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**Public Sector Information Reuse and Copyright**

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# Introduction

Intellectual property rights in public sector information (‘PSI’) are an often-overlooked topic in international copyright. The time has come however to reassess whether the international treaties are still fit for purpose. Because compared to when a provision on ‘official texts’ was first introduced in the Berne Convention nearly seventy-five years ago, the number of texts, software, databases, images in the coffers of government has grown exponentially. That growth is due to a multiplicity of factors, notably the broadening of government responsibilities (e.g., in areas such as health, mobility, the environment, education, employment), the growing complexity of modern society and the regulation and legal conflict that comes with it, and the rise of technologies that enable the collection, production and dissemination of information.

It is therefore fitting that the organizers of the 2021 ALAI conference put the topic of public sector information and copyright on the agenda. When the Berne Convention was conceived, what was seen as key public sector information was mostly legislation, judicial and administrative decisions, tied to the classic functions of the ‘night watch state’. Today the public sector collects and produces vast quantities of information. Not just laws and legal decisions, but all manner of statistics, maps, company registers, health data, information derived from monitoring the environment (e.g., emissions, fishing stocks), in transport, education, and cultural fields (e.g., cultural heritage institutions).

In this contribution the focus is on copyright, although much of what is said also applies to neighbouring rights. More specifically, it queries the relationship between copyright and the growing trend worldwide towards allowing citizens and businesses greater access to information held by public sector bodies. Traditionally, access to government information –also known as the ‘right to know’ or ‘freedom of information’—is regarded as an essential instrument for making governments accountable and to empower citizens to participate in political decision-making. In the past two decades or so, there is also a growing recognition by policymakers that enabling businesses, civil society organizations and citizens generally to re-use public sector information for different purposes has societal benefits. The idea is that there is great potential value in the rich information resources that all manner of public sector bodies hold. This potential can be tapped and yield other societal benefits besides enhancing accountability, especially through the development of innovative information services. As a consequence, at national, regional and international level, the idea has taken hold that information held by the public sector must be made available as ‘open data’ whenever feasible.[[1]](#footnote-2) This has implications for any copyright or other intellectual property in public sector information.

This contribution takes a closer look at two global trends that drive the potential for friction between copyright and public sector information: the rise of access to information laws and the rise of re-use and open data policies. It then discusses the current international copyright framework from the perspective of public sector information (‘government works’). It takes on board information given in national reports. The national groups were asked –as part of the theme on Text- and Data Mining (TDM) and Public Sector Information (PSI) in the data economy-- to reflect on how copyright rules and practices led to the development of databases, apps and other services based on government data. Most reports found this question difficult to answer. The information that could be drawn from the national reports is therefore scarce. The contribution concludes by sketching various ways forward.

# Trend: The rise of access to information laws

The importance of rights to access government information has long been recognized. Sweden is famed for being one of the first countries in the world to have a statutory right for citizens to access government information. It dates back to a law on freedom of the press of 1766 which allows citizens access to government information and ensured the freedom to print and distribute it. Colombia seems to have been the second country enacting a right to information, in 1888.[[2]](#footnote-3)

* 1. **National access laws and the human right to freedom of information**

Taking a bird’s eye view of development, one can distinguish roughly three phases in the introduction of access to information laws. Until the mid 20th century (pre–World War II), there were few states with generic access laws. In the second half of the 20th century the modernization of governments went hand in hand with a growth in the number of countries introducing rights to access government information, especially to documents held by the executive branches such as ministries, city authorities and executive agencies. Since the 1990s there has been an explosion of (supra)national laws, as governments recognized the potential of the web and digitization of the public sector mushroomed. Indices that track the quantity and quality of right to information laws reveal that the vast majority of countries now have enacted access rights. Since the mid-nineties (i.e., when the ‘worldwide web’ took off) some 130 states have adopted freedom of information laws, adding to the 20 states that already had them.[[3]](#footnote-4)

Another important reason why it has by now become routine for countries to have freedom of information acts, is that access to information is increasingly recognized as a human (fundamental) right. In the UN context, since 2000 the need for governments to enact effective laws that ensure access to government information is a staple on the wider freedom of information agenda.[[4]](#footnote-5) Key regional human rights courts have recognized a right to access. The Inter-American court on human rights held in 2006 that access to government information is part and parcel of the right to freedom of expression guaranteed by Article 5 of the American Convention on human rights.[[5]](#footnote-6) In a line of cases since 2009, the European Court of Human Rights has developed a right to access government information under Article 10 of the Council of Europe’s Convention on Human Rights (ECHR), which guarantees freedom of expression. It is not the case that under Article 10 ECHR everyone has an unreserved right to access, broadly speaking access needs to be instrumental for the exercise of the right to freedom of expression, and the refusal an unjustified interference.[[6]](#footnote-7) If a person or organization that fulfils a public watchdog function, like the press and certain civil society organizations do, wants to report on a matter of public interest, for which already existing information (e.g. reports, other documents, datasets) held by a public sector body is relevant, then a refusal to grant access constitutes an interference.[[7]](#footnote-8) It can of course be the case that there are legitimate interests against disclosure such as the protection of privacy or national security. To what extent the existence of copyright or other intellectual property rights justifies a refusal to grant access under the ECHR is unclear as there is no caselaw yet on this by the European Court of Human Rights.

**2.2 Copyright as ground to refuse access to public sector information**

At the domestic level, access to information rights tend to be legislated in a variety of instruments and can be very generic in scope or very specific, covering only certain types of documents or certain public institutions. How the potential conflict between copyright in documents and rights to access is resolved varies greatly. Oftentimes, there are no clear rules. National access to information laws typically recognize that intellectual property rights of third parties can justify a refusal. But it is by no means the case that copyright trumps access rights. For example, the Model Inter-American law on access to information sets a two-prong standard for necessity and harm: it must be legitimate and strictly necessary in a democratic society to refuse access where it would harm ‘patents, copyrights and trade secrets’.[[8]](#footnote-9)

The Council of Europe Convention on Access to Official Documents (Tromsø 2009, entry into force 1 December 2020)[[9]](#footnote-10) names in its list of allowed limitations the protection of “commercial and other economic interests” (Art 3 Tromsø Convention). According to the Explanatory report the main purpose of this exception is to prevent unfair competition or harm to (collective) negotiating positions; intellectual property is not mentioned.[[10]](#footnote-11) Arguably, the protection of especially third-party copyright qualifies as an economic interest to be protected. This is not to say that the existence of copyright in a document necessarily justifies a refusal to grant access. In the terminology of Article 3(2) Tromsø Convention, access “may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.” Also, all limitations should be “set down precisely in law, be necessary in a democratic society and be proportionate [to the legitimate aim]” (Art 3(1) Tromsø Convention).

As will be discussed below, international copyright treaties offer little guidance for dealing with the relationship between copyright and public access.

# The rise of re-use laws and the idea of open data

That information or data held by public sector bodies can be accessed under a growing body of freedom of information or right to information laws, does not mean that the information obtained can be used freely. This is where it is important to note a second trend, namely the rise of laws that allow (unfettered) re-use of public sector information for non-commercial and commercial purposes. This development too can be situated in a wider global phenomenon of so-called ‘open government’.

**3.1 The global Open Government Partnership**

Seeing access to information as a vital tool to help realize good governance is not just a matter that is important at the national level. There is an increase in global cooperation. The rise of the global Open Government Partnership (OGP) is a key example. OGP was initiated in 2011 and has since grown steadily. It promotes transparent, participatory, inclusive, and accountable governance through a number of actions and commitments. By 2021, more than seventy states have made concrete pledges to improve transparency and accountability, as have more than seventy local governments. What is special about the OGP is that it also involves all manner of civil society organizations that co-create plans with governments. International organizations like the Organisation for Economic Cooperation and Development (OECD), Organization of American States (OAS), and United Nations Development Programme (UNDP) also endorse and support OGP members and actions.

Several ambitions of the open government partnership are especially relevant from an intellectual property perspective. This is true of the ambition to increase access to information on governmental activities, and to ensure public sector bodies work to pro-actively provide access to so-called ‘high-value information’, i.e., information that is an important resource for many different types of users (companies, civil society, citizens) and has the potential to generate important societal benefits. This includes laws and regulations, core country statistics, digital maps, electoral data, company register data, environmental emission data, meteorological data, etc. Another IP relevant aspect of the open government partnership is that it recognizes the importance of open standards. Ensuring information is available in open formats (i.e., no particular proprietary software is needed to access, read or use the information) makes the information more accessible and easier to work with.

The Open Government Partnership is special in that it is an independent type of international, flexible forum outside of the major existing international organizations. But these too recognize the importance of access to information for citizens. Access to information is now also seen as a necessary tool to achieve the UN’s sustainable development goals. UNESCO initiated the first annual International Day for Universal Access to Information[[11]](#footnote-12) (first one 28 September 2016, since then also adopted by the UN General Assembly) and is an important global forum for the development of policy and guidelines in the field.

**3.2 Open (government) data and open licensing**

Legislation in the field of access and reuse of public sector information is partly informed by notions that have their origins in the open-source software movement and open culture. This is most obvious in the use of open content licensing and the idea of open data. There is no universal definition of open data but a much used one is by the Open Knowledge Foundation, which takes its inspiration from the open-source field. Knowledge, information, or data is “open if anyone is free to access, use, modify, and share it — subject, at most, to measures that preserve provenance and openness.”[[12]](#footnote-13) Data are legally open when anyone can freely access, reuse and redistribute the data, without needing permission from owners of copyright or other intellectual property, and without having to pay for the use. This is what open licenses like Creative Commons (attribution), GNU Free Documentation License and the Open data commons seek to guarantee. Of note, to be regarded as open, data must not just be open in a legal sense, but also in a technical sense. Data are open when they are machine-readable and in open format (i.e., the specifications of the file format in which the data is made available are openly available and anyone can use the file format without having to rely on proprietary software).

Open data or open government data is typically used as a shorthand for a situation where information held by public sector bodies becomes accessible to everyone, to use for different purposes. In reality there can be restraints on who gets to use the data for which purposes, so that properly speaking the data is not fully open. One reason for that is that the information has not necessarily been produced by the public sector itself. For example, it may have been procured, or the providers may be under a legal obligation to provide information as is the case with land registries and company registries in many countries.

That the development towards open government data is a global phenomenon is clear from the variety of countries and international organizations that pursue open policies. Examples are Korea, Japan, Columbia, the EU and its 27 Member States, the US, Canada, United Kingdom, New Zealand, Argentina, and Mexico). At the level of international organizations, the World bank, Organisation for Economic Development (OECD) and UNESCO engage with open government data. WIPO too addresses the topic in some of its meetings,[[13]](#footnote-14) and uses Creative Commons licenses for its materials.

**3.3 EU’s Open data directive**

To clarify what open data laws can look like, it can help to drill a bit into an important instrument in which the development towards ‘open data’ is visible: the EU’s Open data and public sector information directive (EU/2019/1024). It imposes obligations on all twenty-seven EU member states to make information held by public sector bodies available for commercial and non-commercial re-use. The original Directive dates back to 2003 and has become stricter and more detailed, covering a wider range of (semi)public organizations, in the subsequent 2013 and 2019 revisions.[[14]](#footnote-15) From the start, it was informed by the idea that making government information available for re-use is good for the economy as it allows companies to develop new information products and services.

The main characteristics of the Open data directive are that it applies to ‘public sector bodies’ in a broad sense and across all levels of government. All State, regional or local authorities and other bodies governed by public law are subject to the Directive, and a number of its obligations also apply to public undertakings. A few types of public bodies are exempted. An important category are public service broadcasters, which hold a lot of content that is subject to third party intellectual property. Of note, the Directive does not cover information (‘documents’ in the wording of the Directive) in which outside third parties hold copyright or other intellectual property. It does however cover a wide range of information types. Another important characteristic is that it only applies to information that is accessible to the public under domestic or EU law. In other words, the directive does not regulate access to information, only its subsequent re-use. It creates an obligation to allow re-use with as few conditions as possible (with some exceptions). For public undertakings and cultural heritage institutions like libraries, museums, and archives there is no hard obligation to allow re-use.

Although the EU legislator shied away from introducing a clause that explicitly addresses the exercise of copyright or related rights that public sector bodies might own themselves, clearly the Open data directive is meant to regulate their exercise. With respect to the sui generis database rights the Directive goes furthest: public sector bodies may not exercise these in a way that undercuts the Open data directive. Specifically, they are not allowed to invoke their database rights to prevent re-use of documents, or to restrict re-use beyond the limits set by the Directive (Art 1(6) Open Data Directive). Such important limits are set out in Article 7, which provides that re-use “shall not be subject to conditions, unless such conditions are objective, proportionate, non-discriminatory and justified on grounds of a public interest objective.”

A crucial aspect of the Open data directive is that in principle, re-use should be free of charge. This means no royalties or other compensation can be required. Users can be asked however to cover the costs that a public sector body has to make for the supply of information. The justification for charging at most the (marginal) cost of dissemination is that information has properties of a (semi) public good. Especially its non-rival nature makes it economically sound practice to allow re-use.[[15]](#footnote-16) Once information is produced for public task purposes and tax-funded, the subsequent release for alternative uses is held to maximize welfare. [[16]](#footnote-17)

The EU are well aware of their international obligations, so this is made clear in the Open data directive. Article 1(5) provides: “The obligations imposed in accordance with this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention, the TRIPS Agreement and the WCT.” It is of course the case that the Directive aims to severely limit the exercise of copyright and related rights by public sector bodies.

So, what are the international obligations? We turn to them next and then also look at some examples of how contracting states deal with copyright in public sector works.

# Copyright and related rights in information held by public bodies

In international policy making in the field of copyright, the status of governments as owners of rights and of works produced by or for the fulfilment of public interest tasks has never received much attention. The multilateral treaties allow states plenty of room, and as can be gleaned from national laws, public sector information is treated differently in different countries.

**4.1 The Berne Convention and subsequent treaties**

The most pertinent provision remains Article 4(2) Berne Convention (Paris text). It reads: “It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.” This particular phrasing is the outcome of a longer process.[[17]](#footnote-18)

The original Berne text of 1886 was silent on the copyright status of government works. But the realization that unrestricted application of copyright can impinge on democratic processes and on a well-functioning judiciary was there from the beginning. It informed subsequent revisions. Thus, 1928 Rome Act specifies that “The right of partially or wholly excluding political speeches and speeches delivered in legal proceedings from the protection provided by the preceding Article is reserved for the domestic legislation of each country of the Union.” (Art 2bis (1) Rome Act, maintained in Art 2bis Paris Act). With respect to official texts generally, the 1948 Brussels Act made explicit the right of countries to “determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature” (Art 2(2) Brussels Act). Note that this article only speaks of translations. The 1967 Stockholm Act broadened the provision to its current form, which is not limited to translations (Art 2(4) Paris Act 1971).

Under the current international regime, it is thus for states to decide whether they want to recognize copyright protection in official documents and speeches delivered in political or legal proceedings are public domain. One thing that is unclear, is how terms like ‘official texts’ must be read. What type of works does it include, from which branches of the public sector? And can it apply to works produced by foreign authorities? Especially relevant in this regard is that the Berne Convention technically only concerns the protection of works originating from *other* union countries (Art 5(1) BC). It does not purport to regulate the protection of domestic authors and works. This suggests that for their respective territories, states can exclude from protection official texts of foreign origin too.

The WIPO Copyright treaty (WCT 1996) mandates that parties apply the provisions of Articles 2 to 6 of the Berne Convention – i.e., also Article 4(2) ­– in respect of the protection provided for by the WCT. This suggests that there is no obligation for states to safeguard for example a right of communication to the public in government works excluded from copyright or protect government databases or software under copyright.

The treaties in the field of neighbouring rights are silent on the status of protected subject matter produced by public sector bodies and public officials. Presumably, whether sound recordings, first fixations of film, broadcasts etc. attract intellectual property is not dependent on whether the initial owner is a private sector or public sector entity. Traditional neighbouring rights, like rights in phonograms and (music) performances, attach to subject-matter that is not normally created by public sector bodies, so it is not surprising that the international instruments do not address ‘official recordings’. [[18]](#footnote-19) Public sector broadcasting is perhaps the exception. Of note, the definition used in international treaties of what constitutes a recording is so broad that it can in fact include sound recordings (not of music or other performances, but of ‘other sounds’) made by government.[[19]](#footnote-20)

In sum, the international copyright framework seems to leave ample room for diversity, and from a treaty perspective nothing has changed in the past few decades with respect to the protection of public sector information by copyright and related rights.

**4.2 National examples**

The stasis at the international level is mirrored by stasis at national level. Although a lot has been happening in the field of policies that promote opening up and allowing re-use of public sector information, this has not translated into changes in intellectual property law as such. A couple of examples show the diversity in copyright acts that is still there. The U.S. are famed for excluding copyright in works produced by officers and employees of the federal government. Nor can judges or lawmakers claim copyright. By contrast, the U.K. have long had a system of so-called ‘Crown copyright’ and ‘Parliamentary copyright’ which means that any rights in material produced by civil servants, ministers, government departments, agencies in the course of their work, and in materials made by or under the direction or control of parliament rests with the State respectively parliament.

In continental Europe, the Italian copyright act excludes copyright in official acts of state and of public administrations including judicial decisions, and this applies to both Italian and foreign authorities. When the State, regional or local authorities commission the creation of works and publish them, they are presumed to own any copyright in said works (see National report Italy). The implementation of EU directives on re-use of public sector information in Italy has not resulted in explicit coordination of copyright and re-use rules. This is also true in for example The Netherlands. The Dutch copyright act excludes copyright in laws, administrative decisions and court decisions and judgments. The use of other works made public by or on behalf of public authorities is free unless rights have been explicitly reserved. This dual system has gone unchanged since 1912, already the 1881 copyright act had a similar provision. The EU instruments on re-use have been implemented in separate acts and have not led to changes in the copyright act itself. The question is of course whether such a lack of coordination is problematic. To the question what might need to be done and what could be done we now turn, focussing once more on the international level.

# Going forward

To sum up where we are: on the one hand we see rapid global development towards more access to public sector information and towards making reuse for all kinds of commercial and non-commercial purposes easier. This is informed by considerations of democratic accountability and participation, better public service delivery and the development of new information products and services. On the other hand, we have traditional copyright norms that apply to public sector information essentially on the same terms as to other types of works and protected subject-matter. And unless states make explicit choices otherwise, in principle the expansion of copyright and related rights in e.g., exploitation rights, term of protection, liabilities for infringement will apply to public sector information (whether as works or other protected subject-matter) as much as to other subject matter. This means that the potential for friction between access, re-use and intellectual property grows.

Must something be done? In light of the developments sketched above it seems pertinent that at least the topic of interplay between intellectual property and public sector information is put more squarely on the agendas of relevant regional and international policymaking organizations. Considering the existing international copyright framework, one could adopt one of three possible approaches.

The first focuses on self-regulation through licensing. If the problem analysis is such that the lack of clarity on how copyright accommodates rights to access and re-use public sector information is not felt to be problem so significant that it warrants regulatory intervention, then it makes sense to focus on the use of open licensing as a tool to enable better access and re-use. This approach presupposes that it is generally clear when information held by the public sector is subject to copyright or related rights, and that it is also clear who owns such rights.

A second approach would be to try and arrive at a special provision for public sector information in (a modification of) in international copyright law. For example, certain categories of information that are essential in any country based on the rule of law could be exempted from copyright so that such information would be part of the public domain. Certainly, all manner of legislation, court decisions and administrative decisions are clear candidates for such exclusion, as are parliamentary records and electoral records. An exemption for such categories of key information could be coupled with a less far-reaching regime for other information held by public sector bodies, aimed at maximizing access and re-use while safeguarding legitimate public or private interests in protection. Naturally, a more extensive exemption is also an option, whereby information produced for or by public sector bodies would be excluded from copyright and related rights altogether.

A third possible approach would be to focus on drafting user rights, which would allow for example free uses of essential public sector information and non-commercial / public interest type uses of other public sector information. Of course, one could also conceive of a mix of approaches.

To not address the topic in the context of (international) copyright law at all, however, would be to perpetuate the statis of Article 2(4) Berne Convention, with the probable outcome that limitations on the exercise of exclusive rights in public sector information would ultimately be coming from the ‘outside’, e.g., in international or regional right to information instruments. That will likely perpetuate the legal uncertainty that exists today about the copyright status of public sector information. More importantly, it adds a layer of complexity to the international copyright framework since its proper scope and interpretation would be dependent on such other international norms that address access to and re-use of information.

1. See e.g. the open data policy of the World bank (<http://opendatatoolkit.worldbank.org/en/>), OECD (<https://www.oecd.org/gov/digital-government/open-government-data.htm>), UNESCO (<https://www.unesco.org/en/communication-information/open-solutions/open-data>). [↑](#footnote-ref-2)
2. For a history of early access to information laws, see S. Lamble "Freedom of Information, a Finnish clergyman’s gift to democracy" [2002] 97 Freedom of Information Review 2. [↑](#footnote-ref-3)
3. See for example the overview on <https://www.rti-rating.org>. Numbers here are based on the historical data for 2022. <https://www.rti-rating.org/historical/>. [↑](#footnote-ref-4)
4. UN Human Rights Council ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Addendum’, 2010, https://digitallibrary.un.org/record/681124, p. 5; . [↑](#footnote-ref-5)
5. Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression.

Standards for a free, open, and inclusive Internet. 2010; Organization of American States. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10, 2010. [↑](#footnote-ref-6)
6. For a description of relevant cases, see Council of Europe, Guide on Article 10 of the European Convention on Human Rights, chap IX. Freedom of expression and the right of access to State-held information (2022). [↑](#footnote-ref-7)
7. See e.g., ECtHR 3 March 2020, Centre for democracy and the rule of law v. Ukraine, case 75865/11, ECLI:CE:ECHR:2020:0303DEC007586511 [↑](#footnote-ref-8)
8. Para 41. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10, 2010. [↑](#footnote-ref-9)
9. [The Council of Europe Convention on Access to Official Documents](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205) (CETS No. 205, ‘Tromsø Convention’) [↑](#footnote-ref-10)
10. See *Rapport explicatif de la Convention du Conseil de l’Europe sur l’accès aux documents publics*, available at https://www.coe.int/en/web/access-to-official-documents. [↑](#footnote-ref-11)
11. See https://www.un.org/en/observances/information-access-day [↑](#footnote-ref-12)
12. See https://opendefinition.org/ [↑](#footnote-ref-13)
13. E.g. An International conference for least developed and developing countries on copyright and management of public sector information, Nairobi 2019 (WIPO/CR/NBO/2/19). [↑](#footnote-ref-14)
14. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the Re-use of public sector information, OJ 2003, L 345, as revised by Directive 2013/37/EU, OJ 2013, L175 (short title: Public sector information directive); replaced by Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on Open data and the re-use of public sector information, OJ 2019, L172 (short title: Open data directive). [↑](#footnote-ref-15)
15. The other public good aspect is excludability (once produced the good benefits multiple actors because access to it is difficult to control, in the case of information this may be done by keeping it confidential or regulating access and use through contracts or technical measures). Intellectual property rights are an important instrument to artificially create excludability. [↑](#footnote-ref-16)
16. See e.g., studies by M. De Vries et al., Pricing of Public Sector Information. Models of Supply and Charging for Public Sector Information. Final Report. Study for the European Commission, DG Information Society. Brussels: Deloitte Consulting 2011; R. Pollock, D. Newbery & L. Bently, Models of Public Sector Information Provision via Trading Funds. Study commissioned by UK government Department for Business, Enterprise and Regulatory Reform (BERR) and HM Treasury. Cambridge 2008. [↑](#footnote-ref-17)
17. See for a short history (and the Dutch situation), M. van Eechoud, ‘Government Works’. In: P.B. Hugenholtz, A.A. Quaedvlieg & D.J.G. Visser (Eds.). *A Century of Dutch Copyright Law. Auteurswet 1912-2012*, Amsterdam: Delex 2012. [↑](#footnote-ref-18)
18. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome 1961); Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva 1971). [↑](#footnote-ref-19)
19. Rome Convention 1961 defines phonogram as: “any exclusively aural fixation of sounds of a performance or of other sounds” (Art 3(b)) and phonogram producer as: “the person who, or the legal entity which, first fixes the sounds of a performance or other sounds). [↑](#footnote-ref-20)