



INTERNATIONAL
INTELLECTUAL
PROPERTY
INSTITUTE

Copyright, Culture and Development: The Role of Intellectual Property and of WIPO in the Cultural Industries

Discussion Paper Prepared by Hon. Bruce Lehman

**A presentation to the Policy Advisory Commission of the World Intellectual
Property Organization (WIPO)
Beijing, China**

May 22, 2002

© IIPI

At the end of the twentieth century, it is conventional wisdom that a nation's wealth and influence may be measured through its "cultural industries," which can be broadly defined to include the publishing, film, audiovisual, and music industries. But two hundred years ago, such conventional wisdom seemed neither conventional nor wise. In fact, in 1776, Adam Smith wrote in *The Wealth of Nations* that the labor of performing artists "perishes in the very instant of its production." Accordingly, Smith felt that the work of musicians, actors, and singers created little wealth for a country.

At the beginning of the twenty-first century, few any longer doubt the importance of the creative industries as a source of national wealth. Creative industries in today's information-based, global economy constitute an important source of national wealth and international competitive advantage. That is clearly demonstrated in the world's largest economy, the United States of America. In 2001, core copyright industries contributed an estimated \$535.1 billion to the U.S. economy, accounting for approximately 5.24% of GDP.¹ From 1977 to 2002, the value added to the United States' GDP by the core copyright industries increased at an average annual rate of 7.01%.² During the same period employment in the U.S. copyright industries more than doubled to 4.7 million workers, increasing nearly three times as fast as the annual rate of the

¹ The core copyright industries include movies, television programs, home videos, business and entertainment software, books, music and sound recordings. International Intellectual Property Alliance [hereinafter "IIPA"], *Copyright Industries in the U.S. Economy – The 2002 Report*, 3 (2002) http://www.iipa.com/pdf/2002_SIWEK_FULL.pdf.

² *Id.*

economy as a whole.³ Copyright industries contribute more to the U.S. economy and employ more workers than any other single industrial sector, including chemicals and allied products, motor vehicles and motor vehicle equipment and parts, aircraft and aircraft parts, agricultural products, electronic components and accessories, and computers and peripherals.⁴

Copyright-based industries are flourishing not just in the United States, but also around the world. For example, 2,132 films and television dramas were produced in India in 2000, the most in any nation.⁵ According to Andersen Consulting, the Indian film industry will double by 2006, growing steadily at a compound annual rate of 15% to reach an anticipated value of \$1.03 billion (Rup 50 billion).⁶ India however is merely illustrative of the fact that the film industry is truly a global industry, as evidenced by the geographical dispersion of the top ten film producing countries as of 2000: India (2312 productions), the U.S. (2051 productions), Japan (807 productions), France (535 productions), Hong Kong (423 productions), Philippines (383 productions), Italy (303 productions), United Kingdom (269 productions), Spain (245 productions), and Bangladesh (195 productions).⁷

The growth of cultural industries is not limited to motion pictures. The music industry is an important culture industry requiring relatively small capital investment. Within that industry, we are witnessing a cross-migration of styles – and revenue – among the nations of the planet. The notion that only U.S. or English music appeals to consumers is being proven incorrect. Commercially successful music is no longer just the Beatles, Beethoven and Michael Jackson. Today a whole generation of African and Latin American artists are gaining popularity in Europe and North America. Well known examples of commercially successful African artists include: Salif Keita, Soda Stereo, Milton Nascimento, Angelique Kidjo and Baaba Maal. All of these artists rely on copyright and neighboring rights to protect their ability to earn a living from their music. In 1999, then-U.S. Secretary of Commerce William M. Daley took note of such opportunities in an address to WIPO member states. He told the delegates:

We need to change some attitudes. Too many people have the view that emerging economies cannot benefit from intellectual property rights on the Net – that this is only important to developed countries ... The fact is, the Internet can help African singers more than it can help Madonna. I say that because today consumers can go to a record store in Washington and buy Madonna – but maybe not find the music of African singers. Yet with the Internet, suddenly African singers' works are available – and suddenly these artists could sell music to people everywhere.⁸

The key idea to take from these examples is that copyrights have great potential for assisting in the establishment and flourishing of cultural industries in developing countries,

³ *Id* at 4.

⁴ *Id*.

⁵ Patrick Frater, *India's Film and TV Industry Set to Double by 2006*, ScreenDaily.com (Mar. 17, 2002) <http://www.screendaily.com/story.asp?storyid=7654&st=india&s=3>.

⁶ *Id*.

⁷ *Local Industries Boost World Film Production*, Screen Daily.com (Jan. 7, 2002) <http://www.screendaily.com/story.asp?storyid=6910&st=india&s=3>.

⁸ Secretary of Commerce William M. Daley (United States), *Keynote Address*, at the World Intellectual Property Organization Conference on Electronic Commerce (Sept. 14, 1999) [hereinafter "WIPO E-Commerce Conference"] <http://ecommerce.wipo.int/meetings/1999/papers/daley.html>.

including film, music, literature, and broadcasting. To capture the economic value of these industries for local development, developing countries need to establish appropriate intellectual property infrastructures. Such infrastructures include not only modern intellectual property legal protections and efficiently managed national intellectual property offices (coordinated with agencies responsible for international trade), but also national collecting societies to facilitate the transfer of benefits to creators and performers.

Cultural workers such as writers, composers, and performers also stimulate business opportunities for others. For instance, artists create opportunities for the small businesses that thrive as distributors and retailers of music, books and videos. Also, the music sales statistics from Latin America. According to the International Federation of Phonogram Industries (IFPI) sales of recorded music in Latin America totaled \$2.4 billion and from 1991 through 1998, the annual growth rate of the industry average 38%.⁹ But, sales of sound recordings do not present the whole picture. They reflect a larger industry built around artistic talent, which include concerts, theatrical performances and exhibitions that undoubtedly adds significant value to the tourist industry throughout Latin America. It would be hard to imagine a stay on Rio's Copa Cabana beach without a visit to a nightclub featuring Brazilian music, or a trip to Buenos Aires without seeing a Tango performance.

Sound recording copyrights create employment at all levels, including jobs as artists, sales clerks, and hotel and restaurant workers. However, in the years since 1997, the growth of music sales has slowed in Latin America. According to IFPI, while global sales of music declined by 5% in 2001, in big Latin American markets they declined even more. In Brazil, sales of recorded music declined by 25% and in Mexico by 16% in 2001. Why this decline? According to IFPI "piracy, combined with economic crises, particularly hit markets in Latin America."¹⁰

The Scourge of Piracy

The problem of piracy is the most significant impediment to the growth of the music industry in developing countries. The World Bank has identified piracy as "the great limiting factor on the sales of music within Africa." According to a Bank expert, "estimates for West Africa suggest the piracy level is as much as 85% to 90%."¹¹ John Collins, Professor of Musicology at the University of Ghana, has cited the negative impact of piracy on his country's once thriving music industry. According to Professor Collins:

A ... problem in Ghana is that although numerous FM radio stations have sprung up in the last few years or so these rarely pay for the use of copyrighted material and several

⁹ *Worldwide Recording Industry Integrates Latin America*, International Federation of Phonogram Industry Press Release [hereinafter "IFPI"] (Jan 1, 2000) <http://www.ifpi.org/site-content/press/20000101.html>.

¹⁰ *Global Music Sales Down 5%*, IFPI Press release (Apr. 16, 2002) <http://www.ifpi.org/site-content/press/20020415.html>

¹¹ Gerard Seligman, Senior Director of Hemisphere and Special Projects, EMI Records, *The Market for African Music*, presented at the World Bank Workshop on the Development of the Music Industry in Africa [hereinafter "World Bank Music Workshop"] 5 (June 2001) http://www.worldbank.org/research/trade/pdf/IP_handout3_seligman.pdf.

FM stations do not even carry announcements about the songs that they play. They rather play the whole record, thus encouraging people to tape them. As a consequence cassette sales have slumped.¹²

As Professor Collins has noted, broadcast and recording technologies can be used to violate creators' copyrights and destroy the economic foundation for a thriving cultural industry such as music. This problem is exacerbated with the arrival of the digital age.

Increasingly, the development of cultural industries and electronic commerce will proceed in parallel lines. The need to protect copyright in works fixed in digital form and transmitted through the Internet was recognized by WIPO in the timely promulgation of the WIPO Copyright Treaty (WCT) and WIPO Performers and Phonograms Treaty (WPPT). These treaties recognize that digital technology can open more opportunities to the world's musicians and performers as new markets for their work are created. But, the treaties are predicated on the assumption that creators' rights will be effectively enforced against those who would engage in piracy. Using the power of the new technologies to harness culture industries and promote economic development presents not only new opportunities, but also significant new challenges. Foremost among these challenges is the control of digital piracy.

Piracy is the primary barrier to the use of a country's cultural assets as an engine of economic growth. This is a problem in both developed and developing countries, but the impact of piracy is the greatest in developing countries and countries in transition to market economies. In the United States, the country with the largest copyright-based industry and one of the strongest copyright enforcement regimes, the piracy rate for software products is estimated at 24%. The total economic loss from piracy in 2000 was estimated at \$8.31 billion. The total lost in salary and wages to piracy was estimated at \$5.67 billion and lost taxes were estimated at \$1.59 billion. Nevertheless, with piracy kept at this level the copyright industries continued to lead other sectors in economic growth.¹³

In other countries, however, piracy rates have reached catastrophic levels that greatly inhibit the growth of local copyright-based industries.

A leading example of a country with an historically formidable technological capability and a well educated and creative populace is Ukraine, with an 80% piracy rate for video products, a 95% piracy rate for music, an 89% piracy rate for business software and a 99% piracy rate for entertainment software¹⁴. China's estimated piracy rates were 90% for video products, 93% for music, 94% for business software, and 99% for entertainment software. By contrast, India, which has a national policy of encouraging the local film, music and software industries, experienced a 60% video piracy rate, a 40% music piracy rate, and a 63% business software piracy rate.¹⁵

¹² John Collins, Professor of Musicology, University of Ghana, *The Ghanaian Experience*, World Bank Music Workshop 8 (June 2001) http://www.worldbank.org/research/trade/pdf/IP_handout2_collins.pdf.

¹³ Business Software Alliance, *U.S. Software State Piracy Study*, 7 (Nov. 2001) <http://www.bsa.org/resources/2001-11-01.65.pdf>.

¹⁴ IIPA, *IIPA 2002 'Special 301' Recommendations; IIPA 2000-2001 Estimated Trade Loss Due to Copyright Piracy*, 1 (Feb. 14, 2002) http://www.iipa.com/pdf/2002_Feb14_LOSSES.pdf.

¹⁵ *Id.*

High piracy rates suggest that a country is relying very heavily on pirated products produced elsewhere in the world. Not only does this inhibit the growth of local industry, but also it means that the films, music and software used by the population will reflect the culture and cultural values of foreigners, not of that country's own rich and diverse creative tradition. In short, piracy can kill the creative tradition of centuries and replace it with an homogenized and alien global culture.

Institutions That Support Creators – The Role of the Collecting Society

The control of piracy and strong copyright protection are not the only factors in stimulating the growth of culture industries. Countries wishing to stimulate cultural industries need to have the basic institutions which enable creators to receive payment for use of their works and to have tax systems, industrial and telecommunications infrastructure and investment policies which encourage creative industries.

Collecting societies are among the most important of the institutions necessary to enable creative people to build economic activity from culture. In 1997, the total value of music publishing revenues collected in Africa was \$30.3 million; a figure less than one half of one percent of the total of revenue collected from music publishing in the world. However, even that number is misleading because of that \$30.3 million, \$29.7 million (98%) was collected in the Republic of South Africa. The remainder of the whole of Africa generated only \$600,000 for all the continent's authors of music.¹⁶ Nearly all of Africa's nations are members of WIPO and adhere to the Berne Convention for the Protection of Literary and Artistic Works. The Berne Convention specifically guarantees to authors the right to remuneration for the public performance of their works and the fixation of their works in a mechanical medium (sound recordings). However, granting African authors such rights is meaningless unless there are means by which they can enforce those rights. Collecting societies are key institutions that do just that. They represent artists by collecting royalties on their behalf from the broadcasters and other performance venues that present music to the public.

The lack of local collecting societies and other institutions to support their work has forced successful African artists to leave their homelands if they desire to earn a decent livelihood. Professor Collins of the University of Ghana has observed that the most successful of African musicians have been those from former French colonies who immigrated to France to record their music and take advantage of French-based collecting societies and recording studios to provide their incomes.¹⁷ All of the commercially successful African artists listed earlier in this paper fall into this category. The tragedy of this "talent drain" out of Africa is that it is happening at precisely the same time that African music is becoming very popular in other parts of the world. The booming market for African sound recordings is now estimated at \$1.25 billion per year.¹⁸ Yet, little if any, of this revenue finds its way back into the countries whose culture

¹⁶ Phil Hardy, Founding Member of Music Copyright, *The Collection Societies and Africa*, World Bank Music Workshop 12 (June 2001) http://www.worldbank.org/research/trade/pdf/IP_handout1.pdf.

¹⁷ John Collins, *supra* note 12, at 6.

¹⁸ *Id.*

created it. As we will see later in this paper, this problem of talent drain is a serious problem for popular artists from the Caribbean – particularly Jamaica – as well.

Taxation, Investment and Telecommunications Policies

Government policies on taxation and investment also play a role in encouraging or discouraging the development of culture industries. Professor Collins notes that in 1985 and 1986 the government of Ghana assessed a 160% import duty on musical instruments and disallowed tax waivers for companies sponsoring artistic and cultural events.¹⁹ These policies drove Ghanaian musicians out of the country to places like Toronto and Washington, D.C., where they could perform for the large expatriate communities in those cities. The musicians who remained in Ghana were forced to perform “techno-pop” style music, relying on synthetic music rather than the use of live instrumentation. This type of music proved uncompetitive in the markets of Europe and North America and, therefore, denies Ghana any export potential for its locally produced music.²⁰ To make matters worse, music has been removed as a core subject from the school syllabus in Ghana, denying generations of potential artists the basic learning necessary to produce a musical culture for the country.²¹

In contrast to Ghana, other countries have provided meaningful incentives for their culture industries. Again, a perfect example is India. The Indian government has provided tax incentives and improved access to bank financing to the film, information and telecommunications industries. The Indian government is also encouraging the modernization of the country’s 9,000 permanent and 3,000 mobile cinemas through the reduction of entertainment taxes and lowering of import duties on cinema equipment. These reforms are expected to result in a 70% increase in investment in cultural production in the next five years.²² Such proactive policies have contributed to India being the leading world film producer.

The lack of telecommunications and industrial infrastructure is also a factor limiting the growth of the creative industries in much of the developing world. In his paper delivered at WIPO’s International Conference on Electronic Commerce and Intellectual Property in September 1999, Senator Dale D. Marshall of Barbados identified some of the major structural challenges in Latin America and the Caribbean to the full exploitation of the Internet, including an outdated telecommunications infrastructure and the lack of competitive access to the Internet in many countries.²³ Nonetheless, Sen. Dale fully understood the great opportunities presented to the developing world through electronic commerce. “With eCommerce,” he concluded, “the old established rules change and for the first time the technology may itself provide a level playing field for all nations.”²⁴

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Leon Forde, *India’s Film Industry Poised for Massive Growth*, ScreenDaily.com (Nov. 28, 2001) (citing, Dodona Research, *Bollywood: India’s Film Industry*) <http://www.screendaily.com/story.asp?storyid=6642&st=india&s=3>.

²³ Senator Dale D. Marshall (Barbados), *Electronic Commerce in Latin America and the Caribbean: Opportunities and Challenges*, WIPO E-Commerce Conference (Feb 14, 1999) <http://ecommerce.wipo.int/meetings/1999/papers/marshall.html>.

²⁴ *Id.*

The WIPO Digital Agenda

At the same meeting, French Minister of Culture Catherine Trautmann challenged WIPO to take an active role in the “cultural dimension” of electronic commerce as well as the quality and diversity of on-line content.²⁵ “The role of WIPO will be primordial in the future,” Madame Trautmann stated, “because it will coordinate and complement action taken by governments.”²⁶ At the end of the meeting, Director General Dr. Kamil Idris accepted the challenge, laying out an ambitious ten-point Digital Agenda for WIPO.

Significantly, the Agenda places special emphasis on developing countries. Dr. Idris stated: “We want to broaden opportunities for developing countries to trade their intellectual property assets via the Internet.”²⁷ He added that the new technologies could assist developing countries to “expand trade using their rich cultural heritage.”²⁸ The Agenda calls for the implementation of systems for “the online licensing of the digital expression of cultural heritage.”²⁹ The Agenda also endorses studying “measures designed to improve the management of cultural and other digital assets at the international level,” including the development of “model procedures and forms for global licensing of digital assets.”³⁰

Museums, Monuments and Tourism

The role of infrastructure and of expertise in how to commercially exploit cultural artifacts, including those in the public domain, is a serious problem that was recognized in the WIPO Digital Agenda. A nation’s visual, graphic and photographic arts – often entrusted to the care of museums – also can be a source of national wealth. Museums play a vital role in collecting, preserving, interpreting and disseminating the cultural heritage of mankind through their art works, documents, manuscripts, transcriptions, photographs, drawings and maps. Of course, museums and preserved cultural sites can generate significant direct revenue from admission fees. But, museums also are inextricably linked to the tourism economy. The largest sector in the world economy is tourism, estimated by the World Bank to generate \$7.2 trillion of economic activity by 2005.³¹

It is important to note that the economic activity flowing from cultural heritage is not limited to the airline fares, hotel rooms and restaurant bills of tourists. Cultural content is showing itself to be a significant source of economic activity by itself. For example, museums in

²⁵ Minister for Culture Catherine Trautman (France), *Establiir les principes pour regir un phenomene mondial*, WIPO E-Commerce Conference (Feb 14, 1999) <http://ecommerce.wipo.int/meetings/1999/papers/trautman.html>.

²⁶ *Id.*

²⁷ *WIPO to Present its ‘Digital Agenda’ to Member States*, World Intellectual Property Organization Press Release PR/99/186 (Sep. 17, 1999) <http://ecommerce.wipo.int/press/1999/pr99-186.html>.

²⁸ *Id.*

²⁹ Director General Dr. Kamil Idris (WIPO), *Closing Remarks*, WIPO E-Commerce Conference (Feb 16, 1999) <http://ecommerce.wipo.int/meetings/1999/papers/idris2.html>.

³⁰ *Id.*

³¹ *Historic Cities: Creative Urban Transformations: Culture in Economic Development*, Thematic Seminar, presented at Understanding Culture in Sustainable Development: Investing in Cultural and Natural Endowments, conference sponsored by the World Bank and the United Nations Educational, Scientific and Cultural Organization (Sep. 28, 1998).

the United States derive about eight percent (8%) of their total operating income from gift shop and publication sales.³² Large museums like the Metropolitan Museum of Art in New York and the Louvre operate shops, mail order catalogues and Web sites that sell wares based on their collections. You can witness the reality of this at the famous shopping center designed by architect I.M. Pei underneath the Palais du Louvre in Paris, where museum shops of New York's Metropolitan Museum and Paris' Louvre face one another on the same corridor.

It is not surprising that large software and electronic firms are inviting museums around the world to include their holdings in new media compilations for commercial distribution.

While the Metropolitan Museum of Art and the Louvre may have the resources to fund off-site museum shops, sell merchandise by mail order and set up commercial Web sites, museums in the developing world may lack the funding and the technical resources to take advantage of these opportunities to generate wealth. Therefore, it is appropriate that international programs of development assistance be structured to provide this kind of aid to the cultural authorities in developing countries.

A modest example of this was a WIPO project which created a handbook of best practices – including draft licensing protocols – to be used by developing country cultural authorities in making their cultural treasures available for digital exploitation.³³ However, many developing country cultural institutions lack the financial resources to digitize and license their collections, the expertise to create the legal protocols necessary to protect the works under their care from unauthorized use, and the business knowledge necessary to attract private sector investors and contributors.

Key questions need to be answered by developing countries seeking to more effectively exploit their museums and other cultural assets, such as:

- How have cultural industries established themselves in the past, locally, regionally and internationally?
- What is the state of the market for these industries?
- How can culture-based activities contribute most directly to economic development?
- What approaches have already been used to target and develop key cultural industries?
- What are the best practices to avoid degrading environmental and cultural assets?
- What components are necessary to sustain indigenous cultural industries over the long term?

³² Michael S. Shapiro, *Museums and the Digital Future*, International Intellectual Property Institute [hereinafter "IPI"], report prepared for the World Intellectual Property Organization, 10 (1999) http://www.wipo.int/about-ip/en/pdf/iipi_digital_museum.pdf.

³³ *Id.*

Jamaica as a Case Study

The negative impact of inadequate intellectual property infrastructures in developing countries can be seen in the example of Jamaica. Jamaica's rich cultural heritage – which should be broadly defined to include not only its distinctive music but also its visual arts, food, fashion, and other aspects of its culture – are known and admired around the world. Regrettably, however, Jamaicans reap too little economic benefit from these rich cultural resources because of its inadequate intellectual property infrastructure.

Jamaica is a small, developing country of about 2.5 million inhabitants with a distinctive culture which produces cuisine, fashion, art and – especially music – that is popular far beyond its shores. Yet, Jamaica sees little economic benefit from the popularity of its culture among the wealthy consumers of New York, Paris, Los Angeles or Tokyo. This is because most of the business activity associated with Jamaican culture takes place outside the country's borders. According to a study by the United Nations Council on Trade and Development (UNCTAD), Jamaican music is a \$1.2 billion global industry.³⁴ However, Jamaica itself sees only a small portion of that revenue. A 50-page report prepared by the International Intellectual Property Institute focused heavily on the need to “bring home” business activities which are based on Jamaican culture, but which take place off shore in places such as London, Miami and Los Angeles.³⁵

Jamaica might look to the United States city of Nashville, Tennessee, for insight on how to reap the benefits of its culture. Nashville is the center of the “Country-Western” music industry. While, today, Nashville is the headquarters for record labels, music publishing companies and performing rights organizations, the magnet which brought a critical mass of talent to the city originally was “The Grand Ole Opry.” Though the Grand Ole Opry's shows originally were broadcast live and later were recorded and distributed to a national, syndicated television market. The production of these programs in Nashville was the catalyst for a critical mass of talent to choose to live and work in that city. The services they needed – the lawyers, recording studios, publishers and collecting societies – followed and Nashville became the center of the “Country-Western” entertainment industry in the United States.

Paul Collier, the Director of the Development Research Department of the World Bank has cited the Nashville experience as a model for certain developing countries. In a Bank-sponsored workshop on the development of the music industry in Africa he observed:

At the practical level, the music industry has the potential to have a big impact on economic structure precisely because these economies are so small. You need only one or two real successes – you only need a Nashville – and you have transformed the export structure of an economy away from primary commodity dependence, and that will have major effects.³⁶

³⁴ Zeljka Kozul-Wright and Lloyd Stanbury, *Becoming a Globally Competitive Player: the Case of the Music Industry in Jamaica*, United Nations Committee on Trade and Development, discussion paper No. 138 (Oct. 1998), UNCTD/OSG/DP/138 http://www.unctad.org/en/docs/dp_138.en.pdf.

³⁵ IPI, *Modernizing Jamaica's Intellectual Property System* (Spring 2000) (on file with IPI).

³⁶ Paul Collier, *The Rationale*, World Bank Music Workshop at 2 (paper on file with the World Bank).

The Government of Jamaica has expressed a willingness and desire to make land available for the construction of a performance venue on the country's north coast. However, what is needed is the business know-how and the resources to program the facility, produce video product and market and distribute that product in the lucrative markets throughout the world. In short, Jamaica needs help in building the business infrastructure to enable it to benefit from its cultural assets. In spite of the fact that the World Bank has identified the "Nashville model" as appropriate for developing countries like Jamaica, the development expertise and capital investment necessary to develop that model have not been made available to developing countries on any significant level. Thus, a commodity, bauxite, continues to far exceed music as a source of foreign exchange revenue for Jamaica.

Similarly, Jamaica needs to build its publishing infrastructure and create strong copyright and neighboring rights collecting societies. A recent survey by the National Music Publishers Association of the United States (NMPA) shows that the total global revenue from music publishing exceeds \$6 billion. In the U.S. alone, the annual revenue of the Harry Fox agency is over \$450 million. At the present time, Jamaican and Caribbean artists are receiving very little income to which they are entitled under the Berne and Rome Conventions because they lack music publishers and collecting societies to represent their interests. Assuming, conservatively, that Jamaican music (Reggae, calypso, and jazz) constitute three percent (3%) of the U.S., European and Japanese markets, the Jamaican share of revenue should approach \$180 million. Yet, Jamaica lacks the publishing industry to exploit this revenue source.

Music publishing companies receive most of their revenue from the exploitation of three rights: (1) the performance right, (2) the synchronization right, and (3) the mechanical right. Most of these revenues are received in the United States through "collecting societies" such as ASCAP and BMI (for the public performance right) and the Harry Fox Agency (for the mechanical and synchronization rights). In France, SACEM collects and distributes these payments. In Germany, GEMA performs these functions. Along with a local publishing industry, Jamaica needs to strengthen and build local collecting societies that can enter into reciprocity agreements with the big U.S. and European societies like ASCAP, SACEM and GEMA.

In addition, Jamaicans need to learn how to use the global trademark system to build brand identities that promote all of the rich possibilities of that country's culture. While music might be the foundation of such brands, marketing can be expanded to include other aspects of Jamaica's culture such as food, distilled spirits, soft drinks, and tourism. This requires not only business/marketing know how, but also the legal understanding of how to secure and enforce trademark rights on a global basis.

Like many developing countries with a globally marketable culture, Jamaica needs development assistance to realize the full economic benefit of its heritage.

Culture and Trade Policy – Globalization Versus Localization

At the outset of the twenty-first century, we find ourselves in a world buffeted by the twin forces of globalization and localization. Globalization, the progressive integration of the world's economies and the related quickening of social and cultural interactions, is praised for the opportunities it brings to countries in the developing world such as access to markets, technology transfer and new products and services. Throughout the twentieth century, such changes held the great promise of increased productivity and improved quality of life for all people. Indeed, there is now ample economic evidence of a promise fulfilled, at least for the richest countries of the world. Driven by advances in information and communications technology, average per capita gross domestic product and productivity were at historic levels in these countries at the end of the century.

At the WTO Seattle Ministerial in late 1999 – an event that was intended to launch a new round of trade negotiations and to celebrate the trade-driven prosperity of the last half-century – the voices condemning globalization dominated the public airwaves.³⁷ The architects of global trade rules were condemned rather than praised for their role in creating world economic gains that are in fact startlingly uneven. The average per capita income of the poorest and middle third lost ground steadily over the last several decades compared with the average income of the richest third.

In Seattle, a climate of economic fear replaced one of hope as the exaggerated rhetoric of protest focused on the sometimes unsettling and unwelcome changes associated with global economic growth. Globalization exposes workers to competition from imports; it comes with environmental challenges; and it requires – at least in the short term – that creators and investors in intellectual property that is created in distant lands be compensated for the fruits of their intellectual labor.

The Seattle Ministerial also served as a reminder of the important values associated with localization. The cultural importance and potential economic value of a broad range of local forms of creativity and traditional knowledge are associated with localization. Traditional medicinal, agricultural and ecological knowledge, music, stories, poems, dance, design, and sculpture can be sources of both national pride and national wealth. Localization also reminds us of the economic value of traditional knowledge in areas of biotechnology, entertainment and education and of the values of preservation, sustainable development and the equitable sharing of profits.

At a time when the clash of “global” and “local” values is sharper than ever before, there must be an active and open policy discussion in organizations such as WIPO. We must ask ourselves: What is the relationship of the intellectual property system to pre-existing traditional knowledge and folklore? What services are needed by indigenous cultures to assist them in their economic, social and cultural development?

³⁷ Helene Cooper, *Waves of Protest Disrupt WTO Meeting*, Wall Street Journal, A2 (Dec. 1, 1999).

Article 67 of the TRIPS agreement requires the wealthier members of the global trading community to provide the kind of assistance to developing countries that will enable them to work through these issues and develop meaningful national regimes of intellectual property protection. Yet, in the years since the promulgation of the WTO treaty there has been little – if any – real effort by developed countries to meet the Article 67 obligation.

Fertile Soil for a Vibrant Culture: The Rule of Law, Education and Investment

As we have seen in the preceding discussion, WIPO and its predecessor institutions have provided a strong legal foundation for robust cultural industries. In 1996, the WIPO Performers and Phonograms Treaties brought the Berne Convention and the Rome Convention into the digital age. Within recent months, sufficient numbers of member states have ratified the treaties to make them operative international law in much of the world. However, treaties and laws are meaningless unless they can be effectively enforced. In many parts of the world long-standing creators' rights have been violated with impunity by pirates. Much work remains to control piracy and make intellectual property rights meaningful for many of the world's creators.

The control of piracy is not simply a matter for diplomats, legislators, and law enforcement officials. It is first of all a matter for educators. If citizens do not understand that piracy is a violation of a creator's most basic right, and that piracy kills a nation's own culture and restricts its economic growth, WIPO's norm making activities will be meaningless. Therefore, a major task for the future is to persuade national authorities to educate their own people – particularly children and students – about the relationship between authors' rights and a robust culture. WIPO is an international institution with the global respect and reach to facilitate this educational process.

However, as discussed above in this paper, creative minds cannot work without the institutions and infrastructure necessary to reap economic reward from their works. Much needs to be done to build those institutions and that infrastructure throughout the world. Vast areas of the world lack effective collecting societies to support creators. Film and recording studios, concert halls, arts education and even musical instruments cost money and require both public and private sector encouragement and investment. Some countries, like India, have adopted tax and investment policies designed to encourage investment in culture industries. Others, like Ghana, have driven creators to other countries to practice their arts.

WIPO is not a development bank and has a limited role to play in stimulating investment in the institutions and infrastructure necessary to the growth of culture industries. Nevertheless, it may have a role to play in educating global policy makers about the need for such investments. In recent years the largest development bank, the World Bank, has held seminars and discussions on culture and economic development. However, the bank has made few significant investments in the field. One of the Bank's most significant accomplishments—an on-line service for marketing Moroccan crafts called the “virtual Souk” – involved only a \$50,000 investment. While the Bank's most recent report on spending for “Cultural Assets for Poverty Reduction” lists investments totaling an impressive \$810.2 billion, nearly all of this money has gone to environmental preservation of historic monuments and landscape. Most of the money—\$700 –

million has been committed in connection with preservation of monuments and landscape involved in massive dam building projects here in China.³⁸ It is significant that in nearly all of the World Bank's seminars and other activities involving culture, WIPO has been absent.

WIPO may wish to re-examine its relationship to the international assistance programs of wealthy countries, the World Bank and regional development banks in order to more effectively share its institutional expertise and encourage the investment in institutions and infrastructure necessary to the growth of culture industries.

Questions for Discussion

1. Does WIPO have a greater role to play in preventing piracy?
2. Is there a greater role for WIPO in global education about creators' rights?
3. Is WIPO offering developing countries an adequate level of technical assistance and does it have the resources to meet the needs of developing countries for such assistance?
4. What is WIPO's relationship with other global development institutions such as the World Bank and UNESCO? Should these relationships be strengthened?
5. Is WIPO working effectively with developed country economic assistance programs to channel development aid effectively to support the growth of culture, copyright-based industries?
6. What progress is WIPO making on its digital agenda?

³⁸ *Cultural Assets for Poverty Reduction Quarterly Report*, the World Bank, 10 (2002)
[http://WBLN0018.Worldbank.org/Networks/ESSD/icdb.nsf/D4856F112E805DF4852566C9007C27A6/3D11A93D47D32FEE8525695F00766960/\\$FILE/QrtlyRpt+V1No2+8-4-00.pdf](http://WBLN0018.Worldbank.org/Networks/ESSD/icdb.nsf/D4856F112E805DF4852566C9007C27A6/3D11A93D47D32FEE8525695F00766960/$FILE/QrtlyRpt+V1No2+8-4-00.pdf).