CHAPTER – 3

LEGAL DEVELOPMENT AT THE GLOBAL LEVEL

The norms of copyright were not universal as copyright traditions in common law and civil law countries were different. The countries, therefore, made an effort for harmonization of laws and started entering into bilateral, regional and international treaties. The norms of copyright and neighboring rights today are embodied in an interlocking network formed by Berne\(^{126}\) and Universal Copyright Convention,\(^{127}\) WIPO Copyright Treaty\(^ {128}\) and the neighboring rights treaties – the Rome\(^ {129}\), Geneva\(^ {130}\) and Brussels Conventions\(^ {131}\) and WIPO Performances and Phonograms Treaty.\(^ {132}\) The substantive and procedural norms of the TRIPS Agreement effect both copyright and neighboring rights.\(^ {133}\) The conventions and treaties of this interlock are described below.


\(^{127}\) Universal Copyright Convention, Paris Text 1971.

\(^{128}\) WIPO Copyright Treaty, Geneva, 1996.


\(^{133}\) Agreement on Trade Related Aspects of Intellectual Property Rights, 1994.
3.1 Berne Convention for the Protection of Literary and Artistic works.

The above stated need for a uniform system led to the formulation and adoption on September 9, 1886 of the Berne Convention for the protection of literary and Artistic Works. The Berne Convention is the oldest international treaty in the field of copyright. It is open to all states. Instruments of accession or ratification are deposited with the Director General of the World Intellectual Property Organization (hereinafter referred to as WIPO).

Works Protected:

Article 2 of the Berne Convention provides for the works which are protected under the Convention. The works protected under the convention are as follows:

1. “Literary and artistic works”,
2. Possible requirement of fixation,
3. Derivative works,
4. Official texts,
5. Collections,
6. Obligations to protect, beneficiaries of protection,
7. Works of applied art and industrial designs,
8. News
The Bern Convention protects the works of the authors not only in the country of their origin but also in the countries of Union.

**Article 5(1) of Berne Convention** Provides as follows:

“Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.”

**Article 9 of Berne Convention** Provides that Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

**Term of Protection**

The term of protection granted to the Literary and artistic work by this Convention shall be the lifetime of the author and fifty years after his death.\(^{134}\)

The Convention rests on three basic principles. (1) **The principle of national treatment**, which has the effect that a national of a country

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\(^{134}\) Bern Convention 1886, Article 7.
with a low level of protection who gets better protection abroad than he can get at home, will eventually bring pressure to bear on the authorities of his country for better protection. (2) **Automatic protection**, i.e. such national treatment is not dependant on any formality. (3) **Independence of protection**, according to which enjoyment and exercise of the rights granted is independent of the existence of protection in the country of origin of the work.

The Berne Act expressly guaranteed two of the three rights that were generally protected under national laws of that time the right of Translation\(^ {135}\) and the right of public performance.\(^ {136}\) The reproduction right though regularly protected under national laws, did not appear in the 1886 text. One reason may have been that the right “was so much taken for granted that it was not even mentioned”. It was for the first time included in 1971 Text.

Seven major revisions\(^ {137}\) took place in the Berne Convention in order to improve the international system of protection of copyright which the convention provided. Changes were effected in order to: (1) cope with the challenges of accelerating development of technologies in

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\(^{135}\) Berne convention, 1886. Art V & VI,

\(^{136}\) Id. Art IX.

\(^{137}\) The Paris Additional Act (1896); the Berlin Act (1908); The Additional Protocol (Berne 1914); The Rome Act, (1928); the Brussels Act, 1948, the Stockholm Act (1967); The Paris Act (1971).
the field of utilization or reproduction of authors’ works, (2) to recognize new rights, and (3) to allow for appropriate revisions established rights.

The 1908 Berlin Act introduced many important changes. It added protection for cinematographic productions as derivative works;\textsuperscript{138} the 1896 Paris Additional Act had already added photographs\textsuperscript{139}. The Berlin Act established a minimum term of protection of fifty years after the author’s death.\textsuperscript{140} The 1908 Act also added a qualified right to make recording works\textsuperscript{141} and established the principle that a work’s protection in any country of the Union is independent of its protection in its country of origin.\textsuperscript{142}

The 1928 Rome Act added the moral rights of attribution and integrity to the Convention’s minimum rights,\textsuperscript{143} as well as right to broadcast copyrighted works, which could be subjected to a compulsory license under national legislation.\textsuperscript{144} In case of joint authorship, the Rome Act provided that term of protection was to be measured from death of last surviving author.\textsuperscript{145}

\textsuperscript{138} Berne Convention, Berlin Text 1908, Article 14 (2).
\textsuperscript{139} Berne Convention Paris Additional Act 1896, Article II (1) (B).
\textsuperscript{140} Berne Convention Berlin Text 1908, Article 7 (1) (2)
\textsuperscript{141} Id., Article 13.
\textsuperscript{142} Id., Article 4 (2)
\textsuperscript{143} Berne Convention Rome Text 1928, Article 6\textsuperscript{bis}
\textsuperscript{144} Id., Article 11\textsuperscript{bis}
\textsuperscript{145} Id., Article 7\textsuperscript{bis} (1)
The 1948 Brussels Act strengthened or clarified several minimum Convention rights, including moral right, the adaptation right, and the translation right. It also expanded the broadcast right to include television, 146 added works of applied art and industrial designs as example of protected work, 147 and clarified rights in cinematograph films. 148

The Brussels Act 1948 marked the end of a period. The structure of the Convention and the principal right had been settled, a substantial number of states had joined the Union 149. From now on, new problems began to dominate the scene:

1. Who should be the right owners in case of neighboring rights?
2. How was the Convention to respond to new technologies?

By the time next revision conference was convened in Stockholm in 1967150 three events had taken place which had a bearing on these problems and on the Berne Convention;

146 Berne Convention Brussels Text 1948, Article 11bis
147 Berne Convention Brussels Text 1948, Article 2(1) (5)
148 Id., Article 14,
149 55 States by 1st January, 1967 joined the Berne Union. The countries to which this convention applies constitute a Union. 149 State (as on October 15, 2002) are members of Berne Union: http://www.wipo.int
1) The Universal Copyright Convention was created in 1952 with United States as a member.  

2) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations dealing with neighboring rights was adopted in Rome on October 26, 1961.

3) The Third world countries were pressing for simpler convention with a lower level of protection.

The Stockholm Conference therefore, had to deal with two groups of problems; the general revision of the Berne convention in the wake of new technologies and neighboring rights and the problem of accommodating the wishes of the developing countries which were members of the Union.

The first was achieved by the revision of Articles 1 to 20, the second by the revision of Article 21 and the Additional Protocol.

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151 The USA became a member of Berne Convention only in 1981.
152 The challenge came from developing countries led by India, followed by Tunisia who demanded special concessions, especially in the field of education in respect of translation right and reproduction right. They made a strong case to the effect that without easy access to the literary & scientific works of the developed countries they could not achieve the economic and social progress they were trying to achieve, an aim to which particularly United Nation Educational Scientific and Cultural Organization was devoted. S.M. Stewart, p. 113.
Regarding Developing Countries. The Protocol never came into force as it was not ratified by the required number of states. After nearly four years of arduous work, the Protocol was radically revised at the Paris Conference in 1971. A special treatment for the developing countries was incorporated into the Universal Copyright Convention as well as into the Berne Convention, in almost identical terms. The Paris Act provided for the first time the right of reproduction as a minimum standard.  

Article 9(1) of the 1971 Berne Paris Text Provides; “Authors of literary and artistic works protected by this convention shall have the exclusive right of authorizing the reproduction of their works in any manner or form”. The Paris Act is the current text of the Berne convention and entered into force on October 10, 1974.

The Appendix to the Paris (1971) Act of the Berne Convention provides for special facilities open to developing countries Concerning translation and reproduction of works of foreign origin.

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153 Berne Convention, Paris Text, 1971 Article 9(1) According to professor Ulmer, “The difficulty which had previously been encountered was that regulation of the reproduction right would also have to contain provisions on the exceptions permitted by the contracting states. In Stockholm a formula was found whereby the Contracting States reserved the right to permit reproducing in certain special cases, provided that such reproduction neither conflicts with normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author”. Eugene Ulmer, “one hundred Years of the Berne Convention.17 International Review of Industrial Property and copyright Law 707 (1986).

3. 2 Universal Copyright Convention, 1952.

Berne Convention was successful as the first and original international copyright convention. But it suffered from mainly two weakness. First it lacked universality. The two super powers i.e., United states of America, USSR and many Asian And African Countries were not members of the Berne Convention. Second the high level of protection provided by the Berne Convention prevented some countries from joining the Union. The copyright systems of many countries differed from that of the Berne Convention. The impetus for a Universal Convention came from a newly founded cultural Organization (hereinafter referred to as the UNESCO). It aimed at attracting all countries, particularly the USA without forcing the Berne Union members to lower their standard of Protection. The Universal Copyright Convention (hereinafter referred to as UCC) got its inspiration from the aims of the United Nations.\textsuperscript{157}

\textsuperscript{155} Ibid, Countries, regarded as developing counties are in conformity with the established practice of the General Assembly of the United nation.
\textsuperscript{156} Appendix (Special Provisions regarding developing countries) to Berne Convention,
\textsuperscript{157} Arpad Bogsch, The Law of Copyright and the Universal Convention (Sijthoff Leyden Bowker: 3\textsuperscript{rd} revised edition,1972) 4: The aim of the UN is that if people know each other they will understand each other, and that there is no better means of knowing than through reading the books of other peoples, listening to their music viewing their motion pictures and in general becoming acquainted with what their mind have created.
Works Protected:

The works protected under the 1971 Convention are as follows:\(^{158}\):

(i) Literary,
(ii) Scientific,
(iii) Artistic works including writings,
(iv) Musicals,
(v) Dramatic and cinematographic works,
(vi) Paintings,
(vii) Engravings, and
(viii) Sculpture.

The Universal Copyright Convention is by its terms independent of the two operation of the Berne Convention and in the event of conflict between the terms of the two conventions, the terms of the relevant Berne text will govern.\(^{159}\)

In 1971 the UCC was amended to include three basic rights\(^{160}\): the reproduction right, the broadcasting right and the public performance right. The reproduction right included the making of copies from a

\(^{158}\) Universal Copyright Convention revised in 1971, Art.1
\(^{159}\) Universal Copyright Convention, Paris Text, 1971 Article XVII (1): “The Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by the Convention.
\(^{160}\) Id. Article IV
tangible corporeal fixation by any means. This was sufficiently wide to include all forms of reproduction. This right was subject to Limitations like compulsory licenses.  

3.3 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994.

The Uruguay Round of multilateral trade negotiations launched in September 1986 under the auspices of General Agreement on Tariffs and Trade (hereinafter referred to as GATT) concluded in Marrakesh, Morocco in April, 1994.

The Final Act embodying the results of the Uruguay round binds together about 28 major agreements, decision and understandings. All the agreements are bound together first, by the common institutional framework of World Trade Organization (hereinafter referred to as the WTO) which came into existence on January 1, 1995; second, by a common dispute settlement machinery; third, by a common Trade Policy Review Mechanism (TPRM); and fourth by a Common Balance of Payment committee.

The TRIPS Agreement is divided into VII Parts:

161 UCC 1971, Articles Vbis, Vter, Vquater; Berne convention, Appendix.
1) How the basic principles of the trading systems and other intellectual property agreements should be applied.  
2) How to give adequate protection to intellectual property rights.  
3) How the countries should enforce those rights adequately in their own territories.  
4) Acquisition and maintenance of Intellectual Property Rights and related inter parte procedures.  
5) Settlement of disputes on Intellectual Property between members of WTO.  
6) Special transitional arrangements during the period when the new system is being introduced.  
7) Institutional Arrangements and final Provisions.  

The TRIPS agreement negotiates IPRS, under seven heads. The purpose is to ensure that adequate standards of protection exist in all member countries. Here the starting point is the obligation on the member states not to derogate from existing obligations that members

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162 Id. Part I, Articles 1 – 8 : General Provisions and Basic Principles.  
163 Id. Part II, Articles 9 to 40: Standards Concerning the Availability, Scope and Use of Intellectual Property Rights.  
165 Id., Part IV, Article 62.  
166 Id., Part V, Articles 63,64  
168 Id. Part VII, Articles 68-73.
may have to each other under the Paris Convention, 1883, the Berne Convention, 1886, the Rome Convention 1961, and the Treaty on Intellectual Property in Respect of Integrated Circuits.\textsuperscript{169} It is, therefore sometimes characterized as “Paris plus” and “Berne Plus” Agreements. The right of reproduction remained to be the basic right under this Agreement also. In case of copyright and related rights, the TRIPS Agreement\textsuperscript{170} ensures that Computer Programmes, whether in the source or object code, will be protected as literary works. Berne Convention (1971) had not mentioned computer programmes specifically under literary works. The Agreement further provides that databases should also be protected.\textsuperscript{171}

The Agreement further expands international copyright rules to cover rental rights\textsuperscript{172} in order to strengthen the right of reproduction of authors of computer programme and cinematographic films, “In respect of at least computer programmes and cinematographic works, a member shall provide authors and their successors in title the right to authorize or prohibit the commercial rental to the public of originals or copies of

\hspace{1cm}\textsuperscript{169} TRIPS, Article 2(2).
\textsuperscript{170} TRIPS, Article 10(i); See also WCT, Article 4.
\textsuperscript{171} TRIPS, 1994 Article 10, Para 2, provides : compilation of data of other material, whether in machine readable or other form which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Protection which shall not extend to the data, or material itself, shall be without prejudice to any copyright subsisting in the data or material itself’.
\textsuperscript{172} TRIPS Agreement, Article 11
their copyrighted works, A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title.”

In other words, whether a rental right of cinematographic works is to be recognized depends on the factual situation in that country. This means, if the commercial rental has led to a widespread unauthorized copying, the rental right must be recognized; if the commercial rental has not led to a widespread unauthorized copying, the rental right need not be recognized.

The second exception\(^{173}\) concerns computer programs. It reads as follows; “In respect of computer programs, this obligation that is, the obligation of providing for a right to authorize of prohibit commercial rental does not apply to rentals where the program itself is not the essential objects of the rental”.

This seems to mean that when the presence of a computer program is of secondary importance or incidental, the right of rental need not be

\(^{173}\) TRIPS Agreement, Article 11
recognized. The Berne Convention did not mention rental rights therefore, the obligations referred to above were new for countries party to the Berne Convention.

Article 14 of the TRIPs Agreement required members to grant specific right to performers, phonogram producers, and broadcasting organizations. Members must give performers the right to communicate their performances to the public or broadcast those by wireless means, to fix their unfixed performances, and to reproduce fixations. Phonogram producers must receive the “right to authorize or prohibit the direct or indirect reproduction of their phonograms.” Broadcasting Organizations must receive the right to fix and reproduce fixations of broadcasts as well as to rebroadcast them by wireless means and to communicate television broadcasts to the public.

In the case of the related rights of performers, phonogram producers, and broadcasting organizations, Article 14(6) allows members to “provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Conventions.”

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174 TRIPS Agreement, Art, 14 (1)
175 Id. Art 14 (2)
176 Id. Article 14(6) adds “However, the Provision of Article 18 of the Berne Convention (1971) shall also apply, mutatis mutandis to the rights of performers and producers of phonograms in phonograms”.

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Intellectual property rights are now administered both by the WIPO and the WTO. India being a member of both the organizations, namely, WIPO and WTO has to abide by the international rules provided by them.

3.4 WIPO Copyright Treaty, 1996.

In the 1970s and 1980s a number of important new technological developments took place – reprography, video technology, compact cassette systems facilitating “home taping”, satellite broadcasting, cable television, the increase of the importance of computer programmes, computer generated works and electronic databases etc.

For a while the international copyright community followed the strategy of “guided development” by study and discussion, rather than trying to establish new international norms. This means that guidance was provided to governments by various international bodies as to how to respond to the challenges thrown by these new technologies in the field of intellectual property law. This guidance policy did create an impact on the national legislations but it was soon recognized that guidance was not sufficient.

The preparation of new binding international norms began in two forums – at GATT in the framework of the Uruguay Round negotiations
(as discussed above) and at WIPO. After the adoption of TRIPS Agreement under the auspices of WTO, the preparation of new copyright and neighboring right norms in the WIPO Committee was intensified to deal with specially those problems that were not covered by TRIPS.

On December 20, 1996, representatives of approximately 120 countries participated in a Diplomatic Conference to discuss copyright and neighboring rights questions. This Diplomatic Conference in 1996 was a result of series of sessions of Committee of experts on a possible protocol to the Berne Convention for the protection of literary and artistic works. The need for such a protocol was felt because there were certain questions in respect of which professional circles had no uniform view and what was of particular concern was that governments party to the Berne Convention interpreted their obligations under the Berne Convention differently. The proposed Protocol was mainly destined to clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments; to introduce new norms in order to develop and maintain the protection of the rights of the

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177 In all, eight sessions were held in Geneva: first session from Nov. 4-8, 1991, second from February 10-17, 1992, third from June 21-25, 1993, fourth from December 5-9, 1994, fifth from September 4-8 and 12, 1995, The last three were held in 1996 itself i.e. sixth from February 1-9, seventh from May 22-44 and the last from December 2-20.
authors in their literary and artistic works in a manner as effective and uniform as possible and further to maintain a balance between the rights of authors and the larger public interest, particularly education research and access to information as reflected in the Berne Convention. The Conference at its’ eight session adopted the WIPO Copyright Treaty together with the WIPO Performances and Phonograms Treaty in 1996, in order to achieve the above objectives. The WCT came into force on 6th April 2002 and WPPT on 20th May 2002.

The WCT is closely connected to the 1971 Paris Act of the Berne Convention. The WCT obligates the contracting parties to comply with Articles 1 to 21 and the Appendix of the Berne Convention. Article 1 of the WCT states that it is a “special agreement within the meaning of Article 20 of the Paris Act and that nothing into the Treaty is to derogate from the contracting parties existing obligations under the Berne Convention”

The WCT expands on three aspects of protectable subject matter under the 1971 Berne Paris Act that had assumed significance in the contemporary digital environment;

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1. Computer programmes are protectable as literary works within the meaning of Article 2 of the Berne Paris Act.\textsuperscript{180}

2. Compilations of data or other material “which by reason of the selection or by arrangement of their contents constitute intellectual creations are protected as such” \textsuperscript{181}

3. Copying protection extends to expressions and not to ideas procedures methods of operation or mathematical concepts as such. \textsuperscript{182}

\textbf{The WCT provides for certain new rights:}

1. It provides for right of distribution for authors of literacy and artistic works. \textsuperscript{183} Under the Berne Convention such a right was granted explicitly only in respect of cinematographic work.

2. It provides a qualified exclusive right of authorizing commercial rental\textsuperscript{184} to the public in respect of computer programs, cinematographic works and works embodied in phonograms of the originals or copies of their work in order to strengthen the right of reproduction of authors.

3. Authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{180} \textit{Id.} Article 4. The scope of protection for computer programmes under Article 4.
\item \textsuperscript{181} \textit{Id.; Article 5. This is on par with Article 10 of TRIPS.}
\item \textsuperscript{182} \textit{Id. Article 5. This is on par with Article 10 (2) of TRIPS.}
\item \textsuperscript{183} \textit{Id. Article 6, WCT 1996. The Agreed Statements of the Diplomatic Conference that adopted the Treaty states in relation to Articles 6 & 7: “As used in these Articles, the expressions “Copies” and “original and copies” being subject to the right of distribution and right of rental under the said Article refer exclusively to fixed copies that can be put into circulation as tangible objects”.}
\item \textsuperscript{184} \textit{Id. Article 7. This is consistent with Article 14(4) of TRIPS Agreement.}
\end{enumerate}
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wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. 185

The WCT further requires contracting parties, when creating exceptions to rights granted under the Treaty, to abide generally by the formula that Article 9(2) of the Berne Paris Act prescribes for limitations of the reproduction right. 186 The Treaty also requires contracting States to protect against circumvention of encryption technologies for copyrighted works, 187 and against interference with electronic rights management information. 188 It also requires effective remedies to enforce rights under the Treaty. 189

Special Conventions in the Field of Neighboring Rights

185 Id Article 8. Agreed Statement concerning Article 8: “it is understood that the mere provision of physical facilities for enabling or making a communication not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a contracting party form applying article 11186(2) of the Berne Convention”. Such a right is given by section 14(a) (iii) of the Copyright Act to authors of literary, dramatic or musical works in India.
186 Id. Article 10 Agreed statement concerning article 10: “It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital laws which have been considered acceptable under the Berne Convention. Similarly these provisions should be understood to permit contracting parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is a also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”
188 Id., article 12.
189 Id., Article 14 (2).

The concept of neighboring rights gained importance with technological developments. Unauthorized duplication or reproduction of sound recordings of musical performances became a matter of concern for phonogram industry. The Diplomatic Conference in Rome in 1928 passed a resolution asking governments to consider the possibility of adopting measures to safeguard the interests of performers and producers of phonograms. Drafts were prepared for an annexure to the Berne Convention that would deal with the rights of performers, phonogram, producers and broadcasting organizations. 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 Sam Aden, Switzerland in 1939. Drafts were prepared in cooperation with the Bureau of Berne Union but all progress was stopped for several years by the outbreak of world War-II.

Different committees of experts prepared draft of conventions but finally, in 1960, a committee of experts convened jointly by WIPO,
UNESCO and ILO, met at Hague and drew up a draft convention. This served as a basis for the deliberations in Rome, where a Diplomatic Conference agreed upon the final text of the International Convention for the Protection of Performers, Producer of Phonograms and Broadcasting Organizations the Rome convention of October 26, 1961.

This Convention was signed by forty States, which did not include the USA and came into force on May 18, 1964.190

The structure of the principle provisions of the Rome Convention is somewhat similar to the Berne Convention, viz:

1. It is also based on the principal of national treatment. 191 National treatment is defined separately in respect of performers, 192 producers of phonograms 193 and broadcasting organizations 194. Like the Berne Convention it makes such national treatment subject to certain minima of protection.195

2. It permits exceptions for private use, 196 etc.

3. It lays down a minimum term of protection of 20 years. 197

190 WIPO Guide to the Rome Convention and to the Phonograms Convention 8, 9 (1981)
191 Rome Convention, 1961, Article 2 (1)
192 Id., Article 4.
193 Id. Article 5.
194 Id., Article 6.
195 Rome Convention, 1961, Article 7 (for performances), article 10 (for producers), Article 13 (for broadcasting organization) and Article 12 (for performer and producers).
196 Id., Article 15
Unlike the Berne Convention, the Rome Convention contains the principle of reciprocity in respect of certain rights expressed by reservation which any members state can make at any time.  

3.6 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971. (Geneva Phonograms Convention.)

With technological developments, in 1960s, came a number of duplicating machines, which played massive role in record piracy, prejudicially affecting the right of reproduction of producers of phonograms. The recording industry, therefore, mounted a great pressure on WIPO and UNESCO to look into the question of international sanctions against record piracy. Both these organizations, therefore, convened a committee of governmental experts in 1971, which produced a draft treaty for action at a diplomatic conference in Geneva seven

197 Id., Article 14
198 Id., Article 16

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months later. The Phonograms Convention was opened for signature on October 29, 1971 and came into force on April 18, 1973. 200

Protection the Convention 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. 201

The means by which the Phonogram Convention is to be implemented are a matter of domestic legislation. They may include protection by granting copyright in the phonogram, or by granting other specific (neighboring) rights or by the law relating to unfair competition or by penal sanctions. 202

3.7 WIPO Performances and Phonogram Treaty, 1996 (WPPT).

WPPT was formulated at the same diplomatic conference as the WCT and it responds to many of the same issues presented by new electronic media for disseminating creative productions. Just as the WCT draws several of its operative concepts from Berne Convention, the WPPT draws on elements of the Rome Convention, 1961.

201 Phonograms Convention, Article 2.
202 Id., Article 3.
The WPPT approximates Article 6 of the Berne Convention Paris Act in requiring that performers receive rights of attribution and integrity in their live aural performances fixed in phonograms. This is the first time moral rights have been prescribed for performers in an international agreement.

The provisions of the WPPT relating to the digital agenda cover the following issues:

1) Certain terms like performer, phonogram, fixation, producer of a phonogram, publications, broadcasting and communication to public are defined.

2) Rights applicable to storage and transmission of performances and phonograms in digital systems.

3) Limitations on and exception to rights in a digital environment.

4) Technological measures of protection and Rights Management Information.

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203 WPPT, 1996, Article 5.
204 WPPT, Article 2.
205 Id. Article 7 to 10 give to performers the right of reproduction, right of distribution, right of rental and right of making available of fixed performances; Art. 11 to 14 give to producers of phonogram right of reproduction, right of distribution, right of rental and right of making available of phonograms.
206 Id., Article 16 the Agreed Statements of the Diplomatic Conference concerning Article 7, 11 and 16 states: "The reproduction right as set out in Articles 7 and 11 and the exceptions permitted there under through Article 16, fully apply in the digital environment in particular to the use of performance or phonogram in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles."

The Convention regulate Satellite Transmission as a matter of public international law, obligating members States to comply with regulatory standards rather than investing authors and broadcasters with private rights against unauthorized carriage of signals.

The Brussels Convention differs form traditional copyright and neighboring rights treaties: The Convention protects against distribution of programme carrying signals rather than against distribution of the signal's content. This means that a signal will be protected even if its' content is unprotected by copyright or neighboring right.

3.9 Ministerial Conference in Doha (November 9-14, 2001)

The Ministerial Conference in Doha in Qatar in November, 2001 took some important decisions affecting the TRIPs Agreements. Those decisions are included in:

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207 Id., Article 18, 19. It is similar to provisions in the WIPO Copyright Treaty, 1996.
a. **Ministerial Declaration** – Under this a new round of trade negotiations will start, to be finalized by January 1, 2005. ("The Development Round")

b. **Declaration on TRIPS Agreement and Public Health.**

c. **Decision of Implementation – Related Issues and Concerns.**

In Doha, the stress was on patents, public health issues, protection of traditional knowledge and folklore and not on copyright issues.

The foregoing discussion throws light on various Treaties & Conventions regulating the law of copyright at the International level. We have witnessed their exist two tier system of copyright management:- first is the WIPO system & the second is WTO -TRIPs system. Both these systems supervise and manage various Treaties & Conventions and also examine the requirement or necessity of legislating in the field of copyright at the global level. Both these system namely the WIPO & the WTO have immensely benefitted the authors or owners of copyrighted works as under the system the protection is available to them even outside the country of their origin.