



BCC WIPO Training course 2022

Copyright Law: a general overview of national, international and regional instruments, current issues and developments.

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Overview

- The Law
- The key concepts of International copyright Treaties
 - National treatment, Art 5 (1) BC; Art 2 RC etc!
 - Minimum standards of protection
 - Most favoured nation, Art 4 TRIPS
 - Three Step Test
 - Interpretation: Articles 31 and 32 of the Vienna Convention on the Law of Treaties.
- Current issues – international
 - Implementation of Treaties (WIPO)
 - New Treaties?
 - Fair remuneration of creators and performers
 - Compliance of national laws with international provisions
- Free Trade agreements

History

- From national to international protection (18th – 19th / 20th Century)
 - Bilateral Treaties (19th Century)
 - Multilateral
 - Berne [Convention](#) 1886
 - Universal [Copyright](#) Convention 1952
 - [TRIPS](#) 1994
 - WIPO [Copyright](#) Treaty 1996
 - Rome [Convention](#) 1961
 - Phonogram [Convention](#) 1971
 - WIPO Performances and Phonograms [Treaty](#) 1996
 - WIPO Audiovisual Performances [Treaty](#) 2012
 - WIPO Visually Impaired Persons [Treaty](#) 2013
 - Free Trade agreements (USMCA; EU/ Japan; UK/ Australia; CPTPP) 21st Century
- Authors
- Related rights
- Exceptions

Concepts – minimum standards

- **Beneficiaries**
Authors/ performers/ broadcasting organisations; record companies
- **Works/ performances**
Different national approaches
- **No formalities**
Berne Convention/ ©?
- **National Treatment**
- **Rights**
Economic and moral
- **Term**
Minimum 50 years but FTAs 70 years
- **Exceptions**
Three step test

Concepts – national treatment

WPPT: Contracting Party shall accord to nationals of other Contracting Parties, the treatment it accords to its own nationals

WCT/ Berne Convention: Art 5 (1) “Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention” but Art 7 (7) re term.

WAPT: Art 4 Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals

TRIPS: Art 3 (1) Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection

Historic bilateral Treaties

Concepts - Three Step Test

- Article 13 TRIPS

Members shall confine limitations and exceptions to exclusive rights to

1. certain special cases
2. which do not conflict with a normal exploitation of the work and
3. do not unreasonably prejudice the legitimate interests of the rights holder.

- Free Trade Agreements

- Cases: DS160 and DS362

Concepts - Exhaustion

- **Distribution Right**

The Distribution Right describes the right of the author to disseminate physical copies of the work.

- **Exhaustion**

The Exhaustion or First Sale doctrine (U.S.) states that the author cannot prevent further distribution of a particular physical copy of a work put on the relevant market with his consent.

- National,
- Regional, or
- International

- **For individual members and parties (c.f. TRIPS Art 6 and FTAs)**

Individual and Collective management

- Individual management is national or regional but not international, often only based on contract law

[E.g. European Union DSM Directive 2019/ 790 Articles 18-23]

- Collective management is national or regional but not international, various approaches

[European Union CRM Directive 2014/26/EU
CISAC principles as international organisation]

Enforcement

- International Copyright Treaties
 - Berne Convention Article 15 and 16? Standing/ Seizure
 - WCT Article 14, WPPT Art 23: enforcement procedures to permit effective action against any act of infringement, including expeditious remedies to prevent infringements ...
- TRIPS
 - Art 41 enforcement procedures to permit effective action against any act of infringement of intellectual property rights, including expeditious action in order to prevent infringements and deter
 - Arts 42 onwards procedures; injunctions, damages,...
 - Art 61 criminal
- Multi and bi-lateral Free Trade Agreements
 - Detailed provisions! Cf CPTPP Section I but note Section J suspended)

Thank You

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