THE CULTURAL AND ECONOMIC IMPORTANCE OF COPYRIGHT AND RELATED RIGHTS WITH PARTICULAR REFERENCE TO COLLECTIVE MANAGEMENT

by

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INTRODUCTION

1. For a number of years many countries, including a growing number of developing countries, have recognized and used intellectual property as an instrument of development. In recent years, however, its role and importance have aroused unprecedented interest throughout the world. At present intellectual property is looked upon not only as a legal system for the protection of individual and collective rights, but also as a strategic policy of economic, social and cultural development.

2. The recognition and protection of the rights of authors and other owners of intellectual property stimulate creativity, which in turn results in forms of expression that enrich our world. This is particularly true in the process of transition to the knowledge-based society and economy, in which information and knowledge emerge as new production factors to challenge the main classical economic factors such as land, capital and labor.

3. Indeed knowledge-based industries such as the software development industry have experienced phenomenal growth; the culture and leisure industries now occupy a prominent position; these industries owe their success to creativity, knowledge and information, at the core of which lies the intellectual property system.

4. The promotion, protection and recognition of creative activity strengthen human development.

5. Products and works protected by copyright and related rights laws have very deep impact on each of our daily lives. From the moment we awaken each morning, our lives are in some way affected – the newspapers which we read, the news transmitted via satellite on our television, the music on the radio as we commute to work, the correspondences, documents, research materials we come into or refer to in the course of our work and the very office building in which we spend most of our time (work of architecture). Many of the joys and activities of the after-office hours are equally the subject matter of copyright protection – the movies, videos, television, cable or radio programs, music in the discotheques, night clubs, pubs, bars, piano lounges, the exercise music in the fitness center, for others, the quiet joy of reading a book or magazine or the excitement of 'surfing on the 'net." And finally, as you lay down to sleep, the designs of

your bed and bedsheets may well also be the subject matter of intellectual property protection.

6. To appreciate the economic and cultural importance of copyright and related rights, we need to begin with an understanding of the ambit and scope of those rights.

7. The preamble to the Berne Convention states the desire of countries of the Union to protect the rights of authors in their literary and artistic works. Article 2(1) of Berne provides that the expression "literary and artistic works" shall include:

> *"every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainment in dumb show, musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works, to which are assimilated works expressed by a process analogous to photography, works of applied art, illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science."*

8. These categories of works receive an international protection, which is respected by national legislation of countries party to the Berne Convention. Such legal protection constitutes a pre-requisite basis to the development and expansion of culture at both national and international level. An adequate protection encourages creators to further develop their potential and to enrich the national "patrimoine," it also attracts investment in the development of cultural industries, which in turn contributes to the economic growth of a country including an improvement of the rate of employment.

9. In addition, Article 2(3) makes translations, adaptations, arrangements of music and other alterations of a literary or artistic work protectable as original works without prejudice to the copyright in the original work, and similarly, Article 2(5) extends copyright protection to collections of literary or artistic works such as encyclopaedias and anthologies.

10. As for related rights, the Rome Convention is the starting point. The actual title of this Convention is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations – completely self-explanatory regarding the subject matter protected.

11. They represent three categories of rights owners, who act as intermediary between the creation and the promotion and dissemination of protected works and copyrighted materials. In their own way they do also play an important role in the economic and cultural development.

12. Based on the above descriptions, we can now identify the key industries whose economic well being is either a primary subject matter for the protection afforded by copyright and related rights laws, or indirectly affected. Let us look at some examples of these industries.

	Primary Copyright/Neighboring Rights Industries	Some beneficiary groups of dependent Industries related to Copyright
1	Printing/Publishing	Printing trades persons, library, librarians
2	Music industry	Composers, lyricists, musicians/performers, music publishing, recording companies, concerts or musical promotions
3	Computer/Games software	Computer hardware manufacturers, suppliers and retailers, Internet
4	Arts, photography and related matters	Museums, galleries
5	Radio, television, cable (terrestrial/satellite)	Producers, directors, actors, announcers, advertisers
6	Advertising	Most suppliers of goods and services
7	Films and videos	Producers, directors, actors

ECONOMIC IMPORTANCE

13. The economic significance of copyright and related rights laws lies in the output of the industries listed above (and more). These industries depend directly on the protection provided by copyright and related rights laws. The economic importance of copyright industries in developed market economies has been documented over the years. These copyright industries are becoming all the more important with the rise of the knowledge-based economy.

14. A number of countries have conducted studies that established the share of the Gross Domestic Product (GDP) attributable to the copyright industries as between 3% and 5%.

15. A study was published in early 1994 in the United Kingdom. It was found that the value added to the GDP of the United Kingdom in 1990 (the year of study) by the industries, which were directly dependent on copyright, was 3.6%. Those industries

employed about 800,000 persons. If the output of industries, which are substantially dependent on copyright, is added, the total share of the copyright industries to the GDP is 5.4%. It is of further interest to note that a study by an organization called British Invisibles revealed that the overseas revenues of the music industry alone in 1993 was £1.157 billion with only the spirit distilling and construction businesses boasting better exports.

16. A more recent study by Economists Incorporated for the International Intellectual Property Alliance entitled the 2000 report demonstrates for the ninth straight year, that the US copyright industries continue to be one of the fastest growing segments of the US economy. It details the importance of the copyright industries to the US economy based on three economic indicators:

- value added to gross domestic product
- share of national employment; and
- revenues generated from foreign sales and exports.

17. In 1999, the core copyright industries contributed an estimated U$457.2 billion to the US economy accounting for approximately 4.94% of GDP. This 1999 contribution represents an increase of 10.9% from 1998. Between 1977 and 1999, the value added to GDP by the core copyright industries increased by 360%.

18. Within the US, employment in the core copyrights industries also grew from 1.6% in 1977 to 3.24% in 1999.

19. Foreign sales and exports of the core copyright industries continue to grow rapidly. Preliminary estimates conservatively measure foreign sales of the core copyright industries to be at least U$79.65 billion in 1999. This represents a 15.1% gain over the 1998 sales figure of U$69.21 billion.

20. In Japan, the copyright industries accounted for 2.3% of the GDP in 1998, which is equivalent to the automobile industry. The copyright industries grew at the rate of 5.9%, which is almost equivalent to the growth rate of telecommunications.

21. Although copyright industries are less significant in developing countries, this is likely to change with the growing weight of the knowledge-based service sector in these countries and its importance for their closer integration in the global market economy. According to a 1999 UNCTAD study, the music industry is one of the fastest growing export sectors of the global service economy. The export potential of music is already recognized in some developing countries, such as Brazil and India in addition to its role in the promotion of national culture.

22. International copyright law means that foreign right owners are treated in the same way as national right owners. This principle forms the whole basis for international trade in rights in protected works, for example, in the licensing of computer programs or of publications rights for books. If those rights are not protected in the country where the works are to be used, such trade would be very problematic, or at least the price of legitimate copies would be much higher because the seller/licensor would have no guarantee against unauthorized use of the material.

23. The economic role of the copyright industries in a national intellectual property system is often grossly underestimated, especially in developing countries where the focus is normally fixed on the possible outflow of revenues to foreign right owners and the possible adverse impact on a country's balance of payments.

24. Moreover, the establishment of collective management societies has also contributed in no small part towards the creation of a new and growing economic activity in developing countries – the music publishing industry. Revenues generated by collective management organisations generally account for approximately 40% of a music publisher's income.

25. Another very important economic outcome has been that both collective management organisations and the music publishing industry generate new jobs for countries as well as introduce new knowledge and skills.

26. All of these also result in new income sources for the respective governments. Working on simple assumptions that the average costs of administration of a collective management organisation are 16%, and that governments can retain up to 10% from the royalties.

27. In concluding on this aspect a special parenthesis should be opened on the devastating effects of piracy. Indeed, the crucial problem of piracy represents a threat to the economy of developing countries. The estimated loss of the scourge of piracy is reaching, per year, 4.5 billion US dollars in the field of music. Piracy is concerning both CDs and Internet. Other sectors, like computer software, suffered huge losses, over 12 billion US dollars in 1999. One software application out of three is pirated. It goes without saying that the impact and dramatic consequences of piracy are not limited to the core copyright industries per se. Some negative effects can also be identified in the employment field resulting in job losses in the sectors related to core copyright industries.

CULTURAL IMPORTANCE

28. The economic importance of copyright protection has irrevocably led to the issue being integral to trade talks worldwide. As satellite broadcasts, telecommunications, data networks, multimedia and the Internet become ubiquitous and come to rule our lives, the issue of copyright protection and the economic importance of copyright can only become more important. It will also be a focal point in trade friction.

29. However, we should not underestimate or forget about the cultural dimension of copyright protection. Copyrighted materials like television programs, films, and music, have substantial cultural significance.

30. What constitutes culture? The Oxford Reference Dictionary defines it as the customs and civilization of a particular people. What do we normally associate with the value system customs and civilization of a people? Culture reflects the common meanings of a society, whether presented as a common language, visual images, or traditional forms of performance. Its music, drama, plays, ancient and modern architecture, philosophical and political thought espoused through the mass media of television and radio, books and magazines. All these help shape our thinking, thought processes, knowledge and understanding. It also molds each of our cultures. Every single item which has been identified, as a constituent of a people's culture is a subject matter protected by copyright and related rights. Hence, the importance of the relationship between copyright and a country's culture.

31. Composers, writers, musicians, singers, performers and other talented individuals are among society's most valuable assets. The fabric of our cultural lives is enriched by their creative genius. In order to develop their talent and encourage them to create, we have to give those individual incentives, namely remuneration in return of permission to make use of their works.

32. Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of owners of rights. Collective management organizations are an important link between creators and users of copyrighted works (such as radio stations) because they ensure that as owners of rights, creators receive payment for the use of their works.

33. Collective management provides an opportunity for investment in cultural development. The establishment of a special fund which is around 10% of the income generated prior to the distribution to right owners can be assigned by the members of a collective management society to cultural development in the form of grants or prizes or fellowships for young talents.

THE IMPACT OF RECENT NEW TECHNOLOGIES

34. In the last 10 years, there has been an exponential growth in the number of technological means, which can produce and disseminate protected copyright works. Satellite and cable transmissions technology have made it possible to broadcast or communicate works to populations on a scale and with a quality which would have been impossible just a few decades ago. One CD-ROM can now store 300,000 pages of literary works or a combination of literary, musical and artistic works. It was reported that with the help of a form of so-called molecular storage, the whole Library of Congress could in the future be stored on one single A4-size sheet. Computer programs and databases have made possible storage of enormous quantities of protected works and other information, which can be assessed, easily from anywhere in the world. Electronically stored documents and other information can be transmitted and printed ("electrocopying") and documents need not any more be printed or published; they can be stored in an information database and from there delivered electronically ("electronic publishing" and "electronic delivery").

35. These new technologies have significant economic importance:

(i) They provide new ways for exploiting works.

(ii) They lead to requests for new rights and raise new questions about the permissible scope of the limitations allowed on the exclusive rights (The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)).

(iii) They provide easier access to works than before they make possible mass use of works.

36. All these technological advancements will continually test the limits of copyright protection. The economic importance of copyright will pile on and the impact of a global village brought on by new technologies will test accepted norms and lead to new levels of global interactivity.

37. The economic and cultural importance of copyright and related rights protection is never greater in the context of recent technological advances.

