

Understanding Copyright and its Relevance to the Economy

WIPO - ITC Regional Training Seminar:
**Assessing the Economic Contribution
and Performance of Creative Industries
to National Economies**

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What is Copyright

- Copyright law which grants authors and other creators of works of the mind (literature, music, art), certain rights to authorise or prohibit, for a defined limited time, certain uses made of their works
- Automatic Protection
- Originality
- Expression vs. Idea

Related Rights /Neighbouring Rights

Rights of:

- Performing Artistes who perform copyright works
- Producers of phonograms/ sound recordings
- Broadcasters

Rights granted are similar to those granted to authors of literary and artistic works and like those, last for a limited period of time.

Development of Copyright

- Anglo American System
 - “Copyright” : prevent copying of books and other printed material and to protect the owner of this right against all unauthorized reproduction by others
 - 1709 Statute of Anne
 - Article 1, Section 8, of the US Constitution, whereby Congress has the power “*to promote Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their Respective Writings and Discoveries.*”

Development of Copyright

- Continental European System
 - Genesis : 2 decrees in France in 1791 and 1793, during the French Revolution
 - “Authors right” : authors were granted property rights in their works -nobody was allowed to reproduce the works or perform them in public without their authorization;
 - Right originates in the act of personal creation, akin to a "human right." Arises upon creation, no need to be fixed in tangible medium.
 - United Nations Declaration of Human Rights Art. 27(2) provides that: *"Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."*

International Framework

- National Laws which apply in territory of enactment
- In order to promote dissemination of works beyond national boundaries international protection is necessary
- ***Berne Convention for the Protection of Literary and Artistic Works***, of 1886
- Rome Convention – neighbouring rights
- ***TRIPS Agreement*** – copyright and “related rights”
- WIPO “Internet Treaties”
 - WCT
 - WPPT

Rationale for Protection

- Financial reward for creativity and investment in creativity
- Stimulus for intellectual creativity
- Encourage wide dissemination to the public for the benefit of society as a whole
- Balance 2 competing interests:
 - Right of creator vs. Benefit of society

What is Protected ?

- “Literary & Artistic Works”
- Includes:
 - Computer programmes & databases
 - Applied art
- Anglo American system includes:
 - Phonograms/ sound recordings
 - Broadcasts
- Original works and “Derivative” works
- Fixation vs. Creation

Who is Protected?

- First owner: individual author
- Works *made for hire*:
 - Employment contract; or
 - Commissioned
- Sound recordings & Audiovisual works
 - Producer : creative vs. executive

What Rights are Protected?

- **Economic Rights** - have pecuniary value:
 - The right to *reproduce* the work;
 - The right to *communicate the work to the public* by means of, public performance or communication to the public by broadcasting or by wire or through “on-demand-services”;
 - The right to *make translations, adaptations, arrangements or other transformations* of the work
 - The right to *distribute or import* the work

What Rights are Protected?

- **Moral Rights** – personal to the author:
 - *Paternity* right;
 - *Integrity* right
- USA:
 - limited rights granted to visual artists
 - Protected by contracts
- In some jurisdictions:
 - Inalienable
 - Perpetual

Limitation of Rights / Exceptions

- “Three-Step” Test
- Fair Use or Fair Dealings
- Examples:
 - making single copies of published works for personal and private use;
 - quotations, if they are compatible with fair practice and are made only to an extent which is justified by the purpose;
 - use of works as illustrations for teaching;
 - use of works in the context of reporting of current events;
 - reproduction, under certain conditions by public libraries and archives;
 - use in the media of articles or broadcasts on current events

Term of Protection

- Copyright = *lifetime of the author plus 50 or 70 years after the year of his or her death*
- “Berne” minimum = 50 years p.m.a.
- USA & EU = 70 years p.m.a.
- Related or neighbouring rights = 50 years from first publication, fixation or broadcast

Commercial Exploitation

- Transfer of rights in return for financial payment:
 - Assignment
 - Licence : *exclusive or non-exclusive*
 - Contract
 - Royalty = rent
- Management of Rights:
 - Individual (by contract)
 - Collective (music, sound recordings, text & images)

Enforcement

- Criminal sanctions
- Civil remedies
- Border measures
- Enforcement vs. Facilitating commercial exploitation ?
 - Foreign Direct Investment
 - Local Investment
 - Encouraging local entrepreneurship
 - Development of local industry
 - Export earnings

Digital Environment

- Digital copies:
 - Ease
 - Multiple
 - Perfect
- Threats
- Opportunities
- Digital Divide
- Digital Rights Management : control of access & copying

Copyright & Economic Growth

- Economic output:
 - Capital
 - Labour
 - Knowledge
- Economic Policy:
 - Knowledge – inventiveness & creativity
 - Development of Human Capital
 - Foreign Direct Investment & Transfer of Technology or Know How
- *Does Strong Copyright System = Economic Growth???*

Copyright Industries

- Printing & Publishing of books, newspapers, magazines etc.
- Music recording, live performances , songwriting & music publishing
- Broadcasting; Film , television & video production
- Advertising; Photography; Graphic Arts
- Theatrical production; Carnival
- Visual Arts
- Architecture
- Computer software

Economic Benefits

- Income-generation
- Contribution to GDP
- Employment creation
- Export earnings ?
 - Net exports of royalties vs. development of local industries
- Social & Cultural Benefits :
 - Cultural diversity – local content
 - Human Development



***We need the data to prove the value of
copyright industries to our national &
regional economies!***

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