



## The evolution of international intellectual property instruments for the protection of copyright around the globe

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### Abstract

The traditions of copyright in common law and civil law countries were diverse, hence the principles of copyright were not universal. Therefore, the nations' began to harmonise their legal systems and sign bilateral, regional, and global agreements. The conventions and treaties of this regard are discussed in detail in this article. The history and evolution of the most significant international accords governing copyright and associated rights are covered in length in this article. The Berne Convention for the Protection of Literary and Artistic Works, 1886–1970; the Universal Copyright Convention (UCC); the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, 1961; the TRIPS Agreement and the Internet Treaties Of WIPO, 1996; are among the conventions that are specifically examined in this article. Doctrinal analysis highlights the history and the important provisions of the Berne Convention's current text and evaluates the degree to which later international agreements have contributed in providing protection regarding copyright. The provisions relating to emerging technology and digital networks are also discussed in this article.

**Keywords:** berne convention, universal copyright convention (UCC), rome convention, TRIPS agreement, internet treaties of WIPO, bilateral, regional, and global agreements

### Introduction

Due to its dual nature, intellectual property has both national and international implications. The traditions of copyright in common law and civil law countries were diverse, hence the principles of copyright were not universal. Therefore, the nations began to harmonise their legal systems and sign bilateral, regional, and global agreements. The Berne, Universal Copyright Convention, the WIPO Copyright Treaty, and the neighbouring rights treaties the Rome, Geneva, and Brussels Conventions as well as the WIPO Performances and Phonograms Treaty are the current embodiments of copyright and adjacent rights rules. Both copyright and neighbouring rights are impacted by the TRIPS agreement's substantive and procedural rules. For all nations' future economic development and progress, strong intellectual property rights (IPR) protection is crucial. International IPR treaties, in turn, are crucial to achieving strong intellectual property protection that fosters the development of new technologies and the expansion of the global economy because they include uniform norms and regulations.

### Berne Convention, 1886

#### History of Berne Convention

The Berne convention which was established on September 9, 1886, was the first international convention for the protection of literary and artistic work. The emergence of bilateral agreements paved the way for these international conventions. This convention originated at the instigation of Victor Hugo, a French writer and founder of the Association Littéraire et Artistique Internationale (ALAI). The International Literary and Artistic Association (ALAI) is an independent learned society dedicated to studying and discussing legal issues arising in connection with the protection of the interests of creative individuals. Thus, the Berne convention was influenced by the French "rights of

the author". The convention aims to give creators the right to control and receive payment for their creative works on an international level. The reason behind developing this convention is that the Paris convention gave the minimum standard of protection to industrial properties which includes patents, trademarks, industrial designs, etc. but copyright was not included in it, to give copyright protection at the international level Berne convention was agreed upon by the ALAI. Before the Berne Convention, the copyright legislation remained uncoordinated at the international level.

#### Important provisions of the Convention

The Berne convention is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to the developing countries. The basic principles are National treatment, the principle of Automatic Protection, and the principle of Independent Protection. The provisions of the Berne Convention deal with Subject-matter to be protected i.e., every production in the literary, scientific, and artistic domain, whatever the mode or form of its expression, minimum term of protection, and rights to be conferred, and Permissible limitations to those rights. The Appendix allows developing countries, under certain conditions, to make some limitations on the Right of Translation and the Right of Reproduction. This convention also provides several economic rights to the copyright owner; they are the Right to Reproduction, Translate, Adapt, and Perform in public, and communicate to the public, the Right to Broadcast, and Moral rights. The convention fixed the duration of protection to the life of the author +50 years after the death of the author.

Most of the provisions of the Berne Convention are included in the TRIPS agreement and are administered currently by World Intellectual Property Organization (WIPO). The

Berne Convention also contains limitations and exceptions imposed on the economic rights of the copyright owner. Article 9(2) contains the famous 3 step test which has been adopted by TRIPS in article 13 as a “universalizing formula” and there are several free use provisions like Quotations; Illustrations for teaching; and Indication of source and author were also found in this convention. The Berne Convention was revised in Paris in 1896 and in Berlin in 1908, completed at Berne in 1914, revised in Rome in 1928, in Brussels in 1948, in Stockholm in 1967, and at Paris in 1971, and was amended in 1979.

- Paris act, 1896 - protection for photographs.
- Berlin Act, 1908 - minimum term of protection for fifty years after the author’s death, right to make recordings of musical works, independence of protection, protection for cinematographic productions as derivative works.
- Rome Act, 1928 - moral rights and right to broadcast copyrighted works.
- Brussels Act, 1948 - clarified several minimum rights, including moral rights, adaptation rights, translation rights, and rights in cinematograph films. It also expanded the broadcast right to include television.
- Stockholm act, 1967 - general revision of the Berne Convention in the wake of new technologies and neighboring rights and accommodating the wishes of the developing countries which were members of the Union.
- Paris Act, 1971 – Berne Appendix.

### **Universal copyright convention (UCC), 1952**

Certain provisions in the Berne Convention like independent protection with the registration exception were controversial with several countries, and they refused to sign the treaty's conditions. Particularly, the United States, which was the only country at the time to offer protection through the Library of Congress on a fixed-term basis. To comply with the Berne Convention, the United States needed to make major modifications to its domestic laws. Unwilling to do that the US and other non-Berne countries adopted The Universal Copyright Convention (UCC) which was established in Geneva in 1952, as a substitute for the Berne Convention. UCC was developed and administered by UNESCO, as an alternative international copyright protection forum. UCC did not mandate any change in the domestic laws of the member countries.

### **Rome convention, 1961**

Initially, the Berne convention protected only literary, scientific, and artistic domains, and performers are not given any protection. The Berne convention concentrated only on the rights of the author, to recognize the neighbouring rights Rome convention was initiated in the year 1961. The Rome Convention secures protection, in performances for performers, in phonograms for producers of phonograms, and in broadcasts for broadcasting organizations. This is the first convention that recognized the rights of the Performers, Producers of Phonograms, and Broadcasting organizations. Currently, WIPO is responsible for the administration of the convention jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

### **Trade-related aspects of intellectual property rights (TRIPS) agreement, 1995**

The TRIPS agreement was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) from 1986 to 1994. On January 1, 1995, the GATT came into effect. It has been developed since then, resulting in the creation of the World Trade Organization (WTO) on January 1, 1995, which absorbed and extended it. By this time, 125 countries had signed on to its agreements, which covered almost 90% of world trade. TRIPS agreement was developed due to lobbying by 12 CEOs of multinational companies in the developed countries, who mooted higher IP protection. They wished to mould international law to protect their market. The WTO Agreement, including the TRIPS Agreement, was enforced on January 1, 1995. The WTO's member countries are bound to the agreement by default. Patents, copyright, trademarks, trade secrets, geographical indications, industrial designs, and exclusionary rights over new plant varieties are the intellectual property types covered by the agreement. It is considered the most comprehensive multilateral agreement on intellectual property. The TRIPS is a minimum standard agreement, which provides high-level protection of IPR, which the member states are obligated to follow.

The TRIPS Agreement establishes these standards by mandating the substantive obligations of the WIPO's main conventions, the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), to be followed in their most recent versions. The TRIPS agreement incorporated most of the provisions of the Paris and Berne convention, it also contains the basic principles like national treatment and the most favoured nation principle. The TRIPS agreement laid down some transition provisions which gave WTO members certain period in order to adapt their legislation and practices to their TRIPS obligations. Least-developed countries originally had until 1 January 2006 to meet their TRIPS obligations, but this deadline has been extended three times, most recently until 1 July 2034 (decision of 29 June 2021).

In addition to requiring compliance with the basic standards of the Berne Convention, the TRIPS Agreement clarifies and adds certain specific points, they are,

- The Berne 3 step test was also incorporated into TRIPS with slight modification which expanded the scope of the test. In Berne convention, the scope of the test was limited to the right to reproduction, which is extended to all the exclusive rights of the copyright owner in TRIPS, and also in the final step of the test “does not unreasonably prejudice the legitimate interests of the author”, the word author is replaced by right-holder in TRIPS.
- The agreement confirms that copyright protection shall extend to expressions and not to ideas, procedures, methods of operation, or mathematical concepts as such.
- It also provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).
- Clarifies that database and other compilations of data or other material shall be protected under copyright.
- According to the general rule contained in Article 7(1) of the Berne Convention as incorporated into the TRIPS Agreement, the term of protection shall be the life of the author and 50 years after his death.

### **Internet treaties of WIPO, 1996**

Berne convention 1886 brought minimum standards of copyright protection to be enacted in the domestic legislation of the member States. These provisions are incorporated in TRIPS. TRIPS harmonized IP laws expanded existing rights and introduced new rights regarding computer programs and databases. These provisions were inadequate for the Digital era. This led big media houses, recording studios, broadcasting organizations, and publishing industries from the US to lobby for stronger copyright laws which led to the enactment of WCT and WPPT in 1996, which are generally known as the internet treaties.

### **WIPO copyright treaty (WCT), 1996**

It is a special agreement authorized by the Berne convention which modified international copyright law to accommodate the changes brought by digitization. WCT brought changes in the copyright regime,

- expanded authors' protection in a digital environment
- special provisions on computer programs and database
- right to distribution, rental and communication to the public was introduced
- anti-circumvention laws are brought
- 3 step test was incorporated to maintain fair Balance and
- Provision for members to enact adequate enforcement measures.

### **WIPO performers and phonograms treaty (WPPT), 1996**

WPPT was introduced to protect neighbouring-rights relating to performers and phonograms. It gives moral rights to the performers for the first time. WPPT provisions are similar to WPPT,

- anti-circumvention provisions
- alteration and removal of RMI and
- 3 step test for limitations and exceptions.

### **Conclusion**

These agreements served both the function of the IPR and the objective of establishing a minimum standard for its protection. By establishing a minimum standard for IPR enforcement, these agreements enable right holders to safeguard their justifiable interests in civil court or administrative actions. The requirements of Member States to create administrative and judicial systems through which IPR holders can seek effective protection of their interests are outlined in Part III of the Agreement on the Enforcement of IPR. The general requirement that member states provide enforcement mechanisms necessitates that the enforcement procedure be accessible under their national law to allow effective action against any act of infringement of the IPR covered by these agreements, including immediate measures to prevent infringements and remedies. To ensure that enforcement procedures are "fair and equitable," "not needlessly complex or expensive, or prevent onerous deadlines or unjustified delays," member nations have a responsibility.

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