

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

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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

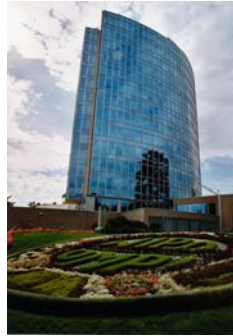
- (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
- (6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

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Administration of IP Treaties

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



WIPO Main Building (Arpad Bogsch Building)

Copyright: WIPO. Photo: Mercedes Martinez.
<https://www.flickr.com/photos/wipo/6357936873/in/album-72157626651588626/>

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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** (NAFTA2.0)

- 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

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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

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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

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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

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National Cat Herders Day
<https://pics.me/me/e-today-is-national-catherdersday-this-holiday-is-for-those-10668758.png>

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WIPO Assembly Hall



<https://i1.wp.com/www.ip-watch.org/weblog/wp-content/uploads/2015/10/WIPO-GA-4.jpg?resize=350%2C200&ssl=1>



<http://ca.archello.com/en/project/wipo-mpi-conference-hall/2224919>

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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

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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)

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Exceptions & Limitations (cont.)

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

2004	2019
Education	Education and research institutions
Libraries	Libraries and archives [and museums]
Disabled Persons	Visually impaired persons → Marrakesh treaty (2013)
Disabled Persons	Persons with other disabilities

http://www.wipo.int/about-wipo/en/stevie_wonder/



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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)

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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

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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
 - Kenneth D. Crews, *Study on Copyright Limitations and Exceptions for Libraries and Archives* (WIPO, 2008, 2015, 2017)
- Desire to add museums to L&A
 - International Council of Museums (ICOM) has participated since Nov 2016
- Studies on Museums (2015, 2019), Archives (2019)

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What has happened since 2011? (cont.)

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

	TOPIC
1	Preservation
2	Reproduction (for research and similar purposes)
3	Library lending (within the same jurisdiction)
4	Cross-border uses (including library lending across national borders, and parallel importation)
5	Orphan works
6	Limitations on liability of L&A
7	Circumvention of technological protection measures
8	Contracts (can't override statutory exceptions)
(c) 9	Right to translate works

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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)

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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

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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

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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

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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

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Who is the Stevie Wonder of LAMs?



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

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Questions? Comments?
Superstar candidates?

Thank you!

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