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Copyrights and Related Rights.

Copyrights and Related Intellectual Property Rights do not need any type of registration for existing. However, **their registration is convenient to enhance the position of their owners**. Within this group, we find copyrights (*derecho de autor*), *related rights and neighbouring rights* (ie the rights of artists, performers, etc. over their creations).

Copyrights and Related Intellectual Property Rights are regulated at International Level, but also at European Level and National Level. We refer here to International protection of some of these rights. Please note that European or National Law may recognise further rights (for instance a longer period of protection)



Radcliffe Camera. Old Bodleian. Ox

1. Copyrights

(traditional formats)

- [The Berne Convention for the Protection of Literary and Artistic Works](#) 1886 deals with the protection of the works and the rights of their authors. It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions for **developing countries**.
 - **Principles.**

- **National Treatment.** Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals
- **Automatic protection. Protection must not be conditional upon compliance with any formality**
- **Independence of protection.** Protection is independent of the existence of protection in the country of origin of the work. However, If a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases
- **Creations protected by the Berne Convention (minimum standards):** «*every production in the literary, scientific and artistic domain, whatever the mode or form of its expression*» (Article 2(1) of the Convention).
- **Contents of the rights of the holder (some exceptions are recognised).**
 - **Moral rights (paternity):** the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honour or reputation.
 - **Exploitation (economic rights):** They include the *right to authorise* (and the right to deny authorisation). They also include the right to *equitable remuneration*
 - The right holder can deny (or grant) authorisation over his or her works to **translate, make adaptations and arrangements, perform in public** dramatic, musical and musical works, **recite** literary works in **public, communicate to the public** the performance of such works, **to broadcast** (*with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization*), **to make reproductions** in any manner or form (*with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author*; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration), **to use the work as a basis for an audiovisual work**, and the right to reproduce, distribute, perform in public

or communicate to the public that audiovisual work

- The Berne Convention allows **certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation.** These limitations are commonly referred to as «free uses» of protected works, for example, reproduction in certain special cases; quotations and use of works by way of illustration for teaching purposes; reproduction of newspaper or similar articles and use of works for the purpose of reporting current events; ephemeral recordings for broadcasting purposes; (and some wider exceptions in developing countries)
- Duration of protection. The general rule is that protection must be granted unless until the expiration of the 50th* year after the author's death. There are, however, exceptions:
 - In the case of anonymous or pseudonymous works, the term of protection expires 50 years* after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies.
 - In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 year* after the making available of the work to the public («release») or - failing such an event - from the creation of the work.
 - In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work
 - *Please note that in the EU (and therefore in Spain) the duration is 70 years after the death of the author and in all the cases above



Computer's room. By M A Diaz

- **Copyrights and related rights (digital)**
- WIPO Copyright Treaty (Geneva 1996) (Summary) The WIPO Copyright Treaty (WCT) is a special agreement **under the Berne Convention** that deals with the protection of **works and the rights of their authors in the digital environment. In addition to the rights recognized by the Berne Convention, authors are granted other economic rights. The Treaty also deals with two subject matters to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material («databases»).**
 - **The right of distribution** is the right to authorize the making available to the public of the original and copies of work through sale or other transfer of ownership.
 - **The right of rental** is the right to authorize commercial rental to the public of the original and copies of computer programs (except where the computer program itself is not the essential object of the rental); cinematographic works (only when the commercial rental has led to widespread copying of such works, impairing the exclusive right of reproduction); works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since 1994, have a system in force for equitable remuneration of such rental).
 - **The right of (broader) communication to the public** is the right to authorize **any** communication to the public, by wire or wireless means, including «the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them». The quoted expression covers, in particular, on-demand, interactive communication through the Internet.

As to **limitations and exceptions: countries may extend the** Berne exception to all rights and to **the digital environment**. The Contracting States may devise new exceptions and limitations appropriate to the digital environment. (Exceptions must comply with the «three-step» test -).

2 Neighbouring rights (or Related Rights)

Neighbouring rights are the rights of a creative work not connected with the work's actual author. These rights vary widely in its scope between different countries. The rights of

performers, phonogram producers and broadcasting organisations are certainly covered and are internationally protected by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in 1961.

Within the European Union, the rights of film producers (as opposed to directors) and database creators are also protected by Related rights,

- **Phonogram producers** (here the term is used to refer to any sound recording) under the Rome Convention, it must be composed exclusively of a sound recording, although some national laws protect film soundtracks with the same measures to the extent that they are not also protected by other rights. The producers of phonograms, that is the person who makes the recording rather than the person who performs, has the right to prevent the direct or indirect reproduction of the recording (Art. 10 Rome Convention, Art. 2 Geneva Phonograms Convention)
- **Broadcasting Organizations** (Article 13 of the Rome Convention) recognize their right to prohibit (or license): the rebroadcasting of their broadcasts; the fixation (recording) of their broadcasts; the reproduction of fixations of their broadcasts; the communication of their broadcasts to the public in places where an entrance fee is charged.
- **Film producers** (with specific protection in the EU)
- **Database creators**
- **Photographers**
- **Performers.**- A performer (musician, actor, etc.) has an intellectual input in their performance over and above that of the author of the work. As such, many countries grant moral rights to performers as well as the economic rights granted by the Rome Convention (Arts. 7-9), and the rights of paternity and integrity are required by the WIPO PERFORMERS and PHONOGRAPHS TREATY (Art. 5). The performer has the exclusive rights of making a sound recording or a visual recording of the performance. This right of the performer extends to reproducing the performance in any material form including storing of it in any medium, issuing the copies of the performance to the public, communicating it to the public, selling or giving on commercial rental or offer for sale of any copy of the recording; communicating or broadcasting the performance to the public except where it has already been broadcast. The performer has also moral rights such as «the right to be identified as the performer of his performance; and «to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation»