

**GENEVA CONVENTION  
FOR PROTECTION OF  
PRODUCERS OF  
PHONOGRAMS AGAINST  
UNAUTHORIZED  
DUPLICATIONS**

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## **OBJECTIVES**

The main objectives behind the Geneva Convention for the protection of the phonograms against unauthorized duplication are as follows:

- 1) To deal with the growing problems of piracy of recorded music.
- 2) To provide Copyright and equivalent protection for sound recordings.
- 3) To protect the producers of Phonograms against unauthorized duplication, importation and distribution of such pirated copies.

## **INTRODUCTION**

In order of social relations, we find the basis of different types of institutions. Property is one of such institutions. As all institutions imply relations between individuals, the institution of property also regulates the relation between individuals apart from ascertaining their relation with reference to objects as well. Ownership is one of such relation between individuals in respect of use of things. In this setting of the social order, a legal right of ownership carries with it a legally supported right to use a definite thing for more or less definite purpose and for definite or indefinite time. The meaning of this right is that, all other persons are forbidden to interfere with the owner in the exercise of his right in respect of the thing owned, up to the point at which the limits of that right are prescribed by law.<sup>1</sup>

The general classification of property is thus, the movable property, the immovable property and the intellectual property. The first two classifications of property being popular we shall speak about the third, being the intellectual property.

Intellectual property in the broadest sense means all rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.<sup>2</sup> Intellectual property is further divided into two branches namely: a) the industrial property and b) copyright.

*Industrial property* is a kind of intellectual property that relates to creations of the human mind. Typically, such creations are inventions and industrial designs. Simply stated, inventions are new solutions to technical problems, and industrial designs are aesthetic creations determining the characteristics of industrial products. In addition, industrial property includes trademarks, design marks, service marks, commercial names and designation, including indications of sources and appellations of origin, and the protection against unfair competition.

*Copyright* on the other hand relates to artistic creations, such as poems, novels, music, paintings, cinematographic works, etc. In most European languages other than English, copyright is called “author’s right”. The expression “copyright” refers to the main act which, in respect of the literary and artistic creations, may be made only by the author with his authorization. That act is the making of the copy of the literary or artistic work, such as a book, painting, a sculpture, a photograph, a motion picture and so on. For a work to enjoy copyright protection, however, it must be an original creation. It applies to both the substance and the form. The exercise of copyright on artistic works on large extent is dependent on display and/ or sale of the original. The fact that the author is allowing himself to be separated from the original should not mean that he should forgo subsequent profit. Thus certain legislatures give the author a share in the fortune of his work by creating a “*droit de*

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<sup>1</sup> Dr. G. B. Reddy, *Intellectual Property Rights & The Law* 7<sup>th</sup> Ed. 2008, Gogia Law Agency Publications, Hyderabad. p. 1.

<sup>2</sup> Ibid. p. 12.

*suite*", which allows him to collect a share of the selling price whenever the work changes owners.<sup>3</sup>

The enormous technological development of transport and communications has resulted in the globalization of trade and commerce. This has a tremendous impact on intellectual property rights which has become International in character. Intellectual property can travel effortlessly from one country to another. Piracy of intellectual property has become international in character. This is particularly important in the case of copyrights. Piracy of copyright work has become extremely easy and inexpensive owing to the availability of gadgets like tape recorder, video, cassette recorder, magnetic tape, photocopying machines and so on. No foolproof method of preventing this piracy has so far been developed. However, the international character of intellectual property is recognized in various international conventions for the protection of such property. India is the member of the Berne Convention and the Universal Copyright Convention/ Geneva Convention.<sup>4</sup>

**Geneva Convention** (for protection of producers of phonograms against unauthorized duplication) which was opened for signature on October 29, 1971; its main purpose was to fight the ever growing practice of record and tape piracy spawned by new reproductive technologies. Although the Rome Convention already covered the same ground, many states including the USA that did not recognize the neighbouring rights, refused to adhere to the Rome Convention. They became parties to this convention. The Convention allows a contracting state to require a notice on all publicity distributed copies of the phonogram, which consist of the symbol 'P' accompanied by the year, date of the first publication and the name of the first producer, for claiming protection. The duration of protection given to a phonogram is left to the domestic law, subject to a minimum term of 20 years from the end of two years in which the phonogram was fixed or published. As on January 1, 1996, there were 53 States which became a party to this convention, India being one of it.<sup>5</sup>

The Geneva Convention comprises of 13 Articles which we shall discuss in detail as we proceed with the article. These Articles as a whole provide for the obligations of each Contracting State to protect the producer of phonograms of another Contracting State against – a) the making of duplicates without the consent of that producer; b) the importation of such duplicates whereby the making and/ or importation is for the purpose of duplication to the public; c) the distribution of such duplicates to the public. However, it is also provided that making and importation of phonograms should be made for the purpose of distribution to the public.

As per Article 3 of this Convention the Contracting States are free to choose their mode of implementation of this Convention within their jurisdiction as per their domestic laws. However, protection shall include one or more of the following means: - a) grant of

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<sup>3</sup> Ibid. p. 15 – 17.

<sup>4</sup> P. Narayanan, Intellectual Property Law 2ne Ed. 1997, Eastern Law House Pvt. Ltd Publications, Calcutta. p. 5.

<sup>5</sup> Dr. G. B. Reddy, Intellectual Property Rights & The Law 7<sup>th</sup> Ed. 2008, Gogia Law Agency Publications, Hyderabad. p. 55.

Copyrights, b) other specific rights, c) the law relating to unfair competition and/ or d) Penal Sanctions.

To understand the whole concept of the Geneva Convention 1971, we start from scratch beginning with the related rights in the next chapter.

# **INTERNATIONAL PROTECTION OF RELATED RIGHTS**

**"Related Rights"** is a term in copyright law, used in opposition to the term "authors' rights". The term neighbouring rights is exactly equivalent, and is a more literal translation of the original French *droits voisins*. Related rights in civil law are similar to authors' rights, but are not connected with the works of the actual author. Both authors' rights and related rights are copyrights in the sense of English or U.S. law. There is no single definition of related rights, which vary much more widely in scope between different countries than authors' rights. The rights of performers, phonogram producers and broadcasting organisations are certainly covered, and are internationally protected by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in 1961. Within the European Union, the rights of film producers (as opposed to directors) and database creators are also protected by related rights, and the term is sometimes extended to include the *sui generis* rights in semiconductor topologies and other industrial design rights. A practical definition is that related rights are copyright-type rights that are not covered by the Berne Convention.<sup>6</sup>

Apart from the Rome convention, a number of other treaties address the protection of related rights:

- 1) Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (Geneva Phonograms Convention, 1971)
- 2) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention, 1974)
- 3) Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty, 1989)
- 4) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994)
- 5) WIPO Performances and Phonograms Treaty (WPPT, 1996).<sup>7</sup>

Related rights are independent of any authors' rights, as is made clear in the various treaties (Art. 1 Rome; Art. 7.1 Geneva; Art. 1.2 WPPT). Hence a CD recording of a song is concurrently protected by four copyright-type rights:

- 1) Authors' rights of the composer of the music.
- 2) Authors' rights of the lyricist.

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<sup>6</sup> [http://en.wikipedia.org/wiki/WIPO\\_Performances\\_and\\_Phonograms\\_Treaty](http://en.wikipedia.org/wiki/WIPO_Performances_and_Phonograms_Treaty)

<sup>7</sup> Ibid

3) Performers' rights of the singer and musicians.

4) Producers' rights of the person or corporation that made the recording.<sup>8</sup>

## **RELATION BETWEEN THE PROTECTION OF RELATED RIGHTS AND COPYRIGHT:**

Considering that the use of literary and artistic works was usually implicit in the work of performers, recorders and broadcasters, the Diplomatic Conference at Rome established a link with copyright protection. The first article of the Rome Convention provides that the protection granted under the Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Under the text of Article 1 it is clear that whenever, by virtue of the copyright law, the authorization of the author is necessary for the use of his work, the need for this authorization is not affected by the Rome Convention.

The majority of the Conference at Rome decided to go even further. They considered the possibility that the performers, producers of phonograms and broadcasting organizations of a country would enjoy international protection even when the literary and artistic works they used might be denied protection in that country because it was not party to at least one of the major international copyright conventions. The Rome Convention therefore provides that in order to become a party to the Convention a State must not only be a member of the United Nations, but also a member of the Berne Union or party to the Universal Copyright Convention (Article 24(2)).

Accordingly, a Contracting State ceases to be a party to the Rome Convention as from the time at which it is no longer party either to the Berne or to the Universal Copyright Convention (Article 28(4)). Because of this link with the copyright conventions, the Rome Convention is sometimes referred to as a “closed” convention from the point of view of the circle of States that may adhere to it.<sup>9</sup>

Let us look into the definition of the terms performers and phonogram producers under the various Conventions:

### **PERFORMERS:**

The protection of performers is perhaps the strongest and most unified of the related rights. A performer (musician, actor, etc.) has an intellectual input in their performance over and above that of the author of the work. As such, many countries grant moral rights to performers as well as the economic rights covered by the Rome Convention (Arts. 7–9), and the rights of paternity and integrity are required by the WPPT (Art. 5).

Performers' rights should not be confused with performing rights, which are the royalties due to the composer for a piece of music under copyright in return for the licence (permission) to

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<sup>8</sup> [http://en.wikipedia.org/wiki/Related\\_rights](http://en.wikipedia.org/wiki/Related_rights)

<sup>9</sup> Online book - Chapter 5 - International Treaties and Conventions on Intellectual Property 327

perform the piece in public. In other words, performers must pay performing rights to composers. Under the Rome Convention (Art. 7), performers have the right to prevent:

- 1) The broadcast or communication to the public of their performance, unless this is made from a legally published recording of the performance;
- 2) The fixation (recording) of their performance;
- 3) The reproduction of a recording of their performance.

The WPPT extends these rights to include the right to licence:

- 1) The distribution of recordings of their performance, for sale or other transfer of ownership (Art. 8);
- 2) The rental of recordings of their performances, unless there is a compulsory licence scheme in operation (Art. 9);
- 3) The "making available to the public" of their performances (Art. 10), in effect their publication on the internet.

Article 14 of the Rome Convention set a minimum term for the protection of performers' rights of twenty years from the end of the year in which the performance was made: the TRIPS Agreement (Art. 14.5) has extended this to fifty years. In the European Union, performers' rights last for fifty years from the end of the year of the performance, unless a recording of the performance was published in which case they last for fifty years from the end of the year of publication (Art. 3(100)).

In the United States, there is no federal statutory right in unfixed works such as performances, and no federal exclusive right to record a performance; some states, notably California, have performer rights laws, but as of 1988 these remain untested.<sup>10</sup>

### **PHONOGRAM PRODUCERS:**

1) The term phonogram is used to refer to any sound recording: under the Rome Convention, it must be composed exclusively of a sound recording, although some national laws protect film soundtracks with the same measures to the extent that they are not also protected by other rights. The producer of phonograms, that is the person who makes the recording rather than the person who performs, has the right to prevent the direct or indirect reproduction of the recording (Art. 10 Rome Convention, Art. 2 Geneva Phonograms Convention). The WPPT (WIPO Performances and Phonograms Treaty) 1996, adds the rights to licence:

- 1) The distribution of their phonograms, for sale or other transfer of ownership (Art. 12);

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<sup>10</sup> Ibid

- 2) The rental of their phonograms, unless there is a compulsory licence scheme in operation (Art. 13);
- 3) The "making available to the public" of their phonograms (Art. 14), in effect their publication on the internet.

Once a phonogram has been published, the producer cannot prevent its broadcast: an equitable fee for the licence may be either agreed between phonogram producers and broadcasters or imposed by law.

The Rome and Geneva Phonograms Conventions specify a *maximum* level of formality required for protection of the phonogram (Art. 11 Rome; Art. 5 Geneva): countries are free to set a lower level, or not to require formalities at all. The maximum conditions are that each copy of the phonogram should be clearly marked with:

- 1) The symbol (P) that is a capital P within a circle; followed by
- 2) The year of first publication;
- 3) The name of the owner or exclusive licensee of the producers' rights;
- 4) For Rome Convention countries only, the name of the person who owns (the licence in) the performers' rights in the country where the recording was made.

Countries signing the WPPT shall not require any formality for the protection of producers' rights.

The Conventions (Art. 14 Rome; Art. 4 Geneva) set a minimum term of protection of producers' rights of twenty years from the end of the year in which the phonogram was first published (or from its creation for unpublished recordings): the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) (TRIPS, 1994) (Art. 14.5) extended this minimum to fifty years from the end of the year in which the recording was made. The term of protection in the European Union is fifty years from the end of the year in which the phonogram was first published, or from the end of the year of its creation for unpublished recordings (Art. 3(2)).

For phonograms recorded in the United States the situation is more complicated:

- 1) Recordings made before 1972-02-15: these are covered by state, not federal, copyright law, although all rights will end on 2067-02-15 at the latest [17 U.S.C. Art. 301(c)];
- 2) Recordings made between 1972-02-15 and 1977-12-31 and published: ninety-five years from the date of publication [17 U.S.C. Art. 303(a)];
- 3) Recordings made and published on or after 1978-01-01: ninety-five years after the date of recording if the recording was made "for hire", seventy years after the death of the producer otherwise [17 U.S.C. Art. 302(a), (c)];

4) Recordings made on or after 1972-02-15 and unpublished: 120 years after the date of recording if the recording was made "for hire", seventy years after the death of the producer otherwise [17 U.S.C. Art. 302(a), (c)].<sup>11</sup>

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<sup>11</sup> Ibid

## **SPECIAL CONVENTIONS IN THE FIELD OF RELATED RIGHTS:**

### **THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS (“THE ROME CONVENTION”):**

Several international conventions on related rights are administered by WIPO. Related rights are primarily an offshoot of technological development. At the national level, it was first the phonogram industry that looked for protection against unauthorized duplication of sound recordings of musical performances. At the international level, it was likewise the development of the phonogram industry that promoted the establishment of special protection for the so-called related rights. As in the case of some national laws, the first proposals aiming at the protection of producers of phonograms and performers at the international level were also based on copyright protection. The rights involved were discussed by the Berne Union for the Protection of Literary and Artistic Works at its Diplomatic Conference in Rome in 1928, where it was proposed that “when a musical work has been adapted to a mechanical instrument by the contribution of performing artists these latter should also benefit from the protection granted to that adaptation.”

Corresponding to this approach, a resolution was passed asking governments to consider the possibility of adopting measures to safeguard the interests of performers.

Later on, in 1934, CISAC, the International Confederation of Societies of Authors and Composers, signed an agreement in Stresa with the International Federation of the Gramophone Industry according to which during the forthcoming revision of the Berne Convention (i) the protection of phonograms against unauthorized duplication and (ii) the right of producers of phonograms to equitable remuneration for communication to the public of their phonograms by broadcasting or cinematography should be proposed by means of an annex to be added to the Berne Convention. On the other hand, the International Labour Organization (ILO) had maintained since 1926 a continuing interest in the protection of performers and the problem was considered at a meeting in Samaden, Switzerland, in 1939. Drafts were prepared in cooperation with the Bureau of the Berne Union but all progress was stopped for several years by the outbreak of World War II.

After the war, different committees of experts prepared drafts of conventions which also included protection of the interests of broadcasting organizations — the so-called Rome Draft (1951), a draft produced under the sponsorship of the International Labour Organization (1957) and the Monaco Draft (1957) prepared by experts convened by the International Bureau of the Berne Union and by Unesco. Finally, in 1960, a committee of experts convened jointly by WIPO, Unesco and the International Labour Organization met at The Hague and drew up the draft convention. This served as a basis for the deliberations in Rome, where a Diplomatic Conference agreed on the final text of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Rome Convention of October 26, 1961.

### **PRINCIPAL PROVISIONS OF THE ROME CONVENTION:**

## **NATIONAL TREATMENT:**

As in the Berne Convention, the protection accorded by the Rome Convention consists basically of the national treatment that a State grants under its domestic law to domestic performances, phonograms and broadcasts (Article 2(1)). National treatment is, however, subject to the minimum of protection specifically guaranteed by the Convention, and also to the limitations specifically provided for in the Convention (Article 2(2)). This means that, apart from the rights guaranteed by the Convention itself as constituting that minimum of protection, and subject to specific exceptions or reservations allowed for by the Convention, performers, producers of phonograms and broadcasting organizations to which the Convention applies enjoy in Contracting States the same rights as those countries grant to their nationals.

## **ELIGIBILITY FOR PROTECTION:**

One of the most important questions to be answered unequivocally by each international convention is: to whom and in what cases does it apply? The Rome Convention provides for its application by determining criteria of eligibility for national treatment.

National treatment should be granted to performers, if the performance takes place in another Contracting State (irrespective of the country to which the performer belongs) or if it is incorporated in a phonogram protected under the Convention (irrespective of the country to which the performer belongs or where the performance actually took place) or if it is transmitted “live” (not from a phonogram) in a broadcast protected by the Convention (irrespective again of the country to which the performer belongs) (Article 4). These alternative criteria of eligibility for protection allow for the application of the Rome Convention to the widest possible circle of performances.

National treatment should be granted to producers of phonograms if the producer is a national of another Contracting State (criterion of nationality) or the first fixation was made in another Contracting State (criterion of fixation) or the phonogram was first or simultaneously published in another Contracting State (criterion of publication) (Article 5).

The Convention allows reservations in respect of these alternative criteria. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may at any time declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Any State which, on the day the Convention was signed at Rome, granted protection to producers of phonograms solely on the basis of the criterion of fixation, can exclude both the criteria of nationality and publication. This possibility has been provided for mainly in view of the contemporary Nordic legislation, so that implementation of the Rome Convention could be adapted to conditions of protection already existing under different national laws.

National treatment has to be granted to broadcasting organizations if their headquarters is situated in another Contracting State (principle of nationality), or the broadcast was transmitted from a transmitter situated in another Contracting State, irrespective of whether the initiating broadcasting organization was situated in a Contracting State (principle of territoriality). Contracting States may declare that they will protect broadcasts only if both the condition of nationality and that of territoriality are met in respect of the same Contracting State (Article 6).

## **THE MINIMUM PROTECTION REQUIRED BY THE CONVENTION:**

The minimum protection guaranteed by the Convention to performers is provided by “the possibility of preventing certain acts” done without their consent. Instead of enumerating the minimum rights of performers, this expression was used in order to allow countries like the United Kingdom to continue to protect performers by virtue of penal statutes, determining offenses and penal sanctions under public law. It was agreed, however, that the enumerated acts which may be prevented by the performer, require his consent in advance. In fact, the possibility of preventing certain acts as defined in the Convention amounts to a distinct bundle of rights granted to performers.

The restricted acts comprise: broadcasting or communication to the public of a “live” performance; recording an unfixed performance; reproducing a fixation of the performance, provided that the original fixation was made without the consent of the performer or the reproduction is made for purposes not permitted by the Convention or the performer (Article 7).

Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms (Article 10). The Rome Convention does not provide for any right to authorize performances of the phonogram and does not explicitly prohibit distribution or importation of unauthorized duplicates of phonograms.

Broadcasting organizations have the right to authorize or prohibit: the simultaneous rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction of unauthorized fixations of their broadcasts or reproduction of lawful fixations for illicit purposes and the communication to the public of their television broadcasts by means of receivers in places accessible to the public against payment. It should be noted, however, that this last-mentioned right does not extend to communication to the public of merely sound broadcasts, and that it is a matter for domestic legislation to determine the conditions under which such a right may be exercised. It should also be observed that the Rome Convention does not protect against distribution by cable of broadcasts.

## **PROVISIONS FOR DISCRETIONARY REGULATION OF THE EXERCISE OF RIGHTS:**

The Rome Convention, over and above the minimum requirements of protection, also contains provisions allowing national laws to regulate certain aspects of protection at their discretion.

As regards the protection of performers, it is a matter for domestic legislation to regulate the protection against rebroadcasting of the performance and fixation thereof for broadcasting purposes, where the broadcasting of the performance was consented to by the performer. The principle of pre eminence of contractual arrangements was embodied in a provision requiring that domestic laws shall not operate to deprive performers of the ability to control by contract their relations with broadcasting organizations (Article 7(2)) whereas it was understood that the meaning of contract in this context includes collective agreements and also decisions of an arbitration board, if involved.

If several performers participate in the same performance, the manner in which they should be represented in connection with the exercise of their rights may be specified by each Contracting State (Article 8). Concerning both the protection of performers and producers of phonograms, Article 12 (perhaps the most controversial part of the Convention) provides that if a phonogram published for commercial purposes is used directly for broadcasting or any communication to the public, an equitable remuneration shall be paid by the user to the performers, or to the producers of the phonogram, or to both. This Article does not grant any right to either the performers or producers of phonograms to authorize or to prohibit the secondary use of a phonogram. By guaranteeing a single remuneration for the use of the phonogram it seems to establish a sort of non-voluntary license. It does not, however, obligatorily specify the beneficiary or beneficiaries of the remuneration for the secondary use of the performance and the phonogram embodying it.

Article 12 only says that at least one of the interested parties should be paid for the use; nevertheless it provides that in the absence of agreement between these parties, domestic law may optionally lay down the conditions for the sharing of this remuneration.

The implementation of these provisions, however, can be excluded or restricted by the Contracting States at any time by an appropriate notification (Article 16(1)(a)). A State may declare that it will not apply the provisions of Article 12. A Contracting State may declare that it will not apply this article in respect of certain uses, for instance as regards communications to the public other than broadcasting, or broadcasting of phonograms acquired before the date of the Convention, etc. It is also possible to apply this Article only as regards phonograms of which the producer is a national of another Contracting State. Furthermore, as regards phonograms of which the producer is a national of another Contracting State, the extent and term of protection can be limited so as to correspond to the protection granted by the other State concerned. The fact, however, that the protection in both countries concerned is not granted to the same beneficiary, cannot be considered as justifying the restriction of the protection provided for in Article 12.

## **LIMITATIONS:**

The Rome Convention allows for certain limitations of the rights granted and, as regards the performers, also imposes limitations on rights itself.

Any Contracting State may provide for exceptions as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, and for all kinds of use solely for the purpose of teaching or scientific research (Article 15(1)). This latter possibility of introducing exceptions may be of special benefit to developing countries.

Besides the exceptions specified by the Convention, any Contracting State may also provide for the same kind of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations as it provides for in connection with copyright protection. There is, however, an important difference: compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention (Article 15(2)).

In view of the cinematographic industry's interest in exclusively exploiting the contributions made to their productions, Article 19 of the Rome Convention provides that once a performer

has consented to the incorporation of his performance in a visual or audiovisual fixation, he shall have no further rights under the Rome Convention as regards the performance concerned.

### **DURATION OF PROTECTION:**

The minimum term of protection under the Rome Convention is a period of twenty years, to be computed from the end of the year in which the fixation was made, as far as phonograms and performances incorporated therein are concerned, or the performance took place, as regards performances not incorporated in phonograms, or the broadcast took place, for broadcasts (Article 14).

### **RESTRICTION OF FORMALITIES:**

If a country requires compliance with formalities as a condition of protecting related rights in relation to phonograms, these should be considered as fulfilled if all copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol P, accompanied by the year date of the first publication. If the copies of their containers do not identify the producer or his licensee, the notice shall also include the name of the owner of the rights of the producer, and if the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who owns the rights of such performers (Article 11). It should be emphasized that this provision is *not* a formality requirement; it is a restriction of formalities, which may be required by some national laws.

### **THE IMPLEMENTATION OF THE ROME CONVENTION:**

The Rome Convention has been referred to as a “pioneer convention.” Whereas the conventions concluded towards the end of the nineteenth century for the protection of copyright resulted from developments in national laws, this Convention defined standards of protection of related rights at a time when very few countries had any rules enacted to protect performing artists, producers of phonograms and broadcasting organizations. Thus it was only natural that the impetus of the Convention in the field of the protection of related rights during the first years following its adoption could not be measured so much by the number of ratifications or accessions as by the impact the Convention had on national laws. Since 1961, many countries have legislated on the protection of related rights, thus greatly increasing the number of national laws protecting producers of phonograms or broadcasting organizations, and the majority of them as a result of the coming into existence of the Rome Convention. The disproportion between the number of national laws protecting performers’ rights and those granting protection to producers of phonograms and broadcasting organizations is still unduly great. There are, however, further draft laws under preparation in several countries, which continue to demonstrate the tendency to pay more attention to the protection of performers’ rights.

The comparatively slow progress of national laws in the field of related rights, and in particular the unequal development of protection as regards different beneficiaries of these rights, even today hinders accession to the Rome Convention, since it requires at the same time protection of performers, producers of phonograms and broadcasting organizations.

### **THE ROME CONVENTION AND DEVELOPING COUNTRIES:**

A large number of the States party to the Rome Convention are developing countries. This is quite natural since most developing countries attach great importance to music, dance and other creations in their national heritage. The value of the Rome Convention to such countries stems from the fact that it affords protection to those who contribute to the dissemination of that heritage abroad.

The Convention is particularly important to those countries whose civilization and tradition are oral and where the author is often the performer as well. In this context, the place occupied by expressions of folklore must be borne in mind and the interests of the artists constantly performing, and thus perpetuating them, must be safeguarded when use is made of their performances. Whilst the possibilities of protecting creations of folklore by copyright seem to be limited, and the establishment of a more adequate kind of protection *sui generis* appears to require more time, expressions of folklore can efficiently be protected indirectly by protecting performances, fixations, and broadcasts of them.

By also protecting the producers of phonograms, the Rome Convention promotes, particularly in developing countries, industry in a dynamic tertiary sector of the economy. Such an industry, while guaranteeing the dissemination of national culture, both within the country and throughout the world, can additionally constitute a substantial source of revenue for the country's economy and, in those cases where its activities extend beyond frontiers, can attract an influx of foreign currency.

By giving performers and phonogram producers the possibility of benefiting from their performances and productions, the Rome Convention is instrumental in promoting the artistic heritage and represents an important incentive to creativity. It is also certain that, where the interests of performers and producers of phonograms are safeguarded by law, works will enjoy greater development and suffer less from the competition of unprotected performances of foreign works. Where performances and phonograms are exported, there is one reason more to protect them internationally, that is, by accepting the relevant international conventions.

Finally, the part played by the broadcasting organizations in the developing countries should not be forgotten either, since they also have an interest in the protection of their costly program against rebroadcasting, reproduction and communication to the public of their broadcasts. The rebroadcasting or reception of television broadcasts in public places can be very profitable, especially when the subject of the original broadcast is an exceptional event. Frequently, the organizers of such events only allow broadcasting for certain territories or on the condition that no public reception close to the place of the event drains away potential spectators. The broadcasting organization must therefore be able to prohibit rebroadcasting and public reception. The same applies to broadcasting of performances or recordings of expressions of national folklore: the broadcasting organization should be entitled internationally to prevent rebroadcasting or fixation for reproduction of its own broadcast of works of the national heritage.

The States party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("the Rome Convention") are listed in the appropriate document to be found inserted in the back flap of this volume.<sup>12</sup>

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<sup>12</sup> Online book - Chapter 5 - International Treaties and Conventions on Intellectual Property 327

**THE CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS AGAINST UNAUTHORIZED DUPLICATION OF THEIR PHONOGRAMS (GENEVA CONVENTION OR THE PHONOGRAM CONVENTION OF 1971) :**

Besides the Rome Convention of 1961, a basic legal instrument discussed in the previous section, two other international instruments have been drawn up with regard to certain related rights. These are the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded in Geneva in October 1971 and generally referred to as “the Phonograms Convention,” and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite concluded in Brussels in May 1974 and known briefly as “the Satellites Convention.” These two Conventions are also within the area of related rights, and their purpose is to protect producers of phonograms and broadcasting organizations, respectively, against certain prejudicial acts that have been widely recognized as infringements or acts of piracy.

## **GENEVA PHONOGRAMS CONVENTION, 1971**

The *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms*, also known as the *Geneva Phonograms Convention*, is a 1971 international agreement relating to copyright protection for sound recordings.

By the mid-1950s, the Berne Convention for the Protection of Literary and Artistic Works, the Buenos Aires Convention and Universal Copyright Convention granted strong rights to creators of printed or artistic content – and also to composers and performers of music – in most first world countries. The publisher of a book could prosecute a maker of unauthorized copies even if they operated in a different country. But there was no equivalent protection for sound recordings.

The 1961 Rome Convention for the first time granted international recognition for copyright in sound recordings. Now music labels were recognized as having a copyright interest in the recording itself, separately from the composer and performer. This gave them standing to prosecute makers of unauthorized copies of their tapes or records in other countries.

In the mid-1960s music labels began producing pre-recorded compact cassettes, a technology developed in the late 1950s which offered relatively compact players and space-efficient storage compared to vinyl records. It was also very much cheaper and simpler to make unauthorized copies compared to vinyl records. By the late 1960s copyright infringement and counterfeiting of these recordings had become common, and the music industry lobbied for a new international treaty which would give them additional powers to combat copyright infringement.

The 1971 Convention granted record producers the international right to block imports of counterfeit music recordings, and to take action against distributors and retailers who sold them.<sup>13</sup>

The Contracting States to the Convention, concerned at the widespread and increasing unauthorized duplication of phonograms and the damage this is occasioning to the interests of authors, performers and producers of phonograms; convinced that the protection of producers of phonograms against such acts will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms; recognizing the value of the work undertaken in this field by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization; anxious not to impair in any way international agreements already in force and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers and to broadcasting organizations as well as to producers of phonograms; have agreed as follows:

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<sup>13</sup> [http://en.wikipedia.org/wiki/Geneva\\_Phonograms\\_Convention](http://en.wikipedia.org/wiki/Geneva_Phonograms_Convention)

## **Article 1**

### **Definitions:**

For the purposes of this Convention:

- (a) "Phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;
- (b) "Producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
- (c) "Duplicate" means an article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram;
- (d) "Distribution to the public" means any act by which duplicates of a phonogram are offered, directly or indirectly, to the general public or any section thereof.

## **Article 2**

### **Obligations of Contracting States; whom they must protect and against what:**

Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.

## **Article 3**

### **Means of Implementation by Contracting States:**

The means by which this Convention is implemented shall be a matter for the domestic law of each Contracting State and shall include one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions.

## **Article 4**

### **Term of Protection:**

The duration of the protection given shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the protection, that duration shall not be less than twenty years from the end either of the year in which the sounds embodied in the phonogram were first fixed or of the year in which the phonogram was first published.

## **Article 5**

### **Formalities:**

If, as a condition of protecting the producers of phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the authorized duplicates of the phonogram distributed to the public or their containers

bear a notice consisting of the symbol (P), accompanied by the year date of the first publication, placed in such manner as to give reasonable notice of claim of protection; and, if the duplicates or their containers do not identify the producer, his successor in title or the exclusive licensee (by carrying his name, trademark or other appropriate designation), the notice shall also include the name of the producer, his successor in title or the exclusive licensee.

## **Article 6**

### **Limitations on Protection:**

Any Contracting State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions, may in its domestic law provide, with regard to the protection of producers of phonograms, the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works. However, no compulsory licenses may be permitted unless all of the following conditions are met:

- (a) The duplication is for use solely for the purpose of teaching or scientific research;
- (b) The license shall be valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and shall not extend to the export of duplicates;
- (c) The duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made.

## **Article 7**

### **Savings:**

#### **1. Safeguard of Copyright and Neighbouring Rights:**

This Convention shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, to producers of phonograms or to broadcasting organizations under any domestic law or international agreement.

#### **2. Protection for Performers:**

It shall be a matter for the domestic law of each Contracting State to determine the extent, if any, to which performers whose performances are fixed in a phonogram are entitled to enjoy protection and the conditions for enjoying any such protection.

#### **3. Non-Retroactivity:**

No Contracting State shall be required to apply the provisions of this Convention to any phonogram fixed before this Convention entered into force with respect to that State.

#### **4. Substitution of the Criterion of Fixation:**

Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms solely on the basis of the place of first fixation may, by a notification deposited with the Director General of the World Intellectual Property Organization, declare that it will apply this criterion instead of the criterion of the nationality of the producer.

## **Article 8**

### **Secretariat:**

(1) The International Bureau of the World Intellectual Property Organization shall assemble and publish information concerning the protection of phonograms. Each Contracting State shall promptly communicate to the International Bureau all new laws and official texts on this subject.

(2) The International Bureau shall, on request, furnish information to any Contracting State on matters concerning this Convention, and shall conduct studies and provide services designed to facilitate the protection provided for therein.

(3) The International Bureau shall exercise the functions enumerated in paragraph (1) and paragraph (2) above in cooperation, for matters within their respective competence, with the United Nations Educational, Scientific and Cultural Organization and the International Labour Office.

## **Article 9**

### **Joining the Convention:**

#### **1. Signature and Deposit:**

This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until April 30, 1972, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

#### **2. Ratification:**

This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1) of this Article.

#### **3. Accession:**

Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

#### **4. States' Obligations as to their Domestic Law:**

It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

## **Article 10**

### **Reservations:**

No reservations to this Convention are permitted.

## **Article 11**

### **Entry into Force and Applicability:**

(1) This Convention shall enter into force three months after deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, the Convention shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization informs the States, in accordance with Article 13, paragraph (4), of the deposit of its instrument.

(3) Any State may, at the time of ratification, acceptance or accession or at any later date, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification will take effect three months after the date on which it is received.

(4) However, the preceding paragraph may in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Convention is made applicable by another Contracting State by virtue of the said paragraph.

## **Article 12**

### **Denunciation of the Convention:**

(1) Any Contracting State may denounce this Convention, on its own behalf or on behalf of any of the territories referred to in Article 11, paragraph (3), by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the Secretary-General of the United Nations has received the notification.

## **Article 13**

### **Languages and Notifications:**

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the Director General of the World Intellectual Property Organization, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of:

(a) Signatures to this Convention;

(b) The deposit of instruments of ratification, acceptance or accession;

(c) The date of entry into force of this Convention;

(d) Any declaration notified pursuant to Article 11, paragraph (3);

(e) The receipt of notifications of denunciation.

(4) The Director General of the World Intellectual Property Organization shall inform the States referred to in Article 9, paragraph (1), of the notifications received pursuant to the preceding paragraph and of any declarations made under Article 7, paragraph (4). He shall also notify the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director-General of the International Labour Office of such declarations.

(5) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to the States referred to in Article 9, paragraph (1).<sup>14</sup>

## **REASONS FOR AND PURPOSES OF THE GENEVA CONVENTIONS:**

The reason for the rapid acceptance of the Phonograms Convention is due, on one hand, to the accelerating increase in international piracy during the last two decades and, on the other hand, to the legal characteristics of the Convention itself.

While a number of countries were preparing new legislation in the field of related rights in view of the standards set by the Rome Convention, international piracy of sound recordings was growing. The total value of pirated sound recordings sold worldwide has been increasing steadily. This made it necessary, even in the early seventies, to establish a special convention without delay. The subject was raised in May 1970 in the Preparatory Committee for the revision of the two major copyright conventions, and the new Convention was signed in Geneva after less than 18 months.

The Phonograms Convention takes into account all the measures that had already been adopted in various national laws, and allows for the application of all of them instead of requiring a uniform solution, as is the case under the Rome Convention, which provides for the granting to producers of phonograms the right to authorize or prohibit the reproduction of their phonograms. Thus, amendments of existing national laws became largely unnecessary to States which already protected producers of phonograms by some other means and wanted to extend this kind of protection also at the international level.<sup>15</sup>

## **MAIN FEATURES OF THE GENEVA/ PHONOGRAPH CONVENTIONS:**

While it can be said that the Phonograms Convention supplements the Rome Convention to a certain extent, it should nevertheless be mentioned that its approach is different, in three main respects.

First, the Rome Convention gives the beneficiaries of related rights essentially a right to authorization or prohibition, without overlooking the safeguarding of the rights of authors. The Phonograms Conventions, on the other hand, do not introduce private rights but rather leave the Contracting States free to choose the legal means of preventing or repressing acts of piracy in that area.

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<sup>14</sup> [http://www.wipo.int/treaties/en/ip/phonograms/trtdocs\\_wo023.html#P85\\_10993](http://www.wipo.int/treaties/en/ip/phonograms/trtdocs_wo023.html#P85_10993)

<sup>15</sup> Online book - Chapter 5 - International Treaties and Conventions on Intellectual Property 327

Second, the Rome Convention is based on the “national treatment” principle. That means that the protection prescribed by the Rome Convention is only minimum protection and that, apart from the rights guaranteed by that Convention itself as constituting that minimum of protection, and within the limits of reservations conceded by it, performers, producers of phonograms and broadcasting organizations enjoy the same rights in countries party to the Convention as those countries grant their nationals. The Phonograms Convention does not speak of the system of “national treatment”, but defines expressly the unlawful acts against which Contracting States have to provide effective protection; consequently, the States are not bound to grant foreigners protection against all acts prohibited by their national legislation for the protection of their own nationals. For instance, countries whose national legislation provides protection against the public performance of phonograms are not obliged to make this form of protection available to the producers of phonograms of other Contracting States, because the Phonograms Convention does not itself guarantee any protection against the use in public of lawfully reproduced and distributed phonograms. It should be mentioned, however, that even the Phonograms Convention is in no way to be interpreted as limiting the protection available to foreigners under any domestic law or international agreement (Article 7(1)).

Third, in the interests of combating piracy over the widest possible area, the new international agreements were made open to all States members of the United Nations or any of the specialized organizations brought into relationship with the United Nations, or parties to the Statute of the International Court of Justice (virtually all States of the world). In contrast the Rome Convention is a “closed” Convention, its acceptance being reserved for States party to at least one of the two major international copyright conventions.

### **SUBSTANTIVE PROVISIONS OF THE PHONOGRAMS CONVENTION:**

As far as the substantive provisions are concerned, the Phonograms Convention differs from the Rome Convention mainly as regards:

- (i) The criteria of eligibility for protection;
- (ii) The scope of protection; and
- (iii) The means of ensuring the protection provided for.

The Phonograms Convention requires only the criterion of nationality as a condition of granting protection. Any Contracting State, however, which on October 29, 1971, afforded protection solely on the basis of the place of first fixation may, by a declaration deposited with the Director General of WIPO, declare that it will apply this criterion.

Protection is granted not only against making duplicates of the phonogram, but also against the distribution of illicit duplicates and importation of such duplicates for distribution (Article 2). On the other hand, the scope of protection does not extend to claiming remuneration for secondary uses of the phonogram.

The means by which the Phonograms Convention is to be implemented are a matter for domestic legislation. They may include protection by granting copyright in the phonogram, by granting other specific (neighbouring) rights, by the law relating to unfair competition, or by penal sanctions (Article 3).

The Phonograms Convention permits the same limitations as those accepted in relation to the protection of authors. The Convention also permits compulsory licenses if reproduction is

intended exclusively for teaching or scientific research, limited to the territory of the State whose authorities give the license, and in return for equitable remuneration.

Regarding the term of protection, the same minimum duration is required by the Phonograms Convention as by the Rome Convention: if the domestic law prescribes a specific duration for the protection, that duration shall not be less than 20 years from the end either of the year in which the sounds embodied in the phonogram were first fixed or of the year in which the phonogram was first published.

It should be noted that the Phonograms Convention also contains a provision concerning performers. Under its Article 7, the national legislation of each Contracting State may lay down, where necessary, the scope of protection afforded to performers whose performance is fixed on a phonogram and the conditions of enjoying such protection.

### **THE GENEVA CONVENTION AND DEVELOPING COUNTRIES:**

It is particularly significant that the States that have joined the Phonograms / Geneva Conventions, as with the countries party to the Rome Convention, are not necessarily highly industrialized market economy States. This may be explained by the role that protection of related rights is capable of playing in the development of those countries: the role of such protection in development, as explained under the Rome Convention is similar where the Phonograms Conventions is concerned.

The recognition and international protection of the rights of performers, producers of phonograms and broadcasting organizations, in conjunction with copyright, quite definitely contribute to the development of nations, as does protection of intellectual property as a whole. Thus it is desirable that more developing countries recognize the necessity of establishing legal protection of authors, performers, producers of phonograms and broadcasting organizations as an interdependent system, both at the national and international levels.

### **THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT):**

The WIPO Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions, held in Geneva in December 1996, adopted two treaties: the WIPO Copyright Treaty (the third section dealt with in this chapter) and the WIPO Performances and Phonograms Treaty (WPPT).

In view of the technological developments of the 1980s, as also in the field of copyright, it was recognized that guidance in the form of recommendations, guiding principles and model provisions would no longer suffice, and that binding new norms were indispensable. The WCT and the WPPT were prepared in parallel at the same Diplomatic Conference.

### **LEGAL NATURE OF THE WPPT AND ITS RELATIONSHIP WITH OTHER INTERNATIONAL TREATIES:**

The WPPT has a certain relationship with the Rome Convention which has been regulated in a way similar to the relationship between the TRIPS Agreement and the Rome Convention. This means that (i) in general, application of the substantive provisions of the Rome Convention is not an obligation of the Contracting Parties, (ii) only a few provisions of the

Rome Convention are included by reference (those relating to the criteria of eligibility for protection), and (iii) Article 1(2) of the Treaty contains, *mutatis mutandis*, practically the same provision as Article 2.2 of the TRIPS Agreement, stating that nothing in the Treaty derogates from obligations that Contracting Parties have to each other under the Rome Convention.

Article 1(3) of the Treaty, in respect of the relation to the other treaties, includes a provision similar to Article 1(2) of the WCT: “The Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.”

The title of Article 1 of the WPPT is “Relation to Other Conventions”, but paragraph (2) of the Article deals with a broader question, namely the relationship between copyright on the one hand and “related rights,” provided for in the Treaty, on the other. This provision reproduces the text of Article 1 of the Rome Convention word for word: *“Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.”*

The Diplomatic Conference adopted an agreed statement which reads: *“It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.”*<sup>16</sup>

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<sup>16</sup> [http://en.wikipedia.org/wiki/WIPO\\_Performances\\_and\\_Phonograms\\_Treaty](http://en.wikipedia.org/wiki/WIPO_Performances_and_Phonograms_Treaty)

## **CRITICISMS**

It is believed that the law is necessary to prevent copyright infringement in the digital era, while a growing coalition of open source software developers and Internet activists argue that the law stifles innovation while doing little to stop copyright infringement. Because the content must ultimately be decrypted in order for users to understand it, near-perfect copying of the decrypted content always remains possible for pirates. Meanwhile, developers of open source and other next-generation software must write complex and sophisticated software routines to ensure interoperability of their software with legacy Windows technology. Thus, the opponents are angry at having to bear the costs of technology that result in no benefit.

Some proponents of the law claim it was necessary to implement several WIPO treaties. Opponents respond that the law was not necessary, even if it went far beyond what the treaties require, and the treaties were written and passed by the same industry lobbyist's people who wanted to pass this law. They also note that the severe ambiguities in the law, its difficulty in enforcement, and its numerous exceptions make it ineffective in achieving its stated goal of protecting copyright holders.

Opponents also argue that the law might be read to give full control to copyright holders over what uses are and are not permitted, essentially eliminating fair use. For example, eBook readers protected by this law can prevent the user from copying short excerpts from the book, printing a couple pages, and having the computer read the book aloud—all of which are legal under copyright law, but this law could be expanded to prohibit building a tool to do what is otherwise legal. However, other legal scholars note that the law's emphasis on violations of pre-existing rights of copyright holders ensures that those rights are not expanded. If the purpose of the activity is not to violate a pre-existing right, the activity is not illegal. Fair use, the scholars say, would still be protected.<sup>17</sup>

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<sup>17</sup>[http://en.wikipedia.org/wiki/WIPO\\_Copyright\\_and\\_Performances\\_and\\_Phonograms\\_Treaties\\_Implementation\\_Act](http://en.wikipedia.org/wiki/WIPO_Copyright_and_Performances_and_Phonograms_Treaties_Implementation_Act)

## **CONCLUSION**

The Phonograms or Geneva Convention provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against The making of duplicates without that producer's consent; against the importation of such duplicates, where the making or importation is for the purpose of distribution to the public; and against the distribution of such duplicates to the public. "Phonogram" means an exclusively aural fixation (that is, it does not comprise, for example, the sound tracks of films or videocassettes), whatever its form (disc, tape, etc.). Protection may be provided under copyright law, *sui generis* (related rights) law, unfair competition law or penal law. Protection must last for at least 20 years from the date of first fixation or the first publication of the phonogram. (However, national laws increasingly provide for a 50-year term of protection.) The Convention permits the same limitations as those provided in relation to the protection of authors. It allows non-voluntary licenses if reproduction is intended exclusively for teaching or scientific research, limited to the territory of the State whose authorities give the license, and if equitable remuneration is provided (Article 6).

WIPO is responsible, jointly with the ILO and UNESCO, for the administration of this Convention. The Convention does not provide for the institution of a Union, governing body or budget. The Convention is open to any State member of the United Nations or of any of the agencies belonging to the United Nations system of organizations. Instruments of ratification, acceptance or accession must be deposited with the Secretary-General of the United Nations.<sup>18</sup>

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<sup>18</sup> [http://www.wipo.int/export/sites/www/freepublications/en/intproperty/442/wipo\\_pub\\_442.pdf](http://www.wipo.int/export/sites/www/freepublications/en/intproperty/442/wipo_pub_442.pdf)

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