Handbook on Creators' Rights

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Table of Contents

What is Copyright?

Legal meaning of copyright

Copyright is a legal term describing the rights of creators of literary and artistic works. The purpose of copyright law is to protect "original expression" when it has been fixed in tangible form such as in a book, film or CD, but it does not protect ideas. Copyright arises automatically upon the creation of a work and lasts for the life of the author plus fifty (50) years.

The economic tools the Act provides are sometimes described as "negative rights" because the power they give the creator is the power to prevent others from taking certain actions. This includes reproducing the work, performing it in public, publishing, adapting, or translating it, communicating it to the public by telecommunication, or authorizing any of these acts. The creator, or copyright owner, can permit any of this to take place in exchange for payment, which is why these are called economic rights.

There are also certain rights associated with particular kinds of work, such as the public exhibition right for visual art, the rental right for computer programs and sound recordings, and the "neighbouring" rights for performers' performances in sound recordings and communications signals. Economic rights can all be assigned or licensed to others to administer and exploit; they expire at the end of the term of protection.

Moral rights include: the right of paternity (which the author can exercise by claiming authorship, by remaining anonymous, or by using a pseudonym); of integrity (which allows the author to prevent the work from being distorted, mutilated or modified to the prejudice of his or her honour or reputation); and the right to prevent the use of a work "in association with products, services, causes or institutions in ways which are prejudicial to the author's honour or reputation". In Canadian law, while moral rights cannot be assigned they can be waived in whole or in part. Unlike an assignment of copyright, this waiver does not have to be in writing. They also expire at the end of the term of protection.

Coverage

The works covered by the Copyright Act include literary works such as novels, poems, plays, film scripts; musical compositions, choreography, artistic works such as paintings, drawings, prints, photographs and sculpture; architecture, sound recordings, broadcasting and some performances. These have been added to since the Act was first passed in 1921, and court rulings have clarified the limits of protection in some cases. The most significant recent additions were the inclusion of computer programs in 1988, and performers' performances in 1997.

There are a number of situations where public policy considerations have led to limitations on the exercise of authors' rights. In general these "exemptions" in the Act are intended to facilitate scholarship and criticism (termed fair dealing), certain process in the broadcasting system (ephemeral recordings), the preservation of original artistic works, and the rendering of works into alternative formats for their use by people with disabilities.

In addition to ideas, there are a number of things which are not given protection under the Copyright Act and which are considered to be everybody's property which is to say, in the public domain. These include most titles, slogans and similar phrases or aphorisms, or themes, methods or techniques, and factual information.

Originality

The key criterion for copyright protection is that the work be "original". Originality does not mean that a work must be unique, one of a kind, unlike anything else, but rather that it be an original expression of the author, and not a copy of another work.

The explanation of one American jurist, Judge Learned Hand in 1936 is often quoted as a definition: *"Borrowed the work must not be for the plagiarist is not himself pro tanto an "author"; but if by some magic a man who has never known it were to compose anew Keat's "Ode on a Grecian Urn", he would be an "author", and, if he copyrighted it, others might not copy that poem, though they might of course copy Keat's."*

Ownership

Copyright in a work belongs in the first instance to the creator. Subsequently, it may be licensed or assigned, for example, to producers, publishers, and distributors who manufacture and market the work. If a work is produced during the course of employment as part of the employee's duties, however, the law stipulates that the rights are the employer's. Similarly, if a photograph, portrait, engraving or print is commissioned, the person ordering the work and paying for it is deemed to own the copyright, unless there is an agreement to the contrary. There are thus two kinds of copyright owners operating in the cultural sector, corporations or businesses and individual creators.

In some countries, in order to have copyright protection a work must be registered. In Canada, when someone creates a work, it is automatically protected under the Copyright Act so long as the creator is Canadian or is resident here, or in a country which is a

signatory to the international conventions, such as the Berne Convention, to which Canada belongs.

Rationale

Copyright law has two basic justifications, the "incentive" and the "dessert" approach. The first conceives of copyright as an incentive to creativity and the second sees it as the just reward for individual labour. There are also two very distinct philosophic roots involved which are evident in the different regimes that have developed in North America and in continental Europe. These are generally known as copyright and droit d'auteur regimes.

Anglo-American copyright systems have a primarily utilitarian logic. In return for enriching the public, creators are allowed to reap some of the fruits of their creative labours. But the monopoly thereby granted by the state is temporary, and the law expresses an interest in protecting the public's right to copyright material in the long term through the concept of the public domain. Hence copyright's concern with "balance". In public policy terms this can be understood as the tension between individual rights and public freedoms, that is between the property rights of individuals and the right of society to its cultural heritage and to the freedom of information.

The Continental system is based on the concept of the *droit d'auteur* as the "natural and inalienable" right of individual creators. The interests of creators are paramount, not those of the public, and moral rights are central. Moreover, these are deemed to be human rights, attached to the individual creator. They indicate that besides being a product or service or a performance, a creation is connected to the person of its creator. Behind the painting, the text, or the film, lies the reputation of its author.

Brief history of Copyright

The word copyright came into being as a reference to the sole right of The Stationers' Company to copy texts, first enacted in the second half of the sixteenth century in England. The Stationers' Company was a London-based booksellers' cartel that enjoyed a legislative monopoly over the trade in books in exchange for assistance in the suppression of "seditious" and "blasphemous" texts.

An idea akin to the modern notion of copyright was developed in fifteenth century Venice, presaging the Industrial Revolution when creations were imbued with unprecedented social and economic value. The first such legislative award was made in 1486 to historian Marc Antonio Sabellico. The grant of copyright protection by Venetian authorities was meant to compensate inventors and stimulate invention. In 1545 the Venetian Council of Ten demanded that booksellers secure written proof that their publications had received authorial consent.
Copyright as we know it in Canada began in 1710 with the enactment in England of the Statute of Anne. Prior to this, publishing was regulated by means of the Licensing Act, which required all books be registered with the Company of Stationers. Thus copyright was not introduced to deal with concerns of authors, but to regulate the trade in books and to assuage the concerns of the booksellers and printers. The mention of the rights of

authors in the preamble had more to do with window dressing than substantive protection.

The preamble stated: *Whereas Printers, Booksellers and other persons have lately frequently taken the Liberty of printing, Reprinting and Publishing or causing to be Printed, Reprinted and Published Books and other writings without the consent of Authors or Proprietors of such Books and Writings to their very great Detriment, and too often to the ruin of them and their families…*

With the Statute of Anne came a time limit on the rights of authors: 21 years for the books already on the Stationers' Register, and up to 28 years for new books. It also introduced the concept of the public domain, a commons that encompasses documents and material of all kinds no longer protected by copyright. Regardless of ownership, once the term of copyright expires, intellectual property becomes the property of everyone. The physical embodiment of it may continue to belong to individuals or institutions, but the intellectual property (IP) falls into the public domain. However, if a new work is created which incorporates a work that is in the public domain, a film of *Hamlet*, say, the new work is protected in the normal way.

The enactment of this statute meant that two authorities governing the rights of authors existed in England: common law (the law created by decisions of judges), and statute law (the law created by legislation). The decisive case came in 1769 with the judgement in *Millar v. Taylor*. Millar was a London-based bookseller who brought the suit for copyright infringement against Taylor, a rival bookman who had published "The Seasons", a poem Millar "owned". Millar grounded his case in common law arguing that he had purchased the rights to the poem in perpetuity. Taylor based his defence on the Statute of Anne claiming that Millar's copyright had run its course and the poem was in the public domain.

The judge decided in favour of common law and Millar saying, "*It is just, that an author should reap the pecuniary profit of his own ingenuity and labour. It is just, that another should not use his name without his consent. It is just that he should judge when to publish, or whether he will publish. It is fit he should not only chose the time, but the manner of publication, how many, what volume, what print. It is fit, he should choose to whose care he will trust the accuracy and correctness of the impression…"*

The Millar Decision in favour of authorial rights stood for only five years. It was overturned in 1774 in the case of Donaldson v. Beckett (Donaldson being a pirate publisher, and Becket being an author) which established the notion of the balance of interests between creators and users in copyright.

Brief history of the droit d'auteur

Moral rights came into being in France in eighteenth century. The moral rights theory holds that a creator is a sovereign individual and therefore his/her work is sovereign and must be so respected. The UN Declaration of Human Rights states that *"Everyone has the right to the production of moral and material interests resulting from scientific, literary or artistic production of which he is the author"* in Article 27 (2) This is

balanced by article 2 (1) which states that *"Everyone has the right to freely participate in the cultural life of the community to enjoy the arts and to share in its benefits."*

The Berne Convention, the first multilateral agreement on copyright which came into being in 1886, enacted a moral rights clause at its Rome Congress in 1928. Article 6 bis states, *"Independently of the author's economic rights, and even after the transfer of said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work which would be prejudicial to his honour or reputation."*

In 1931 Canada became the first of the copyright countries to enact a moral rights clause in its domestic legislation. The moral rights clause, Section 12 (5) was adopted by Canadian legislators as a preliminary to this country's ratification of the Berne Convention. In fact, paternity and integrity rights of authors of dramatic and operatic works and musical compositions had been recognized by the Criminal Code, enacted in 1915 (Section 508B). Furthermore, Quebec's Theatrical Performance Act, passed in 1919, provided for the protection of the moral rights of authors along the lines of the Criminal Code's S. 508B, including penal sanctions for the violation of those rights.

In 1988, the High Court of Ontario ruled in favour of artist Michael Snow, who brought a suit against the Eaton Centre in Toronto claiming that his moral rights had been infringed when red Christmas ribbons were tied around the necks of the flock of Canada geese that form his distinctive sculpture. In March 2002 the Supreme Court of Canada issued a decision in the case of Montreal artist Claude Théberge. The Court was asked to determine the extent to which an artist can control an authorized reproduction of a work used or displayed by a third party purchaser. The Court ruled against Théberge saying that "respect must be given to the limitations that are an essential part of the moral rights created by Parliament", accusing him of trying "to assert a moral right in the guise of an economic right."

The Copyright Debate and the Information Society

With the advent of the Information Society, the knowledge-based industries came to be viewed as the cutting edge of economic growth in the industrialized West. Digitization and the Internet have already revolutionized the cultural industries and transformed the means of the production and distribution of art. At the same time, the new technologies and the new media have also inspired a debate about the fundamentals of copyright.

In the United States an opposition has formed to the demand by the cultural industries for an ever lengthening term of copyright, and for tighter controls on the dissemination of cultural property. This apparent drive to "lock up" copyright material through the expansion of legal rights is seen as compromising free speech (the First Amendment of the American Constitution) and as siphoning material from the public domain. Copyright is also accused of being an inefficient monopoly, and erroneously based on economically abundant intangibles.

This latter argument holds that the infringement of an author's copyright is not theft because the good involved is not economically scarce. If a computer is stolen, then the

owner is deprived of something real and tangible. When copyright is infringed, the aggrieved author continues to own the intellectual property. In fact, the owner of the book or photograph or recording could destroy the artefact (and has the right to do so), but this would in no way affect the author's copyright.

Some critiques of copyright, especially those concerning the MP3 file sharing controversy, take a technological determinist position. The Internet exists and would seem to defy national borders -- not to mention most security and tracking systems – therefore copyright is obsolete. However, technology has always outstripped the means artists have had for tracking use of their work, and extracting legitimate fees for it. (It took twenty years and a change in the Copyright Act, for writers and publishers to catch up with photocopiers, for example.)

While the defiance against copyright, expressed by fans as well as some musicians, can be understood as a consumer revolt against the high prices of CDs, some of it is related to the grassroots resistance to the top-down control of talent by the recording industry. Some is also inspired by concern for the public interest in the free flow of information, and in the existence of a healthy and robust public domain. The privatization of information in databanks, the repackaging of public domain material and material acquired through statutory exemptions attracting new copyrights, and the compiling of cultural material in private archives, are examples of the ways producers are speculating in IP.

The attempt to pare down creators' rights, to separate moral rights from economic rights rights (see the Théberge decision of 2002), and to designate some rights as related to trade and some not (see the TRIPs), has encompassed a challenge to the romantic notion of the author as solitary genius. As some critics frame it, "A person who creates something out of nothing is pure mythology". The implication is that no artist is the sole creator of any work.

What is Traditional Knowledge?

> "Traditional knowledge exists. Intellectual property is invented."

The term "traditional knowledge" is derived from the earlier longer term "traditional knowledge, innovations and practices" and encompasses a broad range of Indigenous knowledge ranging from ancient stories, traditional agricultural, biodiversity-related and medicinal knowledge, and various other forms of Indigenous knowledge that has been referred to as "folklore." The protection of traditional knowledge (TK) is of great concern to Indigenous peoples and is progressively taking centre-stage in global discussions concerning intellectual property and trade in various forums such as UNESCO, WIPO, TRIPS and ILO conventions.

There are several reasons for TK issues' move to the forefront. A growing number of countries (and peoples) believe that up to now they have not derived great benefits from "traditional" forms of intellectual property although their cultures are rich with traditional knowledge. Some of these groups would like to protect and benefit from these resources; meanwhile, at the same time, several major corporations would like to develop and market them. While pharmaceutical and biotechnological companies are looking at ways to exploit Indigenous medicinal knowledge, plants and other resources that are often found in Indigenous cultures and developing countries, the Internet is progressively allowing creators of folklore or folklore-based copyright material to disseminate their material worldwide at low cost.

Traditional knowledge raises serious challenges for the current intellectual property (IP) system, which some say is unable to respond to the concerns of the TK holders. The main reasons TK often does not fit into the IP system are: firstly, that expressions of folklore and several other forms of TK often cannot qualify for protection because they are too old and are, therefore, supposedly in the public domain; secondly, that the author of the material is often not identifiable and there is thus no "rights holder" in the usual sense of the term; and, thirdly, that TK is owned "collectively" by Indigenous groups and not "individually." There is also a lot of TK material which is clearly unfit for public domain or external protection in any form; including ancient ceremonies, spiritual beliefs, methods of governance, languages, human remains and biological and genetic resources in their natural state. It is also important to note that Indigenous peoples have numerous internal cultural protocols associated with the use of TK.

Such discrepancies between TK and the IP system have led certain academics and Indigenous peoples to reject the current system in its entirety. Some have argued that the protection of traditional knowledge requires the establishment of an entirely new system. In the developing literature and discourse, this proposed new system is usually referred to as "*Sui Generis* Protection." The challenge of protecting traditional knowledge forces intellectual property experts to think about what intellectual property actually is. An "intellectual property-like" system could be adopted, but this would beg the question of what it is, if not intellectual property. In other words, why is it not intellectual property? The TK/IP interface forces us to re-evaluate intellectual property fundaments. The central

question in this debate is, can we make intellectual property a truly global system recognizing various forms of traditional creations and innovations and grant some protection to collective rights holders?

There is clearly a perceived need to legislate a *sui generis* system to match identified needs of TK holders. On the other hand, some would argue that resorting to a *sui generis* system should be a solution of last resort, because it usually indicates that instead of finding out why the system does not work, a "tailored" system is legislatively put in place without necessarily thinking about its impact on the existing system. In order to avoid stretching the current IP canvas beyond what is reasonable, a *sui generis* regime could be established and extended through a new international instrument. This could happen much more easily once countries most advanced in the consideration of this issue have adopted and tested certain forms of protection of TK and shown that these new forms of protection actually work and meet the needs and expectations of TK holders.

What is the TRIPs Agreement ?

The escalating value of intellectual property and its increasing economic importance to the pharmaceutical industry and agriculture as well as the e-commerce in cultural goods prompted the United States to spearhead a move for a multilateral agreement protecting economic rights in intellectual property. The efforts to secure such an agreement were begun in the late 1980s during the Uruguay Round of the GATT negotiation. They culminated in 1994 with the **Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement** . The Agreement sets an international standard for IP protection, and set up a TRIPs Council to monitor the situation world wide and to report on the non-compliance of Members.

Some Fact about the TRIPs Agreement: *

- It is set out in Annex 1C of the 1994 Marrakech Agreement establishing the World Trade Organization (WTO).
- It came into force on January 1, 1995.
- It applies to all members of the WTO.
- It is backed by the same dispute settlement rules that govern other WTO agreements. The breach of these rules can result in retaliatory measures including sanctions.
- It sets up the first global regime extending IP rights to plants and animals or "microbiological processes". These can be effected either through patents or an "effective sui generis system" or both, and it is left to individual countries to decide whether or not to patent life.

The TRIPs Agreement is described as one of the three "pillars" of the World Trade Organization (WTO), the other two being the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). According to the WTO, the TRIPs attempts to narrow the differences in the way intellectual property rights (IPRs) are protected and enforced around the world. The TRIPs binds signatory countries to the provisions of the international conventions on IP including the Berne Convention on Copyright, the Paris Convention on industrial property, and other agreements covering trademarks, geographical indications, and trade secrets. In addition to defining minimum standards for IP protection, the agreement requires parties to provide fair and effective judicial procedures, and remedies for rights-holders claiming infringement.

To "National Treatment" (NT), which has been the basis of copyright law for many decades, the TRIPs adds the "Most Favoured Nation" (MFN). Both principles are to be found in most WTO agreements. The first requires that Members not discriminate against foreign property owners but provide the same protection to citizens of signatory countries as to their own nationals. The second requires that any new or preferential treatment accorded another country be immediately and unconditionally granted to all Members.

The TRIPs came about because of the pressing need to "promote effective and adequate protection for intellectual property rights and to ensure measure and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade". So states the preamble to the Agreement which also emphasizes the need to reduce trade distortions and to recognize IPRs as private rights serving the "underlying public policy objectives of national systems of protection of intellectual property, including developmental and technological objectives". Historically, IPRs have not been burdened with objectives other that the protection of creators' rights and the public interest in access to information and cultural heritage.

In Article 7, the Agreement goes further in stipulating that "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligation."

What Are Intellectual Property Rights (IPRs) ?

IP rights are exclusive rights accorded to individuals over their intellectual creations. There are two basic kinds of IP rights:

1. Copyright and related (neighbouring) rights which encompass the rights of creators of literary and artistic works, as well as those of some performers, producers of phonograms and broadcasting networks, and since 1988, writers of computer software. Copyright is distinguished from other forms of IP by the inclusion of moral rights which attach to the person and reputation of the author/artist.

2. Industrial property includes trademarks and geographical indications, patents, industrial designs and trade secrets. These rights typically are owned by corporations.

Copyright in the TRIPs

TRIPs expands international copyright rules to cover rental rights.
TRIPs, for the first time in international treaty, gives performers the right to prevent unauthorized recording, reproduction and broadcast of their live performances for a minimum of 50 years.
TRIPs includes computer programs as "literary works".
TRIPs outlines protection for databases.
TRIPs excludes moral rights.

Unresolved issues

The TRIPs Council continues to grapple with issues relating to the patent ability of life forms and to traditional knowledge (TK), and there continue to be "conflicts" between the TRIPs and the Convention on Biological Diversity (CBD) on these issues. As the Doha Declaration of 2001 makes evident, there is a rift between developed nations and the least developed countries (LDC)s; their interests in IP diverge significantly. The Council is also dealing with proposals about extending protection for geographical indications from

wines and spirits to other products. Geographical indications (GIs) refer to the association of a product with a particular geographic region, the quality, reputation or other characteristics of a that product is primarily attributable to the region. (Champagne with the Champagne region in France, for example.)

Patent ability of life forms is covered under Article 27.3 (b) of the TRIPs. Many countries, notably Brazil and India are demanding a revision of this provision to include the requirement that patent applicants disclose the source of origin of genetic material and relevant traditional knowledge, and provide evidence of fair and equitable benefit-sharing, and prior and informed consent. A proposal submitted by Brazil (and backed by China, Cuba, Dominican Republic, Ecuador, India, Pakistan, Thailand, Venezuela, Zambia and Zimbabwe) calls on the TRIPs Council to provide "positive" protection for traditional knowledge, including among other things, an international instrument that would have TK protection enacted in national laws.

The same countries want the Convention on Biological Diversity to be given priority over the TRIPs as a means of preventing "biopiracy". They argue that while the CBD recognizes the collective rights of indigenous and local communities, the TRIPs imposes private intellectual property rights over them. Allowing the TRIPs to be paramount means environmental issues are subordinated to the interests of the transnational corporations whose main motivation is profit. The U.S , the European Union and Japan are strongly opposed to this. Another unsolved matter is the CBD "observer ship" issue. India, Brazil and others continue to press for the TRIPs Council to grant observer status to the Secretariat of the Convention on Biological Diversity. The United States opposes this stating that the CBD does not have a broad interest in TRIPs issues. Meanwhile, observer status has been granted to the African Regional Intellectual Property Organization and the Gulf Co-operation Council.

What is WIPO ?

The World Intellectual Property Organization (WIPO) is a specialized Agency of the United Nations that co-ordinates the work of several constituent "unions" including the Paris union on industrial property and the Berne union for the protection of literary and artistic work. The Convention establishing WIPO was signed in Stockholm, Sweden in 1967 and was amended in 1979.

WIPO grew out of the United International Bureau for the Protection of Intellectual Property, better known by its French acronym BIRPI. Formed in 1893 as a union of the Paris and Berne agreements, the BIRPI dissolved in 1967 to make way for the launch of the World Intellectual Property Organizations. **WIPO**'s mandate is "to promote the protection of intellectual property". To that end, the it administers 23 IP treaties. (In its day, BIRPI administers a total of four.)

Originally a club of fifty-one industrialized countries, **WIPO** elected to join the UN system in 1974, and thus opened itself to universal membership. Its threefold mission since then has been to help member states create multilateral standards, to assist developing countries design and administer national IP laws, and to serve the membership by administering the treaties. Significantly, **WIPO**'s service to patent applicants under the Patent Co-operation Treaty (PCT) has become a major source of income, lessening its dependence on members contributions, and buying it independence few UN agencies have. **WIPO** offers legal, technical and other forms of assistance to it members, especially the least developed.

WIPO is headed by a director-general, currently Idris Kamil. It is based in Geneva, Switzerland.

Objectives

The objectives of **WIPO** are
(1) To promote the protection of intellectual property through co-operation among states and, where appropriate, in collaboration with any other international bodies;
(2) To ensure administrative co-operation among Unions.

How WIPO Works

Membership in **WIPO**, which is limited to states, is open to the following:
(1) Any State that is a member of the Paris Union for the Protection of Industrial Property, or the Berne Union for the Protection of Literary and Artistic Works;
(2) Any State that is a member of the United Nations, or any of the UN's Specialized Agencies, or of the International Atomic Energy, or that is a party to the Statute of the International Court of Justice;
(3) Any State that is invited by the **WIPO** General Assembly to become a member State of the Organization.

To become a member of **WIPO**, a State must deposit an instrument of ratification or accession with the Director -General in Geneva. There were 178 States are members of **WIPO** 2002**.**

Millennium Declaration: Concerning the value of intellectual property, **WIPO**'s Policy Commission states in its Millennium Declaration that *"Intellectual property has historically been, and continues to be, a major and indispensable element in the progress and development of all mankind."*

"Intellectual property rights are an essential and integral part of any legal framework that intends to regulate on an equitable basis the civil behaviour of creators and users and so provide universal protection for the interests of all."

WIPO IN NUMBERS

No. of Member States	179
No. of Accredited NGOs	172
No. of treaties administered	23
No. of copyright treaties	6

What are the WIPO Treaties?

The WIPO treaties were concluded in 1996 after a five year process of discussion and negotiation. They came into being because of the need to update copyright law, the Berne Convention having last been revised in 1971. More specifically, because of the need to deal with digitization which was not covered in the TRIPs. The WIPO Copyright Treaty (WCT) and the WIPO Phonograms & Performances Treaty (WPPT) were intended to adapt existing standards and copyright systems to the new media, the internet in particular.

They achieve this through a new right of Communication to the Public which includes the right of "making available to the public on demand", and through the protection of rights management systems and technological devices aimed at the circumvention of piracy. The new rights contemplate the Internet by clarifying that material may be made available to the public in such a way that it can be accessed by individuals at times and places chosen by them. The technical provisions have to do with protecting security systems and copyright information which would make the distribution of protected material, and its use, feasible in cyberspace.

The WIPO Phonograms & Performances Treaty (WPPT)

The **WPPT** came into force on May 20, 2002. "The new treaty will protect musicians and the recording industry from the threat of piracy posed by the Internet and other digital technology", said WIPO Director General Dr Kamil Idris at the time. According to WIPO, the **WPPT** will "considerably improve the protection of performing artists and producers by providing the legal basis to prevent unauthorized exploitation of their performances, whether live or recorded, or phonograms, on digital networks".

The **WPPT** updates the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the major existing related rights treaty.

The **WPPT** is the first international treaty to recognize the moral rights of performers. These include the rights to be identified as performers and to object under certain conditions to distortions, mutilations or other prejudicial modifications of performances.

WIPO Copyright Treaty (WCT)

The **WCT** entered into force on March 6, 2002. According to WIPO, the **WCT** is one of two Internet treaties that "lay down the legal framework to safeguard the interests of creators in cyberspace and open new horizons for composers, artists, writers, and others to use the Internet with confidence to create, distribute and control the use of their works within the digital environment". The **WCT** was negotiated by 60 countries at a Diplomatic Conference in Geneva in 1996. The West African nation of Gabon became the thirtieth signatory to WCT in December 2001, paving the way for the Treaty to come into force. Among the "major players" only Japan and the US have ratified the WCT. Canada has yet to ratify the treaty.

The International Federation of Journalists (IFJ), the world's largest journalists' association, is not happy with the **WCT**. IFJ General -Secretary Aidan White says "the copyright system is based on the expropriation of creators' rights". White favours the continental authors' rights system which gives more protection to creators.

What is UNESCO ?

UNESCO, the United Nations Educational, Scientific And Cultural Organization, is a specialized agency of the United Nations. It was created in the wake of the Second World War, with the idea that *as wars were begun in the minds of men* the task would be to *construct defences of peace in the minds of men.* As the founders declared, this peace was to be founded upon the intellectual and moral solidarity of mankind.

UNESCO pursues its goal by promoting collaboration among nations through education, science, culture and communication. The UNESCO constitution was signed in London in November 1945 and came into force one year later. Canada was a founding member of **UNESCO. UNESCO** has its headquarters in Paris, France and its membership body now stands at 188 Member States and 6 Associate Members..

UNESCO purpose is "to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world without distinction of race, sex, language or religion by the Charter of the United Nations."

UNESCO's work ranges from literacy programs to the preservation and restoration of cultural and historic sites and monuments. The Organization's Associated Schools Project (ASP) us very well known around the world. Launched in 1953, the ASP's promote education for international understanding. UNESCO is also heavily involved in the co-ordination of scientific investigation in many different parts of the world.

UNESCO's history is not without controversy. The rise in number and influence of Third World countries, the anti-colonial struggles world wide, and the debate surrounding the proposals for a New World Information Order and New World Economic Order in the seventies led to several defections. Portugal withdrew in 1972 and returned in 1974. The United States walked out in 1984. Great Britain left in 1985 and only returned in 1997. Singapore withdrew in 1985 and has not returned. Late in 2002, the U.S. President indicated in a speech to the UN General Assembly that the U.S. was prepared to rejoin the world body.

How UNESCO Works ?

The **General Conference** is UNESCO's governing body and is made up of the entire membership. The GC meets every two years. The Executive Board comprises 58 representatives of member states and is responsible for carrying out the decisions taken by the General Conference. The EB meets twice annually. The Secretariat is UNESCO's executive arm. It is headed by the Director-General, who is elected for a six -year term. Koïchiro Matsuura is the current holder of the post of Director-General. UNESCO is staffed by more than 2000 civil servants.

Universal Declaration on Cultural Diversity

UNESCO's Universal Declaration on Cultural Diversity was adopted at the Organization's thirty-first session, held from 15 October to 5 November, 2001. At the time, **UNESCO**'s Director-General expressed the hope that the text of the UDCD will one day "acquire as much force as the Universal Declaration on Human Rights".

Article 1 of the UDCD states in part, *"cultural diversity is as necessary for humankind as biodiversity is for nature".* Article 5 states,

> "Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Art. 27 of the Universal Declaration of Human Rights and in Arts.13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms"

The International Covenant on Economic, Social and Cultural Rights was adopted by the United National General Assembly on December 16 ,1966. Article 13 address the right to education, Article 15 addresses the right to take part in cultural life, and Article 15 recognizes of the right of everyone "to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic productions of which he is the author"

Article 27 of the **UN Declaration of Human Rights** states,

"Everyone has a right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

What is the WTO ?

The World Trade Organization (**WTO**) is the only international agency overseeing international trade. The **WTO** came into being in 1995 as the successor to the **General Agreement on Tariffs and Trade** (GATT) which was created in 1948 in the aftermath of the Second World War. The GATT as part of the Bretton Woods Agreements that also established the World Bank and the International Monetary Fund. Its creators viewed international trade as a way to stimulate economic growth and as a means to achieve international peace and co-operation.

The **WTO** is responsible for administering dozens of international trade agreements and declarations which are specific to certain areas of commerce, from agriculture to copyright protection. In addition, the **WTO** operates as a forum for trade negotiations, monitors national trade policies and handles trade disputes.

How the GATT Worked ?

The GATT operated on the basis of "trade rounds", a prolonged series of meetings which sought resolution on a given number of problems. A trade round was a "package" approach to trade negotiations which favoured an issue-by-issue agenda. The first GATT Round resulted in 45,000 trade concessions affecting approximately one fifth of world's trade.

The GATT's main impetus was the reduction of customs tariffs and related trade obstacles. By the time the **Tokyo Round** opened in 1973, some of GATT's "contracting parties" (there were no members) had already come to see a contradiction between the Organization's way of doing business and the trade and economic realities of the time. This realization set off muted calls for fundamental reform.

Tokyo was followed by the **Uruguay Round** which ran from 1986 to 1994, during which talk about fundamental reform of the GATT intensified, and resulted in the birth of the **WTO**. The instrument that brought the **WTO** into existence was signed at Marrakech, Morocco, on 15 April 1994. The scope of the new organization was described as follows, "*The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement. (*Article 11).

The WTO and the GATT: Key Differences

- The GATT was loosely organized around a provisional legal agreement. The **WTO** is an organization with a permanent agreement. It is located in Geneva and run by a secretariat of approximately 500 trade bureaucrats and officials.
- The GATT was made up of "contracting parties". The **WTO** has "members" and is ostensibly run by its member governments, or "parties".
- The GATT applied only to trade in goods. The **WTO** deals with goods, services and the trade-related aspects of intellectual property rights.
- Unlike the GATT, the **WTO** has a binding dispute settlement mechanism.

How the WTO Works ?

Ministerial conferences constitute the **WTO's** decision-making body. Ministerial conferences are convened every two years, at least. To date, the **WTO** has held four Ministerial Conferences: Singapore (1996), Geneva ('98), Seattle (99), Doha (2001). The Fifth Ministerial Conference is slated for September 2003 in Cancun, Mexico.

The General Council is the **WTO's** top, day-to-day, decision making body. It meets regularly.

The Trade Negotiations Committee (TNC) is responsible for co-ordinating the trade negotiations authorized by the Doha Development Agenda (DDA). The October 2002 meeting of the TNC was the first to be chaired by the new Director-General Supachai Panitchpakdi. The DG seemed very concerned over the slow pace of the negotiations. He told the meeting: "*A successful outcome for the Doha Development Agenda is essential for the future of our societies. A larger degree of openness and predictability in international relations can only come about if we have the same set of rules and if we set our sights on similar objectives The Doha Development Agenda was launched in a world economic situation which was widely regarded as being weak. It has not improved since then, and the outlook is uncertain in many ways. This is why it is even more important to deliver on this Round. The future prospects of many, many people depend on it.*"

Functions of the WTO (as stated in the Marrakech Agreement)

1.The **WTO** shall facilitate the implementation, administration and operation, and further the objectives of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for implementation, administration and operation of the Plurilateral Trade Agreements.

2. The **WTO** shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The **WTO** may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference. [Article 111]

DOHA Conference

The **WTO** held its Fourth Ministerial Conference in Doha, Qatar in 2001. The Doha Declaration that was issued at the end of the meetings provides a mandate for negotiations on the following 21 subjects: implementation, agriculture, services, market access (non-agriculture), intellectual property, investment, competition, transparency in government procurement, trade facilitation, anti-dumping, subsidies, regional agreements, the environment, e-commerce, small economies, trade, debt and finance, trade and technology transfer, technical co-operation, least -developed countries, special and differential treatment.

The Doha Conference issued a separate Declaration on the TRIPs Agreement and Public Health. This Declaration was instigated by the developing countries; it does not alter the text of the TRIPs Agreement, but it provides guidance for interpreting the Agreement and it reaffirms the right of poor countries' to use their public health safeguards to the fullest.

The Declaration states that the TRIPs Agreement "does not and should not prevent Members from taking measures to protect public health". It affirms that Members have the "right to protect public health and, in particular , to promote access to medicine for all". Paragraph 3 of this Declaration states, "*We recognise that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices."*

The Declaration on TRIPs and Public Health speaks to the question of parallel importing (or exhaustion). Parallel importing involves the importation of goods subject to intellectual rights via channels that have not been authorized by the rights holder. The U.S. is a opposed to the practice. Paragraph 5d of the Declaration says: *"The effect of the provisions in the TRIPs Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion (parallel importing) without challenge, subject to the MFN [most favoured nation] and national treatment provisions of Articles 3 and 4*.

The Fifth Ministerial Conference of the WTO

September 10-14th 2003. The Cancun Conference is expected to

(1) take stock of progress, provide any necessary political guidance**,** and take decisions as necessary
(2) take decisions by explicit consensus on modalities of negotiations on "Singapore issues" [investment, competition, transparency in government procurement, trade facilitation].
(3) receive reports from the Trade & Environment Committee, the General Council, and the Director-General.

WTO Facts

Established: January 1,1995
Headquarters: Geneva, Switzerland
Membership: 144 countries (as of 2002)
Director General: Supachai Panitchpakdi

What is The Creators' Rights Alliance ?

Mission Statement

The Creators' Rights Alliance (CRA) / L'Alliance pour les droits des créateurs (ADC) is a coalition of national artists' associations and collectives responsible for managing authors' rights, which is devoted to the defense, the promotion and the protection of the interests of Canadian creators in relation to intellectual property. We are the writers, visual artists, directors, composers and musicians, and other authors and performers working in all disciplines and media, whose creative expressions not only reflect Canada to Canadians and to global audiences, but challenge us to think about what we can become. The Alliance is organized around the principle that creators' rights are fundamental to Canadian society.

The mandate of the CRA is to advance, protect and strengthen the economic and non-economic interests of Canadian creators, to study issues raised by trade policy and international treaties, to increase creators' awareness and understanding of their economic and moral rights and to strengthen these rights consistent with Article 27 (2) of the UN Declaration of Human Rights, and in the carrying out of these purposes to co-operate and exchange information with organizations representing creators' in other countries.

We share with our colleagues in the International Network for Cultural Diversity (INCD) and the Coalition for Cultural Diversity (CCD) a concern about the consequences of trade agreements on the ability of the Canadian government to implement cultural policy and measures to support creators, producers, distributors, exhibitors and heritage institutions. We will work together to achieve an international convention that will provide a permanent legal foundation for measures which promote cultural diversity, in addition to developing other necessary strategies to protect creators' rights.

Our Objectives

1. To ensure that government policy and legislation recognize that copyright is fundamentally about the rights of creators.

2. To ensure that international treaties and obligations to which Canada is signatory provide the strongest possible protection for the rights of creators.

3. To convince decision-makers and the public that intellectual creation is part of the culture of a country by definition, and that the exchange of intellectual creation is not the same thing as trade in goods and services.

4. To ensure that the creation and/or implementation of any new rights do not prejudice the existing rights of creators.

5. To work for the inclusion of the moral rights of creators in the TRIPs Agreement.

6. To ensure that a rights regime protecting Traditional Knowledge is devised and implemented internationally.

7. To ensure that all tribunals dealing with the rights of creators include representatives from the creator community.

8. To educate and inform our memberships.

The CRA works in defense of creators' rights on a number of fronts :

- contact with groups within Canada (our constituency/communities)
- connection internationally with creators' groups
- representation at meetings and conferences on IP issues convened by groups such as the INCD (International Network for Cultural Diversity), the CCD (Coalition for Cultural Diversity), the CCA (Canadian Conference for the Arts) and similar bodies
- consultation with appropriate people in the Canadian government (and related provincial ministries)
- participation at conferences and meetings of other organizations and in other sectors where the rights of creators are implicated (e.g. conferences on digital issues)
- building of a communication network
- (speakers bureau)
- education within Canada of our communities
- outreach to prospective constituencies

Members of the Creators' Rights Alliance / Alliance pour les droits des créateurs

Association québécoise des auteurs dramatiques (AQAD)
Association des Réalisateurs et Réalisatrices du Québec (ARRQ)
Centre de musique canadienne au Québec
Conseil des métiers d'art du Québec (CMAQ)
Regroupement des artistes en arts visuels (RAAV)
Société des Auteurs de Radio, de Télévision et de Cinéma (SARTEC)
Société du droit de reproduction des auteurs, compositeurs et éditeurs de musique du Canada (SODRAC)
Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)
Société québécoise de gestion collective des droits de reproduction (COPIBEC)
Union des artistes (UDA)
Union des écrivaines et des écrivains québécois (UNEQ)
Société de auteurs et compositeurs dramatiques (SACD)

Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)
American Federation of Musicians (AFM)
Canadian Artists Representation/Front des artistes canadiens (CAR/FAC)
The CAR/FAC Collective
Canadian Association of Photographers and Illustrators in Communications (CAPIC)
Canadian Actors' Equity

Canadian Music Center (CMC)
Access Copyright
Canadian League of Composers
Directors Guild of Canada
Guild of Canadian Film Composers (GCFC)
League of Canadian Poets
Literary Translators Association of Canada
Playwrights' Union of Canada (PUC)
Periodical Writers' Association of Canada (PWAC)
Professional Photographers of Canada
SOCAN (Society of Composers, Authors and Music Publishers of Canada)
Songwriters Association of Canada (SAC)
Writers Guild of Canada
The Writers' Union of Canada
The En'owkin Center
Imaginative Media Arts Festival
Mi'kmag Grand Council

Contact information

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Téléc. : 1-514-596-2953
Courriel : mbeauchemin [au] cra-adc [point] ca

www.cra-adc.ca

Links

International / Multi-national Organizations

EU (EUROPEAN UNION): **htpp://europa.eu.int**

COMMONWEALTH : **www.thecommonwealth.org**

LA FRANCOPHONIE (ORGANISATION INTERNATIONALE de La FRANCOPHONIE): **www.france.diplomatic.fr/francophonie**

OAS (**ORGANISATION OF AMERICAN STATES): www.oas.org**

OECD (ORGANISATION FOR ECONOMIC DEVELOPMENT AND COOPERATION): **www.oecd.org**

UN (UNITED NATIONS) : **www.un.org**

UNESCO **(** UNITED NATIONS EDUCATIONAL, SCIENTIFIC & CULTURAL ORGAN.): **www.unesco.org**

UNCTAD **(** UN CONFERENCE ON TRADE AND DEVELOPMENT**): www.unctad.org**

UPOV **(** INTERNATIONAL UNION FOR PROTECTION OF NEW PLANT VARIETIES): **www.upov.int**

WIPO (WORLD INTELLECTUAL PROPERTY ORGANISATION): **www.wipo.org**

WTO (WORLD TRADE ORGANISATION) **www.wto.org**

International IP Organizations

American Intellectual Property Law Association (AIPLA) **www.aipla.org**

Asia -Pacific Intellectual Property Association (APIPA) **www.apipa.org.tw**

Asociacion Interamericana de la Propiedad Industrial (ASIPI) **www.asipi.org**

Association Litteraire et Artistique Internationale (ALAI) **www.alai.org**

Campaignie National des Conseils de la Propriete Industrielle (CNCPI) **www.cncpi.fr/html/index.htm**

Copyright Society of the USA (CSUSA) **www.law.duke.edu/copyright/index.htm**

Federation Internationale des Conseils en Propriete Industrielle (FICPI) **www. ficpi.org/ficpi**

Indigenous Peoples Biodiversity Network (IBIN) **www.ibin.org**

Interamerican Copyright Institute (ICI) **www.iidautor.com**

International Intellectual Property Alliance (IIPA) **www.iipa.com**

Intellectual Property Resource Institute Australia (IPRIA) **www.ipria.org**

Intellectual Property Rights and Indigenous Peoples Rights and Obligations **www.inmotionmagazine.com**

Intellectual Property Owners Association (IPOA) **www. ipo.org**

South African Institute of Intellectual Property Law (SAIIPL) **www.saiipl.org.za**

World Intellectual Property Law Agency (WIPLA) **www.wipla.com**

World Intellectual Property Organisation (WIPO) **www.wipo.org**

International Creators' Rights Organizations

Creators' Rights Alliance (UK) **www.creatorsrights.org.uk**

National Writers Union (U.S.) **www.nwu.org**

American Society of Journalists and Authors **www.asja.org**