Copyright: An International Perspective

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Outline

- How copyright works internationally
- WIPO’s Standing Committee on Copyright and Related Rights (SCCR)
- Limitations and exceptions generally
- Limitations and exceptions for libraries and archives
- Objective and prospects for success
How does copyright work internationally?

- A national regime
  - the law that applies is the law of the country where the work is being used
- International treaties
  - Berne Convention, 1886
  - National treatment principle
  - Signatory countries must give foreign rights holders the same copyright protection that they would give their own citizens and residents

Berne Convention

- “ramshackle and disorganized collection of bilateral treaties … gave way to … a multilateral regime that established common minimum standards of copyright protection.”
  - Bently & Sherman (2001), p. 311

Berne Convention Article 7

- (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
- (6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.
Administration of IP Treaties

- 1893 → Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI)
- 1970 → World Intellectual Property Organization (WIPO)

Copyright Treaties

- **Berne Convention** for the Protection of Literary and Artistic Works, 1886-1979 (amended approx. every 20 years)
- **Rome Convention** for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961
- **Geneva Convention** for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971**
- **Brussels Convention** Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, 1974*
- **WIPO Copyright Treaty** (WCT), 1996
- **WIPO Performances and Phonograms Treaty** (WPPT), 1996
- **Beijing Treaty** on Audiovisual Performances, 2012*
- **Marrakesh Treaty** to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, 2013

* = Canada has not signed Brussels or Beijing
** = Canada has signed but not ratified Geneva

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Trade Agreements

- **TRIPS** (Agreement on Trade-Related Aspects of Intellectual Property Rights) (1994)
  - An agreement between all the member nations of the World Trade Organization (WTO).
- **CPTPP** (TPP-11) Comprehensive and Progressive Agreement for Trans-Pacific Partnership
- **CUSMA** (NAFTA 2.0)

- IP Chapter of Trips requires signatories to comply with the substantive law provisions of the Berne Convention
- IP Chapters of CPTPP and CUSMA require signatories to comply with Berne, WCT, and WPPT

Indigenous Knowledge

WIPO’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

- Objective: text(s) of an international legal instrument(s), which will ensure the effective protection of TK, TCEs and GRs.
- Under discussion for nearly 2 decades
- Meets 4 times yearly
- Each meeting focuses on one topic; GRs get the most air time
**Terminology**

- **Traditional knowledge (TK)** is knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

- **Traditional cultural expressions (TCEs)**, also called "expressions of folklore", may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.

- **Genetic resources (GRs)** refer to genetic material of actual or potential value. Genetic material is any material of plant, animal, microbial or other origin containing functional units of heredity.

  https://www.wipo.int/tk/en/igc/

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**SCCR**

**Standing Committee on Copyright and Related Rights**

- Meets twice yearly for a week
- Participants
  - 192 Member States (can introduce documents)
  - ~ 250 Observers (NGOs)
- Reports annually to WIPO General Assembly
  - Makes recommendations to the GA (non-treaty actions)
  - If a treaty is the outcome, a Diplomatic Conference is convened
SCCR (cont.)

- Member states drive the agenda
- Organized into Regional Groups
  - African Group, Asia & Pacific countries, GRULAC (Latin American & Caribbean countries)
  - Group B (developed nations), CEBS (Central European & Baltic States), Russian Federation, China
- Operates on a consensus model
SCCR (cont.)

Current agenda

- Protection of broadcasting organizations
- Limitations and exceptions for libraries and archives
- Limitations and exceptions for educational and research institutions
- Limitations and exceptions for persons with other disabilities
Exceptions & Limitations

- Berne Convention’s limited provisions for exceptions
  - 3-step test (Art. 9(2))
    - “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”
  - Reproduction permitted for:
    - Quotations (Art. 10(1))
    - Teaching (Art. 10(2))
    - News of the day (Art. 10bis)

Exceptions & Limitations (cont.)

- Topic of exceptions for “education, libraries, and disabled persons” first discussed November 2004
- Evolution of scope of topics:

<table>
<thead>
<tr>
<th>2004</th>
<th>2019</th>
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<tbody>
<tr>
<td>Education</td>
<td>Education and research institutions</td>
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<tr>
<td>Libraries</td>
<td>Libraries and archives [and museums]</td>
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<td>Disabled Persons</td>
<td>Visually impaired persons → Marrakesh treaty (2013)</td>
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<tr>
<td>Disabled Persons</td>
<td>Persons with other disabilities</td>
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Exceptions for libraries and archives

- Separate agenda item since Nov. 2011 (SCCR 23)
- Coalition of advocates led by IFLA (International Federation of Library Associations) and ICA (International Council on Archives)
- Supported by
  - National/regional library and archives associations
    - e.g., CFLA, Library Copyright Alliance (LCA), Electronic Information for Libraries (EIFL), European Bureau of Library, Information and Documentation Associations (EBLIDA), Society of American Archivists
  - Civil society organizations
    - e.g., Knowledge Ecology International (KEI), Creative Commons, Centre for Internet and Society (CIS)

The Goal

- A binding international treaty that will set out the minimum copyright exceptions and limitations required by libraries, archives and museums to fulfil their public interest mission
What has happened since 2011?

- 15 meetings
- Lots of talking (in plenary, at breaks, and in meetings of regional groups)
- Study on national statutory exceptions for L&A
- Desire to add museums to L&A
  - International Council of Museums (ICOM) has participated since Nov 2016

What has happened since 2011? (cont.)

- Agreed-upon list of topics requiring exceptions (2017)

<table>
<thead>
<tr>
<th>TOPIC</th>
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<tr>
<td>1  Preservation</td>
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<td>2  Reproduction (for research and similar purposes)</td>
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<td>3  Library lending (within the same jurisdiction)</td>
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<td>4  Cross-border uses (including library lending across national borders, and parallel importation)</td>
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<td>5  Orphan works</td>
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<td>6  Limitations on liability of L&amp;A</td>
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<td>7  Circumvention of technological protection measures</td>
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<td>8  Contracts (can’t override statutory exceptions)</td>
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<td>9  Right to translate works</td>
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What has happened since 2011? (cont.)

- Action plans (approved May 2018)
  - Regional meetings to discuss exceptions for LAMs and Education and Research Institutions, 2019
    - Singapore (April)
    - Nairobi (June)
    - Dominican Republic (July)
  - Conference, Geneva (October 2019)
What is success??

- A binding international treaty setting out minimum exceptions for LAMs

- Success is NOT:
  - “Soft law” (e.g., non-binding principles, model law, guidelines, etc.)
  - Exchange of national experiences

Strengths

- Excellent team
- Strong support from regional groups in developing nations
- Support from education advocates
- Chair wants results
- Support from WIPO Director-General
- Weak opposing arguments
  - Inconsistencies in EU position
  - Hard to argue against LAMs
Obstacles

- Powerful opponents
  - EU, Group B – treaty not necessary; exchange of national experiences is sufficient
  - Rights holders (publishers, CMOs) -- Everything can be licensed
- WIPO culture
- No superstar champion

Strategies

- Providing talking points for local delegates to regional meetings
- Draft treaty in our back pocket
- Focus on less controversial topics, e.g., preservation, copying for research/private study, orphan works, non-commercial cross-border uses
Who is the Stevie Wonder of LAMs?

Stevie Wonder at Bonnaroo, 2010
http://www.steviewonder.org.uk/multimedia/photo_gallery/gallery.html

Questions? Comments?
Superstar candidates?

Thank you!

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