organization (WIPO) in 1996, Provides additional protections for copyright deemed necessary in the modern information era. It protects literary and artistic works, a broad category that includes

books, music, art, movies, computer programs, databases, and digital communications including transmissions of copyrighted works via the internet and other computer networks.

The WIPO Performances and Phonograms Treaty

That treaty was also adopted by the World Intellectual Property Organization (WIPO) on 20 December 1996. The WIPO Performances and Phonograms Treaty extends the existing provision of the Berne Convention and the Rome Convention in 1961 for the Protection of Performers, Producers Phonograms. As in the case of the WIPO Copyright Treaty, some of the aspects of this treaty had already been addressed in TRIPS and it was therefore important for WIPO to update existing protection to ensure that it remained at the leading edge of copyright and related rights protection. These conventions are protecting the copyright and related rights.

We believe that these conventions and laws are not sufficient to maintain the intellectual property of authors and creators. We must enact new laws that the new measures and activated to reach a better situation. Lack of attention to intellectual property would negatively impact on the movement of international creativity and write activity and composition style and also affects our lives negatively.

I . Introduction

this study focuses on international protection of copyright and related rights," Copyright and its related rights are essential to human creativity, and contribute to the cultural and economic development of nations."¹⁾

France is the first to copyright protection when it was released on 13.1.1791 Protection Act playwrights, followed by England in 1810, and then America in 1831 "and Most of the countries have realized the importance of intellectual property protecting."²⁾

Copyright protects works such as poetry, movies, video games, videos, plays, paintings, sheet music, recorded music performances, CD-ROMs, novels, software code, sculptures, photographs, choreography and architectural designs." Protection against unauthorized use in a particular country depends basically on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions "this protection fulfills a decisive role in articulating the contributions and rights of different stake holders and the relation between them and the public."³⁾ The purpose of copyright and related rights is twofold: to encourage a dynamic creative culture, while returning value to creators so that they can lead a dignified economic existence, and to provide widespread, affordable access to content for the public.

WIPO works on the development of international norms and standards in the area of copyright and related rights. "The WIPO Standing Committee on Copyright and Related Rights is presently discussing important issues such as limitations and exceptions, the protection of

1) <http://www.wipo.int/copyright/en/25-5-2009>

2) Adel Fattah Suleiman, Copyright protection. Electronic Journal newspaper, Arabic Reference, translated by the researcher.

3) <http://www.wipo.int/copyright/en/2-6-2009>

audiovisual performances and the protection of broadcasting organizations.
"4)

Copyrights do not last forever, but they do last a pretty long time. Under the current laws,⁵⁾ the protection for works published after 1977, the copyright lasts for the life of the author plus 70 years. However, if the work is a work for hire (that is, the work is done in the course of employment or has been specifically commissioned) or is published anonymously or under a pseudonym, the copyright lasts between 95 and 120 years, depending on the date the work is published.

All works published in the United States before 1923 are in the public domain. Works published after 1922, but before 1978 are protected for 95 years from the date of publication. If the work was created, but not published, before 1978, the copyright lasts for the life of the author plus 70 years. However, even if the author died over 70 years ago, the copyright in an unpublished work lasts until December 31, 2002. And if such a work is published before December 31, 2002, the copyright will last until December 31, 2047.⁶⁾ But the protection in Germany is seventy years, while the copyright laws of Spain give terms of protection between sixty to eighty years.⁷⁾

There are several categories of materials are not eligible for federal copyright protection. These include among others:

- the works that have not been fixed in a tangible form of expression (for example, choreographic, works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded).
- Titles, names, short phrases, and slogans; familiar symbols or

4) <http://www.wipo.int/copyright/en/14-6-2009>

5) <http://www.copyrightkids.org/cbasicsframes.htm> 15-6-2009

6) http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/ 22-6-2009

7) Intellectual Property Law (Paperback) Paul Torremans and Jon Holyoak

designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.

- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.⁸⁾

- the works consisting entirely of information that is common property, and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

8) <http://www.copyright.gov/circs/circ01.pdf> 30-6-2009

II. Conception of copyright and related rights

Copyright was first given statutory force in the United Kingdom by the copyright Act 1710.⁹⁾ this is one of the most long-standing forms of intellectual property right ¹⁰⁾. It established the author of a work as the owner of the right to copy that work and the concept of a fixed term for that copyright. It was created as an act "for the encouragement of learning". "Copyright is the legal protection given to the creator of an original work"¹¹⁾. To qualify for copyright protection an expression must have a sufficient degree of originality. Broadly speaking, a work is original when it reflects the personality of its creator. Yet, there are no universally agreed standards on how to assess originality¹²⁾. In any case, novelty, artistic merit or purpose of the work, are all irrelevant factors.

It is a species of legal protection that applies to a number of works, such as artistic works and literary, dramatic, musical and, computer programs "copyright is a legal term used to describe the rights given to creators for their literary and artistic works"¹³⁾

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

Works covered under this category include novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement,

9) Copyright for archivists and records managers, what is copyright, third edition, Tim padfield, fact publishing

10) Intellectual property, the lifeblood of your company, Mark Elmslie and Simon Portman 2006, CHANDOS PUBLISHING. Oxford England,

11) Collective Management of Copyright and Related Rights, World Intellectual Property Organization, 1

12) <http://portal.unesco.org/culture> 12-6-2009

13) What is copyright? World Intellectual Property Organization

maps, and technical drawings¹⁴⁾ The creators of original works and their heirs have certain important economic rights.

"The first right is the right to reproduce the work in various forms, such as printed publication or sound recording¹⁵⁾The second right is the right of broadcasting the work, by radio, cable, or satellite¹⁶⁾ The third right is the public performance right¹⁷⁾ The fourth right is the right to translate the work into other languages, or the right of adaptation of the work, such as adapting a novel into a movie ¹⁸⁾ Important economic right is the right of distribution. In exercising the right of distribution, creators of original works often sell the rights to their works to individuals and companies who have the resources to mass market the creator's work in return for payments known as royalties¹⁹⁾ this is a common practice in the music industry.

The distinction between protected works and ideas lies at the very heart of copyright law. The protection of a given work applies to the expressions of ideas that are contained therein. Accordingly, in order for copyright in a work to be infringed or violated, one has to copy the form in which the ideas are expressed. The mere use of ideas found in a work does not represent a copyright violation.

Copyright is owned by the physical person who created the work (often referred to as "creator" or "author"). When several people actively participate in the creation, they become a joint author, which means that any decision relating to the exploitation of the work requires their joint consent,²⁰⁾.

14) Ibid

15) Ibid

16) Ibid

17) Ibid

18) Ibid

19) Ibid

20) <http://portal.unesco.org/culture/en> 30-7-2009

Nevertheless, when the creator is an employee and has created the work in execution of his duties, many copyright laws, including both continental and common law traditions, provide that the employer, often a company, will at some point become the owner of the rights. In countries that do not adhere to this rule, the employer has to acquire the rights from the author in order to be able to exploit the work.

Creators of original works also have moral rights in their works. Moral rights were first recognized in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. Canada recognizes moral rights in its Copyright Act,²¹⁾.

The aim of moral rights is to strike a balance between the interests of the commercial exploitation of a protected work and the interests of the creator of the protected work,²²⁾ Moral rights include the right of an author to claim ownership in his or her work (the paternity right).

Moral rights are rights of creators of copyrighted works generally recognized in civil law jurisdictions, and, to a lesser extent, in some common law jurisdictions. They include the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work. The preserving of the integrity of the work bars the work from alteration, distortion or mutilation. Anything else that may detract from the artist's relationship with the work even after it leaves the artist's possession or ownership may bring these moral rights into play. Moral rights are distinct from any economic rights tied to copyrights. Even if an artist has assigned his or her rights to a work to a third party, he or she still maintains the moral rights to the work.

Related rights

Copyright protects the rights of authors and another set of similar

21) <http://en.wikipedia.org/wiki/2-7-2009>

22) Intellectual Property Law (Paperback) Paul Torremans and Jon Holyoak

rights, known as "related rights" or "neighbouring rights" protects the rights of other owners of rights.²³⁾

The related rights it is the rights that come after the author's rights protection, there is no one definition of related rights,²⁴⁾ This term covers a range of rights that have been derived from copyright principles.

Related rights holders who are doing publish of creative works of authors there facilitate the intellectual creation process by assisting authors to communicate their works to the public²⁵⁾ therefore had to be protected. The protection of representatives and performance artists, musicians, singers and other persons, who perform literary and artistic works protect the producer's audio rights and video, recordings permit or prohibit the reproduction of their phonograms, either directly or indirectly, protect the broadcasting organizations rights.

At the international level, the first proposals concerning protection of producers of phonograms and performers took form at the 1928 Rome diplomatic conference to revise the Berne Convention,²⁶⁾ the Rome Convention it is the main international agreement in the field of related rights is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations .(This Convention was adopted in 1961 and is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

According to Article 14 of the Rome Convention- "The term of protection to be granted under the Roma Convention at least until the end of a period of twenty years computed from the end of the year in

23) http://www.belipo.bz/e_library/articles/collectivemanagementofcopyright.pdf 2-7-2009

24) http://en.wikipedia.org/wiki/Related_rights 5-7-2009

25) Collective Management of Copyright and Related Rights, world intellectual property organization

26) http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.pdf 2-8-2009

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."

The laws of many countries grant longer terms of protection, The Copyright Act of Belize protects the rights of a performer or a person having recording rights in relation to a performance for a period of fifty years from the end of the calendar year in which the performance takes place ²⁷⁾.

27) Section 115 of Chapter 252 of the Laws of Belize, Revised Edition 2000
BELIZE, COPYRIGHT ACT

III. Relationship between the Protection of Copyright and Related Rights:

Protection of related rights under this Act shall leave intact and shall in no way affect the protection of copyright²⁸⁾ Provisions of this Act concerning elements of a copyright work, presumption of authorship, joint authors, authors of compound works, contents of economic rights and other rights of the author,

The Diplomatic Conference at Rome established, in Article 1 of the Rome Convention, the so-called "safeguard clause," which provides that the protection granted under the Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of the Rome Convention may be interpreted as prejudicing such protection. Under Article 1,²⁹⁾ it is clear that whenever the authorization of the author is necessary for the use of his work, the need for this authorization is not affected by the Rome Convention³⁰⁾.

The Convention also provides that in order to become party to the Convention, a State must not only be a member of the United Nations, but also a member of the Berne Union or party to the Universal Copyright Convention (Article 24(2)³¹⁾. Accordingly, a Contracting State shall cease to be a party to the Rome Convention as from that time when it is not party to either the Berne or the Universal Copyright Convention (Article 28(4)³²⁾. Because of this link with the copyright conventions, the Rome Convention is sometimes referred to as a "closed" convention, since it is only open to States which meet the above requirements.³³⁾

28) http://www.uil-sipo.si/fileadmin/upload_folder/zakonodaja/ZASP_EN_2007.pdf 14-8-2009

29) Article (1) Roma convention.

30) <http://www.wipo.int/export/sites/> 9-8-2009

31) (Article 24(2). Roma convention

32) (Article 28(4) Roma convention.

33) <http://www.wipo.int/export/sites/> 9-8-2009

IV. The Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention was developed at the instigation of Victor Hugo of the Association Literary and Artistic International.³⁴⁾ It is the oldest international agreement in the Convention is the most important treaty that governs the area of copyright.³⁵⁾ Under the Berne Convention member countries offer each other the same protections as they would provide for their own citizens' copyrights.

The Berne Convention provided that each contracting state would recognize as copyrighted works authored by nationals of other contracting states, (Article 1) lays down that the countries to which the Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works³⁶⁾.

The Berne Convention for the Protection of Literary and Artistic Works followed in the footsteps of the Paris Convention for the Protection of Industrial Property of 1883,³⁷⁾ which in the same way had created a framework for international integration of the other types of intellectual property: patents, trademarks and industrial designs, sometimes called the Berne Union or Berne Convention,³⁸⁾ adopted at Berne in 1886, "The adoption of the Convention was prompted by the need to bring uniformity to the disparate bilateral treaties that existed in the nineteenth century."³⁹⁾

34) Coenraad Visser and Tana Pistorius, Essential Copyright Law, University of South Africa/WIPO Worldwide Academy, 1.2.4.

35) http://www.blackwellreference.com/public/tocnode?id=g9780631233176_chunk_13-8-2009

36) Article (1) Berne convention

37) [http://en.wikipedia.org/wiki/](http://en.wikipedia.org/wiki/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works) 21-7-2009

Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works

38) <http://www.economicexpert.com> 2-8-2009

/a/Berne:Convention:for:the:Protection:of:Literary:and:Artistic

39) Coenraad Visser and Tana Pistorius, supra, 1.2.4.

First established the recognition of copyrights between sovereign nations it is the oldest international treaty in the field of copyright. It is open to all States. Instruments of accession or ratification are deposited with the Director General of the World Intellectual Property Organization (WIPO)⁴⁰). Since 1967, the convention has been administered by WIPO (the World Intellectual Property Organization the countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works.

(The Berne Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms, as the European Union did with the 1993 Directive on harmonising the term of copyright protection⁴¹). For photography, the Berne Convention sets a minimum term of 25 years from the year the photograph was created, and for cinematography the minimum is 50 years after first showing, or 50 years after creation if it hasn't been shown within 50 years after the creation. Countries under the older revisions of the treaty may choose to provide their own protection terms, and certain types of works (such as motion pictures) may be provided shorter terms.

The Unsigned in 1887 but did not implement large parts of it until 100 years later with the passage of the Copyright, Designs and Patents Act of 1988.⁴²).

The United States refused initially to become a party to the Convention since it would have required major changes in its copyright law (particularly with regard to moral rights,⁴³) and the registration of

40) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 4-8-2009

41) <http://wapedia.mobi> 21-8-2009
/en/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works

42) <http://en.wikisource.org/wiki> 23-7-2009
/Convention_for_the_Protection_of_Literary_and_Artistic_Works

copyright works removal of general requirement for registration of copyright works and elimination of mandatory copyright notice This led to Universal Copyright Convention was adored in 1952, to cater to its objections.

The Berne Convention has been revised several times in order to improve the international system of protection which the Convention provides. Changes have been effected in order to cope with the challenges of accelerating development of technologies in the field of utilization of authors' works, in order to recognize new rights as also to allow for appropriate revisions of established ones.⁴⁴⁾ It revised in Paris in 1896 and in Berlin in 1908, completed in Berne in 1914, revised in Rome in 1928, in Brussels in 1948, in Stockholm in 1967 and in Paris in 1971.

1. Administration of Berne convention:-

The Berne Convention is administered by the World Intellectual Property Organization (WIPO),⁴⁵⁾ the administrative tasks performed by WIPO include assembling and publishing information concerning the protection of copyright. Each member country communicates to WIPO all new copyright laws. WIPO conducts studies and provides services designed to facilitate protection of copyright; as the Secretariat, it participates in all meetings of the Assembly, the Executive Committee, the Standing Committee on Copyright and Related Rights or Working Groups. In accordance with the directions of the Assembly and in cooperation with the Executive Committee, it shall also, when required, make preparations for the

43) <http://www.economicexpert.com> 28-7-2009

/a/Berne:Convention:for:the:Protection:of:Literary:and:Artistic

44) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 25-6-2009

45) Ibid

conferences to revise the Convention.⁴⁶⁾

The administrative provisions provide for an Assembly in which the Government of each Member State shall be represented by one delegate. The Assembly determines the program, adopts the budget and controls the finances of the Union. It also elects members of the Executive Committee of the Assembly. One fourth of the numbers of member countries are to be elected to the Executive Committee,⁴⁷⁾ The Executive Committee meets once every year in ordinary session. However, certain administrative changes are now under consideration (see under Constitutional Reform, Chapter 1) becoming Party to the Convention.

In order to become a party to the Berne Convention, an instrument of accession has to be deposited with the Director General of WIPO (Article 29(1)),⁴⁸⁾ Accession to the Berne Convention and membership of the Berne Union becomes effective three months after the date on which the Director General of WIPO has notified the deposit of the above-mentioned instrument of accession (Article 29(2) (a),⁴⁹⁾ In accordance with Article I of the Appendix, a developing country has to specifically declare, at the time of its ratification of or accession to the Paris Act that it will avail itself of the provisions in the Appendix concerning the compulsory licenses for translation and/or reproduction.⁵⁰⁾

To become a member of the Berne Union is in the interest of every country that wants to establish healthy conditions for the development of its culture and economy,⁵¹⁾ and it is particularly in the interest of every developing country. In becoming party to the Berne Convention, the State concerned becomes a member of the Berne Union. It would therefore be

46) Ibid

47) Ibid

48) Article 29(1)

49) Article 29(2) (a)

50) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 12 6-2009

51) Ibid

entitled,⁵²⁾:

- To full membership (right to vote) in the Berne Union Assembly (Article 22(3) (a)⁵³⁾.
- To the right to vote in elections of or to be elected to the Executive Committee of the Berne Union (Article 23(2) (a)⁵⁴⁾.
- To automatic membership in the WIPO Coordination Committee during the period of its membership in the Executive Committee of the Berne Union (Convention establishing WIPO, Article 8(1) (a),⁵⁵⁾.

2. Development of copyright from the first national laws to the Berne convention

The growth of literacy created a large demand for printed books, and the protection of authors and publishers from unauthorized copying was recognized as increasingly important in the context of this new means of making works available to the public⁵⁶⁾. The first copyright laws were enacted as a result. The Statute of Anne, enacted by the British Parliament in 1710, was the world's first copyright law. It provided that, after the lapse of a certain period

From this beginning, copyright spread into other countries.⁵⁷⁾ Denmark recognized the rights of authors in an Ordinance of 1741. In 1790, the United States of America promulgated its first federal copyright statute. In pre-Revolutionary France, copyright belonged to publishers in the form

52) Ibid

53) Article 22(3) (a)

54) Article 23(2) (a)

55) Article 8(1) (a), Convention establishing WIPO

56) <http://www.wipo.int/export/sites/> 11-7-2009

[www/copyright/en/activities/pdf/international_protection.](http://www.wipo.int/export/sites/) pdf

57) Ibid

of a privilege granted by the sovereign. During the Revolution, two decrees of 1791 and 1793 established the protection of authors of literary and artistic works. In Germany, where printing originated, copyright principles first emerged in the form of rules regulating publishing agreement.

The agreements that concluded among European nations, it was neither consistent nor comprehensive. As a result of the need for a uniform system of protection, the first international agreement for protection of the rights of authors was concluded and adopted on September 9, 1886, in Berne,⁵⁸⁾ Switzerland: the Berne Convention for the Protection of Literary and Artistic Works. The countries which adopted the Convention formed the Berne Union to ensure that the rights of authors in all member countries were recognized and protected. The Berne Convention is administered by the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.

The text of the Convention has been revised several times to take into account the fundamental changes in the means of creation, use and dissemination of literary and artistic works,⁵⁹⁾ which have taken place over the years, mostly resulting from technological development.

the Stockholm revision was a response not only to technological change that had taken place since the Brussels revision of 1948,⁶⁰⁾ but also a response to the needs of newly independent developing countries for access to works for the purpose of national education,⁶¹⁾ Preferential provisions for developing countries adopted in Stockholm were refined further at the Paris Revision Conference in 1971. The substantive provisions of the Stockholm Act never entered into force; they were

58) <http://www.economicexpert.com> 5-7-2009

/a/Berne:Convention:for:the:Protection:of:Literary:and:Artistic

59) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 3-8-2009

60) Ibid

61) Ibid

adopted by the Paris Revision Conference in substantially unchanged form.

The accessions to the Berne Convention have accelerated. In recent years,⁶²⁾ due to the growing awareness that copyright protection is a crucial part of the new global trading system; international trade in goods and services protected by intellectual property rights is a booming, worldwide business, and both developed and developing countries have recognized that it is in their interest to provide strong protection of intellectual property rights in order to participate in the benefits of such trade.

3. Works protected by the convention

Article (2) Include any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression"⁶³⁾ in the sense that it encompasses every original work of authorship, regardless of the works literary or artistic merit⁶⁴⁾.

According to Article 2 (1) of the Convention, literary and artistic works include- "books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works or entertainments in dumb show;⁶⁵⁾.

Musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture,

62) Dr. Hassan Gemei, Professor of Private Law Faculty of Law, Cairo University, Copyright protection ,Arabic Reference ,translated by the researcher .

63) Article (2) Berne convention

64) Essential Elements of Intellectual Property, Overview of the Basic Notions of Copyright and Related Rights and Treaties Administered by WIPO, CD-ROM published by the WIPO

Academy, World Intellectual Property Organization, paragraph 54.

65) Article2 (1) Berne convention

engraving and lithography ;⁶⁶⁾ .

The list of works protected by copyright also includes translations, adaptations, arrangements of music and other alterations of literary and artistic works, and collections of literary and artistic works (such as encyclopedias and anthologies) which constitute intellectual creations, and which do not prejudice the copyright in the original works"⁶⁷⁾.

Photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans.

An original production intended to be performed by a person or a group of persons in which an artistic work in the form of an adornment or image presented by the person or persons is the primary element of the production, and in which such adornment or image may be accompanied by words, music, choreography or other works, production is intended to be performed on stage, platform, street or other venue.

Some categories of works may be excluded from protection; thus, member States may deny protection to official texts of a legislative, administrative and legal Nature (Article 2(4)),⁶⁸⁾ works of applied art (Article 2(7))⁶⁹⁾, lectures, addresses and other oral works (Article 2bis (2)).⁷⁰⁾ and works of folklore (Article 15(4)).⁷¹⁾ Furthermore, Article 2(2)⁷²⁾ allows States to require that works must be fixed in some material form in order to be protected. For example, in a country with such a fixation requirement,

66) Ibid

67) Article 2 (3) and (5).

68) Article 2(4))

69) Article 2(7))

70) Article 2bis (2)

71) Article 15(4)

72) Article 2(2)

a work of choreography could only be protected once the movements were written down in dance notation or recorded on videotape,⁷³⁾.

The issue of whether political speeches and speeches given during legal proceedings are protected under the Convention is left for determination by the legislation of countries of the Union,⁷⁴⁾.

The conditions under which public lectures, addresses and other similar works are incorporated in press reports and communicated to the public for informatory purposes, is also reserved for determination by the legislation of countries of the Union⁷⁵⁾ The author of a political speech or a speech given during legal proceedings, or a public lecture, address or other similar work, shall always enjoy the exclusive right to make a collection of his or her works,⁷⁶⁾.

Other examples of works which were not included in the Convention's list but which are now under the umbrella of copyright are multimedia productions. The jury is still out on an acceptable legal definition of a multimedia production, Original expression of authorship sufficient to justify the protection of multimedia productions under the umbrella of copyright"⁷⁷⁾ Member States are given the discretion to prescribe, in their national legislation, the fixations of all works or certain specified works before such works can be eligible for protection.

Member States are free to decide how, and the conditions under which, their copyright laws will apply to works of applied art and industrial designs and models,⁷⁸⁾ If a work is protected in its country of origin as a

73) International copyright law- the Berne convention for protection of literary and artistic works, 1886By Alhaji Tejan-Cole, Deputy Registrar, BELIPO

74) Article 2 bis (1)

75) Article 2 bis (2).

76) Article 2 bis (3).

77) Essential Elements of Intellectual Property, Overview of the Basic Notions of Copyright and Related Rights and Treaties Administered by WIPO, CD-ROM published by the WIPO Academy, World Intellectual Property Organization, paragraph 54

78) Article 2(7).

design or model, it will only be entitled to protection as a design or model in another country of the Union,⁷⁹⁾ If the Union country does not offer special protection for designs or models, the work shall be protected as an artistic work in the Union country, provided that the minimum term of protection of a work of applied art protected as an artistic work shall last up to the end of a period of twenty-five years after the making of such work,⁸⁰⁾ News items and other items of press information are not eligible for protection under the Convention,⁸¹⁾.

The Convention provides that any member country may give protection to unpublished works where the identity of the author is unknown, but where there's every ground to presume that the author is a national of that country, by designating, through the national legislation, the competent authority which should represent the author of unknown identity and protect and enforce his rights in the countries party to the Convention. By providing for the bringing of actions by authorities designated by the State, the Berne Convention offers to countries whose folklore is a part of their heritage, a possibility of protecting it,⁸²⁾.

79) Ibid

80) Ibid., with Article 7(4)

81) Article 2(8)

82) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 16 7-2009

4. Rights Protected

The exclusive rights granted to authors under the Convention include the right of translation (Article 8)⁸³⁾, the right of reproduction "in any manner or form" which includes any sound or visual recording (Article 9)⁸⁴⁾, the right of public performance of dramatic, dramatico-musical and musical works (Article 11)⁸⁵⁾, the right of public recitation (Article 11bis)⁸⁶⁾, the right of adaptation (Article 12)⁸⁷⁾.

The 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 (Article 11),⁸⁸⁾ the right of making cinematographic adaptation and reproduction of works, and the right of distribution of the works thus adapted and reproduced (Article 14)⁸⁹⁾.

The right to make adaptations, arrangements or other alterations of a work (Article 12)⁹⁰⁾ and the right to make cinematographic adaptations and reproductions of a work (Article 14),⁹¹⁾ The so-called "adroit de suite" provided for in (Article 14)⁹²⁾ (concerning original works of art and original manuscripts) is optional and applicable only if legislation in the country to which the author belongs permits.

Article(6)⁹³⁾ provides for "moral rights" –that is, the right of the author to claim authorship of his work and to object to any distortion, mutilation

83) Article (8)

84) Article (9)

85) Article (11)

86) Ibid

87) Article (12)

88) Article (11) bis

89) Article (14)

90) Article (12) bis

91) Article (14)

92) Ibid

93) Article (6)

or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honor or reputation.

5. Moral rights

The term "moral rights" is a translation of the French term "droit moral," and refers not to "morals" as advocated by the religious right,⁹⁴⁾

Moral rights are rights of creators of copyrighted works generally recognized in civil law jurisdictions,⁹⁵⁾ these rights are known as moral (non-patrimonial) rights and are distinct from the author's economic (patrimonial) rights. Moral rights deal with the author's personal relationship with his or her work,⁹⁶⁾ also called moral rights or inalienable rights, are rights which are not contingent upon the laws, customs, or beliefs or a particular society or polity.

This involves the right of the author to have his or her name mentioned, within reasonable limits, when the work is reproduced,⁹⁷⁾ An exception to this rule lies in the fact that a disc jockey is not expected to announce the name of the composer, lyric writer, arranger, etc., of every record he or she plays in a discotheque,⁹⁸⁾ The right of integrity on the other hand involves the right of the author to object to any distortion of his or her work, which will affect the author's literary and artistic reputation,⁹⁹⁾ A good illustration can be found in the objection by the author of a non-pornographic novel to the adaptation of the novel into a

94) <http://cyber.law.harvard.edu/property/library/moralprimer.html> 30-8-2009

95) [http://en.wikipedia.org/wiki/Moral_rights_\(copyright_law\)](http://en.wikipedia.org/wiki/Moral_rights_(copyright_law)) 24-8-2009

96) Coenraad Visser and Tana Pistorius, Essential Copyright Law, University of South Africa/WIPO Worldwide Academy, 1.2.4.

97) Introduction to Intellectual Property (DL-101), World Intellectual Property Organization/WIPO Worldwide Academy, Related Rights,

98) Ibid

99) Ibid

pornographic film.

Moral rights were first recognized in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928,¹⁰⁰⁾

The author of a work shall have the right:

(a) To have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;

(b) To not have his name indicated on the copies and in connection with any public use of his work;

(c) To use a pseudonym

The author of a work has the right to be identified as the author of the work (right of paternity), and the right to object to any derogatory treatment of his or her work that will be harmful to his or her honour or reputation (right of integrity)¹⁰¹⁾.

Moral rights are usually unaffected by the transfer of the author's economic rights. This is due to the personal nature of moral rights¹⁰²⁾ It is not unusual for the economic rights in a work to belong to one person (for example, a film producer or a publisher) and the moral rights to belong to someone else (the individual creator of a film script or novel).

Moral rights cannot be transferred; they can be subjected to a waiver. The heirs of the author are empowered to maintain the moral rights of the author after the author's death, at least until the expiry of the author's economic rights¹⁰³⁾.

100) [http://en.wikipedia.org/wiki/Moral_rights_\(copyright_law\)](http://en.wikipedia.org/wiki/Moral_rights_(copyright_law)) 9-9-2009

101) Article (6)

102) Coenraad Visser and Tana Pistorius, Essential Copyright Law, University of South Africa/WIPO Worldwide Academy, 1.2.4.

103) Article (6)

6. Owners of Rights

Usually the creator of a literary, dramatic, musical or artistic work is the first owner of the copyright in it,¹⁰⁴⁾ .Article 2(6) of the Convention provides that protection under the Convention is to operate for the benefit of the author and his successors in title¹⁰⁵⁾. For some categories of works, however, such as cinematographic works (Article 14),¹⁰⁶⁾ ownership of copyright is a matter for legislation in the country where protection is claimed; for example, member States may provide that the initial owner of rights in such works is the producer, rather than the director, screenwriter, or other persons who contributed to creation of the work.¹⁰⁷⁾

But there are several exceptions. One important exception is that copyrights in works made during the course of employment are owned by the employer and not the employee.

7. Eligibility for Protection

The Convention protects the published or unpublished works of authors who are nationals of a Union country,¹⁰⁸⁾.

Article 3 provides for protection of authors who are nationals or residents of a State party to the Convention,¹⁰⁹⁾.

The protection of this Convention shall apply to,¹¹⁰⁾ Authors who are

104) http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_Whoisa 22-7-2009

105) Article 2(6)

106) Article (14)

107) <http://www.wipo.int/export/sites/> 23-7-2009

[www/copyright/en/activities/pdf/international_protection.pdf](http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.pdf)

108) Ibid

109) Article (3)

nationals of one of the countries of the Union, for their works, whether published or not; Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

The author of a work protected under the Convention is entitled in countries of the Union, other than the country of origin of his or her work, to the same rights granted to nationals of such countries and to the rights granted by this Convention,¹¹¹⁾ This principle is known as the principle of national treatment, and is one of the three core principles enshrined in the Convention (5) The other two principles are the lack of formalities for copyright protection and the independence of copyright protection from the existence or term of protection in the country of origin of the protected work,¹¹²⁾

The Convention provides several definitions of the expression "country of origin". Where the work is first published in a country of the Union, that country is the country of origin,¹¹³⁾ If a work is published simultaneously in several countries of the Union, which have different terms of protection, the country of origin is the country with the shortest term of protection 70 Where the work is published simultaneously in a country of the Union and a non-Union country, the country of origin is the country of the Union 71 If the work in question is an unpublished work, or a work first published in a non-Union country without simultaneous publication in a Union country.

The country of origin is the Union country, of which the author is a national,¹¹⁴⁾ However, this last rule does not apply in the case of a

110) http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html 23-8-2009

111) Article 5(1)

112) Coenraad Visser and Tana Pistorius, Essential Copyright Law, University of South Africa/WIPO Worldwide Academy, 1.2.4.

113) Ibid

cinematographic work made by a person whose headquarters or habitual residence is in a Union country, or a work of architecture built in a Union country, or other artistic works incorporated in a structure located in a Union country,¹¹⁵⁾ In such cases, the country of origin is the Union country in which the person's headquarters or habitual residence, or the work of architecture or structure, is located,¹¹⁶⁾.

A country of the Union is permitted to restrict the protection given under its laws to the works of authors who, at the date of first publication of their works, are nationals of countries which do not adequately protect the works of nationals of the Union country, and who are not habitual residents of a Union country,¹¹⁷⁾ .

Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country,¹¹⁸⁾.

The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.¹¹⁹⁾

114) Article 5(4)

115) Ibid.

116) Ibid.

117) Article 6(1)

118) http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html 21-8-2009

Article 3 (2) of the Convention, which states that non-Union national who is habitually resident in a country of the Union is considered as a national of that country under the Convention,¹²⁰⁾ The Convention also protects the published works of non-nationals of a Union country, if such works are first published in a Union country, or simultaneously in a Union country and a non-Union country,¹²¹⁾

8. Persons Protected

Authors of works are protected, in respect of both their unpublished or published works if, according to Article 3,¹²²⁾ they are nationals or residents of a member country; alternatively, if, not being nationals or residents of a member country, they first publish their works in a member country or simultaneously in a non-member and a member country,¹²³⁾

9. Limitations

There is other provisions in the Berne Convention limiting the strict application of the rules regarding exclusive right,¹²⁴⁾ the Berne Convention allows certain limitations on economic rights,¹²⁵⁾ It provides for the possibility of using protected works in particular cases without having to obtain the authorization of the owner of the copyright and without having to pay any remuneration for such use. These limitations are commonly

119) Ibid

120) Article 3 (2)

121) Article 3(1).

122) Ibid

123) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 22-9-2009

124) Ibid

125) <http://www.wipo.int/export/sites/> 23-8-2009

[www/copyright/en/activities/pdf/international_protection.pdf](http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.pdf)

referred to as "free uses" of protected works, and are set forth in Articles 9(2),¹²⁶⁾ (Reproduction in certain special cases),¹²⁷⁾(quotations and use of works by way of illustration for teaching purposes), ¹²⁸⁾(reproduction of newspaper or similar articles and use of works for the purpose of reporting current events), and¹²⁹⁾ (ephemeral recordings for broadcasting purposes).

There are two cases where the Berne Convention provides the possibility of compulsory licenses – in Articles 11¹³⁰⁾, for the right to broadcast and communicate to the public, by wire, rebroadcast or loudspeaker or any other analogous instrument, the broadcast of the work, and 13¹³¹⁾ for the right of recording musical works.

Such exceptions, which are commonly referred to as free use of protected works, are included in Articles 9¹³²⁾ (reproduction in certain special cases),¹³³⁾ (quotations and use of works by way of illustration for teaching purposes),¹³⁴⁾ (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and ,¹³⁵⁾ (ephemeral recordings).

As far the exclusive right of translation is concerned, the Berne Convention offers a choice, in that a developing country may, when acceding to the Convention, make a reservation under the so-called "ten-year rule" (Article 30,¹³⁶⁾ This provides for the possibility of reducing the term of protection in respect of the exclusive right of translation; this

126) Article (9) and (7)

127) Article (10)

128) Ibid

129) Article (11)

130) Ibid

131) Article (13)

132) Article (9)

133) Article (10)

134) Ibid

135) Article (11)

136) Article (30)

right, according to the said rule, ceases to exist if the author has not availed himself of it within 10 years from the date of first publication of the original work,¹³⁷⁾ by publishing or causing to be published, in one of the member countries, a translation in the language for which protection is claimed,¹³⁸⁾.

10. Term of protection

The general term of copyright protection granted by the Convention is the life of the author and fifty years from the end of the year of his death,¹³⁹⁾ provided for in the Berne Convention. Article 7 lays down a minimum term of protection,¹⁴⁰⁾ there are, however, exceptions to this basic rule for certain categories of works. For cinematographic works, the term is 50 years after the work has been made available to the public,¹⁴¹⁾ or, if not made available, then 50 years after the making of such a work. For photographic works and works of applied art, the minimum term of protection is 25 years from the making of the work.

(Article 7(4). In respect of moral rights, the duration of protection of moral rights must be for at least as long as the duration or protection for economic rights.¹⁴²⁾

The term of protection for anonymous and pseudonymous works is fifty years from the end of the year in which the work became lawfully available to the public.¹⁴³⁾ If the identity of the author of an anonymous

137) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 26-6-2009

138) Ibid

139) Article (7) (1)

140) Ibid

141) <http://www.wipo.int/export/sites/> 4-9-2009

[www/copyright/en/activities/pdf/international_protection.pdf](http://www.wipo.int/export/sites/)

142) Article 7(4).

or pseudonymous work is revealed to the public, the general term of protection will apply,¹⁴⁴⁾ Where there is a reasonable presumption that the author of an anonymous or pseudonymous work has been dead for fifty years, the obligation of Union countries to protect such a work shall lapse,¹⁴⁵⁾ Countries of the Union are given the discretion to prescribe the terms of protection of photographic works and works of applied art protected as artistic works,¹⁴⁶⁾ However, the minimum term of protection of a photographic work, or a work of applied art protected as an artistic work shall extend to the end of a period of twenty-five years calculated from the making of such work,¹⁴⁷⁾

The term of protection for sound recordings is fifty years from the end of year in which the work became available to the public, If the sound recording has not been made available to the public within fifty years from the making of the work, the term of protection shall be fifty years from the end of the year of such making. In the case of works of joint authorship, references to the identity of the author becoming known shall be construed as references to the identity of any of the joint authors becoming known.

Countries of the Union are free to grant terms of protection that are longer than those provided by the Convention,¹⁴⁸⁾ The term of protection of a work shall not exceed the term fixed by the country of origin of the work, unless otherwise prescribed by the law of the country where protection is claimed,¹⁴⁹⁾ In the case of works of joint authorship, the terms of protection counted from the death of the author are calculated

143) Article 7(3).

144) Ibid

145) Ibid

146) Article 7 (4)

147) Ibid

148) Article 7(6).

149) Article 7(8).

from the death of the last surviving author,¹⁵⁰⁾

A majority of countries in the world have legislated for life plus a 50-year term of protection since it is felt fair and right that the lifetime of the author and the lifetime of his children should be covered;¹⁵¹⁾ this could also provide the incentive necessary to stimulate creativity, and constitute a fair balance between the interests of the authors and the needs of society.

11. Main Features of the Berne Convention and Related Rights Conventions

A: About Berne convention:-

In the field of copyright the Berne Convention "for the Protection of Literary and Artistic Works" is the basic international treaty. After its adoption in 1886,¹⁵²⁾ the Berne Convention was revised quite regularly, more or less every 20th year, until the "twin revisions" which took place in Stockholm in 1967 and in Paris in 1971. ¹⁵³⁾ The revision conferences were convened, in general, in order to find responses to new technological developments (such as phonograph, photography, radio, cinematography, television).

1- A major practical advantage to a country in adhering to the Berne Convention is that works of its authors are automatically protected in all countries party to the Convention,¹⁵⁴⁾ with the result that these authors

150) Article (7)

151) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 21-7-2009

152) Ibid

153) http://www.wipo.int/export/sites/www/copyright/nternational_protection. 11-8-2009

154) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne>

may derive financial benefits from the expansion of markets for their works.

2- The Berne Convention offers a comprehensive regulation at a very high level of harmonization, based on the principle of national treatment (with some minor exceptions) combined with provisions fixing the minimum level of protection (Article 5(1),¹⁵⁵)

3- Every production in the literary, scientific and artistic domain, whatever may be the mode or form of expression" with a non-exclusive list (Article 2(1), ¹⁵⁶)with clarifications that protection extends to translations, adaptations and other alterations, as well as to those collections of works which, by reasons of the selection and arrangement of their contents, constitute intellectual creations (Article 2(3) and (5)¹⁵⁷).

4-It allows national laws to make fixation as a condition of protection (Article 2(2),¹⁵⁸) but forbids the prescription of formalities (such as registration, deposit or notice) as a condition (Article 5(2)¹⁵⁹). The minimum duration of protection - as a general rule, during the life, and still 50 years after the death, of the author - is also fixed, with some exceptions (Article 7), ¹⁶⁰)

5- The Convention provides for those rights which - as a minimum - should be granted in all member countries of the Berne Union; both moral rights (Article 6bis) and economic rights: the right of reproduction (Article

¹⁵⁵) Article 5(1)

¹⁵⁶) Article 2(1)

¹⁵⁷) Article 2(3) and (5)

¹⁵⁸) Article 2(2)

¹⁵⁹) Article 5(2)

¹⁶⁰) Article (7)

9),¹⁶¹⁾ the right of distribution (explicitly only in the case of works adapted for cinematographic works and for cinematographic works themselves; Articles 14,¹⁶²⁾ the right of translation (Article 8)¹⁶³⁾, the right of adaptation (Article 12 ¹⁶⁴⁾and, in respect of cinematographic adaptation, Article 14)¹⁶⁵⁾, the right of public performance (of certain categories of works; Article 11),¹⁶⁶⁾ the right of public recitation (of literary works; Article 11),¹⁶⁷⁾ the right of broadcasting (Article 11)¹⁶⁸⁾ the right of communication to the public by wire (Articles 11, 14),¹⁶⁹⁾.

B: About Related Rights Conventions:

1- The basic treaty on related rights is the Rome Convention ("International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations") adopted in 1961.¹⁷⁰⁾ This convention is also based on the double pillars of national treatment and minimum obligations but the minimum prescribed by it is lower than in the case of the Berne Convention.

2- Article 12 of the Convention provides for a single remuneration to be paid to the performers, or to the producer of phonograms,¹⁷¹⁾ or to both, for broadcasting or communication to the public of a phonogram published

161) Article (9)

162) Article (4)

163) Article (8)

164) Article (12)

165) Article (14)

166) Article (11)

167) Ibid

168) Ibid

169) Articles (11) and article (14)

170) http://www.wipo.int/export/sites/www/copyright/nternational_protection. 17-7-2009

171) Article (12)

for commercial purposes; Article 16.1(a),¹⁷²⁾ however, allows reservations to this provision which may go so far as the complete denial of its application.

3- The minimum duration of protection is only 20 years (Article 14) in contrast with the 50-year term under the Berne Convention,¹⁷³⁾.

4- The exceptions and limitations allowed under the Rome Convention (Article 15) ¹⁷⁴⁾are similar to those which are permitted under the Berne Convention. A specific, sweeping exception applies to the rights of performers: once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, Article 7 on the rights of performers have no further application,¹⁷⁵⁾.

5- The adherence to the Rome Convention had not been sufficient enough, and several countries were unable to accede to it due to the specific features of their legal system;¹⁷⁶⁾this led to the adoption of two specific conventions the objective of which is to fight the piracy of phonograms and broadcast signals. These two conventions only contain a few simple obligations and the countries party to them has broad freedom in implementing those obligations.

6- The Phonograms Convention ("Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms") was adopted in 1971, in Geneva.¹⁷⁷⁾ The only obligation of

172) Article 16.1(a)

173) Article (14)

174) Article (15)

175) Article (7)

176) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 18-7-2009

177) Ibid

a Contracting State is to "protect producers of phonograms who are nationals of another Contracting State against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public,¹⁷⁸⁾ and against the distribution of such duplicates to the public" (Article 2),¹⁷⁹⁾ This obligation may be fulfilled by means of granting copyright or other specific ("related") rights; protection by means of the law relating to unfair competition or protection by means of penal sanctions (Article 3), ¹⁸⁰⁾.

7- The Satellites Convention ("Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite") concluded in 1974, in Brussels,¹⁸¹⁾ leaves even greater freedom to a Contracting State; it contains no limitation how they implement the only obligation under the Convention, which is "to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended" (Article 2(1),¹⁸²⁾ The importance of this convention has decreased since its adoption, because it does not cover direct broadcasting satellites (the program of which may be directly received by the public), but only "telecommunication" satellites (Article 3),¹⁸³⁾ and now the overwhelming majority of satellite transmissions may be received directly by the public.

178) Ibid

179) Article (2)

180) Article (3)

181) http://www.wipo.int/export/sites/www/copyright/nternational_protection 19-9-2009

182) Article 2(1)

183) Article (3)

12. Developing Countries and the Berne Convention

The Convention includes certain special provisions regarding developing countries in the Appendix that is attached to the Convention

These provisions resulted from the clamour by developing countries during the 1960s for more changes to the Convention¹⁸⁴). The predominant concern at the last revision of the Berne Convention remained the reinforcement of the Convention, while continuing to address the preoccupations of developing countries¹⁸⁵). The 1971 Paris Act of the Berne Convention was primarily intended to ensure the universal effect of the Convention, ¹⁸⁶).

The Berne Convention recognizes a special right in favor of developing countries. It provides that in the case of unpublished works,¹⁸⁷) where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, the rights in such a work are to be acknowledged in all countries of the Union. By this provision the Berne Convention has rendered it possible for the developing countries to protect their folklore also abroad. It was made a matter for legislation in the country of origin of such works to designate the competent authority which should represent the unknown author and protect and enforce his rights in the countries of the Union. By providing for the bringing of actions by authorities designated by the State, the Berne Convention offers to developing countries, whose folklore is a part of their heritage, a possibility of protecting it.

Countries classified as developing countries by the United Nations which

184) Intellectual Property Law (Paperback) Paul Torremans and Jon Holyoak

185) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 12-8-2009

186) <http://www.wipo.int/export/sites/> 10-9-2009

[www/copyright/en/activities/pdf/international_protection.pdf](http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.pdf)

187) Ibid

accept the Convention, may notify the Director General of WIPO at the time of depositing their instrument of ratification or accession, or may at any time after such deposit declare, that they are availing themselves of the provisions of Article II or III or of both these Articles¹⁸⁸⁾ Such a country may instead of relying on the provisions of Article II, make a declaration under Article V (1)(a)¹⁸⁹⁾ country making a declaration under Article V is barred from subsequently relying on the provisions of Article II, even if it withdraws the declaration under Article V¹⁹⁰⁾.

If the General Director is notified of such a declaration before the expiration of a period of ten years calculated from the commencement of Articles 1 to 21 and the Appendix, the declaration shall be effective until the expiration of the ten-year period¹⁹¹⁾ A country availing itself of the provisions of Article II or III may renew its declaration (wholly or partly) for successive ten-year periods by depositing a notification with the Director General,¹⁹²⁾ Such notification should be deposited within a period of not more than fifteen months and not less than three months before the expiration of the existing ten-year period,¹⁹³⁾.

If the General Director is notified of the declaration after the expiration of a period of ten years calculated from the commencement of Articles 1 to 21 and the Appendix, the declaration shall be effective until the expiration of the existing ten-year period,¹⁹⁴⁾ Such a declaration may also be renewed for periods of ten years each by notifying the Director General within a period of not more than fifteen months and not less than three

188) Article I (1).

189) Ibid

190) Article V (1) (c).

191) Article I (2) (a).

192) Ibid.

193) Ibid.

194) Article I (2) (b).

months before the expiration of the existing ten-year period¹⁹⁵⁾.

Compulsory licenses for translations can be granted for languages generally spoken in the developing country concerned.,There is a distinction between languages in general use also in one or more developed countries (English, French and Spanish, for example),¹⁹⁶⁾and those not in general use there (largely local languages of developing countries). In the case of a language in general use in one or more developed countries, a period of three years, starting on the date of the first publication of the work has to elapse before a license can be applied for, whereas for other languages the period has been reduced to one year. To this has to be added a period of six to nine months, as the case may be, for obtaining licenses according to the formalities provided for in the Convention. It is also important here to point out that the system of translation licenses includes licenses for broadcasting, and this is important when we take into account the part played in today's context by the radio and television for educational purposes.

These licenses, however, are not for authorizing the broadcasting of a translated work; they relate only to translations made for broadcasting purposes,¹⁹⁷⁾.

195) Ibid

196) <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#berne> 26-9-2009

197) Ibid

V. Copyright and related rights Enforcement under the TRIPS Agreement

TRIPS are an international agreement administered by the World Trade Organization (WTO)¹⁹⁸⁾. The World Trade Organization (WTO) is the international organization dealing with the rules of trade between nations. As of February 2005, 148 countries are Members of the WTO. In becoming Members of the WTO, countries undertake to adhere to the 18 specific agreements annexed to the Agreement establishing the WTO. They cannot choose to be party to some agreements but not others (with the exception of a few "plurilateral" agreements that are not obligatory),¹⁹⁹⁾ The trips agreement is subject to continuous interpretation challenge and reinterpretation,²⁰⁰⁾ A key feature of TRIPS is the obligation it places on WTO members to adequately and effectively enforce intellectual property rights, including copyright (Section III of TRIPS, Articles 41–61).

The enforcement provisions of the TRIPS Agreement (Articles 41–61 of TRIPS) provide the basis under the WTO regime for determining whether individual countries are adequately able to fight copyright piracy within and at their borders. These provisions oblige WTO Member countries to provide enforcement procedures, including civil or administrative remedies, as well as criminal penalties, that permit effective action against any act of copyright infringement (including acts of copyright infringement that occur in the online environment).

198) http://en.wikipedia.org/wiki/Agreement_on_Trade– 27-9-2009

199) http://www.who.int/medicines/areas/policy/wto_trips/en/index.html 29-9-2009

200) Intellectual property rights and global capitalism the political economy of the TRIPS Agreement

Donald G. Richards ■ M.S, Sharpe Armonk, New York ■ London, England

1- Effective action against infringements, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements (Article 41.1),²⁰¹⁾

2-procedures that are fair and equitable, are not unnecessarily complicated or costly, and do not entail any unreasonable time limits or unwarranted delays (Article 41.2), ²⁰²⁾

3-transparency in the form of written decisions on the merits, made available to the parties to a proceeding without undue delay (Article 41.3).²⁰³⁾.

4-Adequate civil or administrative procedures and remedies, including the availability of civil injunctions (Article 44);²⁰⁴⁾ the disposal or destruction of pirate goods (Article 46);²⁰⁵⁾and the disposal or destruction of materials and implements the predominant use of which has been in the creation of the infringing goods (Article 46),²⁰⁶⁾

5-Provisional measures, including the availability of ex parte civil search orders (Article 50), ²⁰⁷⁾

6-Adequate border measures, such as applications to "suspend" the release of infringing goods at the border (Articles 51 and 52) ;²⁰⁸⁾ and the disposal or destruction of infringing goods (Article 59),²⁰⁹⁾.

201) Article 41. (1) TRIPS

202) Article 41. (2)

203) Article (41). (3)

204) Article (44)

205) Article (46)

206) Ibid

207) Article (50)

208) Articles (51 and 52)

209) Article (59)

7- Adequate criminal procedures, including deterrent penalties (Article 61), ²¹⁰⁾ the availability of seizure, forfeiture and destruction of infringing goods (Article 61) ;²¹¹⁾ and seizure, forfeiture and destruction of materials and implements the predominant use of which has been in the commission of the offense (Article 61) ²¹²⁾.

Criminal enforcement must be used by governments against copyright piracy "on commercial scale." This term reflects an objective criterion - does the infringing act have significant commercial ramifications to right holders. This test would not be met by criminalizing only the sale or distribution of pirate product, ²¹³⁾

8- Article 61 obliges countries to provide criminal procedures and penalties "at least in cases of willful trademark counterfeiting or copyright piracy" ²¹⁴⁾.

1. Provisions of the Agreement in the field of copyright

Article 9.2 confirms that copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such, ²¹⁵⁾.

Article 10.1 provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne

²¹⁰⁾ Article (61)

²¹¹⁾ Ibid

²¹²⁾ Ibid

²¹³⁾ http://www.iipa.com/rbi/2004_Oct19_TRIPS.pdf 24-9-2009

²¹⁴⁾ Article (61)

²¹⁵⁾ Article (9). (2)

Convention that apply to literary works shall be applied also to them,²¹⁶⁾

Article 10.2 clarifies that database and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations,²¹⁷⁾ the provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form,²¹⁸⁾.

According to the general rule contained in Article 7,²¹⁹⁾ of the Berne Convention as incorporated into the TRIPS agreement, the term of protection shall be the life of the author and 50 years after his death. Paragraphs 2 through 4 of that Article specifically allow shorter terms in certain cases. These provisions are supplemented by Article 12 of the TRIPS agreement, which provides that whenever the term of protection of a work, other than a photographic work or a work of applied art,²²⁰⁾ is calculated on a basis other than the life of a natural by son, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making,²²¹⁾.

216) Article (10). (1)

217) Article (10). (2)

218) http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright11-9-2009

219) Article (7)

220) Article (12)

221) http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright13-9-2009

2. Provisions of the Agreement in the field of related right

The provisions on protection of performers, producers of phonograms and broadcasting organizations are included in Article 14. According to Article 14.1, ²²²⁾performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram (e.g. the recording of a live musical performance). The fixation right covers only aural, not audiovisual fixations. Performers must also be in position to prevent the reproduction of such fixations. They shall also have the possibility of preventing the unauthorized broadcasting by wireless means and the communication to the public of their live performance, ²²³⁾

In accordance with Article 14.2, Members have to grant producers of phonograms an exclusive reproduction right,²²⁴⁾ In addition to this; they have to grant, in accordance with Article 14.4, an exclusive rental right at least to producers of phonograms, ²²⁵⁾

Broadcasting organizations shall have, in accordance with Article 14.3, the right to prohibit the unauthorized fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts,²²⁶⁾ However, it is not necessary to grant such rights to broadcasting organizations, if owners of copyright in the subject-matter of broadcasts are provided with the possibility of preventing these acts, subject to the provisions of the Berne Convention,²²⁷⁾ The term of protection is at least

²²²⁾ Article (14). (1)

²²³⁾ http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright14-6-2009

²²⁴⁾ Article (14). (2)

²²⁵⁾ Article (14). (4)

²²⁶⁾ Article (14). (3)

²²⁷⁾ http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright8-7-2009

50 years for performers and producers of phonograms, and 20 years for broadcasting organizations (Article 14.5),²²⁸⁾

Article 14.6 provides that any Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.,²²⁹⁾

²²⁸⁾ Article (14). (5)

²²⁹⁾ Article (14). (6)

VI. The Rome Convention

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was accepted by members of the World Intellectual Property Organization on October 26, 1961,²³⁰⁾ The agreement extended copyright protection for the first time from the author of a work to the creators and owners of particular, physical manifestations of intellectual property, such as audiocassette or DVDs.

Related rights are primarily a result of technological development. The first organized support for protection of related rights came from the phonogram industry, which sought (and gained, at least in countries following the common-law tradition) protection under copyright law against unauthorized copying of phonograms under copyright. In the United Kingdom, for example, the Copyright Act 1911 granted a copyright to producers of sound recordings, and this copyright approach has been followed in countries such as the United States and Australia, ²³¹⁾ The development of the phonogram industry also led to the first expressions of Support for protection of the rights of performers whose performances were included in phonograms.

The first proposals concerning protection of producers of phonograms and performers took form at the 1928 Rome diplomatic conference to revise the Berne Convention,²³²⁾ around the same time, the International Labor Office (ILO) took an interest in the status of performers as employed workers. Further discussions took place at the Brussels

230) http://en.wikipedia.org/wiki/Rome_Convention_for_the_Protection_of_Performers,
12-9-2009

231) http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.1
3-9-2009

232) Ibid

revision conference in 1948, where it became clear that, due to the opposition of authors' groups, legal protection of the rights of performers and producers of phonograms would not be provided under copyright, although there was support for development of an international instrument providing adequate protection. Different committees of experts prepared draft conventions, including the rights of broadcasting organizations. Finally, in 1960, a committee of experts convened jointly by BIRPI (United International Bureaux for the Protection of Intellectual Property, the predecessor organization to WIPO),²³³⁾

United Nations Educational, Scientific and Cultural Organization (UNESCO) and the ILO, met at The Hague and drew up the draft convention which served as a basis for the deliberations in Rome, where a Diplomatic Conference agreed upon the final text of the International Convention for the Protection of performers, Producers of Phonograms and Broadcasting Organizations, the so called Rome Convention, on October 26, 1961, ²³⁴⁾

1. Eligibility for Protection

Performers are entitled to national treatment if the performance takes place in another Contracting State or if it is incorporated in a phonogram protected under the Convention or if it is transmitted "live" (not from a phonogram) in a broadcast protected by the Convention (Article 4),²³⁵⁾ Producers of phonograms are entitled to national treatment if they are nationals of another Contracting State, if the first fixation was made in another Contracting State, or if the phonogram was first or simultaneously

²³³⁾ Ibid

²³⁴⁾ http://en.wikipedia.org/wiki/Rome_Convention_for_the_Protection_of_Performers,
4-9-2009

²³⁵⁾ Article (4) Roma Convention

published in another Contracting State (Article 5), ²³⁶⁾

The Convention allows reservations in respect of these alternative criteria. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may at any time declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation, ²³⁷⁾

Broadcasting organizations are entitled to national treatment if their headquarters is situated in another Contracting State, or if the broadcast was transmitted from a transmitter situated in another Contracting State, irrespective of whether the initiating broadcasting organization was situated in a Contracting State. Contracting States may declare that they will protect broadcasts only if both the condition of nationality and of territoriality is met in respect of the same Contracting State (Article 6), ²³⁸⁾

2. Limitations

Like the Berne Convention, the Rome Convention permits member States to establish certain limitations on rights. States may provide for limitations allowing private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, and uses solely for the purpose of teaching or scientific research (Article 15(1)),²³⁹⁾. In addition to the limitations specified by the Convention, States may also

²³⁶⁾ Article (5) Roma Convention
²³⁷⁾

http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.21-9-2009

²³⁸⁾ Article (6) Roma Convention

²³⁹⁾ Article 15(1)

establish the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations, as they provide in connection with copyright protection, except that compulsory licenses may be provided only to the extent to which they are compatible with the Rome Convention (Article 15(2),²⁴⁰⁾

Article 19 of the Convention provides a significant limitation, second only to Article 12 in the controversy it has generated over the years since the Convention was established. Article 19 provides as follows: "Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation,²⁴¹⁾ Article 7 [which sets out the rights of performers] shall have no further application."²⁴²⁾ Article 19 was intended to ensure that the Convention did not apply to the cinema industry, because film producers feared incursions on their interests if performers were to enjoy rights in films. Article 19 does not, however, affect performers' freedom of contract in connection with the making of audiovisual fixations, ²⁴³⁾

3. Duration of Protection

The minimum term of protection under the Rome Convention is twenty years from the end of the year in which (I) the fixation was made, as far as phonograms and performances incorporated therein are concerned, or (II) the performance took place, as regards performances not incorporated

240) Article 15(2)

241) Article (19)

242) Article (7)

243) http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection_23-8-2009

in phonograms, or (III) the broadcast took place, for broadcasts (Article 14),²⁴⁴⁾

4. The Principle of National Treatment under the Rome Convention

Like the Berne Convention, protection accorded by the Rome Convention consists basically of the national treatment that a State grants under its domestic law to domestic performances, phonograms and broadcasts (Article 2(1),²⁴⁵⁾ National treatment is, however, subject to the minimum levels of protection specifically guaranteed by the Convention, and also to the limitations provided for in the Convention (Article 2(2),²⁴⁶⁾ That means that, apart from the rights guaranteed by the Convention itself as constituting the minimum of protection, and subject to specific exceptions or reservations allowed for by the Convention, performers, producers of phonograms and broadcasting organizations enjoy the same rights in Contracting States as those countries grant to their nationals,²⁴⁷⁾

5. Restriction of Formalities

If a country requires compliance with formalities as a condition of protecting related rights in relation to phonograms,²⁴⁸⁾ these are fulfilled if all commercial copies of the published phonogram or its packaging bear a notice consisting of the symbol "P," accompanied by the year date of the

244) Article (14)

245) Article 2(1)

246) Article 2(2)

247) http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection_13-7-2009

248) Ibid

first publication. If the copies or their packaging do not identify the producer or his licensee, the notice shall also include the name of the owner of the rights or the producer and, if the copies or packaging do not identify the principal performers, the notice shall also include the name of the person who owns the performers' rights (Article 11),²⁴⁹⁾

The Rome Convention has been referred to as a "pioneer convention." While the copyright conventions concluded at the end of the nineteenth century followed in the wake of national laws, the Rome Convention elaborated standards of related rights protection at a time when very few countries had operative legal rules protecting performers, producers of Phonograms and broadcasting organizations,²⁵⁰⁾ the number of countries party to the Convention is growing, however, and its influence on the development of national legislation has been significant: since 1961, a number of countries have legislated on the protection of related rights, increasing the number of national laws protecting producers of phonograms or broadcasting organizations. A growing number of States have also granted specific protection to performers,²⁵¹⁾

249) Article (11)

250) http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection

251) Ibid

VII. WIPO Copyright Treaty

The WIPO Copyright Treaty, adopted by the World Intellectual Property Organization (WIPO) in 1996,²⁵²⁾ Provides additional protections for copyright deemed necessary in the modern information era it ensures that computer programs are protected as literary works²⁵³⁾.

The purpose of the WIPO Copyright Treaty updates and improves existing rules on the international protection of intellectual property rights including the Berne Convention for the Protection of Literary and Artistic Works, which were established prior to the development and widespread use of personal computers and the internet,²⁵⁴⁾ It protects literary and artistic works, a broad category that includes books, music, art, movies, computer programs, databases, and digital communications including transmissions of copyrighted works via the internet and other computer networks.

1. Eligibility for Becoming Party to the Treaty

Article 17 of the treaty provides eligibility for Becoming Party to the Treaty

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become

252) <http://www.knowledgerush.com/kr/encyclopedia/> 24-8-2009

253) Ibid

254) <http://www.jipo.gov.jm/pages/archive/Understanding%20the%20WCT.pdf> 2-6-2009

party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty²⁵⁵).

2. Scope of Copyright Protection

Article 2 of the treaty provides the Copyright protection extends to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such applications of articles 2 to 6 of the Berne Convention²⁵⁶).

Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty Article 3²⁵⁷).

Article 4 of the treaty provides the Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression,²⁵⁸) Article 5 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 copyright subsisting in the data or material contained in the compilation,²⁵⁹)

255) Article (17) WIPO Copyright Treaty

256) Article (2) WIPO Copyright Treaty

257) Article (3) WIPO Copyright Treaty

258) Article (4)

259) Article (5)

3. 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. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties, ²⁶⁰⁾

(2) Nothing in this treaty shall derogate from existing obligations of that Contracting.

(3) Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.

(4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention,²⁶¹⁾

4. Right of Distribution

Article 6 of the treaty provides a specified public distribution right which entitles authors to an exclusive right to authorize the making available to the public of the original and copies of their work. The Agreed Statement on article 6 provides that the distribution right does not extend to the dissemination of works by electronic means and only extends to hard copies such as books, and compact discs,²⁶²⁾.

260) Article (1)

261) Ibid

262) Article (6)

5. The rental right

The rental right set out in article 7 of the treaty allows authors of computer programs, cinematographic works,²⁶³⁾ and works embodied in phonograms to enjoy a generally exclusive right of authorizing the commercial rental of these works. This exclusive right is curtailed in certain instances, 1) in the case of computer programs; the right does not apply where the program itself is not the essential object of commercial rental,²⁶⁴⁾

6. Right of Communication to the Public

Article 8 of the treaty provides the authors of literary and artistic works shall enjoy the 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 these works from a place and at a time individually chosen by them, ²⁶⁵⁾

7. Duration of the Protection of Photographic Works

Article 9 of the treaty provides In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention²⁶⁶⁾.

263) Article (7)

264) Ibid

265) Article (8)

266) Article (9)

8. Limitations and Exceptions

Article 10 of the treaty provides the 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 in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author,²⁶⁷⁾

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author²⁶⁸⁾.

9. Eligibility for Becoming Party to the Treaty

Article 17 of the treaty provides eligibility for Becoming Party to the Treaty

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty²⁶⁹⁾.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty²⁷⁰⁾.

²⁶⁷⁾ Article (10)

²⁶⁸⁾ Ibid

²⁶⁹⁾ Article (17)

10. Denunciation of the Treaty

Article 23 of the treaty provides a Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification, ²⁷¹⁾.

11. Languages of the Treaty

Article 24 of the treaty provides Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic²⁷²⁾.

(2) An official text in any language other than those referred to in paragraph 1 shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of

WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved,²⁷³⁾.

270) Ibid

271) Article (23)

272) Article (24)

273) Ibid

IX. The WIPO Performances and Phonogram Treaty

A diplomatic conference was held by WIPO from 2 to 20 December 1996 in Geneva and led to the adoption on 20 December 1996 of the WIPO Performances and Phonograms Treaty²⁷⁴⁾

The WIPO Performances and Phonograms Treaty extends the existing provision of the Berne Convention and the 1961 Rome Convention for the Protection of Performers, Producers and Phonogram and Broadcasting in relation to rights of performers and producers of phonogram. As in the case of the WIPO Copyright Treaty, some of the aspects of this treaty had already been addressed in TRIPS, and it was therefore important for WIPO to update existing protection to ensure that it remained at the leading edge of copyright and neighbouring rights protection.²⁷⁵⁾

Some of the provisions of the Copyright Treaty are repeated in this treaty in relation to performances and sound recordings. In particular, this treaty adopts the copy protection and rights management provisions of the Copyright Treaty, and it confirms that the rights of distribution and communication to the public given under the Copyright Treaty apply to performers and producers of sound recordings as well as to owners of copyright. Importantly, in cases of publication for commercial purposes, the right to authorize making available to the public by wire or wireless means is subject to Article 15, which permits contracting states to commute the right to a right to receive a single payment

As of April 2005, 49 States had ratified this Treaty²⁷⁶⁾

The first article of the treaty provides that "nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each

274) http://www.aepo-artis.org/pages/138_1.html 25-6-2009

275) http://itlaw.wikia.com/wiki/WIPO_Performances_and_Phonograms_Treaty 20-7-2009

276) http://www.aepo-artis.org/pages/138_1.html 7-7-2009

other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome October 26, 1961".

The Rome Convention thus seems, in cases of conflict with the Treaty, to prevail over the latter for the States which are parties to both international instruments.

Article 1 provides also that "this treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties ²⁷⁷⁾

1. Definitions

Article 2 of the treaty contains several definitions,

(1) "Performers" are 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, ²⁷⁸⁾

This definition is thus wider than the definition of the Rome Convention. Protection is afforded not only to performers who interpret a work as provided for under Article 3 a) of the Rome Convention, but also to those who interpret an expression of folklore, not protected by copyright. This was already the case in several national legislations but not in an international instrument. ²⁷⁹⁾

(2) The definition of phonogram is not very clear.

Indeed, Article 2, b) provides that "phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a

²⁷⁷⁾ Article (1) from the WIPO Performances and Phonograms Treaty

²⁷⁸⁾ Article (2) from the WIPO Performances and Phonograms Treaty

²⁷⁹⁾ http://www.aepo-artis.org/pages/138_1.html 25-6-2009

cinematographic or other audiovisual work;

This definition, in its last part, differs noticeably, at least in appearance from that included under Article 3 b) of the Rome Convention which defines the phonogram as "any exclusively aural fixation of sounds of a performance or of other sounds."

(3)The fixation is defined as "means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device

(Article 2 c)), It has to be understood that what is at stake is the "first fixation", the initial recording, which can then be reproduced.

(4) "publication" of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(5) Broadcasting is defined as "means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting" transmission of encrypted signals is "broadcasting"where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

The treaty does not distinguish between techniques of broadcasting (digital or analog) and the criterion of broadcasting "for public reception" is the determining factor. A private transmission not intended for public reception and received by a member of the public is not considered as broadcasting. On the other hand, the transmission of encrypted signals constitutes broadcasting if the possibility of decrypting this broadcast is

normally provided to the public by the broadcasting organization or with its consent.

(6) "Communication to the public" of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 15, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. Beneficiaries of Protection under this Treaty

Article 3 of the Treaty stipulates ²⁸⁰⁾

(1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonogram who are nationals of other Contracting Parties.

(2) The nationals of other Contracting Parties shall be understood to be those performers or producers of phonogram who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in Article 2 of this Treaty.

(3) Any Contracting Party availing itself of the possibilities provided in Article 5(3) of the Rome Convention or, for the purposes of Article 5 of the same Convention, Article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization (WIPO) ²⁸¹⁾

²⁸⁰⁾ Article (3)

²⁸¹⁾ Ibid

3. The moral right

Article 5 grants a moral right to the performers ²⁸²⁾

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the 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, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

Moreover, it is regrettable that the possibility of opposing to any distortion, mutilation or other modification of the performance is subject to the demonstration that such acts are "prejudicial to the reputation of the performer".

Article 5 provides that:

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained, This formula also taken from the Berne Convention keeps the moral right to a minimum until the expiration of the economic rights of the performer

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

²⁸²⁾ Article (5)

4. The right of fixation

Article 6 of the Treaty grants to the performer the exclusive right of authorizing, as regards their performances ²⁸³⁾

(i) The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(ii) The fixation of their unfixed performances.

5. The right of reproduction

Under Article 7, performers enjoy "the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any matter or form".

The granted reproduction right refers only to aural fixations of performers' performances. ²⁸⁴⁾

6. The right of distribution

Article 8 of the Treaty grants to performers an exclusive right "of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership"

The protection of performer is also in this case limited to the aural domain. ²⁸⁵⁾

The second paragraph of Article 8 leaves to the Contracting Parties the freedom to determine the conditions of the exhaustion of the distribution right.²⁸⁶⁾

²⁸³⁾ Article (6)

²⁸⁴⁾ Article (7)

²⁸⁵⁾ Article (8)

²⁸⁶⁾ Ibid

7. The right of rental

According to Article 9, performing artists enjoy the exclusive right of authorizing the rental focused on "the commercial rental to the public of the original or copies of their performances fixed in phonograms" and this even after the distribution of the phonogram authorized by the performer.²⁸⁷⁾

In order to respond to the demands of certain States, paragraph 2 of Article 9 leaves the possibility to a Contracting Party which on 15 April 1994 did not apply a system of exclusive right but had in force a system of equitable remuneration for the rental, to maintain that system "provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers".

8. Right of Making Available of Fixed Performances

Article 10 grants to performers the exclusive right of authorizing "the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them."²⁸⁸⁾

9. Limitations and exceptions

Article 16 of the Treaty stipulates :²⁸⁹⁾

"(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of

²⁸⁷⁾ Article (9)

²⁸⁸⁾ Article (10)

²⁸⁹⁾ Article (16)

performers and producers of phonograms as they provide for in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations 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 or phonogram and do not unreasonably prejudice the legitimate interests of the performers or of the producers of the phonograms."

10. The term of protection

The Treaty provides in its Article 17 1) for the benefit of performers a term of protection which shall last "at least until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram".²⁹⁰⁾

The term of protection is thus 50 years from the audio recording of the performance.

This reference to the sole audio recording is not very coherent as it concerns a protection which is not limited to phonograms.

As regards the phonogram producers, the term of protection shall "last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made".

Under the Rome Convention (Article 14) the term of protection was of 20 years computed from the fixation" ²⁹¹⁾

These 50 years computed from the fixation or from the publication are far removed from the 50 years of protection granted after the death of the

290) Article (17)

291) The Rome Convention (Article 14)

author by the Berne Convention”²⁹²⁾

11. Eligibility for Becoming Party to the Treaty

Article 26 of the Treaty stipulates²⁹³⁾

(1) Any Member State of WIPO may become party to this Treaty.

(2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

12. Rights and Obligations under the Treaty

Article 27 of the Treaty stipulates²⁹⁴⁾

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

²⁹²⁾ http://www.aepo-artis.org/pages/138_1.html 25-6-2009

²⁹³⁾ Article (26)

²⁹⁴⁾ Article (26)

13. Denunciation of the Treaty

Article 31 of the Treaty stipulates ²⁹⁵⁾

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

14. Languages of the Treaty

Article 32 of the Treaty stipulates ²⁹⁶⁾

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

²⁹⁵⁾ Article (31)

²⁹⁶⁾ Article (32)

IX. Conclusion

Copyright :

Copyright was first given statutory force in the United Kingdom by the copyright Act 1710. this is one of the most long-standing forms of intellectual property right, it is a legal term used to describe the rights given to creators for their literary and artistic works” The literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the form or mode of its expression...’ the works that covered under this category (include) novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps, and technical drawings

related rights

Copyright protects the rights of authors and another set of similar rights, known as “related rights” or “neighbouring rights” protects the rights of other owners of rights, The related rights or the neighbouring rights is the representatives and performance artists, musicians, singers ,and other persons who are perform literary and artistic works , protecting the producer’s audio rights and video, and prohibit the reproduction of their phonograms, either directly or indirectly, and protecting the broadcasting organizations rights. Those rights come after the author’s rights protection, and the related rights holders who are doing publish of creative works of authors and there facilitate of the intellectual creation process by assisting authors to communicate their works to the public.

There are some conventions to protecting those rights such as;

Berne Convention

the Berne Convention for the Protection of Literary and Artistic Works, Berne Convention was developed at the instigation of Victor Hugo of the Association Literary and Artistic International. It is the oldest international agreement in the Convention is the most important treaty that governs the area of copyright. Article 7 lays down a minimum term of protection; copyright protection granted by the Convention is the life of the author and fifty years from the end of the year of his death. Under the Berne Convention member countries offer each other the same protections as they would provide for their own citizens' copyrights. Include any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression"

TRIPS agreement

TRIPS agreement is an international agreement administered by the World Trade Organization (WTO) and there are some Provisions of the Agreement in the field of copyright and related rights.

Roma convention

Roma convention, Convention for the Protection of Performers, The minimum term of protection under the Rome Convention is twenty years from the end of the year in which the fixation was made.

WIPO Copyright Treaty

The WIPO Copyright Treaty, adopted by the World Intellectual Property Organization (WIPO) in 1996, Provides additional protections for copyright deemed necessary in the modern information era. It protects literary and artistic works, a broad category that includes books, music, art, movies, computer programs, databases and digital communications, Including transmissions of copyrighted works via the internet and other computer networks.

WIPO Performances and Phonograms Treaty

The WIPO Performances and Phonograms Treaty

That treaty was also adopted by the World Intellectual Property Organization (WIPO) on 20 December 1996. The WIPO Performances and Phonograms Treaty extends the existing provision of the Berne Convention and the 1961 Rome Convention for the Protection of Performers, Producers Phonograms. As in the case of the WIPO Copyright Treaty, some of the aspects of this treaty had already been addressed in TRIPS.

These conventions are protecting the copyright and related rights, but it is not sufficient to maintain the copyright and related rights, We must enact new laws and conventions that the new measures and activated to reach a better situation. Lack of attention to intellectual property would negatively impact on the movement of international creativity and write activity and composition style and also affects our lives negatively.

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