

COMPARATIVE ANALYSIS OF THE PARIS AND BERNE CONVENTIONS: SCOPE, PRINCIPLES, AND IMPACT ON INTERNATIONAL INTELLECTUAL PROPERTY LAW

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ABSTRACT

The Paris and Berne Conventions serve as foundational treaties in the international intellectual property (IP) legal framework. While the Paris Convention focuses predominantly on industrial property rights such as patents, trademarks, and industrial designs, the Berne Convention focuses on copyright protection for literary and artistic works. This study offers an in-depth comparative evaluation of these two conventions, by exploring their scope, key foundational principles such as national treatment, automatic protection, and minimum standards-and their combined influence on the harmonization and enforcement of international IP law. The study further explores contemporary challenges posed by digital technologies and globalization, assessing the conventions' ongoing significance and the role of the World Intellectual Property Organization (WIPO) in their administration. The research is grounded in authentic open-access sources, including WIPO publications, legal commentaries, and scholarly articles, to present an evidence-based evaluation of the conventions' contributions and limitations.

Key words: Paris Convention, Berne Convention, Intellectual property rights, WIPO,

1. INTRODUCTION

Intellectual Property Rights (IPR) protection is crucial for fostering innovation, creativity, and economic development worldwide. The international IP regime is anchored by two seminal treaties: the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). These treaties laid the groundwork for multilateral cooperation in IP protection, establishing fundamental principles that continue to shape national laws and international agreements (WIPO, 2023).

This paper aims to provide an in-depth comparative analysis of the Paris and Berne Conventions, focusing on their scope, key principles, and their impact on international IP law. It also discusses the challenges; these

Conventions face in the digital era and their interaction with other agreements such as the TRIPS Agreement.

2. Historical Background and Scope

2.1 The Paris Convention 1883

The Paris Convention, adopted in 1883, is in fact, the oldest international treaty on IP protection (GIB Digital Watch, 2023). This international agreement was the foremost step taken with an intent to help innovators ensure that their intellectual works were protected in other countries (initially the signatory countries). This Convention, primarily deals with industrial property, including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications, its

core objective is to harmonize protection standards amongst member countries and facilitate the international filing of IP rights (World Intellectual Property Organization [WIPO], 2014).

2.2 Berne Convention 1886

The Berne Convention, concluded in 1886, focuses on only copyright protection for literary and artistic works. It provides the creators i.e. authors, musicians and painters etc. with the means and means to control how their works are used, by whom, and on what terms (World Intellectual Property Organization [WIPO], 1979). It was inspired by French droit d'auteur principles and aimed to address inconsistencies in national copyright laws by establishing minimum standards and mutual recognition of rights among member states (WIPO, 2023).

3. Core and Basic Principles of Conventions

3.1 National Treatment

Both conventions enshrine the principle of national treatment, which mandates that each member country must provide the same protection to nationals of other member countries as it does to its own nationals (Bergne et al., 1913). This principle eliminates discrimination based on nationality and likewise facilitates international cooperation.

3.2. Minimum Standards of Protection

Both conventions do set minimum standards that member states must adopt in their national legislation. Paris Convention establishes minimum protection periods (as; patents typically 20 years) and safeguards against unfair competition (Schuyler, 1983). Likewise, Berne Convention requires minimum copyright terms (life of the author plus 50 years) and guarantees rights such as reproduction, adaptation, and distribution (WIPO, 2023).

3.3. Moral Rights

The Berne Convention uniquely recognizes moral rights, including the right of attribution and the right to object to derogatory treatment of the work, emphasizing the personal link between authors and their creations (Ghidini & Moscati, 2023).

3.4. Independence of Protection

The Berne Convention establishes that protection in one member country is independent of protection in the country of origin, meaning a work may be protected in a country even if it is not protected in its origin country. (Ricketson, 2015).

4. Comparative Analysis: Strengths and Limitations of Conventions

4.1. Strengths of Paris Convention

4.1.1. Extensive Industrial Property Protection: The Paris Convention covers a broad range of industrial property rights, including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications, thereby offering a harmonized international framework for safeguarding these rights (Ricketson, 2015)

4.1.2. National Treatment Principle: It ensures that foreign nationals receive the same protection as domestic nationals, eliminating unequal treatment based on nationality and fostering international cooperation (Thomson Reuters, n.d.)

4.1.3. Priority Right: The Convention introduces the priority right, allowing applicants to file in multiple member countries within a 12-month period while preserving the original filing date, facilitating international patent and trademark filings (Schuyler, 1983).

4.1.4. Unfair Competition Protection: It includes provisions against unfair competition, which serve to uphold equitable commercial standards across borders (Ricketson, 2015).

4.2. Strengths of Berne Convention

4.2.1. Automatic Protection: Unlike the Paris Convention, the Berne Convention grants copyright protection automatically upon creation, without requiring formal registration or compliance with formalities, facilitating seamless international copyright enforcement of literary and artistic works (Bergne et al., 1913).

4.2.2. Recognition of Moral Rights: It uniquely protects authors' moral rights, including attribution and integrity, which extend beyond

mere economic considerations and safeguard the personal connection between creators and their works (Ghidini & Moscati, 2023)

4.2.3. Minimum Standards and National Treatment: Sets minimum substantive rights (reproduction, adaptation, distribution) and applies the national treatment principle, thereby safeguarding non-national authors on an equal footing (Ricketson, 2015).

4.2.4. Independence of Protection: Protection in one member country is independent of protection in the country of origin, allowing works to be protected internationally even if not protected domestically (Ginsburg, 2018).

4.2.5. International Cooperation: Facilitates cooperation and enforcement through WIPO and obliges member states to provide effective legal remedies against infringement (Bergne et al., 1913).

4.3. Limitations of Paris Convention

4.3.1. Requirement of Formalities: The Paris Convention typically necessitates formal registration processes or filing procedures, which can be cumbersome and costly, potentially limiting access for some applicants (Schuyler, 1983).

4.3.2. Limited Adaptation to Digital Era: The Convention's provisions were designed before the digital age and do not explicitly address emerging complexities including software patents, domain names, or online trademark infringements, requiring supplementary treaties or national legislation.

4.3.4. Enforcement Reliance on National Laws: While it sets minimum standards, enforcement depends heavily on national courts and administrative bodies, leading to variability in protection quality.

4.4. Limitations of Berne Convention

4.4.1. Enforcement Variability: Although the Convention sets minimum standards, enforcement mechanisms vary widely among member states, and some countries struggle with

effective copyright enforcement, especially against digital piracy (Ginsburg, 2018).

4.4.2. Limited Scope of Subject Matter: The Berne Convention protects literary and artistic works but does not cover related rights such as performances or sound recordings, which are addressed by separate treaties (WIPO, 2023).

4.4.3. Limited Provisions on Limitations and Exceptions: The Convention allows member states discretion in applying limitations and exceptions (e.g., fair use), which can lead to inconsistencies and legal uncertainty (WIPO, 2023; IVIR, 2020).

4.4.4. Challenges in Digital Rights: The Convention's original text does not address digital rights management or online infringements, requiring additional treaties like the WIPO Copyright Treaty to fill gaps (Gao, 2006).

5. Impact on International Intellectual Property Law

5.1 Harmonization and Mutual Recognition

The Paris and Berne Conventions have been instrumental in harmonizing IP laws globally, creating a system of mutual recognition and minimum standards that facilitate international trade and cultural exchange (Ginsburg, 2018). They have laid the foundation for subsequent treaties and agreements, such as the TRIPS Agreement under the World Trade Organisation (WTO).

5.2 Role of the World Intellectual Property Organization (WIPO)

WIPO administers both conventions and plays a crucial role in dispute resolution, technical assistance, and capacity building among member states (FasterCapital, 2021). The organization also facilitates the implementation of related treaties that supplement the conventions, such as the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (Ginsburg, 2018).

5.3 Enforcement Challenges and Digital Age Adaptations

The rapid advancement of digital technologies has posed new challenges for IP protection, particularly copyright enforcement online. The Berne Convention's automatic protection principle has been supplemented by treaties like the WCT to address digital rights management and online infringements (Gao, 2006).

Similarly, the Paris Convention faces challenges in protecting industrial property in the digital economy, such as domain name disputes and patenting software innovations.

6. Conclusion

The Paris and Berne Conventions remain pillars of the international IP system, each addressing distinct but complementary aspects of intellectual property. Their foundational principles-national treatment, minimum standards, and automatic protection (in the case of Berne) have harmonized global IP protection and facilitated international cooperation. However, the conventions face ongoing challenges in adapting to the digital era, necessitating supplementary treaties and enhanced enforcement mechanisms. Continued evolution and international collaboration under WIPO's guidance are essential to maintain the relevance and effectiveness of these historic treaties.

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