Copyright and Related Rights*

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Paper discusses the scope of copyright and related rights and gives reasons why copyright and related rights need to be protected. It describes in detail the copyright and related rights under TRIPS Agreement vis-a-vis Bernese and Rome Conventions.

Copyright law deals with intellectual creations. Broadly speaking, it provides to authors and other creators of the works of the mind (e.g., literature, music, art) various rights to authorize or prohibit use of their works. They are allowed to control the use of their works for a certain period.

Rights relating to copyright, which protect performers, sound recording (or "phonogram") producers and broadcasters, are referred to as "neighbouring on" copyright. In abbreviated form they are known as "neighbouring rights" or "related rights".

Why Protect Copyright and Related Rights?

There are a variety of reasons why copyright and related rights need to be protected, some of the important ones are:

(a) The need to encourage individual creativity—creativity is an important element in the progress of a country. It is important for the country's development.

(b) It provides an incentive for the work to be made public and to be widely disseminated. A wider dissemination enables a larger segment of society to benefit from the work. At the same time the creator knows that he retains the requisite protection despite the wider dissemination.

(c) Investments would be more readily available. Creation and dissemination of works may be a costly affair. Businessmen are more likely to sink money in a book or film venture if they are assured that the works are pro-


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tected and they would obtain a reasonable rate of return.

The Economic Aspects

It has always been axiomatic that authors, performers, publishers, and producers of records and films needed appropriate earnings to enable them to keep engaged in the work of creation and dissemination. The economic aspects of copyright and related rights are important factors which cannot be ignored.

The economic factor has become more important today with the developments in technology and the progress towards the information society. With the new technology, works can be transmitted on a vast scale to a much larger audience.

With the inclusion of intellectual property in the Uruguay Round negotiations in the GATT, the subject also became important in international trade. The result of the intellectual property negotiations during the Uruguay Round was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). All members of the World Trade Organization (WTO) are required to be parties to the TRIPS Agreement under the package-deal approach adopted in the Uruguay Round negotiations.

Copyright and Related Rights Under the TRIPS Agreement

(a) Copyright

The TRIPS Agreement does not intend to replace existing international copyright regimes. It builds upon the existing copyright convention, the Berne Convention for the Protection of Literary and Artistic Works as last revised in 1971 ("Berne Convention").

The Berne Convention came into being in 1886 and has been modified a number of times. Article 9(1) of the TRIPS Agreement states that WTO members are to comply with Articles 1 to 21 of the Berne Convention and the Appendix thereto. However, there is no obligation in relation to moral rights (Article 6bis of Berne) or the rights derived therefrom.

Article 9(2) of TRIPS makes it clear that copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts. This provision reiterates a basic principle of copyright. This is that copyright law protects the form in which an author has expressed his ideas, not the ideas themselves. For example, what is being protected in relation to a story is not the idea behind the story, but the creativity involved in the manner in which the author has expressed his ideas. The objective of copyright is the protection of creativity which is involved in the choice and arrangements of words, musical notes, colours, shapes and so forth.

Article 2(1) of the Berne Convention sets out a non-exhaustive list of "literary and artistic works". The term includes every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression. Various examples of such works are given in the provision. Article 2(2) enables countries to require that works be fixed in some material form to qualify for protection. Translations and derivative works are protected under Article 2(3). Collections of works, such as encyclopaedias and anthologies, which by reason of the selection and arrangement of their contents, constitute intellectual creations are to be protected as such.

Article 5(1) of the Berne Convention provides for national treatment. Article 5(2) in-
icates one of the distinguishing features of Berne: no formalities are required for protection under it.

Rules in relation to the term of protection are dealt with in Article 7 of the Berne Convention. The general rule is the life of the author plus 50 years after his death. Article 12 of the TRIPS Agreement also deals with term of protection.

Some of the more important exclusive economic rights granted to authors are dealt with in Articles 8-14 of the Berne Convention. These include the right of translation (Article 8), the right of reproduction in any manner or form (Article 9(1)), the right of broadcasting and communication to the public (Article 11) and the right of adaptation (Article 12).

Separately from the author’s economic rights, "moral rights" are protected by Article 6bis of the Berne Convention. These would enable an author to claim authorship of his work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honour or reputation.

Certain limitations or exceptions are permitted to the economic rights granted to authors, pursuant to Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement. These are referred to as "fair use" exceptions and in the circumstances covered by them the works may be used without the authorization of the copyright owner. The fair use exceptions are intended to allow a balance to be maintained between the interests of copyright owners and the users of copyrighted works.

Countries may provide for a higher level of protection than that provided for by the Berne Convention, if they so desire (Articles 19 & 20 of Berne Convention).

Apart from incorporating the standards of the Berne Convention, the TRIPS Agreement confirms that computer programs are to be protected as literary works. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are to be protected as such. The protection is not, however, to extend to the data or material itself (Article 10 of TRIPS Agreement).

The TRIPS Agreement provides (in Article 11) for a right in relation to commercial rental of copies of computer programs and cinematographic works. The right shall not apply to cinematographic works, however, unless the rental has led to widespread copyright of such works which is materially impairing the exclusive right of reproduction.

(b) Related Rights

Related rights under the TRIPS Agreement are provided to performers, producers of phonograms and broadcasting organizations. These rights are spelt out in Article 14 of the Agreement.

Article 14(1) provides for performers to prevent the fixation of their unixed performers and the reproduction of such fixation, if undertaken without their authorization. They also have the right to control the broadcasting by wireless means and the communication to the public of their live performances.

Producers of phonograms have been granted the right to authorize or prohibit the direct or indirect reproduction of their phonograms (Article 14(2). Producers of phonograms are also afforded the right to authorize the rental of copies of their
phonograms. An exception has been provided for countries which may have in force a system of equitable remuneration for rental on the date on which the TRIPS Agreement was adopted, namely 15 April 1994. Such countries may maintain the system in force in their country provided that the commercial rental of phonograms does not give rise to material impairment of the right of reproduction (Articles 14(2) & (4)).

Article 14(3) of the TRIPS Agreement deals with the rights of broadcasting organizations. The provision grants to broadcasting organizations the right to prohibit the fixation, the reproduction of fixations, and re-broadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts. An alternative arrangement is also possible. Where broadcasting organizations are not granted the above-mentioned rights, owners of copyright in the subject matter of broadcasts are to be provided with the possibility of preventing the same acts.

The following terms of protection are provided for in regards to related rights:

(a) performers and producers of phonograms—50 years;
(b) broadcasting organizations—20 years.

The same limitations as that provided under the Rome Convention (i.e., the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations adopted at Rome in 1961) may be applied as regards the related rights provided under the TRIPS Agreement. In addition, national legislation dealing with the implementation of the TRIPS Agreement must provide protection for all performances and phonograms which have not fallen into the public domain due to expiration of the term of protection in their country of origin. The same applies to copyright works by virtue of Article 18 of the Berne Convention.