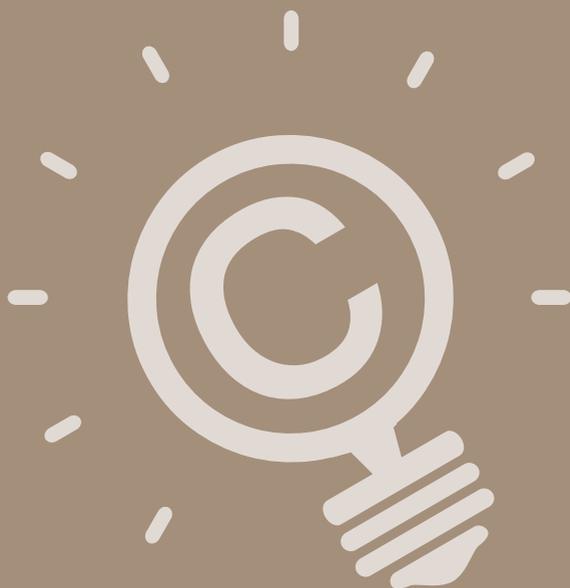


# Understanding Copyright and Related Rights



2016

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# Introduction

This publication provides an introduction to copyright and related rights for non-specialists. It explains in general terms the principles of copyright law and practice and describes the different types of rights that copyright and related rights protect, as well as the limitations and exceptions to those rights. It also briefly covers transfer of copyright and provisions for enforcement.

Detailed legal or administrative guidance on how copyright operates in a particular country is not covered here, but can be obtained from national intellectual property or copyright offices. The “Further Information” section also lists some useful WIPO website links for readers seeking greater depth.

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

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## Intellectual Property

Copyright legislation is part of the wider body of law known as intellectual property (IP) which refers broadly to the creations of the human mind. IP rights protect the interests of innovators and creators by giving them rights over their creations.

The *Convention Establishing the World Intellectual Property Organization* (1967) does not seek to define IP, but lists the following as protected by IP 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”.

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

Countries generally have laws to protect IP for two main reasons:

- to give statutory expression to the rights of creators and innovators in their creations and innovations, balanced against the public interest in accessing creations and innovations;
- to promote creativity and innovation, so contributing to economic and social development.

## The Two Branches of Intellectual Property

IP is usually divided into two branches, namely industrial property and copyright.

### Industrial property

Industrial property takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition.

### Copyright

Copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases). In certain languages, copyright is referred to as **authors' rights**. Although international law has brought about some convergence, this distinction reflects an historic difference in the evolution of these rights that is still reflected in many copyright systems. The expression *copyright* refers to the act of copying an original work which, in respect of literary and artistic creations, may be done only by the author or with the author's permission. The expression *authors' rights* refers to the creator of an artistic work, its author, thus underlining that, as recognized in most laws, authors have certain specific rights in their creations that only they can exercise, which are often referred to as **moral rights**, such as the right to prevent distorted reproductions of the work. Other rights, such as the right to make copies, can be exercised by third parties with the author's permission, for example, by a publisher who obtains a license to this effect from the author.

While other types of IP also exist, it is helpful at this stage to think of the distinction between industrial property and copyright in terms of the basic difference between inventions and literary or 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 the invention to be represented in a physical form. The protection accorded to inventors is, therefore, protection against any use of the invention without the permission of the owner. Even an inventor who independently creates something that has already been invented, without copying or being aware of the first inventor's work, must obtain permission in order to exploit the later invention.

**Copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases).**

Unlike protection for inventions, copyright law and the associated concept of related or neighboring rights (discussed below) protects only the form of expression of ideas, not the ideas themselves. The works protected by copyright are creative with regard to the choice and arrangement of the medium of expression such as words, musical notes, colors and shapes. Copyright protects the owner of the exclusive property rights against those who copy or otherwise take and use the particular form in which the original work was expressed. It is possible for authors and creators to create, have rights in and exploit a work very similar to the creation of another author or creator without infringing copyright, as long as the work of another author or creator was not copied.

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. This involves issuing 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.

By contrast, the legal protection of literary and artistic works under copyright prevents only unauthorized use of the expressions of ideas. This is one reason that the duration of protection for copyright and related rights is much longer than for patents. Copyright 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 the work. A created work is thus considered protected as soon as it exists, and a public register of copyright-protected works is not necessary. No actions or formalities are required of the author or creator.

# Works Protected by Copyright

For the purposes of copyright protection, the term “literary and artistic works” includes 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 by the author. Article 2 of the Berne Convention states that: “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 lists 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 “shall be protected as original works without prejudice to the copyright in the original work”; and
- “collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations” – again, the Convention provides that these “shall 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 some other countries provide protection under their copyright laws for the above categories of works. However, the list is not intended to be exhaustive. Protection for some categories such as designs is optional. National copyright laws also protect other modes or forms of expression of works in the literary, scientific and artistic domain.

**Computer programs** are a good example of a type of work not included in the list in the Berne Convention, but that now qualifies as a production in the literary, scientific and artistic domain within the meaning of Article 2. Computer programs are protected under the copyright laws of a number of countries as well as under the *WIPO Copyright Treaty (WCT)* (1996). A computer program is a set of instructions that controls the operations of a computer to enable it to perform a specific task, such as the storage and retrieval of information.

**The ideas in the work do not need to be original, but the form of expression must be an original creation by the author.**

# Rights Protected by Copyright

Copyright protects two types of rights. **Economic rights** allow right owners to derive financial reward from the use of their works by others. **Moral rights** allow authors and creators to take certain actions to preserve and protect their link with their work. The author or creator may be the owner of the economic rights or those rights may be transferred to one or more copyright owners. Many countries do not allow the transfer of moral rights.

**Economic rights allow right owners to derive financial reward from the use of their works by others. Moral rights allow authors and creators to take certain actions to preserve and protect their link with their work.**

## Economic rights

With any kind of property, its owner may decide how it is to be used, and others can use it lawfully only if they have the owner's permission, often through a license. The owner's use of the property must, however, respect the legally recognized rights and interests of other members of society. So the owner of a copyright-protected work may decide how to use the work, and may prevent others from using it without permission. National laws usually grant copyright owners exclusive rights to allow third parties to use their works, subject to the legally recognized rights and interests of others.

Most copyright laws state that authors or other right owners have the right to authorize or prevent certain acts in relation to a work. Right owners can **authorize** or **prohibit**:

- reproduction of the work in various forms, such as printed publications or sound recordings;
- distribution of copies of the work;
- public performance of the work;
- broadcasting or other communication of the work to the public;
- translation of the work into other languages; and
- adaptation of the work, such as turning a novel into a screenplay.

The following section explains these rights in greater detail.

## Rights of reproduction, distribution, rental and importation

The right of copyright owners to prevent others from making copies of their works without permission 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 to authorize the **dis-tribution** of copies of works. The right of reproduction would be of little economic value if copyright owners could not control distribution of copies of their works made with their consent. The right of distribution usually terminates upon first sale or transfer of ownership of a particular physical 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. The question of applying this concept to digital files is under consideration in various national legal systems.

Another right that is gaining increasing recognition, and is included in the WCT, 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. The right is based on the premise that the legitimate economic interests of copyright owners would be endangered were they not able to exercise their rights of reproduction and distribution on a territorial basis.

Certain forms of reproduction of a work are subject to exemptions from the general rule, because they do not require the permission of the right owner. These exemptions are known as **limitations or exceptions to rights** (see next section).

## 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 are 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 theatre or an orchestra performance of a symphony in a concert hall. Public performance also includes performance by means of a recording. 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 for reception 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 the public performance, broadcasting and communication of their works to the public. Under some national laws, the exclusive right of the author or other right owner to authorize broadcasting is replaced, in certain circumstances, by a **right to equitable remuneration**, although this type of limitation on the broadcasting right has become less common.

In recent years, the rights of broadcasting, public performance and communication to the public have been the subject of much debate. New questions have arisen as a result of technological developments, in particular digital technologies, which have introduced interactive communications that enable users to select works to be delivered to their computers or other devices. Opinions diverge as to which right should be applied to this activity. Article 8 of the WCT clarifies that it should be covered by an exclusive right, which the Treaty describes as the authors' **right to authorize the making available of their works 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

Translating or adapting a work protected by copyright also requires permission from the right 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. In order to publish a translation or adaptation, permission must be obtained from both the owner of the copyright in the original work and 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 in digital formats. With digital technologies, users can easily manipulate text, sound and images to create **user-generated content (UGC)**. Discussion has focused on achieving an appropriate balance between the rights of the author to control the integrity of a work by authorizing modifications, and the rights of users to make changes that seem to be part of the normal use of a work in digital format. Some of the questions revolve around whether authorization from the right owner is needed to create new works that use parts of previously existing works, for example through **sampling** or **mash-ups**.

**New questions  
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result of digital  
technologies**

## Moral rights

The Berne Convention, in Article 6*bis*, requires its members to grant authors the following rights:

- (i) the right to claim authorship of a work (sometimes called the **right of paternity** or the **right of attribution**); and
- (ii) the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation (sometimes called the **right of integrity**).

These and other similar rights granted in national laws are generally known as the **moral rights** of authors. The Berne Convention requires these rights to be independent of authors' economic rights. Moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights. This means that even where, for example, a film producer or publisher owns the economic rights in a work, in many jurisdictions the individual author continues to have moral rights.

**Moral rights are only accorded to individual authors and in many national laws they remain with the authors even after the authors have transferred their economic rights.**

# Limitations and Exceptions to Rights

There are several types of limitations and exceptions to copyright protection. First, certain categories of works are excluded from copyright protection. In some countries, works are excluded from protection if they are not fixed in a 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 some countries, the texts of laws as well as court and administrative decisions are excluded from copyright protection.

Second, certain particular acts of exploitation that usually require the right owner's permission may, under circumstances specified in the law, be carried out without the owner's permission. The two basic types of limitations and exceptions in this category are: (a) **free use**, which carries no obligation to compensate the right owner for the use of the work without permission; and (b) **non-voluntary (or compulsory) licenses**, which require that compensation be paid to the right owner for non-authorized exploitation.

**Certain categories of works are excluded from copyright protection.**

Examples of free use include:

- quoting from a protected work, provided that the source of the quotation and the name of the author are 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 or exception. Article 9(2) states that member states may provide for free reproduction in certain special cases where that act does not conflict with the normal exploitation of a work and does not unreasonably prejudice the legitimate interests of the author. For example, many national laws allow individuals to reproduce a work exclusively for their personal, private and non-commercial use. However, the easy, high-quality individual copying made possible by digital technologies has led some countries to introduce systems (sometimes referred to as private copy levies) that allow private copying but incorporate a mechanism for payment to right owners for the resulting prejudice to their economic interests.

In addition to the specific categories of free use set out in national laws, the laws of many countries recognize the concepts of **fair use** or **fair dealing**. These broad, general limitations or exceptions allow the use of works without the right owner's permission, 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.

The laws of many countries recognize the concepts of fair use or fair dealing.

**Non-voluntary (compulsory) licenses** allow the use of works in certain circumstances without the right owner's permission, but require that compensation be paid for that use. Such licenses are called non-voluntary because they are allowed within the law and do not result from the exercise of the exclusive right of the copyright owner to authorize particular acts, and thus they are not voluntary on the part of the copyright owner. Two non-voluntary licenses recognized in the Berne Convention allow the mechanical reproduction of musical works and broadcasting. Non-voluntary licenses have been created in national copyright systems when a new technology for disseminating works to the public emerges, and have been explained based on the concern of national legislators that right owners are hindering or might hinder the development of the new technology by refusing to authorize use of their works. Once adopted, these licenses sometimes remain in the law even after the technology has been in place for many years. In some countries, effective alternatives now exist for making works available to the public based on right owners' permission, including through the collective administration of rights.

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Limitations and exceptions have traditionally focused on national situations. However, the text of the first multilateral copyright instrument centered on limitations and exceptions, the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* (Marrakesh Treaty), was adopted by WIPO Member States in June 2013. The Marrakesh Treaty requires its members to adopt limitations and exceptions for the creation and cross-border transfer of certain published works in formats accessible to persons who are blind, visually impaired, or otherwise print disabled.

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# Duration of Copyright

Copyright protection does not continue indefinitely. Copyright laws provide for a period of time during which the rights of the copyright owner exist and may be exploited. The period or duration of copyright begins from the moment the work is created or, under some national laws, when it is expressed or “fixed” in tangible form. Copyright protection continues, in general, until a certain 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 even after the author’s death. In some countries moral rights continue in perpetuity after the end of the term of economic rights.

In countries party to the Berne Convention and some other countries, the duration of copyright provided in national law is, as a general rule, the life of the author plus not less than 50 years after the author’s death. There is a trend in a number of countries to lengthen the duration of copyright to the life of the author plus 70 years after the author’s death. The Berne Convention and many national laws also establish 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.

Works that are no longer subject to copyright protection enter the **public domain**.

**The duration of copyright begins from the moment the work is created or, under some national laws, when it is “fixed” in tangible form. Copyright protection continues, in general, until a certain time 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 creator of a work, i.e., the author. However, this is not always the case. The Berne Convention, in Article 14*bis*, contains rules for determining initial ownership of rights in cinematographic works. Certain national laws also provide that where a work is created by an author employed for the purpose of creating that work, the employer, not the author, is the owner of the copyright in that work. As noted above, however, in general *moral rights* belong to the individual author of a work regardless of who owns the economic rights.

The laws of many countries provide that the initial right owner may transfer all economic rights in a work to a third party, although often moral rights cannot be transferred. Authors may transfer the economic rights in their works to individuals or companies best able to market them, in return for payment. Such payments are often made dependent on actual use of the works and are referred to as **royalties**. Transfer of copyright may take one of two forms: assignment and licensing.

An **assignment** is a transfer of a property right. Under an assignment, the right owner transfers the right to authorize or prohibit certain acts covered by one, several or all rights under copyright. The person to whom the rights are assigned becomes the new copyright owner or **right holder**. Copyright rights are divisible, so it is possible to have multiple right owners for the same or different rights in the same work.

In some countries, an assignment of copyright is not legally possible, and only **licensing** is allowed. Licensing means that the copyright owner retains ownership but authorizes a third party to carry out certain acts covered by the economic rights, generally for a specific period of time and for a specific purpose. For example, the author of a novel may grant a publisher a license 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, with the right owner agreeing not to authorize any other party to carry out the licensed acts; or non-exclusive, which means the right owner may authorize others to carry out the same licensed 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 right owners grant exclusive licenses to a single entity that acts on their behalf to grant permission for third-party use, collect and distribute remuneration, prevent and detect infringement of rights, and seek remedies for infringement. Collective administration offers advantages to authors, in particular by providing a single, central source to ensure that mass use of a work takes place only with the necessary, easily obtainable, permission. This is increasingly important as digital technologies allow multiple possibilities for the unauthorized use of copyrighted works, but at the same time can facilitate the rapid, automated granting of licenses and the inclusion of licensing information in metadata.

**Authors may transfer the economic rights in their works to individuals or companies best able to market them, in return for payment.**

While there are few specific copyright law provisions regarding the possibility of **copyright relinquishment**, copyright owners may also effectively **abandon the exercise of rights**, in whole or in part. Such effective abandonment is also sometimes characterized as licensing with no or limited conditions for use. The owner may, for example, post copyright-protected material on the Internet and leave it free for anyone to use, or restrict the abandonment to non-commercial use with or without certain additional requirements. Various cooperation projects have been set up according to a model whereby contributors give up certain rights described in the licensing terms adopted for the project, such as Creative Commons licenses and the General Public License (GPL) for free software. Right owners thereby leave their contributions free for others to use and adapt, but with conditions such as requiring that subsequent users must 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 set specific terms or create an obligation for subsequent users.

# Enforcement of Rights

The Berne Convention contains few provisions concerning the enforcement of rights, even if it has, since its earliest days, required that infringing copies of a work should be liable to seizure in any country of the Berne Union in which they may enjoy protection. However, new national and international enforcement standards have evolved dramatically 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 technologies, in particular, make it easy to transmit and make perfect copies of information existing in digital form, including copyright-protected works. This is acknowledged in the WCT, which requires

Contracting Parties to ensure that enforcement procedures are available under their laws in order to provide for effective action against infringement of any rights covered by the Treaty, including remedies to prevent or deter further infringements. The second factor is the increasing economic importance in international trade of the movement of goods and services protected by IP rights. Trade in IP-protected products is a thriving worldwide business. The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement), which contains more detailed provisions on the enforcement of rights, embodies the link between IP and trade.

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The following paragraphs summarize some of the enforcement provisions found in relatively recent national legislation. They may be divided into the following categories: provisional measures; civil remedies; criminal sanctions; border measures; and measures, remedies and sanctions against abuses in respect of technical devices.

**Provisional measures** are orders of the court issued in civil proceedings prior to the final determination of the parties' rights. They have the general purpose of preventing the objective of the litigation from being frustrated, whether through irreparable damage to the plaintiff before the parties' rights have been determined or through interference with the court's process, for example by the destruction of evidence. Thus a right holder will often seek an order to prevent infringements from continuing pending the court's final decision in the case. Further, if there are grounds to fear that the other party will conceal or destroy evidence, the plaintiff may apply to the court for an order to search the premises of the alleged infringer and seize suspected infringing goods, the equipment used to manufacture them and all documents relating to the alleged infringing activities.

Where there is no time to notify the alleged infringer of the application or it is necessary for practical reasons (such as the risk of concealment of evidence) not to give prior warning, judicial authorities may order that provisional measures be granted without advance notice to the defendant. However, the defendant is entitled to seek a review of the court's order, once he or she becomes aware of it.

**Final remedies** in civil proceedings seek to restore the injured right holder to his or her former position and prevent any recurrence of the infringing activities. The court may make an award of damages – that is to say, order the infringing party to pay a sum of money – to compensate the right holder for economic or moral injury suffered through the infringement. As an alternative to damages, the plaintiff may be entitled to recover any profits made by the defendant through the infringing activities. If there is any danger that infringing acts may continue, the court may also issue an injunction ordering the defendant not to carry out such acts, with failure to comply subject to sanctions. In addition, in order to create an effective deterrent, the court will usually have the power to order the destruction of the infringing goods and any tools and materials predominantly used to produce them.

**Criminal sanctions** are intended to punish those who carry out infringements of particular gravity, such as willful acts of piracy committed on a commercial scale, and so to deter further infringement. The purpose of punishment is achieved through fines and prison sentences consistent with the level of penalties applied for crimes of corresponding seriousness, particularly for repeat offenses. Deterrence is also served, as in civil proceedings, by orders for the seizure and destruction of infringing goods and of materials and equipment used predominantly to commit the offense.

**Border measures** are different from the enforcement measures described so far in that they involve action by customs authorities. Border measures allow right owners to request that customs authorities suspend the release into circulation of goods suspected of infringing copyright. This is intended to give right owners 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. Typically, right owners must meet certain requirements such as to: (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 security to indemnify the importer, the owner of the goods and the customs authorities in case the goods are found to be non-infringing. Following the detention of the goods by Customs, the right holder will typically apply to the court for provisional measures to prevent the release of the goods into the market, pending a final decision on the claim of infringement.

The final category of enforcement provisions includes **measures, remedies and sanctions against abuses in respect of technical means**, also referred to as **technological protection measures (TPMs)**, which have achieved greater importance since the advent of digital technologies. In certain cases, the only practical means of preventing copying is through so-called copy-protection or copy-management systems. These use technical devices that either entirely prevent copying or make the quality of copies so poor as to be unusable. Technical means are also used to prevent the reception of encrypted commercial television programs except with the use of decoders. However, it is technically possible to manufacture devices that circumvent such copy-protection and encryption systems. These enforcement provisions are intended to prevent the manufacture, importation and distribution of such devices. The WCT includes provisions to this effect, as well as 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. Rights management information may identify the author or right owner, or contain data about the terms and conditions of use of the work. Removing the information could thus hinder the detection of infringements or result in the distortion of computerized rights management or fee-distribution systems. National laws may also include exemptions from the application of these measures in certain circumstances, such as to give effect to copyright limitations and exceptions provided in the national law.

# Related Rights

Related rights, also referred to as neighboring rights, protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as works under the copyright systems of all countries, contains 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 that result from the activities of such persons and entities merit legal protection 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 sound recordings (also referred to as 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 the legal protection of their individual interpretations. The rights of producers of sound recordings are recognized because their creative, financial and organizational resources are necessary to make sound recordings, often based on musical works, available to the public in commercial form, 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 sound recordings. 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.

**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.**

**Treaties.** The first organized international response to the need for legal protection of these three categories of related rights was the conclusion in 1961 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome Convention). While most international conventions 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 field in which few national laws existed at the time. This meant that most states had to draft and enact laws before they could accede to the Convention.

Today, there 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 the Convention was the basis for the inclusion of provisions on the rights of performers, producers of sound recordings and broadcasting organizations in the TRIPS Agreement. (The levels of protection granted in the two instruments are similar, but not the same.) For two of the categories of beneficiaries, updated protection is now provided by the *WIPO Performances and Phonograms Treaty* (WPPT), adopted in 1996 along with the WCT (the two are sometimes referred to collectively as the **Internet Treaties**), and the *Beijing Treaty on Audiovisual Performances* (Beijing Treaty) (adopted in 2012 but not yet in force). Discussions continue in the WIPO Standing Committee on Copyright and Related Rights on a new treaty on the rights of broadcasters.

The **rights granted** in national laws to the three types of beneficiaries of related rights based on these treaties are generally as follows (although not all rights may be granted under the same law):

- **Performers** have the right 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 use of their name and image, or modifications of their performances that present them in an unfavorable light. When the Beijing Treaty enters into force, these rights will extend to performers in relation to their audiovisual performances.
- **Producers of sound recordings** have the right to authorize or prohibit reproduction, importation and distribution of their sound recordings and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of their sound recordings.

- **Broadcasting organizations** have the right 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, a right of rental is granted to producers of sound recordings in respect of sound recordings, and to performers in respect of audiovisual works. Some countries also grant specific rights over cable transmissions. Likewise, under the WPPT producers of sound recordings (as well as any other right holders of sound recordings under national law) are granted a right of rental. When the Beijing Treaty enters into force, the right of rental will be extended to performers in relation to their audiovisual performances.

As in the case of copyright, the related rights treaties and national laws contain **limitations and exceptions** to related rights. These limitations 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, such limitations and exceptions must be restricted to certain special cases that neither conflict with the normal use of the performances in sound recordings nor unreasonably prejudice the legitimate interests of performers or producers.

The **duration** of protection of related rights under the Rome Convention is 20 years from the end of the year in which: (a) the recording is made, in the case of sound recordings and performances included in sound recordings; (b) the performance took place, in the case of performances not incorporated in sound recordings; or (c) the broadcast took place, for broadcasts. Under the TRIPS Agreement, the rights of broadcasting organizations are also to be protected for 20 years from the date of the broadcast. In the TRIPS Agreement and the WPPT, however, the rights of performers and producers of sound recordings are to be protected for 50 years from the date of the fixation or the performance. The Beijing Treaty, when it enters into force, will also provide for a term of protection of 50 years.

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; border measures; and measures, remedies and sanctions against abuses in respect of technical devices and rights management information.

**As in the case of copyright, the related rights treaties and national laws contain limitations and exceptions to related rights.**

# Benefits for Developing Countries

Finally, mention should be made of the relationship between the protection of copyright and related rights and the interests of **developing countries**. Many developing countries have vibrant, thriving cultural and creative industries in everything from music to visual arts, to video games and films. WIPO studies have shown that the culture and creative industries make significant contributions to developing country economies. Without protection for copyright and related rights, the economic benefits from these works would not always remain in or return to the country in which they originated. Therefore, protection of copyright and related rights serves the twin objectives of preserving and developing national culture and providing a means for commercial exploitation in national and international markets.

The interest of developing countries in the protection of copyright and related rights goes beyond development of domestic cultural industries into the realm of international trade and development. The extent to which a country protects IP rights is inextricably linked to that country's potential to benefit from the rapidly expanding international trade in goods and services protected by such rights. For example, the convergence of telecommunications and computer infrastructure leads to international investment in many sectors of developing country economies, including IP. Protection of copyright and related rights has thus become part of a much larger picture: it is a necessary precondition for participation in the system of international trade and investment.

The largely unwritten and unrecorded cultural expressions of many developing countries, generally known as **traditional cultural expressions or folklore**, could be protected by copyright to the extent they are reflected in a new creative expression, even if it is based on a traditional legend or tale. They may also be protected under related rights as performances, since it is often through performers that they are communicated to the public. By providing for related rights protection, developing countries may also offer a means of protection for the vast, ancient and invaluable cultural expressions that are the essence of what distinguishes each culture. Likewise, protecting producers of sound recordings and broadcasting organizations helps to establish the foundation for national industries capable of disseminating traditional national cultural expressions within a country and in foreign markets. The enduring international interest in "world music" is one example of such markets.

**Protection of copyright and related rights serves the twin objectives of preserving and developing national culture and providing a means for commercial exploitation.**

# The Role of WIPO

WIPO is an international organization dedicated to promoting creativity and innovation by ensuring that the rights of creators and owners of IP are protected worldwide, and that inventors and authors are recognized and rewarded for their ingenuity.

As a specialized agency of the United Nations, WIPO provides a forum for its member states to create and harmonize **rules and practices** for protecting IP rights. Many member states have protection systems that are centuries old, although those systems may require updating to address rapid technological change, while other countries continue to develop new legal and administrative frameworks to protect their patents, trademarks and copyright. WIPO assists its member states in developing these new systems through treaty negotiation, legal and technical assistance, and training in various forms, including in the area of enforcement of IP rights.

The field of copyright and related rights has expanded dramatically as technological developments have enabled new ways of disseminating creations worldwide through such means as satellite broadcasting, compact discs, DVDs, and streaming and downloading from the Internet. WIPO is closely involved in the ongoing 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 (1886)
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) (administered with ILO and UNESCO)
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)
- WIPO Copyright Treaty (WCT) (1996)
- WIPO Performances and Phonograms Treaty (WPPT) (1996)
- Beijing Treaty on Audiovisual Performances (2012, not yet in force)
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013)

The WIPO **Arbitration and Mediation Center** provides services for the resolution of international IP disputes between private parties. Such proceedings can include contractual disputes (such as patent and software licenses, trademark co-existence agreements, and research and development agreements) and non-contractual disputes (such as patent infringement). The Center is also recognized as the leading dispute resolution service provider for disputes related to Internet domain names.

## Further information

Further information about copyright and related rights is available on WIPO's website and in a range of WIPO publications.

WIPO website: *[www.wipo.int](http://www.wipo.int)*

The full texts of all WIPO treaties regulating IP protection: *[www.wipo.int/treaties](http://www.wipo.int/treaties)*

To download WIPO publications: *[www.wipo.int/publications](http://www.wipo.int/publications)*



For more information  
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