

ARBEITSKREIS URHEBERRECHT 2026

Super flumina Babylonis – Gedanken zu den Jubiläen des internationalen Urheberrechts 2026

Stichworte zum Referat von

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I. Übersicht über die Entwicklung der internationalen Urheberrechtskonventionen

1. Jubiläen:

Berner Übereinkunft	1886 – 2026	(140 Jahre)	
Stockholm/Paris	1967/1971	(55 Jahre)	
Rom Abkommen	1961 – 2026	(65 Jahre)	
Geneva Convention	1971 – 2026	(55 Jahre)	
WIPO Verträge WCT	1996 – 2026	(30 Jahre)	
WIPO Verträge WPPT	1996 – 2026	(30 Jahre)	
Int Covenant on Economic, Social and Cultural Rights	1966 - 2026		60 Jahre
Int Covenant on Civil and Political Rights	1966 - 2026		60 Jahre
TRIPs Abkommen	1995 – 2026	(31 Jahre)	
Beijing Treaty	2012 – 2026	(14 Jahre)	
Marrakesh Treaty	2013 – 2026	(13 Jahre)	

2. Ratifikationsstand der internationalen Urheberrechtsverträge und Folgen

Berne Convention:	182
WURA:	65
TRIPs Agreement:	162
WCT:	118
Marrakesch:	102
Rome Convention:	99
Geneva Convention:	81
WPPT:	114
Beijing Treaty:	48
UNO Staaten:	$193 + 4 = 197$
Beobachter	Vatikan und Palestina
Nichtmitglieder	Taiwan, Kosovo

(Stand: Februar 2026)

Berne Convention, aber nicht TRIPs Agreement (182 Länder)

Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnien-Herzegowina, Cooks Islands, Democratic Republic of Korea (Nord Korea), Äquatorial Guinea, Heilige Stuhl, Kiribati, Lebanon, Lybia, Micronesia, Monaco, Nauru, San Marino, Sao Tome et Principe, Seria, Sudan, Syria, Turkmenistan, Tuvalu, Uzbekistan

(24 Länder)

TRIPs Agreement, aber nicht Berner Übereinkunft (162 Länder)

Angola, Myanmar, Nepal, Papua Neu Guinea, Seychellen, Sierra Leone, Timor-Leste
(7 Länder)

[European Union, Hong Kong, Macao, Taiwan] (3/4 Länder)

$$182 + 7 + 3 = 192$$

Berner Übereinkunft:

Rom-Fassung: Malta

Brüsseler Fassung: Madagaskar

Nichtmitglied: Islamische Republik Iran

WCT: nur 118 Länder $182 - 118 = 64$ Länder fehlen

II. Problemaufriss (Urheberrecht)

1. Unübersichtlichkeit

- RBÜ und mehrere ergänzende Sonderabkommen (Art 20 RBÜ) nebeneinander anzuwenden
- Mögliche Lösung: Zusammenfassendes Abkommen mit
 - TRIPs- und WCT-Plus Elementen und
 - Verweis auf TRIPs-Rechtsdurchsetzung und
 - WCT Technical PM and Copyright Information

2. Inhaltliche Stagnation

- Mögliche Lösung:
 - weitere **Plus-Elemente**

3. Ratifizierungsmüdigkeit (in Bezug auf WCT oder ein künftiges zusammenfassendes Abkommen)

- TRIPs verliert wohl an Bedeutung
 - Internationale Gesamtsituation
 - Ratifizierungseffekt des TRIPs Abkommens weitgehend ausgeschöpft
 - Fehlende Initiativen (Standing Committee)

4. Logik des internationalen Urheberrechts

TRIPs-Approach v Inländerbehandlung – auf Basis Gegenseitigkeit?

- Beides funktioniert nur (mehr) bedingt
- **RBÜ**
 - Autokratisch regierte Staaten wenig beeindruckt
 - „Bestrafung“ der Einzelpersonen
 - Urheberrecht Menschenrecht
- **TRIPs**
 - Potential wohl ausgeschöpft
 - Moderates Schutzniveau
 - WTO in der Krise
 - Protektionismus/Neo-Kolonialismus
- **Neuausrichtung (?)** – modifizierte Gegenseitigkeit (?)
 - gesamtwirtschaftliche Betrachtung?
 - zB individuelle – kollektiv wahrgenommene Rechte (modifizierte materielle Gegenseitigkeit)
 - Minimalschutz auch für Verbandsfremde (?)

5. Handelsverträge (zB EU/Indien, Mercosur)

- Möglicher Ansatz für
 - Ratifizierung (zB des WCT)
 - Inhaltlicher Ausbau
 - Streitschlichtung
- Nachteile
 - Intransparente Verhandlungsführung
 - Handelspolitische Ausrichtung (EU Kommission)
 - Streitschlichtung
- Beispiele
 - Mercosur:

zB „Each Party affirms its rights and obligations under the following international agreements, taking into consideration that agreements are not binding on those that are not parties to them: RBÜ, Rom, WCT, WPPT, Beijing, Marrakesch, TRIPs

zB Brasilien nicht WCT

allerdings Art 12 Rom zwingend – Beispiel: Schutzfrist (50 – 70 – if so provided for)

- Indien ?

6. Machbarkeit einer inhaltlichen Revision der Berner Übereinkunft

- Einstimmigkeit (Art 27 Abs 3 RBÜ) wohl kein Problem (?):
Art 9 Wiener Vertragsübereinkommen 1969
 - Abweichung vom Einstimmigkeitsprinzip mit Zweidrittelmehrheit (of the votes cast)
- Entwicklungsländer (Protocol - Pays en voie de développement)
- Weltlage – Neokolonialismus – WTO Krise
- „Utopia or Realistic Dream “ (?)
- „Unmöglichkeiten sind die schönsten Möglichkeiten“ (*Nikolaus Harnoncourt*)

7. Diskussionsentwurf (work in progress)

- TRIPs plus + WCT plus
- Anknüpfungssystem grundsätzlich beibehalten, aber etwas modifiziert
- Systematisierung grundsätzlich beibehalten
- Klarstellungen
- Materielle Gegenseitigkeit auf Schutzfristenvergleich beschränkt (Folgerecht offen)
- Inländerbehandlung noch keine Systemumstellung vorgesehen
- Inhaltlicher Ausbau (zum Teil fakultativ)
- Einstimmigkeit modifiziert
- Streitschlichtung neu

III. WCT Plus and Beyond

1. Anknüpfungspunkte und Grundsätzliches

1.1. Anknüpfungspunkte

- Online publication (Klarstellung)
- Ursprungslandausnahme (Streichung)
- Materielle Reziprozität
 - Werke der angewandten Kunst (Art 2 Abs 8) (Streichung)
 - Schutzfristenvergleich (beibehalten – Ursprungsland ?)
 - Folgerecht (beibehalten – Nationalität (?)) oder zwingendes Folgerecht
 - Retorsionsbestimmung (Art 6) – Streichung (?)

1.2. Funktionierende Streitschlichtungseinrichtung

- Internationaler Gerichtshof funktioniert nicht (Vorlage durch Streitteile erforderlich) und ist auf Staaten beschränkt
- ebenso wenig wie TRIPs (Appellate Body seit 2017 nicht besetzt)
- Lösung:
 - Ausbau des bestehenden Systems (Unterwerfung der Verbandsländer, die das Statut des IG anerkannt haben = 193 Mitgliedstaaten der UNO)
 - + Vorabentscheidung über gerichtlichen Antrag

2. Auflösung des inhaltlichen Reformstaus

- Systematisierung in einigen Punkten
- Anwendbares Recht (klarere Formulierung)
- Ausschließlichkeitsrechte – Erweiterung einschließlich KI-Problematik
- Ausschließlichkeitsrechte Generalklausel
- Ausbau des Urheberpersönlichkeitsrechts
- Schutzfrist – TRIPs Plus und fakultatives Domaine public payant
- Zwingendes Folgerecht (?)
- Drei-Stufen-Test (Klarstellungen - Vergütungsansprüche)
- Verankerung von Vergütungsansprüchen
- Kollektive Rechtewahrnehmung - Sozialwidmung
- Haftungssystem
- Urhebervertragsrecht (im Grundsätzlichen)

IV. Entwurf für eine Revision der Berner Übereinkunft

(work in progress)

Article 1: ,... *that constitute intellectual creations*

Article 2: computer programs, copyright databases [WCT] und Klarstellungen

Article 3: Anknüpfungspunkte - Klarstellungen und online publication

(5) Authors of works made available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them are deemed published in a country of the Union if the publisher of such work (e.g. e-book publisher or online-publisher) has his headquarters or habitual residence in one of the countries of the Union, provided that the making available is carried out in a permanent form.

Article 4: (Filmwerke - Architektur) unverändert

Article 5: National treatment - country of origin exception – applicable law

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in *all* 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.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the existence, scope, and duration of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where the exploitation or infringement takes place or produces its effects [that are not only marginal] (country of protection).

*Paragraphs (3) [national treatment in the country of origin] and
(4) [concept of country of origin] deleted*

Article 6: Retorsion measures – deleted (?)

Article 6^{bis} Moral rights (Unveräußerlichkeit – Namensnennung – legitimate Interests – country of protection)

(1) Independently of the author's economic rights, and even after the transfer *or licencing* of the said rights, the author shall have the inalienable and non-waivable right to claim authorship of the work, including the right to determine whether to be credited or not and under which name, and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his legitimate interests [instead of 'honor or reputation'].

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights. After the expiry of these rights, it shall be a matter of the legislation of the countries of the Union to determine whether and for what period moral rights shall continue to exist and by which persons or institutions they may be exercised. [~~However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.~~']

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country of protection.

Article 7: Term of protection

- Regelschutzfrist für Werke der Fotografie
- Schutzfristenvergleich mit dem Staat, dem der Urheber angehört (Nationalität)
- Fakultatives domaine public payant

(9) Whenever a country of the Union grants a term of protection exceeding the minimal terms as set out in the previous paragraphs it shall be a matter for such legislation to dedicate the proceeds from the exploitation during such periods in whole or in part to social, cultural or educational purposes managed by the persons or institutions authorized by national legislation.

Article 7^{bis} Fair compensation of the author – indirect and direct claims

In case of a transfer or licencing of the rights granted to authors under the Convention, the author shall have the right to claim fair compensation; it shall be a matter for legislation in the countries of the Union to determine whether this claim is directed against the transferee or licensee in the chain of exploitation, against the user, or against both of them.

Article 8: (ex-Article 12) [Adaptations – Generative AI]

(1) Without prejudice to Article 11 [cinematographic adaptation] authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation, adaptation, arrangement of music and other alterations or modifications of a literary or artistic work, provided that they constitute intellectual creations.

(2) Works created with the assistance of generative AI models shall be protected as adaptations in the sense of the previous paragraph, if the author's input is an intellectual creation and is clearly recognizable in the end-product, without prejudice to the protection of the works used for the training of generative AI-models.

(3) If products that do not meet the conditions according to the previous paragraph they do not enjoy protection, whereas authors of the works used for the training of such models enjoy an inalienable and unwaivable claim to an equitable remuneration in the proceeds from such use in the sense of Articles 9-12bis ; Article 15^{sexies} (4) applies correspondingly.

Article 9: Reproduction, distribution, rental and public lending

(1) The author of literary and artistic works shall enjoy the exclusive right of authorizing or prohibiting the exploitation of his work in tangible form through

(a) the direct or indirect, temporary or permanent reproduction of these works, in any manner or form, in whole or in part,

(b) the distribution to the public of the original or of copies of his work by means of sale or other transfer of ownership, [WCT] as well as

(c) the commercial rental and non-commercial lending, except for computer programs, where the program itself is not the essential object of the rental, [WCT] and except for the rental of cinematographic works for the purpose of communication to the public.

(2) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention as is the case with regard to any reproduction in digital form on whatever physical device.

Article 10 Public lending - equitable remuneration

It shall be a matter for legislation in the countries of the Union to grant an inalienable and unwaivable claim to an equitable remuneration in the case of non-commercial lending in lieu of an exclusive right according to the preceding paragraph lit (c). Article 15^{sexies} (4) applies correspondingly.

Article 11: (replacing ex-Articles 11 to 11ter) Communication to the public – artistic works included

(1) The author of literary and artistic works shall enjoy the exclusive right of authorizing or prohibiting any communication to the public of their works, by wire or wireless means, including broadcasting via satellite and including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

(2) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, or to otherwise reproducing the work communicated to the public in the sense of the preceding paragraph.

Article 12: Training and marketing of generative AI models

(1) The author of a literary and artistic work shall enjoy the exclusive right to authorize or prohibit the use of his work for the purpose of training generative AI-models, the reproduction, distribution, rental and lending (Article 10) as well as the communication to the public (Article 11), including a use according to Article 12^{bis}.

(2) If a use in the sense of the preceding paragraph is carried out for the purpose of scientific research, the countries of the Union may, in lieu of an exclusive right provide for an inalienable and unwaivable claim to an equitable remuneration; Article 15^{sexies}(4) applies correspondingly.

Article 12^{bis} General clause

Without prejudice to Articles 9-12, authors of literary and artistic works shall enjoy the exclusive right to authorize or prohibit any other use made of their works in material or immaterial form, provided that such use is not merely insignificant. (ähnlich Daniel Gervais)

Article 13 (ex-Article 14^{ter}) Mandatory Resale Right

- (1) The author of works of art work, or after his death the persons or institutions authorized by national legislation, enjoys the *unwaivable and* inalienable right to *a fair* interest in any sale of the original of his work subsequent to the first transfer by the author of the work in which art market professionals have been involved.
- ~~(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.~~
- (2) The procedure for *an effective* collection and *adequate* amounts shall be matters for determination by national legislation.
(oder weiter fakultativ mit Klarstellungen –
oder Special Agreement – Report *S Ricketson* 2015)

Article 13^{bis}: Collective management

It shall be a matter for legislation in the countries of the Union to provide for a collective management through collecting societies of the rights granted to authors under this Convention on

Article 14: Cinematographic adaptation - Klarstellungen

Article 14^{bis}: Cinematographic works – Klarstellungen (Vergütungspflicht)

Article 15: Presumption of authorship

Article 15^{bis} (ex-Article 2^{bis}) Political speeches etc

Article 15^{ter} (ex-Article 10) : Quotation

Article 15^{quater} (ex-Article 10^{bis}) : Newspaper exception – Reporting on current events

Article 15^{quinquies} (ex-Article 11^{bis} Abs 3) : Ephemeral recordings)

Article 15^{sexies} (ex-Article 9(2)) :

Three-Step-Test – diseases in times of a pandemic – equitable remuneration

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Article 16: Seizure

Article 17: Public interest measures

Article 18: Application in time

Article 19: Minimum protection

Article 20: Special agreements

Article 15^{sexies} (ex-Article 9(2))

[Three-Step-Test - diseases in times of a pandemic - equitable remuneration]

(1) Countries of the Union may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Convention in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. [TRIPs]

(2) Limitations of or exceptions in the sense of the preceding paragraph may in particular be provided for to the extent necessary to respond to serious diseases in times of a pandemic, including vaccination, treatment and containment.

(3) Where the use is made according to such limitations of or exceptions to the rights granted to authors of literary and artistic works under this Convention is not merely insignificant, the countries of the Union shall provide for an inalienable and unwaivable claim to an equitable remuneration to compensate them adequately for such use.

(4) It shall be a matter of national legislation to dedicate the proceeds from such remuneration in whole or in part to social, cultural or educational purposes managed by the persons or institutions authorized by national legislation.

Article 21: Liability regimes

(1) It shall be a matter for legislation in the countries of the Union to establish fair liability regimes ensuring the effectiveness of the rights and claims granted to authors of literary and artistic works in particular in cases of mass use. If certain intermediaries are exempted from liability (safe-harbor provisions), equivalent liability rules must be provided for.

(2) Without prejudice to Article 17 Union countries shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the rights covered by this Convention. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

(3) Union countries shall in any case comply with Articles 41 through 50 as well as Articles 51 through 60 and 61 (enforcement of intellectual property rights) of the TRIPs-Agreement with the following modifications and amendments:

... plus elements ...

(4) The Union countries shall comply with Articles 11 and 12 of the WIPO Copyright Treaty concerning technological measures and copyright information.

Article 21^{bis}: Developing countries

Article 27: Revision

- (1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.
- (2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.
- (3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require ~~*the unanimity of two thirds of the votes cast, unless by the same majority of the States present and voting shall decide to apply a different rule.*~~

Article 33: Dispute resolution

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) The countries of the Union that are parties to the Statute of the International Court of Justice shall declare, according to Article 36 of these Statutes, that they recognize as compulsory ipso facto and without special agreement, in relation to any other country of the Union the jurisdiction of the Court in all legal disputes concerning the interpretation of this Convention (Article 36(a) of the Statute).

(3) The International Court of Justice further shall have jurisdiction to give preliminary rulings concerning the interpretation of the Convention, where such a question is raised before any court or tribunal of a Union country, if it considers that a decision on the question is necessary to enable it to give judgment, at the request such court or tribunal to give a ruling thereon.

~~*(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.*~~

~~*(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration*~~

St.-Albans-
Psalter, 12. Jhd



Vpsilmina
babilonis illic
sedim' & fleuimus:
dum recordarem'
sion.
Insa licibz in medio ei:
suspendim' organa nra
Quia illic interro-
gauerunt nos: q
captiuos duxer't nos
uerba cantionu.

Et qui abduxerunt nos:
ymnu cantate nob de canticis sion.

Quom cantabim' canticu dñi: intra aliena.

Si oblit' fuero tui ierusalem:
obliuioni detur dextera mea.

Adhereat lingua mea faucibz meis:
si non meminero tui.

Si non proposuero ierusalem:

Chlodov-Psalter,
9. Jhd



The first system of musical notation for 'The Rose Tree' is written on a three-staff system. The top staff begins with a treble clef and a key signature of one flat (B-flat). The melody is composed of eighth and sixteenth notes, with some notes beamed together. The middle and bottom staves provide harmonic support with chords and single notes. The system concludes with a double bar line.

* Baby-

The first system of the musical score consists of two staves. The upper staff contains a melody written in a treble clef, featuring a series of eighth and sixteenth notes. The lower staff contains a bass line, also written in a treble clef, with notes that generally follow the contour of the upper melody but at a lower pitch level. The system is divided into two measures by a vertical bar line.

The first system of musical notation for 'The Bird Song' consists of two staves. The upper staff begins with a treble clef and a key signature of one sharp (F#). It contains a series of eighth and sixteenth notes, with some notes beamed together. The lower staff begins with a bass clef and contains fewer notes, primarily eighth notes. A vertical bar line divides the system into two measures.

The first system of musical notation consists of a single staff with a treble clef. It begins with a key signature of one sharp (F#) and a common time signature (C). The melody is written in a simple, folk-like style, featuring a series of eighth and sixteenth notes, with some rests. The system ends with a double bar line.

Si- on.

Psalm 136 (137 Vulgata)

Super flumina Babylonis,
illic sedimus et flevimus:
dum recordaremur tui, ius auctoris.
In salicibus in medio eius suspendimus organa nostra.
...

Va, pensiero, sull'ali dorate