Understanding Copyright and Related Rights

World Intellectual Property Organization

Contents

Introduction

This booklet is intended to provide an introduction for non-specialists or new-comers to the subject of copyright and related rights. It explains in layman's terms the fundamentals underpinning copyright law and practice. It describes the different types of rights which copyright and related rights law protects, as well as the limitations on those rights. And it briefly covers transfer of copyright and provisions for enforcement.

Detailed legal or administrative guidance on how, for example, to deal with infringement of copyright, is not covered in this booklet, but can be obtained from national intellectual property or copyright offices. The further information section at the back of this booklet also lists some useful websites and publications for readers requiring more detail.

A separate WIPO booklet, *Understanding Industrial Property*, offers an equivalent introduction to the subject of industrial property, including patents for invention, industrial designs, trademarks and geographical indications.

Intellectual Property

Copyright legislation is part of the wider body of law known as intellectual property. The term intellectual property refers broadly to the creations of the human mind. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The *Convention Establishing the World Intellectual Property Organization* (1967) gives the following list of subject matter protected by intellectual property rights:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- "all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number

of copies at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them. Intellectual property rights are also characterized by certain limitations, such as limited duration in the case of copyright and patents.

The importance of protecting intellectual property was first recognized in the *Paris Convention for the Protection of Industrial Property* in 1883 and the *Berne Convention for the Protection of Literary and Artistic Works* in 1886. Both treaties are administered by the World Intellectual Property Organization (WIPO).

Countries generally have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations. The second is to promote creativity, and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.

The Two Branches of Intellectual Property: Industrial Property and Copyright

Intellectual property is usually divided into two branches, namely industrial property, which broadly speaking protects inventions, and copyright, which protects literary and artistic works.

Industrial property takes a range of forms. These include patents to protect inventions, and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition.

Copyright relates to artistic creations, such as books, music, paintings and sculptures, films and technology-based works such as computer programs and electronic databases. In most European languages other than English, copyright is known as author's rights. The expression copyright refers to the main act which, in respect of literary and artistic creations, may be made only by the author or with his authorization. That act is the making of copies of the work. The expression author's rights refers to the creator of the artistic work, its author. It thus underlines the fact, recognized in most laws, that the author has certain specific rights in his creation which only he can exercise (such as the right to prevent a distorted reproduction). Other rights (such as the right to make copies)

can be exercised by other persons, for example, a publisher who has obtained a license from the author.

While other types of intellectual property also exist, it is helpful for present purposes to explore the distinction between industrial property and copyright in terms of the basic difference between inventions and literary and artistic works.

Inventions may be defined in a non-legal sense as new solutions to technical problems. These new solutions are **ideas**, and are protected as such; protection of inventions under patent law does not require that the invention be represented in a physical embodiment. The protection accorded to inventors is, therefore, protection against any use of the invention without the authorization of the owner. Even a person who later makes the same invention independently, without copying or even being aware of the first inventor's work, must obtain authorization before he can exploit it.

Unlike protection of inventions, copyright law protects only the **form of expression** of ideas, not the ideas themselves. The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colors and shapes. So copyright law protects the owner of property rights against those who copy or otherwise take and use the form in which the original work was expressed by the author.

From this basic difference between inventions and literary and artistic works, it follows that the legal protection provided to each also differs. Since protection for inventions gives a monopoly right to exploit an idea, such protection is short in duration – usually about 20 years. The fact that the invention is protected must also be made known to the public. There must be an official notification that a specific, fully described invention is the property of a specific owner for a fixed number of years; in other words, the protected invention must be disclosed publicly in an official register.

Since the legal protection of literary and artistic works under copyright, by contrast, prevents only unauthorized use of the expressions of ideas, the duration of protection can be much longer than in the case of the protection of ideas themselves, without damage to the public interest. Also, the law can be – and in most countries is – simply declaratory, i.e., the law may state that the author of an original work has the right to prevent other persons from copying or otherwise using his work. So a created work is considered protected as soon as it exists, and a public register of copyright protected works is not necessary.

Works Protected by Copyright

For the purposes of copyright protection, the term "literary and artistic works" is understood to include every original work of authorship, irrespective of its literary or artistic merit. The ideas in the work do not need to be original, but the form of expression must be an original creation of the author. The *Berne Convention for the Protection of Literary and Artistic Works* (Article 2) states: "The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression". The Convention goes on to list the following examples of such works:

- books, pamphlets and other writings;
- lectures, addresses, sermons;
- dramatic or dramatico-musical works;
- choreographic works and entertainments in dumb show;
- 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, engraving and lithography;
- photographic works, to which are assimilated works expressed by a process analogous to photography;
- works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
- "translations, adaptations, arrangements of music and other alterations of a literary or artistic work, which are to be protected as original works without prejudice to the copyright in the original work."
- "collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations, are to be protected as such, without prejudice to the copyright in each of the works forming part of such collections."

Member countries of the Berne Union, and many other countries, provide protection under their copyright laws for the above categories of works. The list, however, is not intended to be exhaustive. Copyright laws also protect other modes or forms of expression of works in the literary, scientific and artistic domain, which are not included in the list.

Computer programs are a good example of a type of work which is not included in the list in the *Berne Convention*, but which is undoubtedly included in the notion of a production in the literary, scientific and artistic domain within

the meaning of Article 2. Indeed, computer programs are protected under the copyright laws of a number of countries, as well as under the *WIPO Copyright Treaty* (1996). A computer program is a set of instructions, which controls the operations of a computer in order to enable it to perform a specific task, such as the storage and retrieval of information. The program is produced by one or more human authors, but in its final "mode or form of expression," it can be understood directly only by a machine (the computer), not by humans.

Multimedia productions are another example of a type of work not listed in the *Berne Convention*, but which comes within the notion of creations in the literary, scientific and artistic domain. While no acceptable legal definition has been developed, there is a consensus that the combination of sound, text and images in a digital format, which is made accessible by a computer program, embodies an original expression of authorship sufficient to justify the protection of multimedia productions under the umbrella of copyright.

Rights Protected

The principle of any kind of property is that the owner may use it as he wishes, and that nobody else can lawfully use it without his authorization. This does not, of course, mean that he can use it regardless of the legally recognized rights and interests of other members of society. Similarly the owner of copyright in a protected work may use the work as he wishes, and may prevent others from using it without his authorization. The rights granted under national laws to the owner of copyright in a protected work are normally exclusive rights to authorize a third party to use the work, subject to the legally recognized rights and interests of others.

There are two types of rights under copyright. Economic rights allow the rights owner to derive financial reward from the use of his works by others. Moral rights allow the author to take certain actions to preserve the personal link between himself and the work.

Most copyright laws state that the author or rights owner has the right to authorize or prevent certain acts in relation to a work. The rights owner of a work can **prohibit or authorize**:

- its reproduction in various forms, such as printed publications or sound recordings;
- the distribution of copies;
- its public performance;

- its broadcasting or other communication to the public;
- its translation into other languages;
- its adaptation, such as a novel into a screenplay.

These rights are explained in more detail in the following paragraphs.

Rights of reproduction, distribution, rental and importation

The right of the copyright owner to prevent others from making copies of his works without his authorization is the most basic right protected by copyright legislation. The right to control the act of **reproduction** – be it the reproduction of books by a publisher, or the manufacture by a record producer of compact discs containing recorded performances of musical works – is the legal basis for many forms of exploitation of protected works.

Other rights are recognized in national laws in order to ensure that this basic right of reproduction is respected. Many laws include a right specifically to authorize **distribution** of copies of works. Obviously, the right of reproduction would be of little economic value if the owner of copyright could not authorize the distribution of the copies made with his consent. The right of distribution usually terminates upon first sale or transfer of ownership of a particular copy. This means, for example, that when the copyright owner of a book sells or otherwise transfers ownership of a copy of the book, the owner of that copy may give the book away or even resell it without the copyright owner's further permission.

Another right which is achieving increasingly wide recognition, and is included in the *WIPO Copyright Treaty*, is the right to authorize **rental** of copies of certain categories of works, such as musical works in sound recordings, audiovisual works, and computer programs. This became necessary in order to prevent abuse of the copyright owner's right of reproduction when technological advances made it easy for rental shop customers to copy such works.

Finally, some copyright laws include a right to control **importation** of copies as a means to prevent erosion of the principle of territoriality of copyright; that is, the legitimate economic interests of the copyright owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis.

Certain forms of reproduction of a work are exceptions to the general rule, because they do not require the authorization of the rights owner. These exceptions are known as limitations on rights (see page 11). An area of current debate relates to the scope of one particular limitation traditionally present in

copyright laws, which allows individuals to make single copies of works for private, personal and non-commercial purposes. The continued justification for such a limitation on the right of reproduction is being questioned now that digital technology has made it possible to produce high-quality, unauthorized copies of works, which are virtually indistinguishable from the source – and thus a perfect substitute for the purchase of authorized copies.

Rights of public performance, broadcasting, communication to the public, and making available to the public

A **public performance** is considered under many national laws to include any performance of a work at a place where the public is or can be present; or at a place not open to the public, but where a substantial number of persons outside the normal circle of a family and its close acquaintances is present. The right of public performance entitles the author or other copyright owner to authorize live performances of a work, such as a play in a theater, or an orchestra performance of a symphony in a concert hall. Public performance also includes performance by means of recordings. Thus a musical work is considered publicly performed when a sound recording of that work, or phonogram, is played over amplification equipment, for example in a discotheque, airplane, or shopping mall.

The right of **broadcasting** covers the transmission for public reception of sounds, or of images and sounds, by wireless means, whether by radio, television, or satellite. When a work is **communicated to the public**, a signal is distributed by wire or wireless means, which can be received only by persons who possess the equipment necessary to decode the signal. Cable transmission is an example of communication to the public.

Under the *Berne Convention*, authors have the exclusive right to authorize public performance, broadcasting and communication of their works to the public. Under some *national laws*, the exclusive right of the author or other rights owner to authorize broadcasting is replaced, in certain circumstances, by a right to **equitable remuneration**, although this sort of limitation on the broadcasting right is less and less common.

In recent years, the rights of broadcasting, public performance and communication to the public have been the subject of much discussion. New questions have arisen as a result of technological developments, in particular digital technology, which has introduced interactive communications, whereby the user selects which works he wishes to have delivered to his computer. Opinions diverge as to which right should be applied to this activity. The *WIPO Copyright Treaty* (WCT) (article 8)

clarifies that it should be covered by an exclusive right, which the Treaty describes as the authors' right to authorize making their works available to the public "in such a way that members of the public can access these works from a place and at a time individually chosen by them." Most national laws implement this right as a part of the right of communication to the public, although some do so as part of the right of distribution.

Translation and adaptation rights

The acts of translating or adapting a work protected by copyright also require authorization from the rights owner. Translation means the expression of a work in a language other than that of the original version. Adaptation is generally understood as the modification of a work to create another work, for example adapting a novel to make a film; or the modification of a work for different conditions of exploitation, e.g., by adapting a textbook originally written for university students to make it suitable for a lower level.

Translations and adaptations are themselves works protected by copyright. So in order to publish a translation or adaptation, authorization must be obtained both from the owner of the copyright in the original work and from the owner of copyright in the translation or adaptation.

The scope of the right of adaptation has been the subject of significant discussion in recent years because of the greatly increased possibilities for adapting and transforming works which are embodied in digital format. With digital technology, manipulation of text, sound and images by the user is quick and easy. Discussions have focused on the appropriate balance between the rights of the author to control the integrity of the work by authorizing modifications, and the rights of users to make changes which seem to be part of a normal use of works in digital format.

Moral rights

The *Berne Convention* (Article 6*bis*) requires Member countries to grant to authors:

(i) the right to claim authorship of the work, (sometimes called the **right of paternity**); and

(ii) the right to object to any distortion or modification of the work, or other derogatory action in relation to the work, which would be prejudicial to the author's honor or reputation, (sometimes called the **right of integrity**).

These rights are generally known as the moral rights of authors. The Convention requires them to be independent of the author's economic rights, and to remain with the author even after he has transferred his economic rights. It is worth noting that moral rights are only accorded to individual authors. Thus even when, for example, a film producer or a publisher owns the economic rights in a work, it is only the individual creator who has moral interests at stake.

Limitations on Rights

The first limitation is the exclusion from copyright protection of **certain categories of works**. In some countries, works are excluded from protection if they are not fixed in tangible form. For example, a work of choreography would only be protected once the movements were written down in dance notation or recorded on videotape. In certain countries, the texts of laws, court and administrative decisions are excluded from copyright protection.

The second category of limitations concerns particular acts of exploitation, normally requiring the authorization of the rights owner, which may, under circumstances specified in the law, be carried out without authorization. There are two basic types of limitations in this category: (a) **free use**, which carries no obligation to compensate the rights owner for the use of the work without authorization; and (b) **non-voluntary licenses**, which do require that compensation be paid to the rights owner for non-authorized exploitation.

Examples of free use include:

- quoting from a protected work, provided that the source of the quotation and the name of the author is mentioned, and that the extent of the quotation is compatible with fair practice;
- use of works by way of illustration for teaching purposes; and
- use of works for the purpose of news reporting.

In respect of **free use for reproduction**, the Berne Convention contains a general rule, rather than an explicit limitation. Article 9(2) states that Member States may provide for free reproduction in special cases where the acts do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. As noted above, many laws allow for individuals to reproduce a work exclusively for their personal, **private and non-commercial use.** However, the ease and quality of individual copying made possible by recent technology has led some countries to narrow the scope of such

provisions, including through systems which allow certain copying, but incorporate a mechanism for payment to rights owners for the prejudice to their economic interests resulting from the copying.

In addition to the specific categories of free use set out in national laws, the laws of some countries recognize the concept known as **fair use** or **fair dealing**. This allows use of works without the authorization of the rights owner, taking into account factors such as the nature and purpose of the use, including whether it is for commercial purposes; the nature of the work used; the amount of the work used in relation to the work as a whole; and the likely effect of the use on the potential commercial value of the work.

Non-voluntary licenses allow use of works in certain circumstances without the authorization of the owner of rights, but require that compensation be paid in respect of the use. Such licenses are called non-voluntary because they are allowed in the law, and do not result from the exercise of the exclusive right of the copyright owner to authorize particular acts. Non-voluntary licenses were usually created in circumstances where a new technology for the dissemination of works to the public had emerged, and where the national legislator feared that rights owners would prevent the development of the new technology by refusing to authorize use of works. This was true of two non-voluntary licenses recognized in the *Berne Convention*, which allow the mechanical reproduction of musical works and broadcasting. The justification for non-voluntary licenses is, however, increasingly called into question, since effective alternatives now exist for making works available to the public based on authorizations given by the rights owners, including in the form of collective administration of rights.

Duration of Copyright

Copyright does not continue indefinitely. The law provides for a period of time during which the rights of the copyright owner exist. The period or duration of copyright begins from the moment when the work has been created, or, under some national laws, when it has been expressed in a tangible form. It continues, in general, until some time after the death of the author. The purpose of this provision in the law is to enable the author's successors to benefit economically from exploitation of the work after the author's death.

In countries party to the *Berne Convention*, and in many other countries, the duration of copyright provided for by national law is as a general rule the life of the author plus not less than 50 years after his death. The *Berne Convention*

also establishes periods of protection for works such as anonymous, posthumous and cinematographic works, where it is not possible to base duration on the life of an individual author. There is a trend in a number of countries toward lengthening the duration of copyright. The European Union, the United States of America and several others have extended the term of copyright to 70 years after the death of the author.

Ownership, Exercise and Transfer of Copyright

The owner of copyright in a work is generally, at least in the first instance, the person who created the work, i.e. the author of the work. But this is not always the case. The *Berne Convention* (Article 14*bis*) contains rules for determining initial ownership of rights in cinematographic works. Certain national laws also provide that, when a work is created by an author who is employed for the purpose of creating that work, then the employer, not the author, is the owner of the copyright in the work. As noted above, however, *moral* rights always belong to the individual author of the work, whoever the owner of economic rights may be.

The laws of many countries provide that the initial rights owner in a work may transfer all economic rights to a third party. (Moral rights, being personal to the author, can never be transferred). Authors may sell the rights to their works to individuals or companies best able to market the works, in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as **royalties**. Transfers of copyright may take one of two forms: assignments and licenses.

Under an **assignment**, the rights owner transfers the right to authorize or prohibit certain acts covered by one, several, or all rights under copyright. An assignment is a transfer of a property right. So if all rights are assigned, the person to whom the rights were assigned becomes the new owner of copyright.

In some countries, an assignment of copyright is not legally possible, and only **licensing** is allowed. Licensing means that the owner of the copyright retains ownership but authorizes a third party to carry out certain acts covered by his economic rights, generally for a specific period of time and for a specific purpose. For example, the author of a novel may grant a license to a publisher to make and distribute copies of the novel. At the same time, the author may grant a license to a film producer to make a film based on the novel. Licenses may be exclusive, where the copyright owner agrees not to authorize any other party to

carry out the licensed acts; or non-exclusive, which means that the copyright owner may authorize others to carry out the same acts. A license, unlike an assignment, does not generally convey the right to authorize others to carry out acts covered by economic rights.

Licensing may also take the form of **collective administration of rights**. Under collective administration, authors and other rights owners grant exclusive licenses to a single entity, which acts on their behalf to grant authorizations, to collect and distribute remuneration, to prevent and detect infringement of rights, and to seek remedies for infringement. An advantage for authors in collective administration lies in the fact that, with multiple possibilities for unauthorized use of works resulting from new technologies, a single body can ensure that mass uses take place on the basis of authorizations which are easily obtainable from a central source.

A rights owner may also **abandon the exercise of the rights**, wholly or partially. The owner may, for example, post copyright protected material on the Internet and leave it free for anybody to use, or may restrict the abandonment to non commercial use. Some very impressive cooperation projects have been organized on a model where contributors abandon certain rights as described in the licensing terms adopted for the project, such as the General Public License (GPL). They thereby leave their contributions free for others to use and to adapt, but with the condition that the subsequent users also adhere to the terms of the license. Such projects, including the *open source movement*, which specializes in creating computer programs, also build their business models on the existence of copyright protection, because otherwise they could not impose an obligation on subsequent users.

Enforcement of Rights

The *Berne Convention* contains very few provisions concerning enforcement of rights, but the evolution of new national and international enforcement standards has been dramatic in recent years due to two principal factors. The first concerns advances in the technological means for creation and use (both authorized and unauthorized) of protected material. Digital technology in particular makes it easy to transmit and make perfect copies of any information existing in digital form, including copyright-protected works. The second factor is the increasing economic importance in the realm of international trade of the movement of goods and services protected by intellectual property rights. Simply put, trade in products embodying intellectual property rights is now a booming, worldwide business.

This is acknowledged in the *WIPO Copyright Treaty* (WCT), which requires Contracting Parties to ensure that enforcement procedures are available under their law so as to permit effective action against any infringement of rights covered by the Treaty, including remedies to prevent or deter further infringements.

The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS), which contains more detailed provisions on the enforcement of rights, is ample evidence of this new link between intellectual property and trade. The following paragraphs identify and summarize some of the enforcement provisions found in recent national legislation. They may be divided into the following categories: conservatory or provisional measures; civil remedies; criminal sanctions; measures to be taken at the border; and measures, remedies and sanctions against abuses in respect of technical devices.

Conservatory or provisional measures have two purposes: first, to prevent infringements from occurring, in particular to prevent the entry of infringing goods into the channels of commerce, including entry of imported goods after clearance by customs; and second, to preserve relevant evidence in regard to an alleged infringement. Thus, judicial authorities may have the authority to order that provisional measures be enacted without advance notice to the alleged infringer. In this way, the alleged infringer is prevented from relocating the goods to avoid detection. The most common provisional measure is a search of the premises of the alleged infringer and seizure of suspected infringing goods, the equipment used to manufacture them, and all relevant documents and other records of the alleged infringing business activities.

Civil remedies compensate the rights owner for economic injury suffered because of the infringement, usually in the form of pecuniary damages, and create an effective deterrent to further infringement. This is often in the form of a judicial order to destroy the infringing goods and the materials which have been predominantly used for producing them. If there is a danger that infringing acts may be continued, the court may also issue injunctions against such acts, failure to comply with which would subject the infringer to payment of a fine.

Criminal sanctions are intended to punish those who willfully commit acts of piracy on a commercial scale and, as in the case of civil remedies, to deter further infringement. The purpose of punishment is served by substantial fines, and by prison sentences consistent with the level of penalties applied for crimes of corresponding seriousness, particularly for repeat offenses. The purpose of deterrence is served by orders for the seizure and destruction of infringing goods, and of the materials and equipment used predominantly to commit the offense.

Measures to be taken at the border are different from the enforcement measures described so far, in that they involve action by the customs authorities rather than by the judicial authorities. Border measures allow the rights owner to request that customs authorities suspend the release into circulation of goods that are suspected of infringing copyright. This is intended to give the rights owner a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged infringing goods will disappear into circulation after customs clearance. The rights owner must (a) satisfy the customs authorities that there is *prima facie* evidence of infringement, (b) provide a detailed description of the goods so that they can be recognized and (c) provide a security to indemnify the importer, the owner of the goods, and the customs authorities in case the goods turn out to be non-infringing.

The final category of enforcement provisions, which has achieved greater importance since the advent of digital technology, includes **measures, remedies and sanctions against abuses in respect of technical means**. In certain cases, the only practical means of preventing copying is through so-called copy-protection or copy-management systems. These use technical devices, which either entirely prevent copying, or make the quality of the copies so poor as to be unusable. Technical means are also used to prevent the reception of encrypted commercial television programs except with use of decoders. However, it is technically possible to manufacture devices to circumvent such copy-protection and encryption systems. The enforcement provisions are intended to prevent the manufacture, importation and distribution of such devices. Provisions to this effect are included in the WCT. So too are provisions to prevent the unauthorized removal or alteration of electronic rights management information, and the dissemination of copies of works from which such information has been removed. Such information may identify the author or rights owner, or contain information about the terms and conditions of use of the work. Removing it may result in the distortion of computerized rights management or fee-distribution systems.

Related Rights

The purpose of related rights is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public; or who produce subject matter which, while not qualifying as works under the copyright systems of all countries, contain sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right. The law of related rights deems that the productions which result from the activities of such persons and entities merit legal protection in themselves, as they are *related* to the protection

of works of authorship under copyright. Some laws make clear, however, that the exercise of related rights should leave intact, and in no way affect, the protection of copyright.

Traditionally, related rights have been granted to three categories of **beneficiaries**:

- performers,
- producers of phonograms and
- broadcasting organizations.

The rights of performers are recognized because their creative intervention is necessary to give life to, for example, motion pictures or musical, dramatic and choreographic works; and because they have a justifiable interest in legal protection of their individual interpretations. The rights of producers of phonograms are recognized because their creative, financial and organizational resources are necessary to make sound recordings available to the public in the form of commercial phonograms; and because of their legitimate interest in having the legal resources to take action against unauthorized uses, be this the making and distribution of unauthorized copies (piracy), or the unauthorized broadcasting or communication to the public of their phonograms. Likewise, the rights of broadcasting organizations are recognized because of their role in making works available to the public, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.

Treaties. The first organized international response to the need for legal protection of the three categories of related rights beneficiaries was the conclusion, in 1961 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)*. Unlike most international conventions, which follow in the wake of national legislation and are intended to synthesize existing laws, the Rome Convention was an attempt to establish international regulations in a new field where few national laws existed at the time. This meant that most States had to draft and enact laws before adhering to the Convention.

Today, it is a widespread view that the Rome Convention is out-of-date and in need of revision or replacement by a new set of norms in the field of related rights, even though it was the basis for inclusion of provisions on the rights of performers, producers of phonograms, and broadcasting organizations in the TRIPS Agreement. (The levels of protection are similar, but not the same). For two of the categories of beneficiaries, up-to-date protection is now provided by the *WIPO Performances and Phonograms Treaty (WPPT)*, which was adopted

in 1996, together with the WCT. Work on a new, separate treaty on the rights of broadcasters continues at WIPO.

The **rights granted** to the three beneficiaries of related rights in national laws are as follows (although not all rights may be granted in the same law):

- **Performers** are provided the rights to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances under certain circumstances. The rights in respect of broadcasting and communication to the public may be in the form of equitable remuneration rather than a right to prevent. Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unauthorized uses of their name and image, or modifications to their performances which present them in an unfavorable light.

- **Producers of phonograms** are granted the rights to authorize or prohibit reproduction, importation and distribution of their phonograms and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of phonograms.

- **Broadcasting organizations** are provided the rights to authorize or prohibit re-broadcasting, fixation and reproduction of their broadcasts.

Under some laws, additional rights are granted. For example, in a growing number of countries, producers of phonograms and performers are granted a right of rental in respect of phonograms (audiovisual works in respect of performers), and some countries grant specific rights over cable transmissions. Likewise under the WPPT, producers of phonograms (as well as any other right holders in phonograms under national law) are granted a right of rental.

As in the case of copyright, the Rome Convention and national laws contain **limitations** on rights. These allow use of protected performances, phonograms, and broadcasts, for example, for teaching, scientific research, or private use, and use of short excerpts for reporting current events. Some countries allow the same kinds of limitations on related rights as their laws provide in connection with copyright, including the possibility of non-voluntary licenses. Under the WPPT, however, such limitations and exceptions must be restricted to certain special cases, which do not conflict with the normal use of the performances of phonograms, and which do not unreasonably prejudice the legitimate interests of the performers or producers.

The **duration** of protection of related rights under the *Rome Convention* is 20 years from the end of the year (a) that the recording is made, in the case of phonograms and performances included in phonograms; or (b) that the performance took place, in the case of performances not incorporated in phonograms; or (c) that the broadcast took place, for broadcasts. In the *TRIPS Agreement* and the *WPPT*, however, the rights of performers and producers of phonograms are to be protected for 50 years from the date of the fixation or the performance. Under the TRIPS Agreement, the rights of broadcasting organizations are to be protected for 20 years from the date of the broadcast. Thus many national laws which protect related rights grant a longer term than the minimum contained in the Rome Convention.

In terms of **enforcement**, remedies for infringement or violation of related rights are, in general, similar to those available to copyright owners as described above, namely, conservatory or provisional measures; civil remedies; criminal sanctions; measures to be taken at the border; and measures, remedies and sanctions against abuses in respect of technical devices and rights management information.

Finally, mention should be made of the relationship between the protection of related rights and the interests of **developing countries**. The largely unwritten and unrecorded cultural expression of many developing countries, generally known as **folklore or traditional cultural expressions**, may be protected under related rights as performances, since it is often through the intervention of performers that they are communicated to the public. By providing related rights protection, developing countries may also provide a means for protection of the vast, ancient and invaluable cultural expression, which is the essence of what distinguishes each culture. Likewise, protecting producers of phonograms and broadcasting organizations helps to establish the foundation for national industries capable of disseminating national cultural expression within the country and, perhaps more important, in markets outside it. The current popularity of what is called world music demonstrates that such markets exist. But the economic benefits from do not always return to the country where the cultural expressions originated. In sum, protection of related rights serves the twin objectives of preserving national culture and providing a means for commercial exploitation of international markets.

The interest of developing countries in the protection of related rights goes beyond the protection of traditional cultural expressions and into the realm of international trade and development. Today, the extent to which a country protects intellectual property rights is inextricably linked to the potential for that country to benefit from the rapidly expanding international trade in goods and services protected by such rights. For example, the convergence of

telecommunications and computer infrastructures will lead to international investment in many sectors of developing country economies, including intellectual property, and those countries which lack political commitment to the protection of intellectual property rights will be left out of the frame. Protection of related rights has thus become part of a much larger picture. It is a necessary precondition for participation in the emerging system of international trade and investment that will characterize the 21st century.

The Role of WIPO

The World Intellectual Property Organization (WIPO) is an international organization dedicated to promoting creativity and innovation by ensuring that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are thus recognized and rewarded for their ingenuity.

As a specialized agency of the United Nations, WIPO exists as a forum for its Member States to create and harmonize **rules and practices** to protect intellectual property rights. Most industrialized nations have protection systems that are centuries old. Many new and developing countries, however, are now building up their patent, trademark and copyright laws and systems. With the rapid globalization of trade during the last decade, WIPO plays a key role in helping these new systems to evolve through treaty negotiation, legal and technical assistance, and training in various forms, including in the area of enforcement of intellectual property rights.

The field of copyright and related rights has expanded dramatically as technological developments have brought new ways of disseminating creations worldwide through such forms of communication as satellite broadcasting, compact discs, DVDs and the Internet. WIPO is closely involved in the on-going international debate to shape new standards for copyright protection in cyberspace.

WIPO administers the following international **treaties on copyright and related rights:**

- Berne Convention for the Protection of Literary and Artistic Works
- Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- WIPO Copyright Treaty (WCT)
- WIPO Performances and Phonograms Treaty (WPPT)

WIPO also provides an **Arbitration and Mediation Center**, which offers services for the resolution of international commercial disputes between private parties involving intellectual property. The subject matter of these proceedings includes both contractual disputes (such as patent and software licenses, trademark coexistence agreements, and research and development agreements) and non-contractual disputes (such as patent infringement). The Center is also now recognized as the leading dispute resolution service provider for disputes arising out of the abusive registration and use of Internet domain names.

Further Information

Further information about all aspects of copyright and related rights is available on the WIPO website and in a range of WIPO publications. Many of these publications may be downloaded free of charge.

www.wipo.int	For the WIPO website.
www.wipo.int/treaties	For full texts of all of the **treaties** regulating intellectual property protection.
www.wipo.int/ebookshop	To buy publications from the WIPO electronic bookshop. These include:

- *Intellectual Property. A Power Tool for Economic Growth, by Kamil Idris,* publication no. 888.
- *WIPO Intellectual Property Handbook: Policy, Law and Use,* publication no. 489.
- *Collective Management of Copyright and Related Rights,* publication no. 855.
- *Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms,* publication no. 891.

- *Guide on Surveying the Economic Contribution of the Copyright-Based Industries,* publication no. 893.

- *WIPO Guide on the Licensing of Copyright and Related Rights,* publication no. 897.

www.wipo.int/publications To download free publications. These include:

- *WIPO General Information,* publication no. 400.

- *From Artist to Audience: How creators and consumers benefit from copyright and related rights and the system of collective management of copyright,* publication no. 922.

Links to the websites of national Intellectual Property Offices can be found at *www.wipo.int/new/en/links/addresses/ip/index.htm*

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