Study Note: This module should take around 2 hours to study.

Module 3: Related Rights

Objectives

After completing the study of this module you should be able to:

1. List the beneficiaries of related rights.
2. Cite the duration of related rights as given in the Rome Convention and the TRIPS agreement.
3. Explain in about 250 words how the concept of related rights may be extended to encompass “folklore.”

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Introduction

Related rights are rights that in certain respects resemble copyright. The purpose of related rights is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public. One obvious example is the singer or musician that performs a composer's work to the public. The overall purpose of these related rights is to protect those people or organizations that add substantial creative, technical or organizational skill in the process of bringing a work to the public.

This module will explain to you the types of related rights, how they are obtained, the duration of the rights and the main international treaties or conventions that are concerned with related rights.

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Related Rights

The first thing to say is that related rights is a fairly new term and some documents refer to the same rights under the term **neighboring rights**. This module will just use the term related rights. Begin your studies by listening to the audio segment of related rights.

Audio segment 1: *Could you define this related rights concept for me again?*

Related rights are not copyright, but they are closely associated with it; they are derived from a work protected by copyright. So the two are always, in some way, related. They offer the same kind of exclusivity as copyright, but they don't cover the actual works. They cover things that involve a work, in the general sense of bringing it to the public. Let's use the example of a copyright-protected song, and take it through the various stages.

Assuming that we have an original song, it is, of course, protected for the composer and the lyric writer as original copyright holders; they in due course will offer it to a singer who performs it and he or she will also need a form of protection. If it is to be recorded, or if the singer hopes to have it broadcast, those acts involve engaging another company, which will also want to be protected before it enters into an agreement. The first of these related rights then are the rights of those who **perform** the works, namely the performers, singers, actors, dancers, musicians and so on.

Then there is a second group, the phonogram producers, or more accurately producers of sound recordings as recording material moves on from vinyl phonograph records into the realm of CDs and digital recording media. Theirs is a more commercial kind of protection, in a sense, as the making of a quality sound recording has more to do with the protection of an investment, than with the artistic concerns involved in the

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making, writing or performance of a song. Nevertheless, even here, in the whole process of selecting the instrumental backing, repertoires, arranging the music and so on, there are some creative elements as well as the more obvious and important economic element. We should bear in mind that these producers are among the most immediate victims of piracy, as they don't get the money that is diverted to the pirate producers, but then of course their loss, their financial loss, is passed down the line to the performers and authors. This is why **producers of sound recordings** have also been granted specific rights.

The third group receiving protection for their related rights are **broadcasters**. Their rights derive from their creative input, namely the making of broadcasts, not from the content of the broadcast, not from the film, for instance, but from the act of broadcasting it. The very fact that they have the ability to emit the signals constituting the broadcast gives them protection rights of a sort in those signals. And there again, it is the investments, the efforts that they made in putting together and broadcasting the various programs that are involved.

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The speaker also mentioned at the very start that related rights are not the same as copyright, but they are closely associated with it; "**they are derived from a work protected by copyright".**

Sometimes related rights are associated with works that are not protected by copyright, e.g. works that are in the public domain. Let us consider, for example, a piano concerto by Beethoven. It may have been performed in a concert hall or it could have been recorded on a CD. As Beethoven died in 1827, all of his works are in the public domain and thus do not enjoy copyright protection. Hence anyone is free to play a particular composition, say one of Beethoven's piano concertos, or to record it on a CD, without having to obtain an authorization.

However, in the same example, the performers of the concert (pianist and orchestra), as well as the producer of the CD containing a recording of the concert, would enjoy related rights, with regard to, respectively their performance of the concert and its recording. Therefore, in the example under consideration, no one would be entitled to record a live performance of such concert without the consent of the performers. As well, no one is entitled to make copies of a sound recording containing the rendition of such piano concert, without the consent of the sound recording producer.

It may be interesting to note also that sound recording producers may enjoy protection even if what has been recorded is not in itself a work. A sound recording may contain natural sounds, such as bird songs, ocean waves, etc. These sounds are not works. Nevertheless, the sound recording company that has arranged for the production of the CD containing these sounds would be protected against any act of piracy involving such recording.

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Self-Assessment Question

SAQ 1: What were the three groups of people or organisations, which were mentioned to have related rights?

Type your answer here:

Click here for answer

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SAQ Answer 1:

The three groups mentioned were:

- **Performers** such as the singer of a song;
- **Producers** of recordings such as record companies;
- **Broadcasting Organisations**.

The speaker mentioned the term **piracy** in the audio segment. If you are not sure of the meaning of the term now would be a good time to look it up in the glossary.

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As the audio segment explained, related rights have been traditionally granted to three categories of beneficiaries: performers, producers of recordings and broadcasting organizations.

The **rights of performers** are recognized because their creative intervention is necessary to give life, for example, to musical works, dramatic and choreographic works, and motion pictures, and because they have a justifiable interest in legal protection of their individual interpretations.

The rights of producers of recordings are recognised because their creative, financial and organisational resources are necessary to make recorded sound available to the public in the form of commercial phonograms (tapes, cassettes, CDs, Mini Discs, etc.)

They also have a legitimate interest in having the legal resources necessary to take action against unauthorised uses, whether it be through the making and distribution of unauthorised copies (piracy) or in the form of unauthorised broadcasting or communication to the public of their phonograms.

Likewise, the **rights of broadcasting organizations** are recognised because of their role in making works available to the public, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.

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Now listen to the next audio, which concerns the importance and evolution of rights relating to broadcasting, giving an example through the broadcast of a sporting event.

Audio segment 2: *Related rights for broadcasters of sporting events*

The rights of broadcasters also have a very specific importance in relation to **sports programs**. In many countries, a sports program would not be considered eligible for copyright protection. There are countries, and the US is a prime example, that regard a football match, when it is filmed, as an **audiovisual work**, because it is considered sufficiently creative to be a work. But in many other countries the law provides that the game is the determining factor, and not creative to the point of qualifying for protection. The cameraman is merely following the action on the pitch and other incidental events. He might be a skilled manipulator of the camera, but he is not an artist. Very few such broadcasts, therefore, if any at all, would be considered worthy of protection.

And yet there is enormous interest in, say, the television rights for the Olympic Games. Millions or billions of dollars, pounds, euros, francs or yen can change hands.

But it would be an unattractive investment, would it not, if those broadcasters, having paid enormous sums of money years in advance for an exclusive license to broadcast, or for exclusive access to

other major sporting events for the benefit of a given broadcasting area, were unable to invoke the protection offered by their **related rights** to prevent other companies from rebroadcasting their work or recording and selling videos of it.

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This brief set of examples is intended to illustrate the reasons why the groups concerned, namely **performers, phonogram producers and broadcasters,** have been made eligible for **related rights.**

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The first organised international response to the need for legal protection of the three categories of related rights beneficiaries was the conclusion, in 1961, of the Rome Convention, or more specifically, the "International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations." Unlike most international conventions, which follow in the wake of national legislation and are intended to synthesize existing laws, the Rome Convention was an attempt to establish international regulations in a new field where few national laws existed at the time. This meant that most States would have to draft and enact laws before adhering to the Convention.

Since the adoption of the Convention in 1961, a large number of States have legislated in matters related to the Convention, and the laws of many such States exceed the minimum levels of protection established by the Convention.

The most recent international response to meet these evolving legal protection needs came with the signing of the WIPO Performances and Phonograms Treaty ("WPPT"), concluded in Geneva on December 20, 1996. The development of this treaty was designed to offer further protection of the economic and moral rights of **performers** and **producers of phonograms**, in particular as regards their exploitation in digital form, including over the Internet. This Treaty entered into force on May 20, 2002.

Now that you know the types of people and organizations that can have protection under related rights, the next thing to consider is "what are those rights?" In principle they are similar to the rights granted to copyright holders. That is the right to prevent others from an unauthorized exploitation of the protected performance, recording or broadcast.

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Rights Granted to the Beneficiaries of Related Rights

The rights granted to the three beneficiaries of related rights in national laws are as follows, although not all rights may be granted in the same law.

- *Performers* are provided the rights to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances. The rights in respect of broadcasting and communication to the public of fixations on commercial phonograms may be in the form of equitable remuneration rather than a right to prevent. This would be through **non-voluntary licensing** discussed in the Copyright module. Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unreasonable omission of their name, or modifications to their performances, which present them in an unfavourable light.

- *Producers of phonograms* are granted the rights to authorize or prohibit direct and indirect reproduction, importation and distribution of their phonograms and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of phonograms.

- *Broadcasting organizations* are provided the rights to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. Under some laws, additional rights are granted: for example, in the countries of the European Union, producers of phonograms and performers are granted a right of rental in respect of phonograms (and, in respect of performers, audio-visual works), and some countries grant specific rights over cable transmissions. Under the TRIPS Agreement, likewise, producers of phonograms (as well as any other right holders in phonograms under national law) are granted a right of rental.

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As was the case in copyright, the Rome Convention and national laws contain **certain limitations** on rights allowing, for example, private use, use of short excerpts in connection with the reporting of current events, and use for teaching or scientific research, of protected performances, phonograms, and broadcasts. Many countries allow practically the same kinds of limitations on related rights as their laws provide in connection with protection of copyright.

The duration of protection of related rights under the Rome Convention is 20 years from the end of the year in which:

> the performance took place, as regards performances not incorporated in phonograms;
>
> the fixation (recording) is made, in the case of phonograms and performances included in phonograms;
>
> the broadcast took place.

You should note that many national laws, which protect related rights, grant a longer term than the minimal terms contained in the Rome Convention.

In the TRIPS Agreement, the rights of performers and producers of phonograms are to be protected for 50 years from the end of the year in which the fixation was made or the performance took place, and the rights of broadcasting organisations for 20 years from the end of the year in which the broadcasting took place. So this means that countries adhering to the TRIPS Agreement would have to provide or modify their laws to offer longer protection than that required by the Rome Convention.

In terms of enforcement of rights, the remedies for infringement or violation of related rights are, in general, similar to those available to owners of copyright. These are conservatory or provisional measures; civil remedies; criminal sanctions; measures to be taken at the border; and measures, remedies and sanctions against abuses in respect of technical devices. Please review the material presented in the previous **Copyright module**.

The idea of related rights has also attracted some attention as a way of protecting the unrecorded cultural expression of many

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developing countries, which is part of their folklore. Since it is often through the intervention of performers that these folkloric expressions are communicated to the public. By providing related rights protection, developing countries may also provide a means for protection of the vast, ancient and invaluable cultural expression which is a metaphor for their own existence and identity, indeed, the essence of what separates each culture from its neighbors across the frontier or across the world.

Likewise, protection of producers of phonograms and broadcasting organizations helps to establish the foundation for national industries capable of disseminating national cultural expression within the country and, perhaps more important, in markets outside it. The enormous current popularity of what is called "world music" demonstrates that such markets exist, but it is not always the case that the economic benefits from the exploitation of such markets return to the country where the cultural expressions originated.

In summary, protection of related rights might serve the twin objectives of preserving national culture and providing a means for commercially meaningful exploitation of international markets.

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Summary

In this section, you have learned about related rights, also referred to as neighbouring rights, or more specifically “rights neighbouring on copyright”. The purpose of related rights is to protect the legal interests of certain persons or organizations who contribute to making the works available to the public or those who add creative, technical or organizational skill.

Traditionally, related rights have been granted to three categories of beneficiaries: performers, producers, and broadcasters. The need for legal protection of these three groups was identified in the Rome Convention in 1961 which was an attempt to establish international regulations in a new field where few national laws already existed. In other words, most States would normally have to draft and enact laws before adhering to the Convention. The Rome Convention, although imperfect and in need of revision, is still the only international benchmark for protection in this field. Like copyright, the Rome Convention and national laws do contain limitations on rights allowing for private use, use of short excerpts, and use for teaching or scientific research.

The duration of protection of related rights, as stated in the Rome Convention, is 20 years from the end of the year (1) the recording is made; (2) the performance took place; (3) the broadcast took place. Conservatory or provisional measures refer to the remedies for infringement or violation of related rights. These include civil remedies, criminal sanctions, measures to be taken at the border and measures, remedies and sanctions against abuses in respect of technical devices.

The newest treaty in the field of related rights, the WPPT, increased the scope of protection of the rights of performers and phonogram producers by venturing into the "digital age" with protections designed as regards the exploitation of protected works in digital form, including over the Internet.

It is important to note that related rights may also serve to protect the largely unwritten and unrecorded cultural expression of many developing countries. Protection of related rights has

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become part of a much larger picture and is a necessary precondition to participate in the emerging system of international trade and investment.

Legislative Texts:

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations
- TRIPS Agreement
- WIPO Performances and Phonograms Treaty (WPPT)
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

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