

Western or Fairy tales? Global Copyright Policies & Information Society

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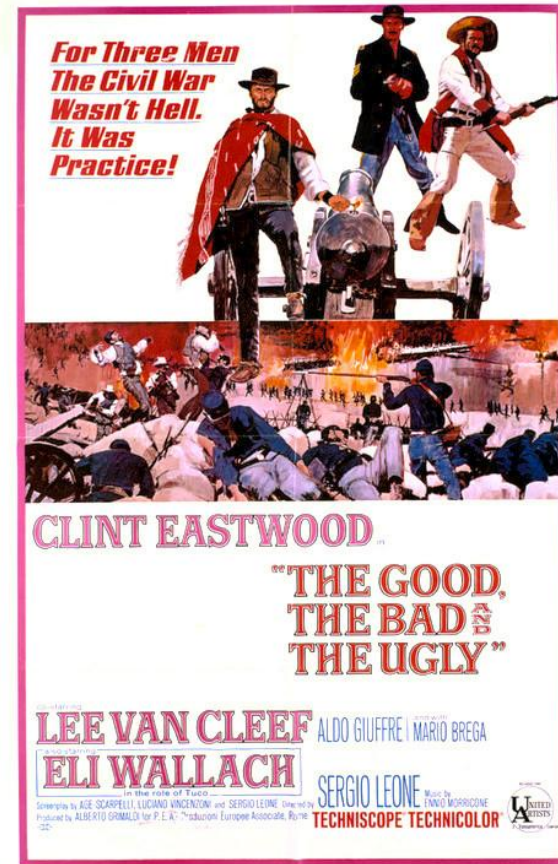


The Good, The Bad and the Ugly

Important actors: WIPO
and trade agreements

-WIPO in Geneva and
everywhere

-Trade agreements
everywhere



First, the Ugly

The World Intellectual Property Organization

WIPO started dealing with the impact of digital technology on copyright and related rights as early as 1993.

WIPO Worldwide Symposium at Harvard University then in Paris in June 1994, Mexico city in May 1995, Naples in October 1995...



The World Intellectual Property Organization

But “concrete work” was done by experts: “The Berne Protocol Committee” and the “New Instrument Committee” which accelerated after the adoption of the TRIPS Agreement and resulted in the WIPO diplomatic in Geneva in December 1996. The so-called Internet treaties entered into force in 2002.

These two treaties have all the substantive norms already existing and add new ones.

They are Berne/Rome plus and TRIPS plus because of the additional provisions dealing with the internet.



The Digital Agenda: 4 main issues

- 1) reproduction rights and their application in the digital environment
- 2) the rights that applied for interactive digital transmissions
- 3) the applications of limitations and exceptions in the digital environment
- 4) the obligations regarding technological protection measures and rights management



At WIPO: What is the SCCR?

After the 96 WCT and WPPT, the Standing Committee on Copyright and Related Rights was set up in 1998-1999 to examine matters of substantive law or harmonization in the field of copyright and related rights.

The Committee is composed of all member states of WIPO and/or of the Berne Union; and, as observers, certain member states of the United Nations (UN) which are non-members of WIPO and/or the Berne Union, as well as a number of intergovernmental and non-governmental organizations. The member states are organized in Groups. Grulac, Group B, the Africa Group, the Baltic States, China...

The SCCR members do not vote but reach consensus and make recommendations for the WIPO General Assembly or a Diplomatic Conference. They discuss and draft treaties.

Some would want to forget WIPO Standing Committee on Copyright and related Rights (since they get what they want with trade agreement) but WIPO SCCR is still alive and kicking.

The treaty for the protection of broadcasting & cablecasting organizations

After the successful negotiations of the WCT and WPPT, the SCCR continued discussions on the protection broadcasting & cablecasting organizations.

However, a parallel track on limitations and exceptions slowed progress starting in 2003-2004...

The protection of broadcasting organizations stayed on the table although almost died many times due to the overreach of the demandeurs, the broadcasters, cablecasters... and webcasters.

Put on the “back burner” until 2013, the treaty came back with force this year.

There are outstanding issues but the SCCR seems committed in holding a diplomatic conference 2017.

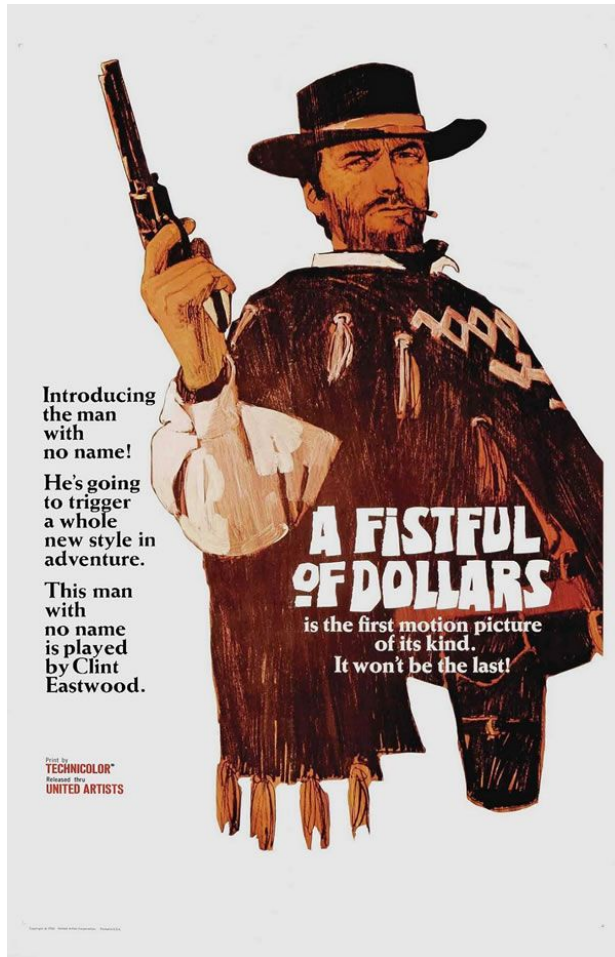
What do broadcasters want?

Broadcasting entities want a treaty that provides IPR for all means of transmission of their signals which would cover all new technologies (cable, satellite television and the Internet).

They also want anti-piracy locks which could block legal uses (recording, educational uses etc) and inhibit technological innovations.



Who are the demandeurs?



The advocates for an IP based broadcasting treaty are a number of giant media companies that package and aggregate copyright content into cable television channels, over pay services such as cable television or satellite television and radio.

For many if not most countries, this will result in a transfer of income from local copyright owners to media conglomerates, such as Disney, Time Warner, Viacom, News Corp and Discovery.

Why we oppose the treaty for broadcasting, cablecasting Organizations (1)

Wrong paradigm for the Internet (and webcasting was excluded in 2006), & unnecessary for any platform since copyright & theft of service laws provide balance as regards users rights, and adequate remedies against unauthorized uses.

Creative works distributed through broadcasting networks are nearly always protected by copyright. In the rare cases where the broadcast involves material in the public domain, broadcaster should not acquire an IPR for merely for transmitting information.

Why we oppose the treaty for broadcasting, cablecasting Organizations (2)

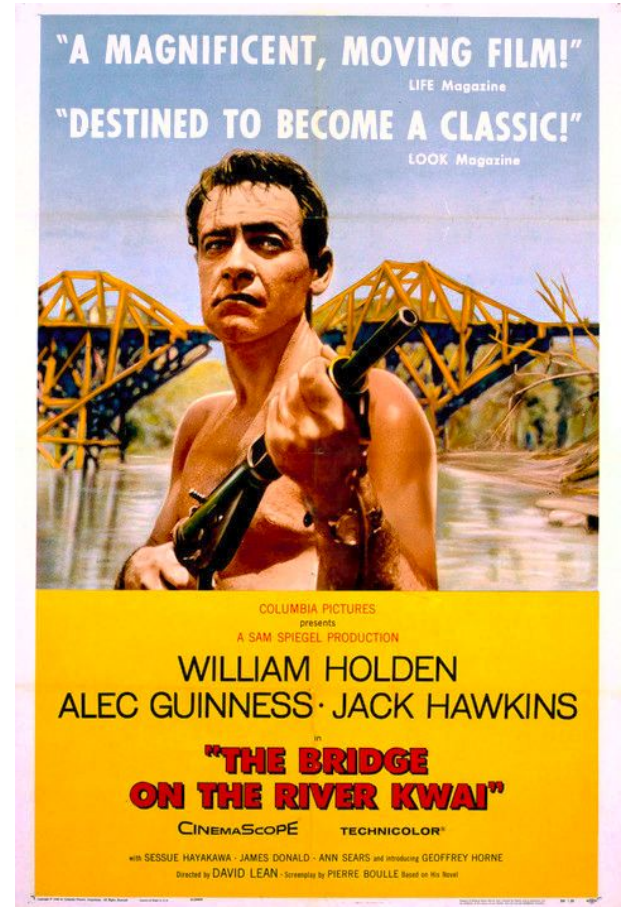
Piracy of broadcasting signals already is against the law under copyright, as well as under various national and local laws on the theft of services.

The advocates of a broadcasting treaty have not shown that there is a problem in the area of piracy that cannot be addressed by existing laws on copyright or theft of service.

There are outstanding issues but the SCCR seems committed in holding a diplomatic conference 2017? (3)

“The treaty is in essence an attempt by corporate broadcasting entities to change outcomes of licensing negotiations, by giving the broadcasters a right that they would otherwise have to acquire by contract, in return for something they would give the copyright holders.”

KEI Statement at SCCR 22 (June 2011)



Now the Bad: The TPP (1)

The governments of Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States just ended (secret) negotiations on a multilateral free trade agreement known as the Trans-Pacific Partnership Agreement (TPP).

The last leaked version of the TPP negotiating text, showed that the TPP would most probably change global norms, restrict access to knowledge, create significant financial risks for persons using and sharing information, and, in some cases, impose new costs on persons producing new knowledge goods.

Now the Bad: The TPP (2)

As of October we do not know if the TPP will mandate a copyright term of life plus 70 years (or 95?), change the global rules on copyright exceptions (apparently not mandatory), block legislation to limit remedies for the infringement of orphan copyrighted works.



The Good ...

The WIPO Development Agenda

The Limitations and Exceptions Agenda and the Marrakesh Treaty

Resale rights

Tunis Model Law

WIPO Development Agenda



The first proposal for the establishment of a development agenda for WIPO (document WO/GA/31/11) was submitted by Argentina and Brazil at the 2004 General Assembly, and subsequently supported by 12 other developing countries.

In 2007, two sessions of the Provisional Committee on Development Agenda were held, during which Member States agreed, *inter alia*, on a set of 45 recommendations and recommended the establishment of the Committee on Development and Intellectual Property.

The 45 adopted recommendations are listed below in the following clusters:

- Cluster A: Technical Assistance and Capacity Building
- Cluster B: Norm-setting, flexibilities, public policy and public domain
- Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge
- Cluster D: Assessment, Evaluation and Impact Studies
- Cluster E: Institutional Matters including Mandate and Governance
- Cluster F: Other Issues

Cluster B: Norm-setting, flexibilities, public policy and public domain (1)

* 15. Norm-setting activities shall:

- be inclusive and member-driven;
- take into account different levels of development;
- take into consideration a balance between costs and benefits;
- be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations (IGOs) and NGOs; and
- be in line with the principle of neutrality of the WIPO Secretariat.

* 16. Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.

* 17. In its activities, including norm-setting, WIPO should take into account the flexibilities in international intellectual property agreements, especially those which are of interest to developing countries and LDCs.

* 18. To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.

* 19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.

Cluster B: Norm-setting, flexibilities, public policy and public domain (2))

20. To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.

* 21. WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.

22. WIPO's norm-setting activities should be supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration.

The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: (a) safeguarding national implementation of intellectual property rules (b) links between intellectual property and competition (c) intellectual property -related transfer of technology (d) potential flexibilities, exceptions and limitations for Member States and (e) the possibility of additional special provisions for developing countries and LDCs.

23. To consider how to better promote pro-competitive intellectual property licensing practices, particularly with a view to fostering creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.

The WIPO Development Agenda

- Ensures that development considerations form an integral part of WIPO's work.

The effective implementation of the Development Agenda, including the mainstreaming of its recommendations into WIPO substantive programs, must be a key priority.

- [Program of the WIPO International Conference on Intellectual Property and Development, Geneva, April 7 and 8, 2016](#)

Limitations and exceptions to copyright and related rights

- Vary from country to country due to particular social, economic and historical conditions.
- Treaties provide general conditions for the application of exceptions and limitations and national legislations decide if a particular exception or limitation is to be applied and, if it is the case, to determine its exact scope.
- New technologies and the Internet, have changed the balance between stakeholders' interests and L&E need to be revised.

The Limitations and Exceptions Agenda

Limitations and exceptions has been discussed officially by the SCCR since its 12th session. (Ricketson Study was presented at the 9th Session (June 2003))

At the November 17-19, 2004 SCCR 12, Proposal by Chile on the Subject "Exceptions and Limitations to Copyright and Related Rights."

At SCCR 16, March 10 to March 12, 2008, Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations.

Informative Sessions on Limitations and Exceptions and on Audiovisual Performances, Study on Copyright Limitations and Exceptions for Libraries and Archives.

The SCCR examined questions of limitations and exceptions regarding education, libraries and disabled persons, particularly visually-impaired persons.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT)

Adopted June 27, 2013 in Marrakesh it is the first treaty dealing directly about user rights. Its entry into force requires 20 ratifications or accessions.

First treaty for limitations and exceptions.

It requires parties:

- 1) to provide a standard set of L&E to copyright rules to permit the reproduction, distribution and making available of published works in accessible formats,
- 2) to permit exchange of these works across borders by organizations serving the beneficiaries (authorized entities as defined by national laws),
- 3) the MVT leaves the parties the freedom to implement its provisions taking into account their own legal system and practices, including determinations of fair dealings, fair practices or fair uses.

11/20 Ratification or Accession of MVT

No 11 Ratification by the Republic of Korea October 8, 2015

No 10 Ratification by Mongolia September 23, 2015

No 9 Ratification by the United Mexican States July 29, 2015

No 8 Ratification by the Argentine Republic April 1, 2015

No 7 Accession by the Republic of Singapore March 30, 2015

No 6 Ratification by the Republic of Paraguay January 20, 2015

No 5 Ratification by the Republic of Mali December 16, 2014

No 4 Ratification by the Eastern Republic of Uruguay December 1, 2014

No 3 Accession by the United Arab Emirates October 15, 2014

No 2 Ratification by the Republic of El Salvador October 1, 2014

No 1 Ratification by the Republic of India June 24, 2014

Resale Right

First appeared at SCCR 26 (in December 2013) with a side event presentation.

But first what is a resale right? (Quote from the Resale rights .org website):

“The resale right is a fundamental right for authors of graphic and plastic arts. It consists of a small percentage of the resale price that art market professionals pay to them at each resale of their works be it in auction or in a gallery. [...]

The specificity of visual artists is that their primary source of income is the material selling of their original works. While auction houses and galleries make their business by taking commissions, it would be paradoxical that artists do not benefit from the profit generated by their works on the art market.

This is why the resale right, which is not applicable to first sales and therefore not on those galleries that do the work of promoting artists, was created.

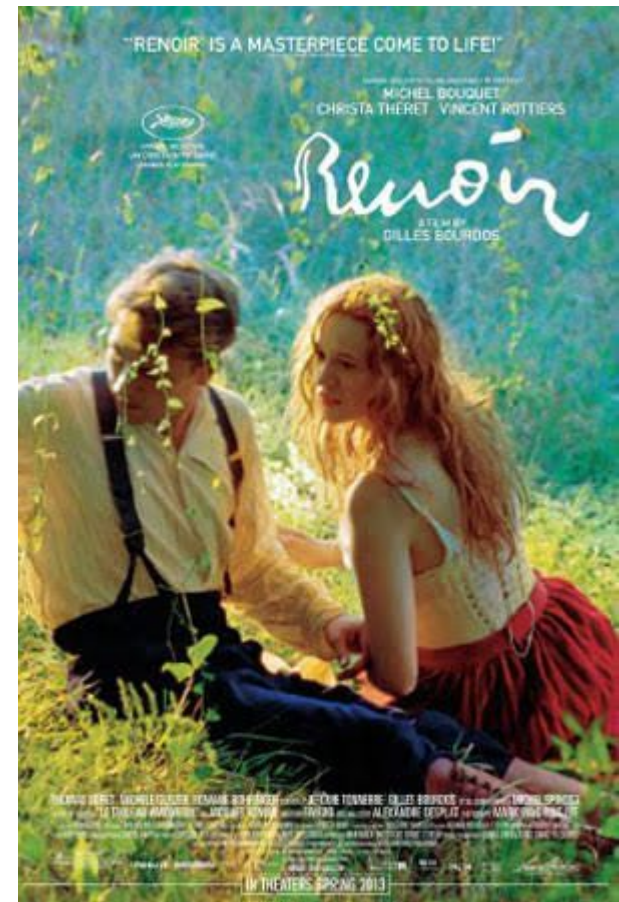
It also helps to restore the balance with the authors of other creative sectors (composers, screen-writers and film directors, writers, ...) whose rights of reproduction and communication to the public cannot be compared with those of visual artists.”

Status?

On May 2, 2014, Senegal made a proposal to include resale rights to the SCCR Program.

During "other matters" to be discussed a number of delegations spoke in favor of adding "resale Rights" to the agenda of next SCCR sessions.

Will artists get some attention at WIPO?



The 1976 Tunis Model Law

Drafted by experts for member states of WIPO and UNESCO, it provides a Berne-consistent template for developing countries that accommodate the common law and civil law traditions.

It addressed a number of the most important issues in copyright, including issues such as:

- the protection of folklore,
- limitations and exceptions to rights, such as those in Section 7, entitled “Fair use,” Section 3 on “Works not protected,” or Section 10 on the limitation of the right of translation.
- It provided a foundation for the protection of author’s rights, including extensive provisions on licensing of works and enforcement of rights.
- It proposed language on the treatment of domaine public payant in Section 17.

Update of Tunis Model Law for the Digital Environment?

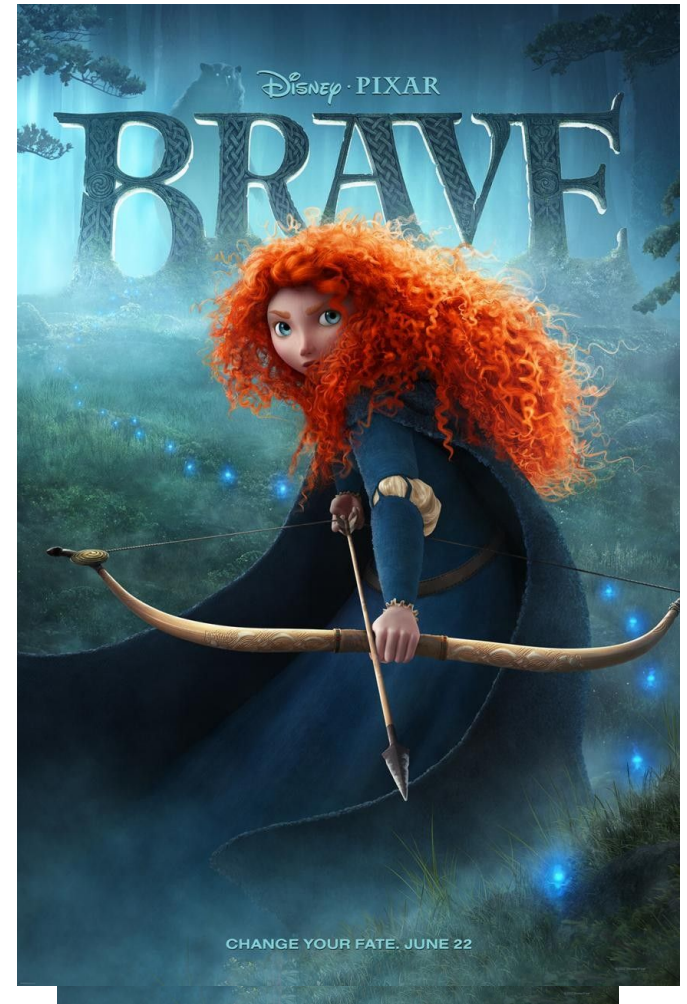
We support an update because:

-a model act would be useful for the implementation of copyright limitations and exceptions that address the special concerns of developing countries, and would take into account new developments of international law, including the norms contained in the WTO TRIPS Agreement, the 1996 WIPO Internet treaties, and the Beijing and Marrakesh treaties.

-we need model provisions for copyright limitations and exceptions for education and research, institutions like libraries and archives that support education and research, distance education delivered cross border, access to orphaned copyrighted works, exceptions for translation, and systems of liability rules to address a variety of concerns regard access to cultural works, consistent with addressing the legitimate interests of suppliers of knowledge and cultural works.

Update of Tunis Model Law for the Digital Environment

Find the Tunis Model Law on Copyright for Developing Countries (1976) Arabic, English, French, Portuguese and Spanish, other languages available upon request at r.sy@unesco.org (11/01/13)



In conclusion (1)

Broadcasting & cablecasting new layers of rights

Secret trade agreements

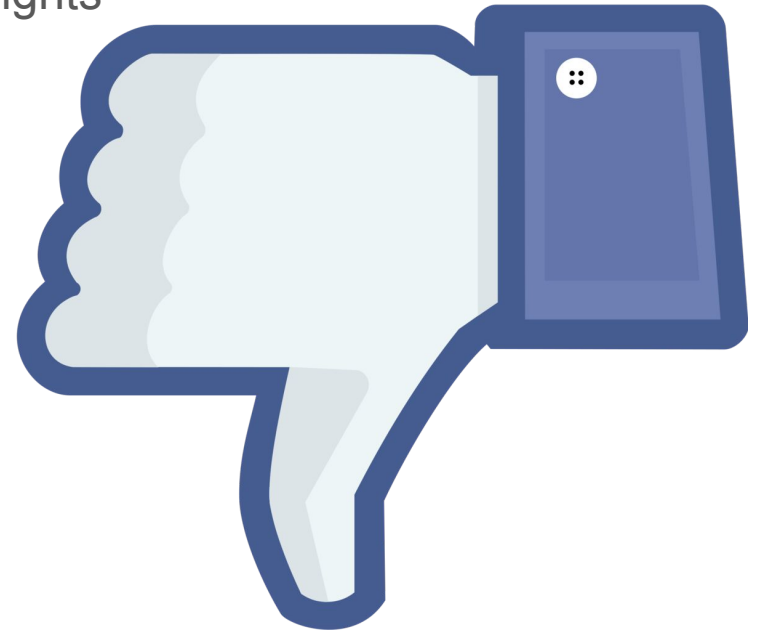
Longer terms

Less flexibilities

Less exceptions and Limitations

Damages increase

No solution for orphan works



In Conclusion (2)

Development Agenda

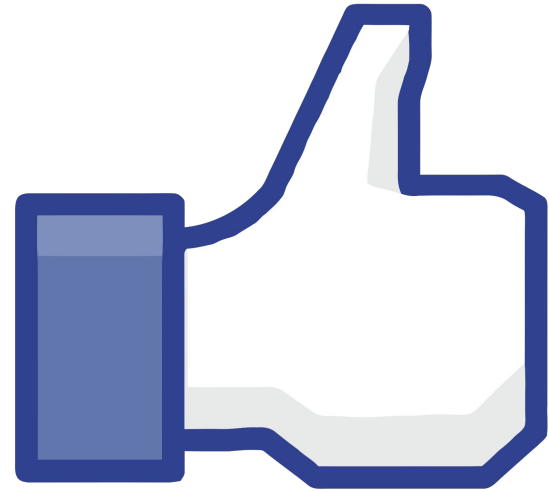
Limitations and Exceptions Agenda

Treaty for the visually impaired

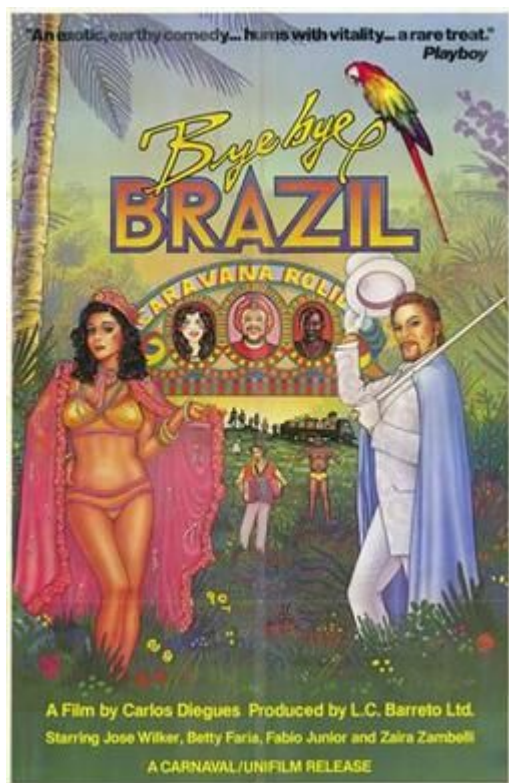
Resale Rights

Update of the Tunis model law

More Access to Knowledge, Culture & Information



Thank you!



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