

Overview of Copyright



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Formality free protection

- Berne Article 5(2)
 - The enjoyment and the exercise of these rights shall not be subject to any formality;
- Registration, Deposit, Notice
 - OK, as long as they are not a condition of protection.



Subject Matter - Berne

- Berne Article 2(1) The expression “literary and artistic works” shall include *every production in the literary, scientific and artistic domain*, whatever may be the mode or form of its expression, such as:
 - books, pamphlets and other writings;
 - lectures, addresses, sermons and other works of the same nature (Exception Art 2(2));
 - dramatic or dramatico-musical works;
 - choreographic works and entertainments in dumb show;
 - musical compositions with or without words;



Subject Matter - Berne

- cinematographic works to which are assimilated works expressed by a process analogous to cinematography;
- works of drawing, painting, architecture, sculpture, engraving and lithography;
- photographic works to which are assimilated works expressed by a process analogous to photography;
- works of applied art;
- illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.



Subject Matter - TRIPS

- TRIPS Art 10 expanded the subject matter that was expressly provided for in Berne:
 - Computer Programs,
 - Compilations of data or other material...which *by reason of the selection or arrangement of their contents* constitute intellectual creations shall be protected as such.



Subject Matter (U.S.)

- §102 – Works of authorship include the following categories:
 - Literary works;
 - Musical works, including any accompanying words;
 - Dramatic works, including any accompanying music;
 - Pantomimes and choreographic works;
 - Pictorial, graphic, and sculptural works;
 - Motion pictures and other audiovisual works;
 - Sound recordings; and
 - Architectural works.



Berne – What is not protected?

- Berne Art 2(8)
 - News of the day or miscellaneous facts having the character of mere items of press information.
- What is excludable? Berne Art 2bis(1)
 - Political speeches
 - Speeches delivered in the course of legal proceedings.



TRIPS – What is not protected?

- Art 9(2)
 - Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.



U.S. – What is not protected?

- Titles, names, short phrases, and slogans;
- Familiar symbols or designs;
- Mere variations of typographic ornamentation, lettering, or coloring;
- Mere listings of ingredients or contents;
- Works consisting entirely of information that is common property and containing no original authorship (e.g., standard calendars, height and weight charts, tape measurers and rulers, and lists or tables taken from public documents or other common sources).



Ownership

- Berne Art 2(6).
 - The works mentioned in this Article shall enjoy protection in all countries of the Union.
 - This protection shall operate for the benefit of the author and his successors in title.
- Berne Art 14 *bis* (2)
 - Owner of copyright in movies is a matter for domestic legislation.



Ownership

- Presumption of ownership – Berne Art 15.
 - In the absence of proof to the contrary, an author whose name appears on the work in the usual manner will be regarded as such.



Ownership (U.S.)

- Copyright is a form of protection provided by the laws of the United States to the authors of original works of authorship, fixed in a tangible medium of expression. (Title 17, U.S. Code)
- Copyright in a work protected...vests initially in the author or authors of the work. The authors of a joint work are coowner of copyright in the work. (§201)



Works for Hire (U.S.)

- In the case of works made for hire, the employer and not the employee is considered to be the author.
- Section 101 of the copyright law defines a "work made for hire" as:
 - a work prepared by an employee within the scope of his or her employment;



Rights

	Reproduction	Adaptation	Distribution	Broadcasting / Communication to the Public	Making Available	Rental
Berne	A: 9(1), 14	A: 8, 12, 14	A: 14(1), 14bis	A: 11, 11bis, 11ter, 14, 14bis	NA	NA
TRIPS	P: 14(1) PP: 14(2)	NA	NA	P: 14(1)	NA	A: 11 PP: 14(4)
WCT	A: 1(4)	NA	A: 6(1)	A: 8	A: 8	A: 7(1)
WPPT	P: 6(ii), 7 PP: 11	NA	P: 8 PP: 12	P: 6(i)	P: 10 PP: 14	P: 9 PP: 13
U.S.	106(1)	106(2)	106(3)	106(4-6)	106(3)	106(3)



Moral Rights

- Berne Art *6bis* – The author has the right:
 - To claim authorship of the work; and
 - To object to any distortion, mutilation, or other modification of...the said work, which would be prejudicial to his honor or reputation.



Term of protection

- Generally life of the author +50 years (Berne Art 7(1) & TRIPS Art 12)
- Generally life of the author +70 years. (U.S. §302)
- For works made for hire, the term will be 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. (U.S. §302)



Berne – Exceptions

- Quotations - Berne Art 10(1)
 - It shall be permissible to make quotations from a work which has *already been lawfully made available to the public*, provided that their making is *compatible with fair practice*, and their *extent does not exceed that justified by the purpose*, including quotations from newspaper articles and periodicals in the form of press summaries.



Berne – Exceptions

- Illustration for teaching – Berne Art 10(2)
 - ...permit the utilization, to the *extent justified by the purpose*, of literary or artistic works by way of *illustration* in publications, broadcasts or sound or visual recordings *for teaching*, provided such utilization is *compatible with fair practice*.



Berne – Exceptions

- Certain articles or broadcasts – Berne Art 10bis(1)
 - ...to permit the *reproduction by the press*, the broadcasting or the communication to the public by wire of *articles published in newspapers or periodicals on current economic, political or religious topics*, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is *not expressly reserved*.



Berne – Exceptions

- Works seen during current events – Berne Art 10bis(2)
 - ... to determine the conditions under which, for the *purpose of reporting current events* by means of *photography, cinematography, broadcasting or communication to the public by wire*, literary or artistic works *seen or heard in the course of the event* may, to the *extent justified by the informatory purpose*, be reproduced and made available to the public.



Berne – Exceptions

- Limitations on the Right of Translation – Berne Appendix Art II
 - Allows for a nonexclusive, nontransferable license
 - No translation has been published in a language in general use within 3 years of publication.
 - only for the purpose of teaching, scholarship, or research.
 - Subject to procedures under Berne Appendix Art IV.



Berne – Exceptions

- Limitations on the Right of Reproduction – Berne Appendix Art III
 - Allows for a nonexclusive, nontransferable license
 - The work is not for sale in country for a price reasonable related to normal charge for comparable work or 6 months elapsed since they were available for sale.
 - Generally 5 years after first publication.
 - For systematic instructional activities.
 - Subject to procedures under Berne Appendix Art IV.



Exceptions - TRIPS

- 3-step test – TRIPS Art 13 and BERNE Art 9
 - Members shall confine limitations or exceptions to exclusive rights to
 - certain special cases which
 - do not conflict with a normal exploitation of the work and
 - do not unreasonably prejudice the legitimate interests of the right holder.



Exceptions (US)

- Fair Use
 - The fair use of a copyrighted work for purposes such as *criticism, comment, news reporting, teaching, scholarship, or research* is not an infringement of copyright.



Exceptions (US)

- Four factors to be considered in determining whether or not a particular use is fair:
 - the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
 - the nature of the copyrighted work;
 - amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
 - the effect of the use upon the potential market for or value of the copyrighted work.



THANK YOU

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