

Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)

The Berne Convention deals with the protection of works and the rights of their authors. It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions available to **developing countries** that want to make use of them.

(1) The **three basic principles** are the following:

(a) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment") [1].

(b) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection) [2].

(c) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases [3].

(2) The **minimum standards** of protection relate to the works and rights to be protected, and to the duration of protection:

(a) As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" (Article 2(1) of the Convention).

(b) Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** that must be recognized as exclusive rights of authorization:

- **the right to translate,**
- **the right to make adaptations and arrangements** of the work,
- **the right to perform in public** dramatic, dramatico-musical and musical works,
- **the right to recite** literary works in **public,**
- **the right to communicate to the public** the performance of such works,
- **the right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- **the right to make reproductions** in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- **the right to use the work as a basis for an audiovisual work,** and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work [4].

The Convention also provides for "**moral rights**", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

(c) As to the **duration** of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during

that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work [5].

(3) The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11*bis*(3) (ephemeral recordings for broadcasting purposes).

(4) The Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

The Berne Union has an Assembly and an Executive Committee. Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*.

The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Berne Union is concerned – is the task of its Assembly.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO [6].

[1] Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the principles of national treatment, automatic protection and independence of protection also bind those World Trade Organization (WTO) Members not party to the Berne Convention. In addition, the TRIPS Agreement imposes an obligation of "most-favored-nation treatment", under which advantages accorded by a WTO Member to the nationals of any other country must also be accorded to the nationals of all WTO Members. It is to be noted that the possibility of delayed application of the TRIPS Agreement does not apply to national treatment and most-favored obligations.

[2] *Idem*.

[3] *Idem*.

[4] Under the TRIPS Agreement, an exclusive right of rental must be recognized in respect of computer programs and, under certain conditions, audiovisual works.

[5] Under the TRIPS Agreement, any term of protection that is calculated on a basis other than the life of a natural person must be at least 50 years from the first authorized publication of the work, or – failing such an event – 50 years from the making of the work. However, this rule does not apply to photographic works, or to works of applied art.

[6] It is to be noted that WTO Members, even those not party to the Berne Convention, must comply with the substantive law provisions of the Berne Convention, except that WTO Members not party to the Convention are not bound by the moral rights provisions of the Convention.

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