

Workshop: Dis/Ordering Distribution. Infrastructures, Formats and Practices in the Circulation of Culture

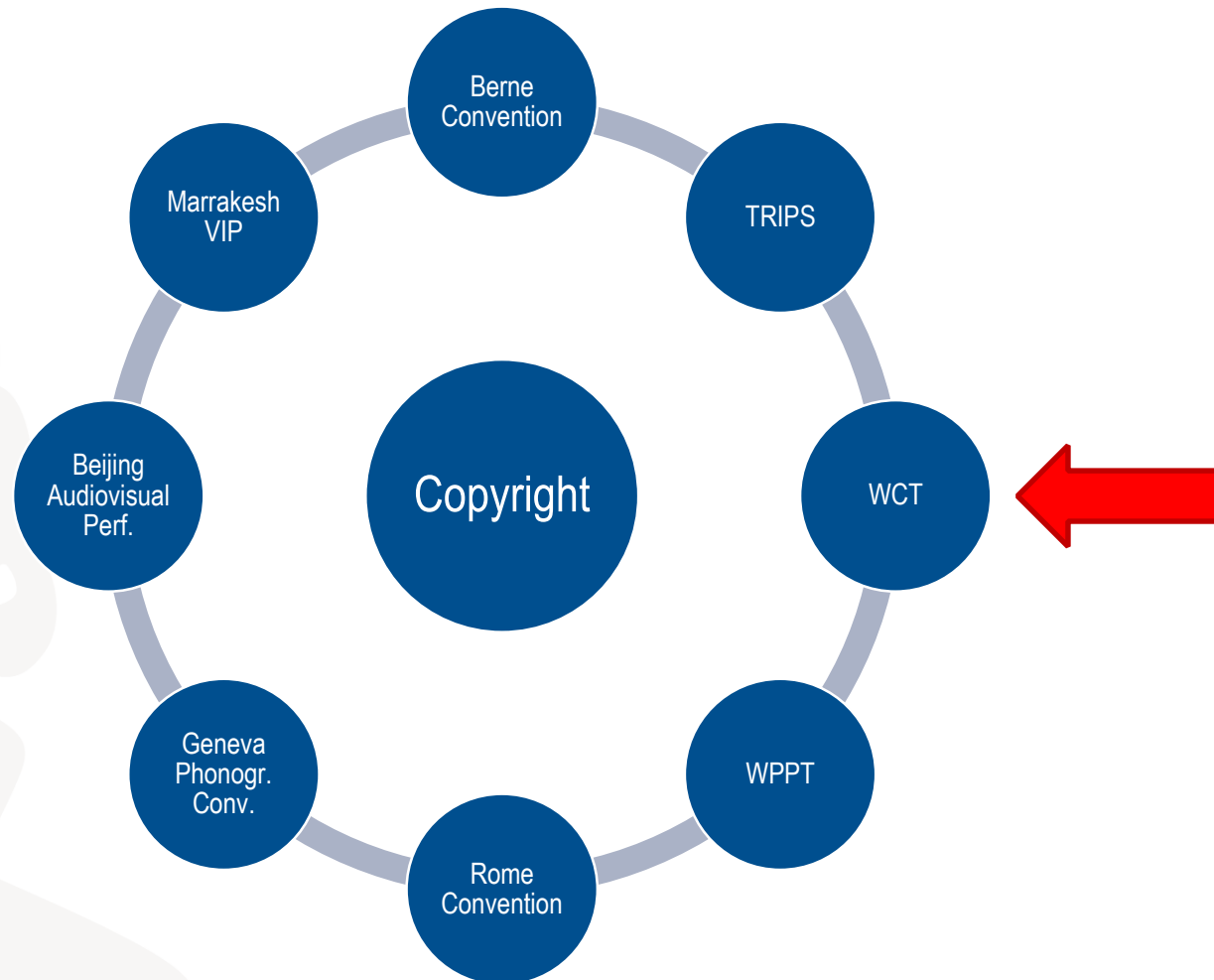
Geoblocking from the Perspective of Copyright Law

Prof. Dr. Alexander Peukert
Goethe University Frankfurt am Main
a.peukert@jur.uni-frankfurt.de

International copyright law basics #1: Territoriality



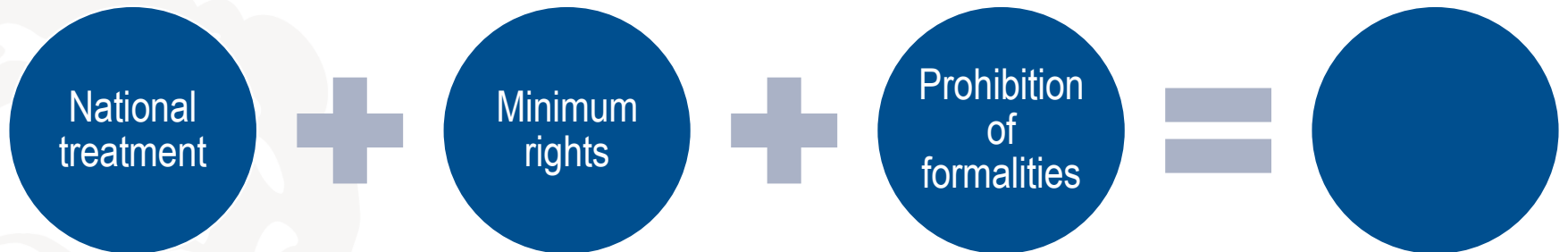
International copyright law basics #2: International © treaties



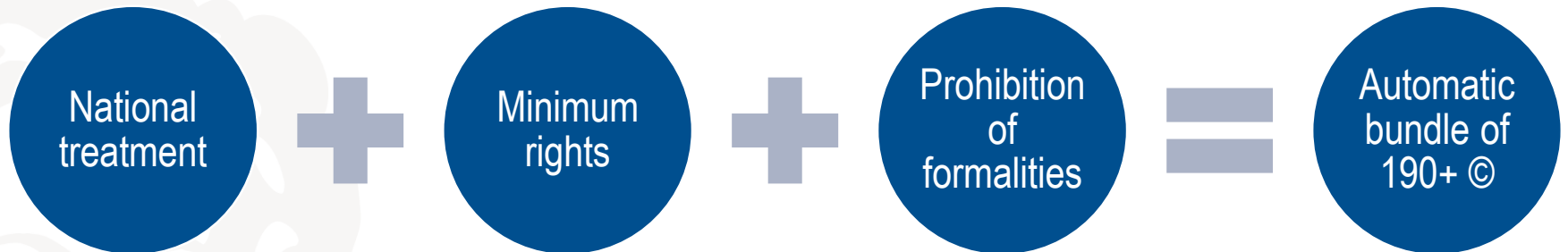
International copyright law basics #3: **The function of international © treaties**

- Leave territoriality intact but mitigate the problems
 - (1) National Treatment
 - (2) Obligatory minimum rights
 - (3) Prohibition of any formalities, Art. 5(2) Berne Convention

International copyright law basics #3: The function of international © treaties



International copyright law basics #3: The function of international © treaties



- The copyright basis for geoblocking:
 - The making available right according to Art. 8 World Copyright Treaty 1996 (WCT):

“... authors ... shall enjoy the exclusive right of authorizing any **communication to the public** of their works, by wire or wireless means, **including the making available** to the public of their works in such a way that **members of the public may access** these works from a place and at a time individually chosen by them.”

The localization of
cross-border acts of
communication to the
public



The localization of cross-border acts of communication to the public

One-to-many (broadcasting)

→ Traditionally where the signal was introduced in a chain of communication (broadcaster domicile)

The localization of cross-border acts of communication to the public

One-to-many (broadcasting)

→ Traditionally where the signal was introduced in a chain of communication (broadcaster domicile)

On demand (making available)

→ From where the content is accessed (user domicile)

- Consequence for uploads on the Internet:
 - Worldwide rights clearing necessary
 - Content providers (e.g. streaming services such as Netflix)
 - Online platforms (YouTube et al)

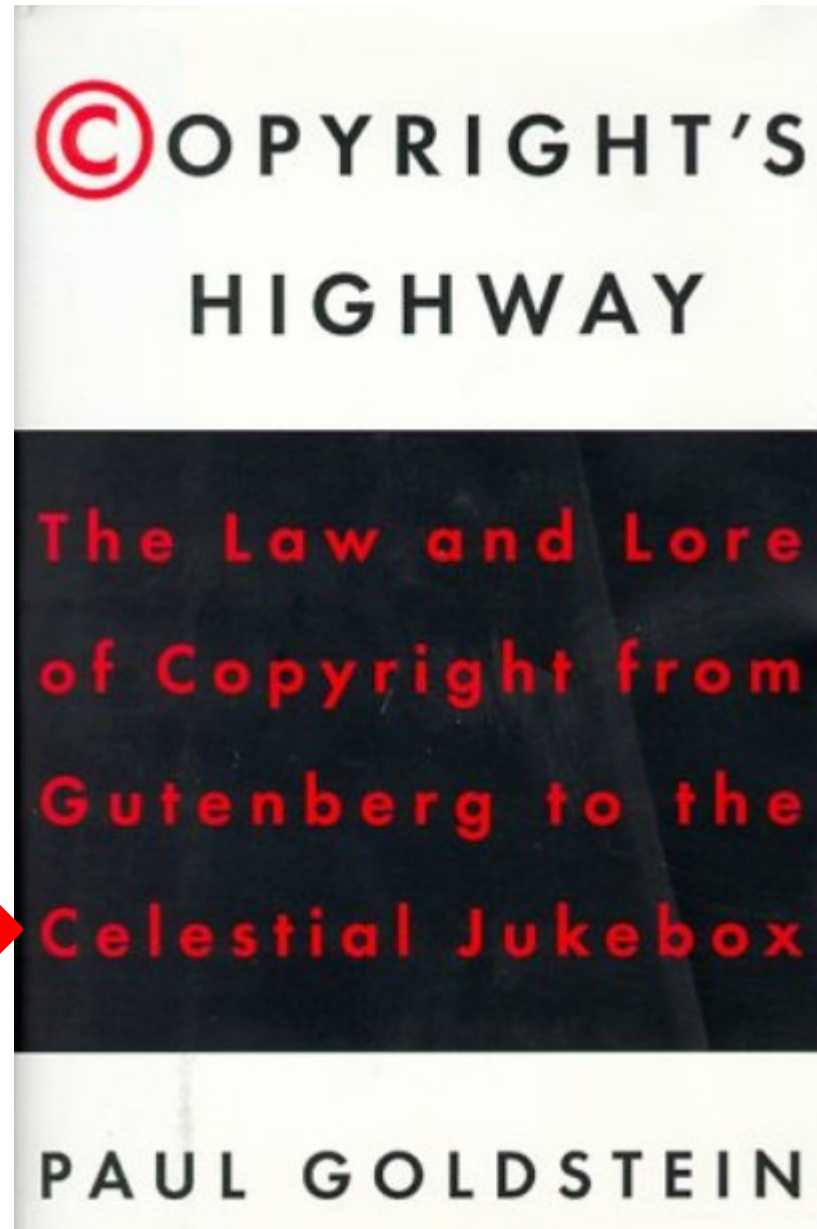
Dieses Video ist in Deutschland nicht verfügbar, weil es möglicherweise Musik enthält, für die die erforderlichen Musikrechte von der GEMA nicht eingeräumt wurden.

Das tut uns leid.



- If uploaders do not hold worldwide rights, they **MUST** geoblock to prevent an infringement in non-licensed territories.
- And: legal protection of geoblocking measures under Art. 11 WCT
 - “Contracting Parties shall provide adequate legal protection ... **against the circumvention of effective technological measures** that are used by authors in connection with the exercise of their rights ... and that **restrict acts**, in respect of their works, which are **not authorized by the authors** concerned or permitted by law.”
 - Geoblocking prevents unauthorized “access”
 - Use of VPNs an illegal circumvention of TPMs?

Economic
reasons for
territorial licensing
and
geoblocking



1st ed. **1994** (!)

Efforts to overcome territoriality and fragmentation **within the EU**

- Cross-border public communication subject only to one member state law („**country of origin**“)
 - Satellite broadcasting (Dir 1993/83)
 - Some online uses permissible under limitations and exceptions (e.g. for non-commercial teaching in secure electronic environments, Dir 2019/790)
- **Cross-border portability** of online content services by subscribers (Reg 2017/1128)

Efforts to overcome territoriality and fragmentation **within the EU**

- Geoblocking Reg 2018/302, Art. 4:
 - “A trader shall not apply different general conditions of access to goods or services, for reasons related to a customer's nationality, place of residence or place of establishment where the customer seeks to ... receive electronically supplied services ...
 - other than services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form;”
- Does geoblocking violate the freedom to access cross-border services and competition law?
 - Fabian Brandt, Diss. Frankfurt am Main 2024, forthcoming.

Efforts to overcome territoriality and fragmentation **globally**

- (-)



- Further reading
 - [Territoriality and Extraterritoriality in Intellectual Property Law, 2012](#)
 - [Copyright and the Two Cultures of Online Communication, 2015](#)
 - [Intellectual property: the global spread of a legal concept, 2015](#)
 - [The Colonial Legacy of the International Copyright System, 2016](#)
 - [Transnational Intellectual Property Governance on the Internet, 2022](#)
 - [WIPO ALERT: A Reason to be alerted?, 2023](#)