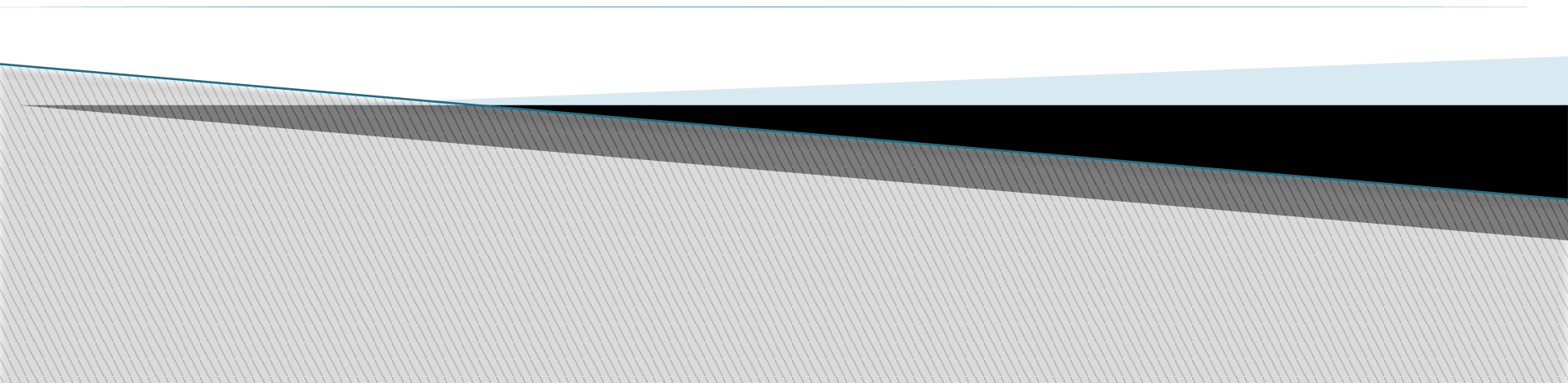


Neighboring Right



- ▶ Copyright is not extended to any right **related to copyright**.
 - ▶ There are some rights which are recognized to have close **relationship with copyright but cannot be the subject matter of copyright law as such**.
 - ▶ Because of they are often closely associated with copyrights, any consideration of copyright laws has to take into account this associated rights.
 - ▶ These rights are named **neighboring rights or related rights**.
- 

▶ Protection of neighboring right

- The protection of author's rights
 - ✓ does not stop preventing the use of their creations and
 - ✓ cannot be limited to prohibiting infringement of the rights that laws afford to authors.

□ The authors works

❖ made available to the public at large.

➤ In various way

/intermediaries/

- live performances,
- sound recordings or
- broadcasts.

□ At This stage

✓ interest of the performers themselves in relation to the use of their individual interpretation in the performed work.

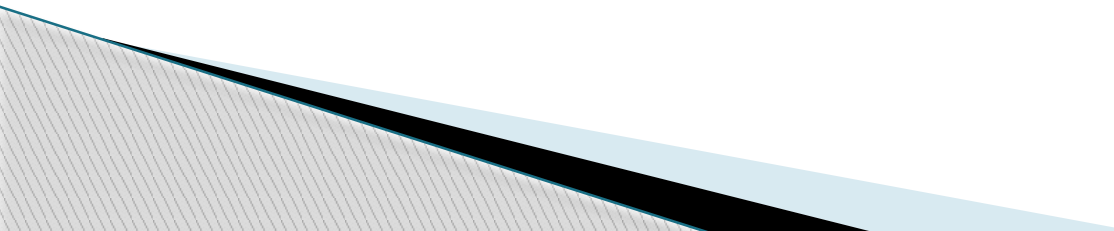
□ Therefore the problem for protection of performers, producers and broadcasting organizations, i.e., protection of neighboring rights arise

- ▶ In this regard,
 - ❑ the Italian law, one of the first to recognize these new rights called them **connected rights** (*diritti connessi*);
 - ❑ German law **related rights** (*verwandte Schutzrechte*);
 - ❑ French law **neighboring rights** (*droit voisins*) and
 - ❑ in the English law, the term **neighboring rights** is now commonly used.

- ❑ The problem with regard to intermediaries has become more acute/ sensitive with rapid technological developments
- ❑ fixing of performances on a variety of materials, viz., records, cassettes, tapes, films etc become easy with technology.

□ From before a limited audience in a hall to an - increasingly permanent manifestation

✓ capacity of unlimited and repeated reproduction and use before an equally unlimited audience that went beyond national frontiers.

- ❑ To put it differently, “these technological innovations, have led to a reduction in the number of live performances.”
 - ❑ Because of this there is a new dimension to the protection of the interests of performers.
- 

- ▶ Similarly “the increasing technological development of phonograms and cassettes and, more recently, compact discs (CDs), and their rapid proliferation, was pointing to the need of protection of producers of phonograms.”

- ❖ Finally, there were the interests of broadcasting organizations as regards their individually composed programs.
 - ❖ The **broadcasting organizations** required **their own protection** for these as well as against the retransmission of their own programs by other similar organizations.
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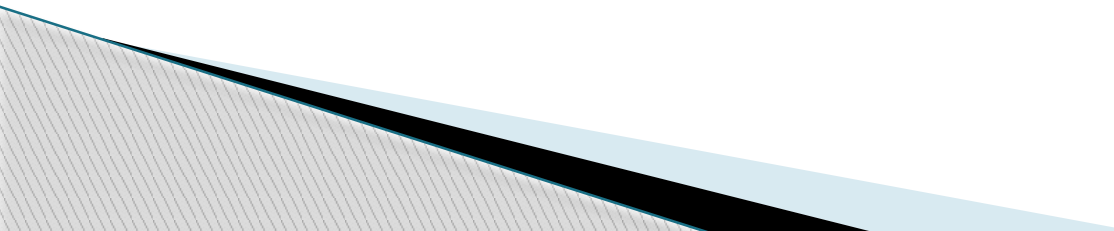
- ❑ In international laws, the first attempt towards neighboring rights was made by the Berne Union for the Protection of Literary and Artistic Works at its Diplomatic Conference in Rome in 1928.
- ❑ At this time there was a need for the revision of the Berne Convention that was adopted in 1886 for the protection of literary and artistic works to

- ❑ In this Conference the members refused to grant a copyright to performers. But, at the end of the conference of the Berne convention, they considered the possibility of measures intended to safeguard the rights of performers and also other neighboring rights are given due consideration

- At the international level, however, it was the development of the **phonogram industry** that promoted the establishment of special protection for the so called related rights as the phonogram industry looked for **protection against unauthorized duplication of sound recordings of musical performances.**

- Thus, the rights of performers, producers of sound recordings and broadcasting organizations are given due recognition, after long discussions, under the *Rome Convention* in 1961 (Rome Convention, International Convention Ratified in 1961 for the Protection of Rights of Performers, Producers of Phonograms and Broadcasting Organizations).

❖ Unlike most international conventions, which follow national legislations and provide a synthesis of existing laws, the Rome Convention was an attempt to establish international regulations in a new field (neighboring rights) where few national laws existed.

- Besides the Rome Convention, two other international instruments
 - 1. The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, “Phonograms Convention”, concluded in Geneva in October 1971, and
 - 2. the Convention Relating to the Distribution of Program -Carrying Signals Transmitted by Satellite, “The Satellites Convention” concluded in Brussels in May 1974.
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- ▶ In Ethiopia, The Civil Code does not incorporate rights of performers, producers and broadcasting organizations.
- ▶ In Ethiopia, neighboring right is recognized for the first time in the Proclamation.

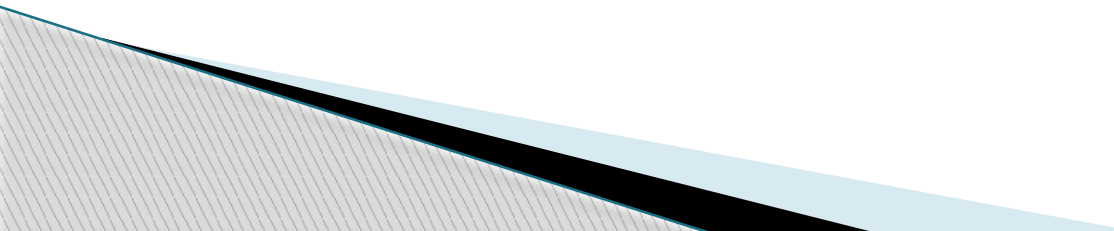
- The Proclamation incorporates the legal protection of performances, sound recordings and broadcasts.
- Proclamation No.90/1997 Ethiopia's membership to WIPO (ratification)

Nature of Neighboring Rights

- ❑ The term “neighboring rights” comes from the French “*droits voisins*” referring to those rights which have been developed parallel to and are related to copyrights.
- ❑ They may be loosely defined as rights which do not arise directly from the five major types of intellectual property (patents, copyrights, trade secrets, trademarks and industrial designs) but which are “neighboring” to such rights.

- Neighboring rights are those rights granted to protect performers, producers of phonograms, and broadcasting organizations in the performance of their works

- ❑ “neighboring rights” are rights that are related but not identical with copyrights.
- ❑ Example an actor almost invariably, is not the creator of the role he plays. He rather performs a role in a play written by a playwright.

- ❑ Similarly a musician may not necessarily be a composer. He may perform the creative works of another person.
 - ❑ Yet, their contribution does not make them subjects of copyright.
 - ❑ Identically the producers of phonograms produce works of authors as performed by the performers; and broadcasting organizations broadcast such works on their station.
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□ The fact that they have intervened in the channeling of the works does not entitle them to claim copyright on the works.

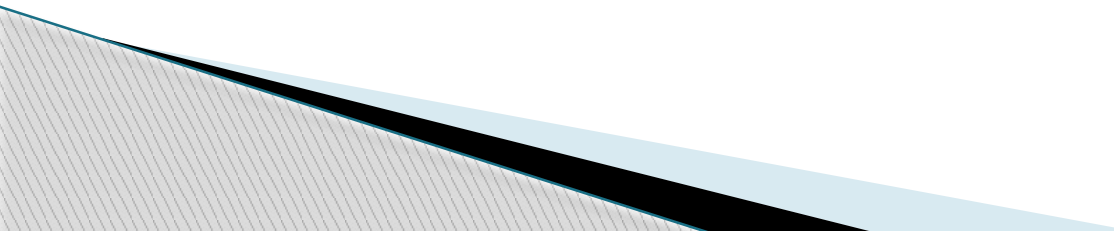
❖ However, their assistance in making the work available to the public entitles them to certain rights that are called neighboring rights

- ❑ Under Ethiopian legal system,
- ❑ Neighboring rights are the rights performers, producers of sound recordings, broadcasting organizations have over their works as per Art 2(14) of the Proclamation that defines neighboring rights.

- ❑ The most important categories are the right of **performers** to **prevent** fixation, broadcasting, reproduction etc of their performances without their consent;
- ❑ the rights of **producers of phonograms** to authorize or prohibit the reproduction of their phonograms and the import and distribution of unauthorized duplicates thereof;
- ❑ and the rights of **broadcasting organization** to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts.

- ▶ Some countries also protect the interests of broadcasting organizations by preventing the distribution on or from their territory of any program carrying signal emitted to or passing through a satellite, by a distributor for whom the signal is not intended.
- 

- ❑ **Article 2(21)** of the Proclamation defines a “producer of sound recordings” as a person that undertakes the initiative and responsibility for the making of sound recording works.
 - ❑ The right owner is the person that first fixes the sounds.
 - ❑ This excludes both the technicians and operators employed by the recording company, and any entity merely pressing records, i.e., duplicating the first fixation which is the original recording.
- 

- ❑ Meaning to “Sound recording” **Article 2(28)**
 - ✓ It does not, however, include a fixation of sound and images such as the sound track of an audiovisual work.
 - ✓ It is important to note that the sounds could be sounds of a performance or other sounds or a representation thereof whether fixed on cassette tape or compact disc etc from which fixed sounds can be perceived, reproduced or otherwise communicated directly or with the aid of machine.
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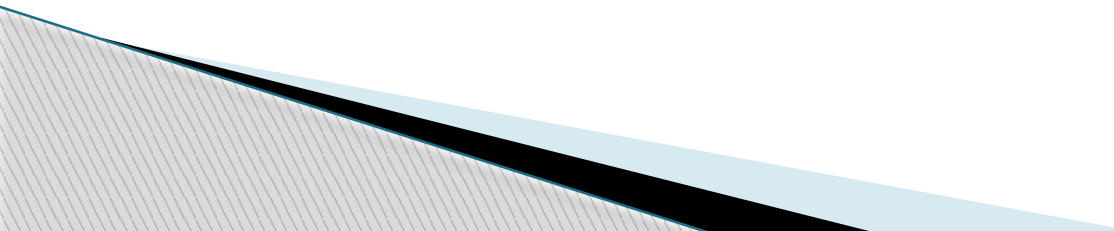
- ❑ Broadcasting organizations enjoy neighboring rights. As to the rights of broadcasting organization, a broadcasting organization shall have the exclusive right to carry out or authorize reproduction of its broadcasts, fixation of its broadcasts and reproduction of a fixation of its broadcast as per **Article 31 (1)** of the Proclamation until the expiry of **20 years** following the year in which the broadcast took place.

► **Justifications for the Protection of Neighboring Rights**

- ▣ copyright and neighboring rights constitute an essential element in the development process of a country.
 - ▣ The Preamble of the Proclamation asserts that the protection of works of artistic, literary and scientific nature serves to enhance cultural, social, economic, scientific and technological development of a country.
- 

1. It will serve for the social, economic and cultural development of the country
2. they are the means for disseminating works of authors

3. They employ their talents or technical skills. Furthermore, they have economic interests on their works. They require economic returns for their investment. Consequently, they have to be accorded with some sort of exclusive legal rights for their respective works



Scope of Application of the Proclamation on Neighboring Rights

□ Art 3(3) Performers

(a) **Ethiopians**

(b) **Not nationals**

- i.) take place in Ethiopian territory
- ii. Incorporated under the work protected in this proclamation or
- iii. Included in broadcasts eligible under this proclamation

□ Art 3(4) sound recording

(a) **Ethiopians producers**

(b) **First fixed in Ethiopia and**

(c) **First published in Ethiopia**

Art 3(5) broad casting

(a) Head quarter in Ethiopia

(b) From transmitter situated in Ethiopia

Art 3(6) as per international convention or agreement

Owners and Scope of Neighboring Rights

- 1. Performers' right (Art 26) -authorization power to performers**
 - Economic right (Art 26 (1))- Exclusive right**
 - a) broadcasting or other communication to the public**
 - b) Fixation of his unfixed work**
 - c) Reproduction**
 - d) Making available first fixed or copy thereof**
 - e) Rental or public lending**
 - f) Making available to the public**

- **Moral right (Art 26 (4))**
 - I. To be identified as....**
 - II. Objection to distortion, mutilation or other modification....**
 - III. Application of art 8 (2) and (3)**
- **Time of protection (Art 26 (5))**
 - ✓ **50 year from the date of fixation or from the performance took place**

2. Rights of Producers of Sound Recordings and Affiliated Issues (Art 27)

- Exclusive right (Art 27 (1)) – exclusive right
 - a) Reproduction
 - b) Importation
 - c) Distribution to the public
 - d) Rental or lending
 - e) Making available to the public
- Time of Protection (Art 27 (2))
 - ✓ 50 years from publication or fixation

- Obligation of Producer of sound recording (Art 28)
- 28 (1) Labeling of the recording on the container-
 - a) Title of the work
 - b) Name of authors and main performers
 - c) Right reserved
- 28(2) a choir or orchestra reference
- Notice of protection (Art 29)- for commercial purpose
- 29 (1) a) symbol (P)
- b) year
- Time of protection –1art 30 (3) 50 years from publication or from fixation
- Remuneration for sound recording (Art 30 (1))

3. Rights of broad casting Organizations

□ Exclusive right (Art 31 (1))

- a) Rebroadcasting**
- b) Fixation**
- c) Reproduction**

□ Time of protection (Art 31 (2))

- 20 years

□ Limitation on Neighboring Right (Art 32)

- a) Using short excerpt for reporting current event**
- b) Reproduction solely for scientific purpose**
- c) Face to face teaching activity**
- d) Exceptions provided for copy right**

Enforcement of Rights / Infringement of rights and remedies

- ❑ the recognition of rights by itself cannot avoid infringement of rights.
- ❑ The law should set the way by which the recognized rights will be enforced.

□ Enforcement measure
include Provisional
measures, civil measures,
criminal sanction and border
measures

1. Provisional measures (Art
33)

Have two purposes

✓ To prevent entry to the
market

- ▶ Art 33 (2) in audita altera parte (with our hearing the other party)
- ▶ Art 33 (3) application of temporary injunction and courts power
- ▶ Art 33 (4) – application of civil and criminal procedure on search and seizure
- ▶ Art 33 (5) power of courts to demand evidence for certainty (imminence) of the infringement.
- ▶ Art 33(6) Notice for the party affected

2. Civil Remedies (Art 34)

- ❑ Monetary Compensation (adequate)
 - Art 34 (1) (a) injunction
 - Art 34 (1) (b) confiscation
 - Art 34 (1) (c) to impound packaging and implements to make documents, accounts or business papers.
 - Art 34 (2) replacement of unjust enrichment in lieu of compensation
 - Art 34 (3) Payment of net profit

- Art 34 (4) Method of calculation of Compensation for material damage and Amount of moral damage
- Art 34 (5) limit of compensation to the profit when infringement done with out awareness
- Art 34 (6) making copies out of channel of commerce.

3. Border measure (Art 35)

Art 35 (1) Retaining infringing goods under control

Art 35 (2) information provision about control taken

Art 35 (3) lifting of controlling

Art 35 (4) Liability for damage for retained goods

Art 35 (5) confiscation



4. Criminal sanction (Art 36)

Art 36 (1) 5 up to 10 Years
imprisonment for intentional
violation

Art 36 (2) 1 up to 5 years for
gross negligence violation

Art 36 (3) seizure, forfeiture and
destruction of goods and any
materials.

