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COMPULSORY LICENSING FOR TRANSLATION: AN INSTRUMENT OF DEVELOPMENT?

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I. INTRODUCTION

The relationship between copyright and economy has long been regarded as obvious in many countries. The disclosure of copyrighted works to the public for educational, cultural and intellectual purposes is encouraged by the protection of the economic rights of an author -- original authors are ensured of the ability to collect sufficient remuneration for their original works.⁴⁰ IDEA_503_and_footnotes(n1);FTNT n1 However, a more challenging concept to contemplate is whether there is a relationship between copyright and the cultural and economic development of third world countries. Can copyright protection be, in any respect, an opportunity for the development of education, research and culture of a developing country? Where, if anywhere, can a line be drawn? Is there a privileged instrument in the international copyright system that one could invoke with respect to the intellectual and educational development of third world countries? Given that translation is known to be a fundamental device of intercultural communication for understanding the power differentials between societies, when not only the languages, but also the native way of thinking are being translated, what is the real weight of a legal system that provides for compulsory licenses for translation ("CLT")? What is the actual status of the translators according to the language of the most recent copyright conventions? What about the publishers who are supposed to obtain compulsory licenses for translation as well as for reproduction? Since the debate is essentially oriented towards the economic considerations of copyright, how do the financial interests of the copyright owners balance with the interests of the publishers and translators, since both the publishers and the translators would obtain the rights to the transformed work if copyright owners freely allowed their works to be translated? Furthermore, how substantial would the economic harm to the copyright owner be, and

how much benefit would the publishers, translators, and end users of the translated material gain?

II. DEVELOPING COUNTRIES IN THE INTERNATIONAL COPYRIGHT SYSTEM

A. The International Conventions and the Developing Countries

The purpose of this article is not to exhaustively narrate the history of the international copyright conventions, but rather to provide a brief background of the position developing countries have taken against the trend of the continually evolving international copyright laws.^{40 IDEA_503)_and_footnotes(n2);.FTNT n2}

International copyright law has two major conventions: the Convention for the Protection of Literary and Artistic Works (.Berne Convention.)^{40 IDEA_503)_and_footnotes(n3);.FTNT n3} and the Universal Copyright Convention ("UCC").^{40 IDEA_503)_and_footnotes(n4);.FTNT n4} The Berne Convention was established in 1886.^{40 IDEA_503)_and_footnotes(n5);.FTNT n5} From the beginning, the Berne Convention provided a high level of protection for copyrights, and has been constantly expanded through various revisions.^{40 IDEA_503)_and_footnotes(n6);.FTNT n6} The UCC was signed in Geneva on September 6, 1952 and took effect in 1955.^{40 IDEA_503)_and_footnotes(n7);.FTNT n7} Administered by the United Nations Educational, Scientific and Cultural Organization ("UNESCO") under the lead of the United States, the UCC "has greatly simplified copyright protection . . . by reducing to a minimum the requirements for securing copyright in the participating countries."^{40 IDEA_503)_and_footnotes(n8);.FTNT n8} However, the "level of protection under the UCC is considerably lower than that provided by the Berne Convention."^{40 IDEA_503)_and_footnotes(n9);.FTNT n9} The UCC's reduced requirements for securing copyright protection was particularly attractive to the developing countries for whom the Berne Convention was too exigent.^{40 IDEA_503)_and_footnotes(n10);.FTNT n10} This was especially so after the Safeguard Clause was abandoned in 1966, thereafter allowing a developing country the privilege of renouncing the Berne Convention and instead applying the UCC in its relations with Berne members.^{40 IDEA_503)_and_footnotes(n11);.FTNT n11} This privilege was rapidly, but indirectly, withdrawn by the International Copyright Joint Study Group in 1969.^{40 IDEA_503)_and_footnotes(n12);.FTNT n12} This Study Group provided the overall framework for the simultaneous revision of the Berne Convention and the UCC, revisions which were to be made in accordance with certain general principles.^{40 IDEA_503)_and_footnotes(n13);.FTNT n13} In effect, by bringing the two conventions more closely in line with each other, developing countries were put into a position where they would not be tempted to leave the Berne Convention for the UCC.

1. The Brazzaville Meeting: The Awakening

Arising during a period in history where a number of countries became independent after several decades of colonization, the international copyright conventions were forced to deal with a new factor -- developing countries.^{40 IDEA_503)_and_footnotes(n14);.FTNT n14} In fact, developing countries constituted a new challenge for the multilateral copyright conventions.^{40 IDEA_503)_and_footnotes(n15);.FTNT n15} After World War II, "these

nations came to form a majority of the international community" and thus had to be taken into consideration in the arena of international copyrights as well.^{40_IDEA_503)_and_footnotes(n16);.FTNT n16}

The first meeting reflecting the needs of these "new" countries was jointly organized by UNESCO and the United International Bureau for the Protection of Intellectual Property ("BIRPI") and took place at Brazzaville in 1963.^{40_IDEA_503)_and_footnotes(n17);.FTNT n17} In Brazzaville, twenty-three African countries gathered to be assisted in formulating the appropriate principles that were to serve as the basis for each of these countries to draft its own copyright laws.^{40_IDEA_503)_and_footnotes(n18);.FTNT n18} These African countries were mainly concerned with expressing the problems these nations had with the existing copyright model.^{40_IDEA_503)_and_footnotes(n19);.FTNT n19} These countries frankly stated their opinion that the world copyright situation in 1963 was essentially European in orientation and was opposed to the interests of developing countries.^{40_IDEA_503)_and_footnotes(n20);.FTNT n20} This claim became a key factor underlying the future endeavors to devise provisions applicable to developing countries.

Three recommendations were formulated in the Brazzaville meeting.^{40_IDEA_503)_and_footnotes(n21);.FTNT n21} The most important one, within the frame of this article, was that protected works should be allowed to be freely used for educational purposes. While the initial intentions of these African nations were oriented towards getting the UCC to accept their proposals, the African nations ultimately shifted their concern towards modifying the Berne Convention.^{40_IDEA_503)_and_footnotes(n22);.FTNT n22} This was partly due to the impending revision of the Berne Convention which, strategically, made the possibility of getting the situation changed more likely.

Shortly after Brazzaville, a second meeting was held in New Delhi in December 1963.^{40_IDEA_503)_and_footnotes(n23);.FTNT n23} Here, attention remained focused on considering the position of developing countries.^{40_IDEA_503)_and_footnotes(n24);.FTNT n24} India took the lead and proposed that a study be made of the possibility of introducing compulsory licenses into the Berne Convention for the reproduction of protected works for educational purposes.^{40_IDEA_503)_and_footnotes(n25);.FTNT n25} India also recommended introducing into the Berne Convention translation licenses similar to those in the UCC.^{40_IDEA_503)_and_footnotes(n26);.FTNT n26} India's proposed study was undertaken and the developing countries were able to express their reservations about the latest revision to the Berne Convention.^{40_IDEA_503)_and_footnotes(n27);.FTNT n27} The report of this 1964 Study Group was highly criticized by the Authors. Consultative Committee, as they worried about the risk of degenerating the overall Berne Convention and feared that the high level of protection provided by the Berne Convention would dissolve if the report's suggestions were adopted.^{40_IDEA_503)_and_footnotes(n28);.FTNT n28} Accordingly, the Authors. Consultative Committee proposed that a number of restrictions be added to the Study Group's report.^{40_IDEA_503)_and_footnotes(n29);.FTNT n29}

2. The Stockholm Conference: A Few Steps Backward for a Greater Leap Forward

In the light of the New Delhi meeting, the Stockholm Conference discussions promised to be highly colored in tone, and they, in fact, were.^{40_IDEA_503)_and_footnotes(n30);FTNT n30} Some developing nations, particularly India, argued that special concessions in favor of developing countries were essential to assist in the promotion of national literacy and training in developing countries.^{40_IDEA_503)_and_footnotes(n31);FTNT n31} The developing nations argued that the special concessions of the Protocol^{40_IDEA_503)_and_footnotes(n32);FTNT n32} "were necessary at this stage in order to enable the developing countries to attain the high standards of protection required by the Berne Convention."^{40_IDEA_503)_and_footnotes(n33);FTNT n33} The British delegation took the strongest stance against these concessions, "arguing that the Protocol appeared to be a way of giving economic assistance to developing nations at the expense of authors," which they felt was inappropriate.^{40_IDEA_503)_and_footnotes(n34);FTNT n34} At the substantive level of the discussions, the CLT proposal based on the Article V regime of the UCC was retained, but the free use of copyrighted works for purposes of education and scholarship, as proposed in Brazzaville, was not.^{40_IDEA_503)_and_footnotes(n35);FTNT n35} Thus, the Protocol permitted the following:

If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work . . . a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation with his authorization, any national of such country may obtain a nonexclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published.^{40_IDEA_503)_and_footnotes(n36);FTNT n36}

However, these licenses were subject to several restrictions: a) the national seeking the license was required to establish that authorization to make a translation of the work had been requested; b) where the author could not be found, a notice was to be sent to the publisher or to the diplomatic representative of that country; c) payment of just compensation was to be made to the copyright owner, subject to national currency regulations; d) the author's right of paternity was to be acknowledged; e) the license for publication of the translation would be valid only in the territory of the applying country, with the possibility however to export copies of the translation to another country of the Union, if the national or the regional language was the same as that of the translating country; f) the license would be non-transferable; g) no grant of license would be available where the author has withdrawn all copies of his work from the market; h) the license would automatically terminate when the author published his own translation, if done during the ten-year period from first publication; i) there would be no grant of a license in a developing country unless the author had not published his translation in that country.^{40_IDEA_503)_and_footnotes(n37);FTNT n37}

Notwithstanding the foregoing conditions for obtaining a CLT, developed countries were still unsatisfied and concerned about the paramount number of concessions that

were given in the Protocol.^{40_IDEA_503)_and_footnotes(n38);.FTNT n38} Especially of concern were those concessions regarding: a) the possible exportation of translations for commercial benefit or importation back into the country of origin of the original work;^{40_IDEA_503)_and_footnotes(n39);.FTNT n39} b) the reference to national currency for the transfer of a "just" compensation, which was feared really meant "no" compensation;^{40_IDEA_503)_and_footnotes(n40);.FTNT n40} and c) the end of the obligation for the licensee to pay any compensation at the exhaustion of the ten-year period.^{40_IDEA_503)_and_footnotes(n41);.FTNT n41}

As expected, the disagreements reigning between the developed and the developing nations considerably affected the Stockholm Conference to such a great extent that the Protocol has been accepted by only a few developed countries.^{40_IDEA_503)_and_footnotes(n42);.FTNT n42} The Protocol has even been referred to as the "crisis in international copyright law."^{40_IDEA_503)_and_footnotes(n43);.FTNT n43}

3. Washington Recommendation: The Package Deal

The views of the developed nations' governments concerning the Protocol were strongly influenced by the different authors and publishers associations such as the International Literary and Artistic Association ("ALAI"), the International Confederation of Societies of Authors and Composers ("CISAC"), and the International Publishers Association ("IPA").^{40_IDEA_503)_and_footnotes(n44);.FTNT n44} Four specific aspects of the Protocol were particularly criticized: a) the lack of any guarantee that the authors would be paid for the use of their works, and the doubts with respect to the transmittal of compensation; b) the permission to export copies to other developing countries despite the conditions attached thereto; c) the inadequate definition of a developing country; and d) the lack of any incentive to the developing countries to improve the level of protection beyond the Protocol.^{40_IDEA_503)_and_footnotes(n45);.FTNT n45} For some parties, the Berne Convention was in jeopardy, because the threat that developing nations would leave the Union had never been greater.^{40_IDEA_503)_and_footnotes(n46);.FTNT n46} But after three meetings of the Permanent Committee of the Berne Union,^{40_IDEA_503)_and_footnotes(n47);.FTNT n47} the International Copyright Joint Study Group's meeting of October 1969 provided an overall framework that would balance the interests of all parties within the perspective of a new revision.^{40_IDEA_503)_and_footnotes(n48);.FTNT n48} The most critical threat was the eventual denunciation of the Berne Convention by the developing countries.^{40_IDEA_503)_and_footnotes(n49);.FTNT n49} The key solution to this threat was to be found in the simultaneous revision of the two conventions so that there would be no halfway house between them.^{40_IDEA_503)_and_footnotes(n50);.FTNT n50} Thus, the tense climate of the Stockholm Conference was avoided, and the discussions here were limited to the frame of the existing Conventions, remote from any outlaw alternative.^{40_IDEA_503)_and_footnotes(n51);.FTNT n51}

4. Paris Conference: A Temporary Compromise?

The Paris Conference remarkably started on a different note than the previous conferences. Not only had the preparation committees invested a paramount of effort in

the rapprochement of the various viewpoints of the parties, but also the ranks of the developed States themselves were seemingly straightened up.^{40_IDEA_503)_and_footnotes(n52);.FTNT n52} The Paris Conference constituted a greater coherence and consistency than the obvious lack of leadership that existed while discussing the Protocol in Stockholm.^{40_IDEA_503)_and_footnotes(n53);.FTNT n53} Nevertheless, from the developing countries' viewpoint, arguments were still put forth about the "need for the developing countries to limit the property right" in conformity with the 1964 Report.^{40_IDEA_503)_and_footnotes(n54);.FTNT n54} The developing countries emphasized the necessity "to promote the general development of copyright by reforms intended to make the rules relating to it more simple to apply, as well as to adapt them to the social, technical and economic conditions of the contemporary community."^{40_IDEA_503)_and_footnotes(n55);.FTNT n55} For the developing countries though, the aim is nothing more than to adapt the convention with regard to their social, technical and economic conditions.^{40_IDEA_503)_and_footnotes(n56);.FTNT n56} In the light of the foregoing, it could be asked how the Paris revision of the Berne Convention has addressed the problem of responding to the needs of the developing countries with respect to their respective political, economic and cultural contexts. In other words, how copyright protection, and more specifically the CLT, could objectively be an instrument of development, with a real global scope, knowing that the structural system in which it is taking place is necessarily perceived from a historically subjective and determined perspective.

Thus, while this article will attempt to review with more detail the provisions regarding the reservations on translation in the Appendix of the Berne Convention, it suffices to say at this stage that "a nation's copyright laws lie at the roots of its culture and intellectual climate."^{40_IDEA_503)_and_footnotes(n57);.FTNT n57} Then, it could be asked, why should one model be imposed on the rest of the world?

B. The Appendix of the Berne Convention: An Attempt at Analysis

Discussions regarding developing countries have included discussions about CLT since the early sixties.^{40_IDEA_503)_and_footnotes(n58);.FTNT n58} This article will now attempt to provide a more thorough insight into the substantive and procedural provisions of the Appendix to the Berne Convention with respect to the CLT without forgetting the general context of the Appendix as a whole. It should be noted that the Appendix as a whole is not only the product of a specific historical contingency, but is also the result of reflection on the present state of international copyright law, as well as a consideration of where international copyright law is heading in the future.

1. Article I: What is a "developing country"?

A developing country is "any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations."^{40_IDEA_503)_and_footnotes(n59);.FTNT n59} From its first sentence, the Appendix touches upon a considerable problem: what is meant by the term "developing country"? The relevance of such a classification on a country is of great importance; not only because there should not be any room for ineligible countries to wrongly take advantage of the reservations of the Appendix, but also because it is an adequate opportunity for developing countries to tackle the very practical problems that they are

facing. In fact, the various criteria that were to establish a country as a developing country were initially debated at the Stockholm Conference where, without much satisfaction, the different parties adopted the general definition listed above.^{40_IDEA_503)_and_footnotes(n60);.FTNT n60}

Delegates at the 1971 Paris Conference offered no apparent alternative definitions to consider and the Stockholm Conference definition was retained without much further discussion.^{40_IDEA_503)_and_footnotes(n61);.FTNT n61} This was done even though the United Nations definition contained nothing that could be considered a real definition of what "developing country" meant.^{40_IDEA_503)_and_footnotes(n62);.FTNT n62} The main concern of the developed nations was how long these special provisions were to remain a part of international copyright relations.^{40_IDEA_503)_and_footnotes(n63);.FTNT n63}

At the CISAC once again expressed its concern that each year of concessions under the Appendix would be a year of expenses that would be borne by authors and their legal successors alone.^{40_IDEA_503)_and_footnotes(n64);.FTNT n64} Nevertheless, it can be noted that this attitude appears not to be very consistent with the declarations of some Authors. associations, such as the IPA, which stated that "developed countries have the bounden duty to assist developing countries in overcoming the difficulties and problems which beset them in the fields of education and culture."^{40_IDEA_503)_and_footnotes(n65);.FTNT n65}

The IPA suggested that if governments were willing to participate in the development of education and culture within the frame of the international copyright system, they could do so by exempting copyright owners "from all taxes, fees and bank charges . . . (on) any payments for licenses granted for translation or reproduction."^{40_IDEA_503)_and_footnotes(n66);.FTNT n66} The IPA also suggested that governments could introduce a system where payments received for licenses granted for translation or reproduction would be shared between the collecting management organizations and the educational institutions in the developing countries themselves.^{40_IDEA_503)_and_footnotes(n67);.FTNT n67}

It should also be noted that not all developing countries are even. The stage of development of each country should not be measured with regard to an alien model as if the quality of that reference was sufficient to reflect the situation, as well as the perspective, of the developing country in question. On the contrary, the underdevelopment of a country cannot be objectively measured, but must be considered on a case by case basis while taking into account the dynamics of the society and its cultural, educational and political status. In short, each country should be left free to decide for itself whether its stage of development allows it to take advantage of the Appendix to the Berne Convention.^{40_IDEA_503)_and_footnotes(n68);.FTNT n68} The developing countries argued that this self-determination is necessary because consideration of the social and cultural situation of a country can not be made other than by means of a self-evaluation.^{40_IDEA_503)_and_footnotes(n69);.FTNT n69}

Additionally, it can be noted that while the TRIPs Agreement acknowledges the existence of the Least Developed Countries. category ("LDC"),^{40_IDEA_503)_and_footnotes(n70);.FTNT n70} the Berne Convention does not

distinguish between "Least Developed Countries" and the broader category of "developing countries."^{40_IDEA_503)_and_footnotes(n71);.FTNT n71} The omission of this relative categorization among the developing countries can be fraught with consequences for the less developed among them. For example, it is self-evident -- but not determinative -- that in 1993, India, with its 55,562 book title production, is otherwise more developed than Zimbabwe, with its 123 titles.^{40_IDEA_503)_and_footnotes(n72);.FTNT n72}

2. Article II: Are CLTs concessions in limitations or limitations in concessions?

Now that the general concept of a developing country has been introduced, the CLT system provided by the Appendix can be understood in the light of its natural context. The aim of this section is to discuss the CLT as it appears in the Appendix, with a special attention to its ultimate significance in the context of the developing countries as discussed in the preceding section. Even though the Appendix was conceived with regard to these developing countries, the Appendix sometimes fails to differentiate between the various situations where developing countries are still in a very early stage of development and therefore do not represent any threat to the developed countries. Moreover, the analysis of the CLT provision^{40_IDEA_503)_and_footnotes(n73);.FTNT n73} is rather important for it conveys the idea that translation is a critical subject matter at the international level and especially with regard to copyright. Therefore, this article scrutinizes four individual elements: a) the time that has to lapse before granting a license; b) the languages into which works are translated; c) the teaching purpose; and d) the power of the copyright owner. This article suggests that these concessions are unjustifiably restrictive against the least developed of the developing countries, since the goal of the Appendix is to take into consideration the social and cultural needs of developing countries.^{40_IDEA_503)_and_footnotes(n74);.FTNT n74}

a) The duration "concession"

Article II provides two concessions regarding the time that must lapse before one can apply for a CLT.^{40_IDEA_503)_and_footnotes(n75);.FTNT n75} "After the expiration of a period of three years" any national of the applying country may obtain a license for translation.^{40_IDEA_503)_and_footnotes(n76);.FTNT n76} Initially, the developed countries proposed that copyright owners should retain exclusive rights for seven years, but the developing countries objected to that term and the term was ultimately set at three years.^{40_IDEA_503)_and_footnotes(n77);.FTNT n77} This three-year minimum period is the shortest period before which a country may obtain a translation license if no translation has been published by the author.^{40_IDEA_503)_and_footnotes(n78);.FTNT n78} The three-year period is further conditioned by the necessity that "a translation of such work has not been published in a language in general use in that country by the owner of the right of translation."^{40_IDEA_503)_and_footnotes(n79);.FTNT n79} Thus, at first sight, the three-year concession in the Appendix appears to be the same as that suggested in the Stockholm Protocol,^{40_IDEA_503)_and_footnotes(n80);.FTNT n80} but, in fact, it is not.

In addition to these concessions, restrictions were added under the cover of being concessions. For example, in certain circumstances, a developing country can obtain a translation license within a period shorter than three years, but no shorter than one

year.^{40_IDEA_503)_and_footnotes(n81);FTNT n81} The developing country will, however, be subject to the following conditions: a) the unanimous agreement of the developed countries in which the same language is in general use is required and b) the shortened period is not applicable where the language in question is English, French or Spanish.^{40_IDEA_503)_and_footnotes(n82);FTNT n82} "The exclusion of translations from English, French and Spanish significantly limits the scope for relaxation of time periods, and must be regarded as a considerable concession in favour of authors and publishers in those languages."^{40_IDEA_503)_and_footnotes(n83);FTNT n83} What possibilities are left after excluding the mentioned languages? Can German or Scandinavian be a language in general use in a developing country? Doubtfully.

A second example appears in article II(4)(a). "No license obtainable after three years shall be granted . . . until a further period of six months has elapsed, and no license obtainable after one year shall be granted . . . until a further period of nine months has elapsed" from the date of the application.^{40_IDEA_503)_and_footnotes(n84);FTNT n84} This makes it three years and six months before a license can be obtained in the first instance, and one year and nine months in the second. The Indian delegation asked "that it be included the Report that India's interpretation was that the period should be concurrent, and not consecutive."^{40_IDEA_503)_and_footnotes(n85);FTNT n85} Then the French delegate made reference to the Revision of the UCC where it was understood that this period "started to run after the expiry of the normal period."^{40_IDEA_503)_and_footnotes(n86);FTNT n86} This understanding was made clear in the General Report.^{40_IDEA_503)_and_footnotes(n87);FTNT n87}

Article II(4)(b) states that no license shall be granted if, during the stated periods "a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization."^{40_IDEA_503)_and_footnotes(n88);FTNT n88} Again, a restriction has been added under the cover of a concession. It can now be seen that what has been commonly called a "concession" or "reservation" in favor of the developing countries really constitutes a more restrictive "condition" to obtaining a license.^{40_IDEA_503)_and_footnotes(n89);FTNT n89}

b) The language conditions

Article II(3)(a) is rather unclear and vague, necessitating the need to explain it in the General Report as being that "it was understood that the notion of a 'language in general use' . . . included languages in general use by less than the totality of the country's population" and could even include "the language of (just) an ethnic group of the population."^{40_IDEA_503)_and_footnotes(n90);FTNT n90} On one hand, this means that a minority language in a country can be considered a "language in general use" if it is the same as a language of a developed country. On the other hand, this also means that a developing country can rarely benefit from the shortening of the three-year period to one year because that concession does not apply where the language in question is English, French or Spanish, and these languages are the ones in general use in major parts of the developing world by virtue of colonization.^{40_IDEA_503)_and_footnotes(n91);FTNT n91} Clearly, the conditions lying in the aforementioned provisions are so restrictive for the developing countries -- and it goes without saying for the LDCs as well -- that almost no room is left for such countries to take advantage of the concessions. This limitation

was well recognized and the Union of National Radio and Television Organization of Africa ("URTNA") even wished that "language discrimination embodied in the Additional Act be removed."^{40_IDEA_503)_and_footnotes(n92);FTNT n92} It seems as if the conscience of the developed countries was not very active at the time of the adoption of these provisions.

c) The teaching purpose limitation

Article II(5) provides for the granting of licenses for teaching, scholarship or research.^{40_IDEA_503)_and_footnotes(n93);FTNT n93} This limitation could be easily understood and accepted without further discussion if copyright was a subject where the economic factor was not fundamental. Although education is often perceived as a potential source of wealth, the prevailing conception among western countries is that culture is regarded as a more immediate source of income.^{40_IDEA_503)_and_footnotes(n94);FTNT n94} Thus, it was not surprising to see Sri Lanka's proposal seeking to expand the purposes of licenses to "the promotion of culture" be refused.^{40_IDEA_503)_and_footnotes(n95);FTNT n95} The Sri Lankan proposal was based on the 1969 Washington Recommendation urging the need for developing countries to find solutions in the field of copyrights with respect to their requirements in culture.^{40_IDEA_503)_and_footnotes(n96);FTNT n96} It is remarkable to note that two countries expressly refusing the proposal, the United Kingdom and France, objected on the grounds that the proposal was a "fundamental change to the package deal."^{40_IDEA_503)_and_footnotes(n97);FTNT n97} Interestingly, this objection came despite the fact they had referred to the same text from the 1969 Washington Recommendation in support of their own amendment.

Clearly, there may have been a cultural misunderstanding whether to include the promotion of culture in the proposal. Is the promotion of culture linked to the promotion of education, as argued by developing countries? Or is the promotion of culture a distinct and separate entity to education, a position held by more developed western countries? If education is closely related to culture, to what extent is education perceived as a non-profit activity? Are the publishers and translators of educational and cultural materials the same parties committed to the promotion of the educational and consequently the cultural level of the users? Should the promotion of culture be primarily based on its market economy perceptions?^{40_IDEA_503)_and_footnotes(n98);FTNT n98} How does one account for the prevailing view in developing countries that culture has a source of value to the community beyond the constraints of commerce and trade?

d) Owner's power to terminate a license

Article II empowers the copyright owner to terminate licenses granted to the nationals of developing countries.^{40_IDEA_503)_and_footnotes(n99);FTNT n99} The copyright owner may choose to publish the work themselves or authorize others to translate their works and thus recuperate his or her exclusive rights of translation in the language of that country.^{40_IDEA_503)_and_footnotes(n100);FTNT n100} For example, Section 8 entitles the copyright owner to refuse to grant licenses where he "has withdrawn from circulation all copies of his work."^{40_IDEA_503)_and_footnotes(n101);FTNT n101} The issue in this instance is whether the developing countries' concessions to copyright owners have been, by means

of these provisions, allowed developing countries to enter markets at will, wherever translated works, commercialization appear to be more profitable. Thus, compulsory licenses may be used by copyright owners to initially test the market in developing countries. The copyright owner may then elect to translate the work himself or authorize the translation of his work by others despite the fact that a license to translate the copyrighted work had previously been granted but then later terminated. Most troubling is the fact that an author may choose to not make their copyrighted work available for translation regardless of the fact that the work may benefit a developing country.^{40_IDEA_503)_and_footnotes(n102);.FTNT n102}

3. Art. IV: Is it really a compulsory license system?

The issue remains whether what is referred to in Article IV^{40_IDEA_503)_and_footnotes(n103);.FTNT n103} is in fact a "compulsory license." It has been demonstrated that compulsory translation licenses may be revoked following the expiration of a specific period of time.^{40_IDEA_503)_and_footnotes(n104);.FTNT n104} After the first publication of a copyrighted work and the expiration of the initial one-year period, a copyright owner has nine months to revoke the license. For three-year translation licenses, copyright owners have up to six months to revoke the license.^{40_IDEA_503)_and_footnotes(n105);.FTNT n105} With revocation possible, then what is a compulsory license? Are there any references available to assist in determining the scope of compulsory licenses as compared to negotiable licenses? What are the advantages and limitations of a compulsory license system?

a) Owner's power to authorize a license

Obviously, there are varying conceptual definitions for compulsory licenses. The "free use" proposal for copyrighted works, initially proposed in Brazzaville,^{40_IDEA_503)_and_footnotes(n106);.FTNT n106} was categorically refused due to the absence of compensation for copyright owners. In contrast, compulsory license systems contain significant differences. The obvious difference between compulsory license systems and the "free use" concept is the latter's lack of compensation for copyright owners. In addition, "free use" is not applied through governmental authority. However, neither system requires the user to request authorization from the copyright owner. Due to the inherent nature of compulsory license systems, it is obvious that copyright owners do not have the choice to either accept or refuse a license. Instead, it is their obligation to grant the license. Furthermore, a compulsory license still necessitates that "the publisher, and through him, the author, be informed of the application,"^{40_IDEA_503)_and_footnotes(n107);.FTNT n107} a feature absent in the "free use" concept. Clearly, there is a critical difference between merely informing the author that his copyrighted work is going to be copied and requesting permission for the authorization to translate and copy.

b) Procedure: the betrayal of a tradition?

The provisions and procedures for obtaining a translation license appear to be somewhat complicated. Article IV section (1),^{40_IDEA_503)_and_footnotes(n108);.FTNT n108} (2)^{40_IDEA_503)_and_footnotes(n109);.FTNT n109} and (3)^{40_IDEA_503)_and_footnotes(n110);.FTNT n110} present a number of procedural

steps which the licensee must accomplish prior to obtaining a license. The International Federations of Actors, Variety Artists and Composers criticized the procedures when they stated that "it regrets . . . that it has been impossible to devise a simpler system for the assistance to be granted to developing countries under the Additional Act, and that it has been necessary to draft the relevant provisions in a language not easy to understand."^{40_IDEA_503)_and_footnotes(n111);FTNT n111} It is disappointing to observe that the Berne tradition of protection without formalities may have been changed to the contrary. This observation is especially disheartening for developing countries for whom goodwill had been spared in order to develop "satisfactory solutions in the field of Copyright in respect of their requirements for education, science and promotion of culture."^{40_IDEA_503)_and_footnotes(n112);FTNT n112}

c) Exportation limitations

Developing countries have legitimate concerns regarding the exportation of translated works through the special license provisions of the Appendix. Transportation of the copyright owner's works heightens the possibility of cheaper versions of their work being imported into their own pre-existing territory. Nonetheless, sophisticated measures, such as those employed by the United States Customs Service,^{40_IDEA_503)_and_footnotes(n113);FTNT n113} remain powerful instruments to assist in preventing the incursion of such materials.

Why are developed countries so fearful of the exportation of translated works from a country which has made the declaration and another that is entitled to the same declaration? It is confusing to understand why developed countries are fearful when one considers that the purpose of allowing translated works is to foster cooperation between developing countries who do not have the material capacity to independently undertake translation and publication and developed countries which do have the resources for translating and publishing. Furthermore, it is troubling to observe that "five of the Francophone African countries under which two or more countries with the same language would not be allowed, jointly, to request and obtain a license for translation or reproduction of a work for the purpose of teaching, scholarship or research."^{40_IDEA_503)_and_footnotes(n114);FTNT n114} The primary issues raised by the developing countries in their joint proposal were publishing, printing and translating. The issues had been thoroughly debated,^{40_IDEA_503)_and_footnotes(n115);FTNT n115} but resulted in no consensus. The proposal evoked a sharp response from the developed countries who responded that the developing countries proposal represented a major departure from the guidelines of the already agreed upon "package deal."^{40_IDEA_503)_and_footnotes(n116);FTNT n116}

However, there are circumstances where the General Report's restriction's may not apply. These include countries that have no printing or reproduction facilities or countries that are members of Berne Union.^{40_IDEA_503)_and_footnotes(n117);FTNT n117} In these cases, all copies are transported in bulk to the licensee for exclusive distribution in their country.^{40_IDEA_503)_and_footnotes(n118);FTNT n118} Although these exceptions were included in the General Report,^{40_IDEA_503)_and_footnotes(n119);FTNT n119} they do not appear in the body of the Appendix. Some argue that the interpretations adopted by the Revision Conference

were so "detailed and precise" that they clearly should have been embodied in the Convention itself.⁴⁰ IDEA_503)_and_footnotes(n120);FTNT n120

Moreover, still pending under the regime of the "free use" system is the issue of potential harm upon developed countries by the translation of works by developing countries into minority or regional languages. For example, if the harm is for transnational publishing corporations to not take over the marketplace for translating Swahili works, this may indicate that the colonization process has not ended, but rather has taken another shape. In essence, developed countries are continuing to exert and maintain economic influence over developing countries although colonial political and military establishment had been officially declared obsolete and even after the developing countries. so-called "independence."⁴⁰ IDEA_503)_and_footnotes(n121);FTNT n121

d) Compensation

The compensation provision stipulates that payment and transmittal of compensation should be conducted using international transmittal standards in order to ensure the convertibility of the currency or its equivalent.⁴⁰ IDEA_503)_and_footnotes(n122);FTNT n122 The developing countries. dependence upon and submission to the developed countries. economic scheme falls clearly within these stipulations. The provisions raise the question, just how is "just compensation" measured? The Article's text is rather vague, stating that compensation should be "consistent with standards of royalties normally operating on licenses freely negotiated between two persons in the two countries concerned."⁴⁰ IDEA_503)_and_footnotes(n123);FTNT n123 However, because royalty payments under compulsory license systems are at the discretion of the individual countries. governmental authorities, the "freely negotiated" clause from the text is biased against developing countries.

Clearly, the economical presence of the developed countries. institutions is taking advantage of the easily penetrable markets of the developing countries. Furthermore, the rules of the game have been shaped according to western political philosophy which has emerged - not surprisingly -- since the early days of colonization.

III. A CONFLICT OF INTERESTS

This section will attempt to explore the different poles of interest in the geography of the provisions regarding the CLT in the Appendix of Berne.⁴⁰ IDEA_503)_and_footnotes(n124);FTNT n124 Arguably, the animated and divergent discussions present at the Stockholm⁴⁰ IDEA_503)_and_footnotes(n125);FTNT n125 and Paris⁴⁰ IDEA_503)_and_footnotes(n126);FTNT n126 conventions were influenced by the respective actors of the international copyright system, e.g., the authors, publishers, translators and end users. The obvious question is, how does each actor perceive the CLT provision?

Copyright laws were established in order to recognize and protect the value of the author's works. As such, little light has been shed upon the rights of other actors, with the exception of publishers who may have been assigned the rights to the works by the author. Users are generally perceived as trivial consumers armed simply with purchasing

power. However, users are also moral individuals that often question the content of the subject matter they are exposed to, for example, culture, education values, etc., and the conditions in which they receive that content, such as oppression/freedom, dependency/autonomy, etc.^{40_IDEA_503)_and_footnotes(n127);FTNT n127} Translators are often seen as minor figures, capable of only producing "derivative works."^{40_IDEA_503)_and_footnotes(n128);FTNT n128} Presuming that translators have accepted this "non-original" preposition, to whom is their translation directed towards, the author or the end-user? Furthermore, what is the present position of the translator in the quadrilateral scheme of CLT with respect to developing countries and where should the translator's position be?

A. The perspective of the author

It is unnecessary to review the divergent interests that influenced the development of international copyright law especially where it has been called "droit d'auteur", e.g., in the name of the author.^{40_IDEA_503)_and_footnotes(n129);FTNT n129} Additional support for this influence is seen from the Records of the Paris Conference.^{40_IDEA_503)_and_footnotes(n130);FTNT n130} International and nongovernmental associations from developing nations, in unison with delegates from developed nations, called for the respect and sake of authors' rights.^{40_IDEA_503)_and_footnotes(n131);FTNT n131} As the historical focal point of copyright legislation, the author's perspective may appear somewhat uninteresting. Nevertheless, the potent rights held by authors reflected in copyright laws, such as the power to use or misuse their work,^{40_IDEA_503)_and_footnotes(n132);FTNT n132} have increasingly becoming the subject of growing critique and have raised a number of questions. What is the definition of an author? Does the author still possess, in the literary or philosophical thought of the twentieth century, the same status?^{40_IDEA_503)_and_footnotes(n133);FTNT n133} Is it time to rethink and redefine the grounds for authorship with respect to copyright laws?

Relevant as they are, it is necessary to table these questions and instead focus on the implications of authors' defenses within the context of compulsory translation licenses. Developing country delegates at the Stockholm and Paris conventions used the metaphor, "a humble figure of a dwarf on the shoulders of a giant . . ." in an attempt to distinguish the individual aspects of authorship and ownership to an author. The image is based on the assumption that an author is not a creator, e.g. an absolute being maker ex-nihilo, who possesses the absolute privilege to exploit his rights. The image is perhaps based on the theory that the bulk of the author's contributions to the patrimony of the humanity is nothing more than a reformulated heritage. In essence, the value and definition of absolute "originality" is questioned. At the same time, the concept of absolute "ownership" becomes relativized.

Thus, if the nature of authorship is questioned because of issues regarding originality, which itself are reflected in the concept of ownership, users may have broader rights than originally perceived. The reformulated heritage concept finds support in the policy underlying compulsory licenses for developing countries. The obligation^{40_IDEA_503)_and_footnotes(n134);FTNT n134} requiring authors to concede the translation or reproduction of their works is based upon the principle of sharing a new formulation of the human patrimony with countries that historically cannot

translate or reproduce works with the same means and efficiency. Precisely because the Appendix's compulsory license system is not an absolute or definitive measure of "ownership," there is an opportunity for authors to consider the noneconomic side of their concession and view compulsory licenses as a contribution which assists in the building of developing nations. education and culture.

The economic issues concerning compulsory licenses raise another question, are economic incentives a motive of creation for authors? If this were the case, the arguments put forth by developing countries in Stockholm⁴⁰ IDEA_503)_and_footnotes(n135);.FTNT n135 and Paris⁴⁰ IDEA_503)_and_footnotes(n136);.FTNT n136 would be justified without discussion. Nonetheless, and without mitigating the legitimacy of the economic incentive argument, attention should also be drawn to the questions of why write, why publish, and why the immodesty of disseminating the writing? These questions have been thoroughly discussed:

A fundamental form of argument used to justify the creation of intellectual property is that such rights provide incentives for persons to engage in the activity covered by the particular right History may tell us whether property rights are the only route to take for a society that wants to encourage invention and

innovation History may teach us that the connection between IP, science and economic development is contingent and local rather than necessary and universal.⁴⁰ IDEA_503)_and_footnotes(n137);.FTNT n137

Whereas some may have a larger view concerning intellectual property rights, there is a specific distinction with regards to copyrights. Although it is impossible to discuss this matter in depth, it is sufficient to point out that this economic justification may be exaggerated. This is especially obvious when viewing the benefits that would be conveyed to developing countries in terms of education, research and scholarship. Assuming of course, that the intellectuals of developed countries have a simultaneous concern for the development of the humanity, as a whole, and not just within the framework of their own limited society.

B. The perspective of the publisher

Another important stakeholder in copyright conflicts of interests is the publisher. Although the economic interest of publishers may be perceived as more immediate, publishers and authors often have identical interests relating to the printing and publishing of the author's work. Furthermore, the publisher is the means by which an author can reach users. A publisher's existing goodwill presents the opportunity for an author to establish or build upon their image in the marketplace.

In some instances, the publisher is also the copyright owner. In this case, the author is perceived as a first generator of the work. In return, they are paid a lump sum for assigning their rights in the work to the publisher. With their economic interests often mirroring author's interest, it is clear that publishers are important parties in the scheme of compulsory translation license systems.

However, the CLT system^{40_IDEA_503)_and_footnotes(n138);.FTNT n138} adds yet another stakeholder -the publisher's counterpart within the developing country. In these situations, it is the publisher's burden to represent the initial work of the translator, as published in the developed country, and transform it into a marketable product in the language of the respective developing country.

The potential difficulties facing senior publishers^{40_IDEA_503)_and_footnotes(n139);.FTNT n139} have been discussed thoroughly:

It has long been recognized that publishing is a complex enterprise, being both a business venture and a cultural institution. It has international implications and relationships that have a tremendous cultural impact. Translations, copyright questions In the Third World, particularly, publishing is linked closely to the educational system It depends on the institutional infrastructures of education and libraries to provide the basic market for books The individual market in most Third World countries is largely undeveloped Government policies affect the book industry. . . . Since public funds provide much of the basic economic support for publishing, the industry is directly influenced by government policies concerning libraries, the price of paper,^{40_IDEA_503)_and_footnotes(n140);.FTNT n140}

The junior publisher has been regarded as one of the more sensitive players in the international copyright system. "Without question, the international copyright arrangements were drafted to protect the interests of the major publishing nations and many industrialized countries accepted copyright only when it was in their interest; copyright did not originate in a desire for the free flow of knowledge and ideas."^{40_IDEA_503)_and_footnotes(n141);.FTNT n141} The statement raises the issue of controlling information and knowledge, not only as source of income, but as a means for promoting educational, technological and cultural development. The reasons put forth by the developed nations justifying the high level of copyright protection within the frame of international conventions is perceived by some commentators as suspicious.

Many in the Third World feel that international copyright does not serve their best interests. This is not difficult to understand when one recognizes that many industrialized countries began to observe international copyright only when they felt it fit their particular needs. Many industrialized countries still find ways of getting around the issues of copyright when they feel this is necessary.^{40_IDEA_503)_and_footnotes(n142);.FTNT n142}

More precisely, the junior publisher's concern is not only the insufficient support conveyed through the CLT provisions,^{40_IDEA_503)_and_footnotes(n143);.FTNT n143} but also the globalization phenomena affecting the publishing industry:

Without question, the multinational publishers retain a good deal of influence in the international textbook configuration: they set the standard for texts and they are able, in some markets, to dominate the production and sales of textbooks. In recent years, they have begun to publish in Third World languages and have thereby spread their influence. Branches of multinational publishers in such countries as Zimbabwe, Nigeria, India, and Malaysia are actively producing books in local languages for specific markets.^{40_IDEA_503)_and_footnotes(n144);.FTNT n144}

Moreover, "The development of new technologies in publishing will accelerate the use of knowledge. This in turn will allow the users of such knowledge to advance into other new technologies that will provide the foundations for future major world industries"^{40_IDEA_503)_and_footnotes(n145);.FTNT n145}

The continuing advancement of developed countries is not just an observation, but may also be a planned strategy to surround developing countries with economic requirements that place them perpetually in a stage of dependency. Support for this proposition is evidenced by the existence of the "cultural imperialism" phenomenon.^{40_IDEA_503)_and_footnotes(n146);.FTNT n146} In this instance, developing countries are primarily regarded as consumers of intellectual property such as movies and music imported from developed countries. This perceived injustice has spawned an even more radical concept of what is known as copyright. "The concepts of organization and control make it obvious that there is nothing universal about copyright. All societies have evolved systems for organizing information flows, but these systems show many facets. Different societies have given very different answers to copyright issues."^{40_IDEA_503)_and_footnotes(n147);.FTNT n147}

Arguably, it can be concluded that the established authorship and publishing policies are undeniably influenced by the technological and educational advantages western countries possess over developing countries. As a consequence, international copyright regimes are deemed as one of the more privileged and efficient instruments to maintaining these policies. Obviously, it is difficult to criticize and argue in favor of the deconstruction of these legal means. Thus, the law is benefiting from its normative powers; shouldn't the law also be used to prevail in actual and potential conflicts arising from divergent interests?

C. The perspective of the translator

Prior to addressing the translator's duty of faithfulness owed to either the author or the end-user, it is important to examine the legal, symbolic, historical and political dimensions of the translator's position.^{40_IDEA_503)_and_footnotes(n148);.FTNT n148}

Obviously, developing countries are concerned with "who" translates the works into their language(s). This is especially important considering the fact that translation is not merely translation of words and ideas but also a translation of cultures and values.^{40_IDEA_503)_and_footnotes(n149);.FTNT n149} Thus, it is important for developing countries to have their own translators examine the work in order to ensure proper adaptation and fitness for their society. The UNESCO Recommendation encouraged member states to adopt standards holding translators to a "linguistic and stylistic" duty and a duty to guarantee that the translation will be a faithful rendering of

the original.⁴⁰ IDEA_503)_and_footnotes(n150);FTNT n150 Although the recommendation represents an affirmation of the original author's rights, it does not shed any light regarding the rights of end-users with translations.

The position of the translator with respect to the author has been a vocal point of debate. The influence of existing international copyright conventions on institutions defending the status of translators is seen by many as unsatisfactory. For example, some commentators have accused the Nairobi Recommendation, of directly lining up with the U.C.C. and the Berne Convention. These commentators argue that these institutions should be more considerate toward translators.

The autonomy of translation as original work is enhanced by separating author from translator. But the originality that entitles translators to legal protection is obviously not the same as that of foreign authors, who still enjoy "the exclusive right of making and authorizing the translation of their works" (article 8). The UNESCO recommendation to improve the status of translators . . . actually repeats the wording of the Berne Convention and thereby continues the subordination of translators to the authors of the underlying works (article II.3).⁴⁰ IDEA_503)_and_footnotes(n151);FTNT n151

The point raised by some commentators⁴⁰ IDEA_503)_and_footnotes(n152);FTNT n152 is that the symbolic and legal position of the translator in the field of copyrights needs to be revised. On one level it is noted that

when copyright treats derivative works, it contradicts its key principle: that authorship consists of original expression, and hence that legal protection is given only to forms, not ideas In current law, the producer of a derivative work is and is not an author. This contradiction indicates that copyright law must be protecting something else to the detriment of derivative works like translations.⁴⁰ IDEA_503)_and_footnotes(n153);FTNT n153

The developed countries. legal conception of translation must change. Despite the fact that the translator accomplishes the critical function of bridging cultures and establishing dialogue between remote populations, the present copyright regime appears to lack consideration for these efforts. Unless developing countries. notions change, there remains no incentive for translators to translate. This lack of consideration is evidenced in the following comment.

A translation, then, can never be more than a secondorder representation: only the foreign text can be original, authentic, true to the author's psychology or intention, whereas the translation is forever imitative, not genuine, or simply false. Copyright law reserves an exclusive right in derivative works for the author because it assumes that literary form expresses a distinct authorial personality -- despite the decisive formal

change wrought by works like translation.^{40_IDEA_503)_and_footnotes(n154);.FTNT n154}

On a more subjective level, the translator's efforts are also stigmatized with the label of derivative works. This feature of nonoriginality is rooted since the birth of the concept of ownership.

There was a time when the original was perceived as being de facto superior to the translation, which was relegated to the position of being merely a copy, albeit in another language The concept of the highstatus original . . . arose as a result of the invention of printing and the spread of literacy, linked to the emergence of the idea of an author as "owner" of his or her text.^{40_IDEA_503)_and_footnotes(n155);.FTNT n155}

When, by law, authors acquire title of ownership in their work, the status of "originality" is immediately granted to their work.^{40_IDEA_503)_and_footnotes(n156);.FTNT n156} However, the assumption of originality is increasingly being questioned by parties outside developed countries.^{40_IDEA_503)_and_footnotes(n157);.FTNT n157}

Furthermore, translation has not been seen historically as an innocent practice. Some commentators have seen translation used as an instrument of domination to such an extent that it is recognized that "colonialism and translation went hand in hand."^{40_IDEA_503)_and_footnotes(n158);.FTNT n158} What does this position mean in the context of the present international copyright conventions?

The pressures exerted by the developed countries, manifested in the last two revisions of Berne, can be seen as a sign of a willful perpetuation of the past dominant conduct by the industrialized world upon developing countries. Although the changes to the provisions have been attempted by developing countries, these changes have been aborted and thus minimize the efficiency of the so-called favorable provisions present in the Berne Appendix which were supposedly made to meet the needs of the developing countries.

The perspective of the translation scholars is enlightening as it highlights how the power of language has rather critical implications.

Translation scholars make note of the fact that whether or not a language is dominant in a geographic region of a developing country, the choice of language is strongly influenced by the colonizing country. For example, one author noted the following:

The Belgian colonizers of what came to be known as the Congo selected Shaba Swahili, then a minor dialect spoken by a few hundred Africans, to become the lingua franca or "vehicular language" of empire, and systematically set about spreading it across the territory under their control so that at independence in 1960 the language had several million speakers.^{40_IDEA_503)_and_footnotes(n159);.FTNT n159}

In light of the foregoing, how legitimate is the "language in general use" category? How can the law handle these distortions of history? Is there any likelihood that future international conventions will someday account for these past injustices or change the fate of ongoing injustices in the developing world?

D. The user's perspective: an example of an oriented public interest without loss

The importance of the user's perspective in the present problem is evidenced by the fact that the user here is precisely the developing countries. The purpose of the overall argument developed in this article points directly to the interest of that quite heterogeneous group -- the developing countries. It is, however, fair -- regarding the CLT dispute -- to consider the heart of the developed countries. economic argument and to formulate, for time being, a tentative proposal^{40_IDEA_503)_and_footnotes(n160);FTNT n160} that would be at least more sympathetic to the least developed countries. Any proposal should also be more in line with what is already practiced at the national level in some industrialized countries (for example, the United States).

A relatively recent congressional policy decision^{40_IDEA_503)_and_footnotes(n161);FTNT n161} could form the framework for a new fair use exception for translation. The Congress of the United States, in 1996, amended the Copyright Act to implement a new section, § S 121.^{40_IDEA_503)_and_footnotes(n162);FTNT n162} This new section allows authorized entities to copy and to distribute copyrighted material for the blind or disabled.^{40_IDEA_503)_and_footnotes(n163);FTNT n163}

Far from inappropriately labeling all the people of developing countries as blind or disabled, the proposed analogy is only to demonstrate that there are existing copyright provisions that help challenged people. The § S 121 copyright provision disfavors damages for Braille and other "specialized formats."^{40_IDEA_503)_and_footnotes(n164);FTNT n164} In fact, § S 121 would not have been enacted if Braille and other formats were a significant source of damages (loss of profits) for copyright owners. "These special forms, such as copies in Braille and phonorecords of oral readings (talking books), are not usually made by the publishers for commercial distribution."^{40_IDEA_503)_and_footnotes(n165);FTNT n165}

The author proposes that the Least Developed Countries also would not be a source of damages for copyright owners. The Least Developed Countries deserve to be treated with more understanding and flexibility. The same type of fair use provision should be applied to developing countries instead of the actual compulsory license system.^{40_IDEA_503)_and_footnotes(n166);FTNT n166} The author acknowledges that this thesis should be supported with figures and statistics, however, a current lack of resources presents an obstacle to provide such support. It must suffice for the time being to at least set up a strategy of approach.

Step 1: Select the Least Developed Countries based upon United Nations criteria.^{40_IDEA_503)_and_footnotes(n167);FTNT n167} These countries should not be chosen based only on their lack of material capacities. Least Developed Countries should

also be chosen by human resources, such as teachers, intellectuals, artists and any other individuals (or institutions) contributing to the educational and cultural life of the countries in question. This should be done primarily with the help of the UNESCO which is obviously dedicated to all these issues and possesses a nonnegligible database related to these factors.^{40_IDEA_503)_and_footnotes(n168);.FTNT n168}

Step 2: Inventory the number of local products that can fall under the protection of a copyright law. This inventory should include not only artistic works, such as music, songs, movies, drawings, translated and original books, broadcasts, etc., but also local traditional artistic works, such as oral stories, traditional drawings and motives, religious sculptures, ritual dances and other cultural items related to indigenous people's heritage.

Step 3: Look favorably upon the countries that have integrated into their copyright laws the provisions of the Appendix of Berne. The western countries should also favorably consider those countries that have actually availed themselves of Articles II and III of the same Berne Appendix.^{40_IDEA_503)_and_footnotes(n169);.FTNT n169}

Step 4: Collect any information regarding the concrete reasons for using, or not using, the provisions of the Appendix. This information could be collected from government officials dealing with CLT, from educational institutions, from publishers, from translators or from any other relevant parties.

Step 5: On the scale of what is actually practiced on the field of CLT, and on the basis of the inventory obtained in Step (2), calculate the gain that has been realized by the copyright owners from the CLT compensations. Balance this gain against the total income resulting from sales in the copyright owner's developed country.

Step 6: Finally, the gain from the CLT compensations should be so negligible that it consequently would not be a damage for the copyright owner to concede his rights as fair use by users originating from LDCs.

Another argument for CLT can be put forth. The inhibition of copyright owners in giving concessions on copyright protection, in favor of developing countries, is less understandable in the age of digital technology than in the age of printed books. The owners of copyrighted works need not fear the importation and dissemination of pirated digital copies (mainly CDs and DVDs produced in developing countries under a compulsory license for translation). Least Developed Countries are less likely to have pirated copies of printed works being cheaply re-published in a developing country and exported to the original country of publication. Pirated printed works are less likely because: i) United States Customs has very strict infringement and importation regulations;^{40_IDEA_503)_and_footnotes(n170);.FTNT n170} ii) the printed works market is being slowly, but surely, replaced by the digital market;^{40_IDEA_503)_and_footnotes(n171);.FTNT n171} and iii) if the developing countries' policies are seriously supporting education and research, these countries will have strict export regulations and will put a clearer priority on the dissemination of the printed material among the unbalanced proportions of educated/uneducated populations rather than allowing the cultural imperialism to take place.

If the United States Copyright Act allows reproduction for blind and other disadvantaged persons under a fair use

doctrine⁴⁰ IDEA 503) and footnotes(n172); FTNT n172 (e.g., no royalty, no authorization, no delay), why not imagine a fair use doctrine for the Least Developing Countries? Why not a fair use doctrine instead of the tedious CLT system?⁴⁰ IDEA 503) and footnotes(n173); FTNT n173 Many LDCs have so many languages (and territories) that they will not constitute a significant market for the developed countries. book publishers. Nor will many LDCs be a source of damages to the developed countries. book publishers. Books are still objects of large consumption in developed countries, but the need for books in the third world is much more critical than what it is in the developed countries (due essentially to the technology development such as the Internet).⁴⁰ IDEA 503) and footnotes(n174); FTNT n174 In fact, a great responsibility of political will is also borne by the developing countries which need to concentrate on the basic education of their populations. Basic education can be improved by the effective dissemination of valuable literacy programs supported by adapted printed materials, notwithstanding the parallel need for developing countries to catch up on digital technology, at least and for the time being as acknowledged consumers.

IV. BETWEEN ECONOMY AND CULTURE

Part IV will demonstrate that the conventional assumption of copyright economic incentive can be otherwise perceived. As this portion of the article shows, the developed countries. conception of copyright, and its associated economic incentive to create, need not be due to the differing cultures of LCDs. This materialistic incentive can be considered as an investment for a future and long term source of economic development, if and only if, it is agreed that "culture" is merely a spring of materialistic well-being and tangible profits, perceived in the specific perspective of economism. What is, then, the developing countries viewpoint on that matter? Should developing countries continue to adopt laws and their underlying philosophical premises from their own understanding of "culture" and "economic development"? Or should developing countries be able to elaborate their own models and propose constructively new orientations of copyright as well as to how it should be implemented in the developing countries environment?

A. .The cultural dimension of development.

The CLT provisions are so critical that they provoke a great deal of issues. In fact, as copyright is usually conceived as an incentive to create more intellectual production and, therefore, more wealth, it is legitimate to think with respect to developing countries, that beyond its intrinsic necessity and general usefulness, copyright would have the primary quality of promoting progress and advancement. But what kind of progress does copyright promote? Is it a purely economical progress? Or does copyright simultaneously promote social, educational and cultural progress? Or is it, maybe more globally, all the foregoing aspects of a community's life that are to be taken into account in order to plan a development project? Can the CLT constitute an instrument of development and, if it can, then, under what conditions?

In the first place, as any society is constituted of more than one aspect (because of all the subdivisions that structure its organization), any development project intended for any society should normally be envisaged adequately. Any development project, for example, should take into account all the aspects that constitute society's material, as well as moral, body. Thus, attention would be drawn, in addition to the economical dimension of its

development, to the social, educational and cultural dimensions as well. That is, if copyright law reservations -- as meant for the developing countries -- are conceived as an instrument of development (e.g., the CLT), any implementation project should not be limited to its purely legal or economic perspective. Any implementation project, instead, should be construed more broadly to its other aspects as well.^{40_IDEA_503)_and_footnotes(n175);.FTNT n175} Culture, in this regard, is one of the most important angles of approach.

According to UNESCO, the concept of "Cultural Dimension of Development"^{40_IDEA_503)_and_footnotes(n176);.FTNT n176} came up in the 1980's when "culture"^{40_IDEA_503)_and_footnotes(n177);.FTNT n177} was no longer defined as a subsidiary or even ornamental dimension of development but as the very fabric of society in its overall relation with development and as the internal force of that society."^{40_IDEA_503)_and_footnotes(n178);.FTNT n178} In fact, that definition of culture was adopted at the 1982 World Conference on Cultural Policies held in Mexico City.

The cultural dimension of development embraces all the psychosociological components which, like the economic, technological and scientific factors, help to improve the material and intellectual life of the populations without introducing any violent change into their way of life or modes of thought, and at the same time contribute to the technical success of the development plans or projects.^{40_IDEA_503)_and_footnotes(n179);.FTNT n179}

This change of understanding is a demarcation from the conception of development as it has been conceived in the West since its industrialization. In fact, only until recently, the strictly economic development model was the "super-standard" in use. Such understanding supposed that a society could mainly develop if -almost exclusively - the economic instruments and means were put together in order to obtain the anticipated result. But the social crisis and the environment problems that were beginning to ache Europe in the early 80's engendered new approaches to the question of development in general.

At the intergovernmental level, the Mexico City Conference has set the new standard. The final report states:

Development is "a complex, comprehensive and multidimensional process which extends beyond mere economic growth to incorporate all dimensions of life and all the energies of a community, all of whose members are called upon to make a contribution and can expect to share in the benefits."^{40_IDEA_503)_and_footnotes(n180);.FTNT n180}

As the concept of culture, as well as of development, has evolved, the ethical and moral dimensions of life in community could not be further ignored. Progress has to start

from where the society is standing in order to go forward.^{40_IDEA_503)_and_footnotes(n181);.FTNT n181} If the society is multidimensional, development has to be multidimensional as well. Thus, after having been placed in the periphery of past development projects, culture became -- at least theoretically -- a central concern and gave to the "developer"^{40_IDEA_503)_and_footnotes(n182);.FTNT n182} a better view of what is the extent of the noneconomic factors. As UNESCO states:

The growth of the world population will make it increasingly necessary to give priority to the problems of economic and social development and to take into account the non-economic, particularly cultural, factors as accelerators of or obstacles to the growth of production and the balanced distribution of the goods and resources essential to the intellectual and spiritual - as well as physiological -- life of all humanity.^{40_IDEA_503)_and_footnotes(n183);.FTNT n183}

The holistic perspective of the "cultural dimension of development," with regard to the way that international forums are envisaging the problem of the developing countries, poses a number of questions: in such a context, would the cultural specificity be a factor of dissension or rather an element of reconciliation between the populations of the developing nations? What would be the long term benefits, in favor of developing countries, from a dedicated attention to the cultural dimension of an international e.g. economic development conference? Would it be legitimate to propose -- in the frame of a Conference such as the Berne Convention -- that some anthropologists^{40_IDEA_503)_and_footnotes(n184);.FTNT n184} participate as consultants to discuss legal issues involving the developing countries. covenant to the international copyright system in order to insure a vital minimum of concern about the cultural dimension of the copyright conception, development and implementation? As Professor Ruth Gana states:

There is some sense in intellectual property literature that once the development concerns are substantially resolved, intellectual property issues will "fit" in the developing world structure. This approach ignores the fact that local perceptions of tangible goods, in particular goods which result from creative activity, and local values which shape a system of protection for these goods have never been seriously considered in the context of the North-South debate over intellectual property protection. . . . Scholarship from both sides tends to focus exclusively on the economic impact of protecting intellectual property.^{40_IDEA_503)_and_footnotes(n185);.FTNT n185}

More specifically, CLT can be considered a development project. The CLT could be a means for developing countries to introduce the copyright system, as provided in the Berne Appendix, into their body of laws. The CLT may gradually enhance the level of copyright protection and, in the long term, prod developing countries to cope with the main provisions of the Berne Act. Although the CLT's principal perspective is clearly

legal, it is nevertheless in a wider sense a text of law. CLT plans a strategy for less developed nations to adopt a conception of ownership of intangible property and a use of knowledge that is inspired by, or even rooted in, the western tradition.^{40_IDEA_503)_and_footnotes(n186);FTNT n186} This CLT strategy means that the Berne Appendix is full of cultural distortion effects.

Cultural factors should be considered early, even at the project planning stage. Cultural factors "may either act as constraints, slowing down development, or may serve to stimulate social change."^{40_IDEA_503)_and_footnotes(n187);FTNT n187} The "project planning stage" is, in fact, where the revision conferences revisit the text of the Convention and re-adapt the letter and spirit of some parts of the laws with the enviroing context and time without betraying the essential of the whole. That is, planning in the context of copyright for the developing countries is the exact stage where the incorporation of the cultural dimension should be made.

What we witnessed, however, in the 1971 Paris Conference Revision was rather different.^{40_IDEA_503)_and_footnotes(n188);FTNT n188} The 1971 Revision notes that the Delegation of Ceylon proposed amending Article II(4) to state: "Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship, research or promotion of culture."^{40_IDEA_503)_and_footnotes(n189);FTNT n189} This proposed amendment, however, was "omitted."^{40_IDEA_503)_and_footnotes(n190);FTNT n190} This omission seems surprising given that the World Intellectual Property Organization has, as one of its principles and its tasks, the promotion of culture through the "dissemination of literary and artistic works."^{40_IDEA_503)_and_footnotes(n191);FTNT n191}

At this time, the CLT provisions of the Paris Conference Revision can be described as a bundle of reservations to the Berne Act. This bundle of reservations was formulated, on average, less than ten years after the great move of decolonization of the mid-1960.s.^{40_IDEA_503)_and_footnotes(n192);FTNT n192} This was a particularly tense atmosphere of protest expressed by the newly independent nations and in a spirit of compromise between two mainly unequal parties (the industrialized and the developing nations).^{40_IDEA_503)_and_footnotes(n193);FTNT n193} The Paris Conference Revision was not a constructive partnership, building-up an international copyright system suitable for each and every nation (by the very fact that it would account for the conceptual issues that preserve the identity and cultural values of both the developed countries and the developing ones).

Thus, the respect of the differences in the cultural values among the nations with regard to the CLT provisions would have at least set the following problems: whether intangibles (knowledge, popular literature, spiritual teachings, folkloric expressions, etc.) can be an individual property and further an object of trade;^{40_IDEA_503)_and_footnotes(n194);FTNT n194} whether the product of one's mind or the individual expression of a community tradition could be a source of wealth;^{40_IDEA_503)_and_footnotes(n195);FTNT n195} whether translation is an independent activity, a totally separate production from what has been commonly called the "original" composition;^{40_IDEA_503)_and_footnotes(n196);FTNT n196} whether translation is considered in some parts of the world as the only means for the circulation of knowledge and, thus, unsubdued to any sort of control under the copyright law or

other.⁴⁰ IDEA 503) and footnotes(n197); FTNT n197 Moreover, the incorporation of copyright and its implementation, conceived as a development project and intended for the developing countries as provided in the CLT, sets the question of "change" that underlies development.

In fact, in the face of change, each culture defines implicit and explicit hierarchies of consent, which determine the acceptability of development action. . . . Thus, there is a hierarchy of cultural values which largely determines their compatibility (or potential for conflict) with development values and in which traditions, beliefs, value systems and norms play a fundamental role.⁴⁰ IDEA 503) and footnotes(n198); FTNT n198

Several questions, however, immediately come to mind. Why change? What is the balance between the intrinsic and the extrinsic interests to change? Is the change timely or even possible in some societies? What place does change occupy in the cultural system of each society? What, if any, should be the conditions of change? These questions are essential, especially where the rules and boundaries that stem from a given worldview are being corrupted, and even replaced, by the dominant's worldview. There is still no deliberate will -- neither from the "developer" side nor from the "developed" side -- to re-think "change" in the simultaneous perspective of preserving one's identity and culture.

Development, or even the slightest trend toward change (should that change be legal change or any change), necessarily implies a minimum endeavor to answer these foregoing questions. In the case of the CLT provisions, the underlying development objectives are of such importance -- on the global level of developing societies -- that they deserve a primary concern in the intergovernmental institutions (e.g., WIPO and UNESCO). The intergovernmental institutions should avoid outdated, exclusive legalistic discussions and, rather, consider an open and multidisciplinary approach. This multidisciplinary approach would foster a wider range of enlightened views. Planning the future of a multidimensional and heterogeneous global world cannot be possible without a multidimensional and heterogeneous perspective. From now on, the epistemology of building the global future within the international organizations should take precedence. This, however, is a subject beyond the scope of the present article.

However, how can the above-proposed approach be considered when the actual trend at the intergovernmental level -- mainly out of the immediate frame of the United Nations specialized agencies -- is to reduce the measure of all things to the sole denominator: economy? Where does copyright stand with regard to this phenomenon? And what kind of influences are to be expected for the developing countries?

B. Copyright, Development and Culture in the TRIPs Agreement

While the Berne Convention and the UCC could be considered international legal instruments of development, some commentators seriously question the very idea of "development."⁴⁰ IDEA 503) and footnotes(n199); FTNT n199 Professor Ruth Gana likens the TRIPs Agreement reservation provisions for developing countries to an "internationalization of intellectual property."⁴⁰ IDEA 503) and footnotes(n200); FTNT n200 The TRIPs Agreement, in

fact, is "premised solely on economic considerations"^{40_IDEA_503)_and_footnotes(n201);FTNT n201} and constitutes "a condition for participation in multilateral trade relationships."^{40_IDEA_503)_and_footnotes(n202);FTNT n202} The TRIPs Agreement, then, becomes the representation of a new generation of international treaties that does not act from a philanthropic standpoint. "The impetus behind the TRIPs Agreement is a combination of two inextricable objectives: (1) to secure global economic rewards of an intellectual property grant, and (2) to facilitate the enforcement of these rights as a means to accomplish the first objective."^{40_IDEA_503)_and_footnotes(n203);FTNT n203}

Inevitably, these interested and egocentric perspectives have yielded a denunciation of the TRIPs Agreement's driving motivations with regard to development. "Close examination of the TRIPs Agreement reveals an overall disproportionate burden in the area of intellectual property protection in developing countries without any tangible development benefit."^{40_IDEA_503)_and_footnotes(n204);FTNT n204} Furthermore, "the point the TRIPs Agreement attempts to legitimize is not whether intellectual property rights may, or should, be used as a vehicle to achieve national development and prosperity, but rather, how the control of these rights determines the direction and beneficiaries of that development."^{40_IDEA_503)_and_footnotes(n205);FTNT n205}

However, an important paradox is to be noted. On the one hand, the TRIPs Agreement is presented as global action in order to achieve global growth. The TRIPs Agreement situates intellectual property at the core of multilateral trade relations.^{40_IDEA_503)_and_footnotes(n206);FTNT n206} On the other hand, the TRIPs Agreement imposes that the approach taken, for intellectual property protection on the international level, is determined solely by economic criteria.^{40_IDEA_503)_and_footnotes(n207);FTNT n207} This economic criteria is clearly based on one particular model -- the liberal market economy system.^{40_IDEA_503)_and_footnotes(n208);FTNT n208} That is, intellectual property cannot be a privileged instrument of development in a framework that reduces all the values of "what constitutes 'the good life'"^{40_IDEA_503)_and_footnotes(n209);FTNT n209} to solely economic criteria. Development, instead of being the major priority of any global action, is actually relegated to a secondary position. The needs of the developing countries are satisfied through the constitution of different ad hoc commissions (e.g., the commission for the LDCs) that definitely do not have any leverage to influence the major orientation of the WTO's founding principles. International forums, then, appear to be a pseudo-democratic process where development is not conceived for the developing nations, but rather, for the developed nations. The developed nations, under the cover of the laws in force and the group's legitimacy, serve their own interests and make third world development the actual and final development of oneself only. In fact, it is a self-development that strangely reminds us of the colonization period where development was almost always of one's own, and at the expense of the colonized.

A global action for a global growth needs to start at the national/individual level.^{40_IDEA_503)_and_footnotes(n210);FTNT n210} It is by taking into account the less and least developed countries. views, needs and inputs that a real development perspective can take place.^{40_IDEA_503)_and_footnotes(n211);FTNT n211} A global action starts with a global dialogue where a development perspective should harmonize

the values and terminology brought by the West in order, at least, to be translated into -- if not reinvented by -- the different worldviews of the nations.⁴⁰ IDEA_503)_and_footnotes(n212);FTNT n212 This harmonization of different worldviews seems, to the author, a principle of fundamental justice. The objective sought is a real international copyright system, where all nations are equals in its building or readaptation, rather than an "internationalization" of a copyright system that has already been conceived upon the premises of a specific philosophical understanding. A philosophical understanding quite alienating and deeply invasive to many developing nations.⁴⁰ IDEA_503)_and_footnotes(n213);FTNT n213 As Professor Gana writes:

The TRIPs agreement makes the protection of intellectual goods in the forms and categories recognized in western cultures a mandatory requirement for nations within the multilateral trading system. . . . The requirement essentially erodes any possibility that a nation might independently negotiate its own accession to the Berne Convention, which has always been a possibility under international aspects of intellectual property protection.⁴⁰ IDEA_503)_and_footnotes(n214);FTNT n214

A development process cannot be but transparent and put together "partners" rather than a "developer" and a "developed." In fact, if the criteria of acceptability have already been set -- a "take it or leave it" approach -- the development perspective loses credibility. International cooperation is transformed into a legal legitimization of the richest part of the world's primacy.

Moreover, the TRIPs Agreement, as is, is indifferent or unfounded upon development principles. It is, in fact, an instrument literally against development. As a matter of fact, there are three complementary but overriding principles proper to the actual international copyright system in general and to the TRIPs Agreement in particular through which this could be demonstrated. First, the concept of protection of knowledge from appropriation rather than dissemination -- the sole real perspective for the developing countries - is an impediment to development. This cannot be defended from the stand point of the disfavored nations, especially because education and raw materials constitute a key problem for the basic progress of the society in general.⁴⁰ IDEA_503)_and_footnotes(n215);FTNT n215

Second, alienation from one's own worldview is an impediment to development. The adoption of a legal system that has not been discussed in light of one's identity cannot be but against a development perspective. As this article mentions, development cannot take place without considering the different cultural components that constitute the identity reference. In fact, no development is possible if the spiritual and philosophical elements supporting a society's cohesion and balance are relegated in favor of a foreign replacement, however sophisticated that foreign replacement may be.

Third, the promotion of control, rather than access, also impedes development. The control granted to the copyright holder, from copyright legislation and from that included in the body of the TRIPs Agreement, rather than wider, cheaper and easier access, is also symptomatic of a system that favors progress over development. In effect, if development

is a project that takes into account all founding aspects of life, then should not progress be tied to such founding elements?

Finally, some suggest that WTO enforcement of the TRIPs Agreement will increase trade sanctions against developing countries.^{40_IDEA_503)_and_footnotes(n216);.FTNT n216} If a developing country lacks an internal governmental structure to police the TRIPs Agreement, developing countries will be more exposed to the trade sanctions imposed by the new Dispute Resolution process.^{40_IDEA_503)_and_footnotes(n217);.FTNT n217} The likelihood that developing countries are going to incur such risks can definitely not be credited to a development perspective, but, to something radically converse. The anti-development perspective of the WTO has been extensively discussed during the recent Seattle and Davos meetings.^{40_IDEA_503)_and_footnotes(n218);.FTNT n218} One commentator, for example, has said:

Many of today's developed nations which are so keen to see intellectual property rights strengthened had very vague rules when their own national industries were being built. They only changed their tune when they became exporters of technology. By amassing intellectual property rights over the whole of knowledge (from photographic archives to the human genome, from software to drugs), the richest countries, which are also the ones with the most highly developed legal systems (the US employs one third of the world's lawyers) are making sure they have control over vast swathes of future output.^{40_IDEA_503)_and_footnotes(n219);.FTNT n219}

It has become clear that the true intentions of these international legal reforms are the same political interests that long motivated European expansionism. Since 1944, from the heart of the White Mountains of New Hampshire, the Bretton Woods Conference has set the frame of a new era.^{40_IDEA_503)_and_footnotes(n220);.FTNT n220} From now on, the protection of the United States's and Europe's interests, and the control over their resources and wealth potentials, must take a distinctive expression from the colonization period. One commentator has said, "Far from being a mere technical adjustment to the 'information society', the changes to intellectual property law are a political matter. Using the 'multimedia revolution' as an argument, some interest groups have in fact mobilised sic to get intellectual property law revised, strengthening it in the rights holders' favour."^{40_IDEA_503)_and_footnotes(n221);.FTNT n221}

Whatever would be the awareness of the real issues and interests that are at stake, the responsibility is, however, the developing countries' burden. In effect, they have to translate the meanings that underlie the words into values and dare to speak them at any cost. The future of a great share of mankind depends on the capacity of man to be wise, say the truth, and do the best.

V. CONCLUSION

The Compulsory License for Translation provisions found in the Appendix to the Berne Convention is a good starting point for a new international character to the copyright system. The weaknesses and lack of consistence, however, with the developing countries. needs should be compensated with a new perspective toward development. As

the copyright system has to be considered as merely a means to its true end, e.g., the good of all human beings, it is necessary to change the overall view of the priorities of life. One commentator boldly predicts that "one has to expect a violent reaction on the economic level, unless the human being is replaced at the center of the system."⁴⁰ IDEA_503)_and_footnotes(n222);FTNT n222

In fact, while there is no divergence about the human fundamental need for well-being, there is clearly no unanimity about the multiplicity of ways to achieve this very well-being. "It should nevertheless be possible to agree on some principles at once. Trade must have no place in areas such as health, education and culture in the broadest sense of the term."⁴⁰ IDEA_503)_and_footnotes(n223);FTNT n223 If it is possible to obtain a general agreement that the only horizon worthy of investment is the Human Being, then copyright -- if replaced by a development perspective -- can play a serious role in constructing a future of prosperity for all peoples. A prosperity that remembers the real ends of the life we have in our hands.

n1 See generally *17 U.S.C. § § 101-1332* (1994 & Supp. IV 1998).

n2 The voices of protest have been developing throughout the world for quite some time, beginning in the 1990's when copyright became part of the Trade Related Aspects of Intellectual Property's ("TRIPS") Agreement under the World Trade Organization ("WTO"). See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Hein's No. KAV 4054, *33 I.L.M. 1143*, Annex 1C 1197 [hereinafter TRIPs Agreement].

n3 Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, last revised, Paris, July 24, 1971, S. TREATY DOC. NO. 99-27, 828 U.N.T.S. 221 [hereinafter Berne Convention].

n4 Universal Copyright Convention, Sept. 6, 1952, last revised, Paris, July 24, 1971, *6 U.S.T. 2731*, 216 U.N.T.S. 132 [hereinafter UCC].

n5 See Berne Convention, *supra* note 3.

n6 For a comprehensive presentation of the Berne Convention, see SAM RICKETSON, UNIVERSITY OF LONDON, QUEEN MARY COLLEGE, CENTER FOR COMMERCIAL LAW STUDIES, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986* (1987).

n7 See UCC, *supra* note 4.

n8 LIBRARY OF CONGRESS, UNITED STATES COPYRIGHT PROTECTION FOR BOOKS BY FOREIGN AUTHORS UNDER THE UNIVERSAL COPYRIGHT CONVENTION, Circular 38d (Jan. 1977).

n9 Eugene M. Braderman, International Copyright -- A World View, 17 BULL. COPYRIGHT SOC'Y U.S. 147, 151 (1969-70).

n10 The UCC "brought some newly independent or developing countries into the international copyright community on terms that they found acceptable." Barbara A.

Ringer, *The Role of the United States in International Copyright -Past, Present, and Future*, 56 *GEO. L.J.* 1050, 1064 (1968).

n11 See Kelsey Martin Mott, *The Relationship Between the Berne Convention and the Universal Copyright Convention*, 11 *IDEA* 306, 307 (1967).

n12 See RICKETSON, *supra* note 6, at 628.

n13 See *id.*

n14 See generally Eleanor D. O'Hara, "Developing Countries" -- A Definitional Exercise, 15 *BULL. COPYRIGHT SOC'Y U.S.* 83 (1967-68).

n15 See *id.*

n16 RICKETSON, *supra* note 6, at 592.

n17 See Charles F. Johnson, *The Origins of the Stockholm Protocol*, 18 *BULL. COPYRIGHT SOC'Y U.S.* 91, 103-04 (1970-71). BIRPI organized the administration of the Berne Convention before the World Intellectual Property Organization ("WIPO") was created in 1967. UNESCO, under the lead of the United States, administers the UCC.

n18 See *id.* at 104.

n19 See *id.* at 105-06.

n20 See *id.* at 107.

n21 See *id.* at 107-08.

n22 See *id.* at 109.

n23 See *id.* at 116.

n24 See *id.*

n25 See *id.*

n26 See *id.*

n27 See *id.* at 116-17.

n28 See *id.* at 124-25.

n29 See *id.*

n30 See generally T. S. Krishnamurti, *Protocol Regarding Developing Countries appended to the Stockholm Act of the Berne Convention*, 160 *B EBU REV.* 59 (1967).

n31 See RICKETSON, *supra* note 6, at 607.

n32 At the Stockholm Conference, reservations in favor of the developing countries, called the Protocol, was proposed to be appended to the Berne Convention, thereby forming an integral part of it. See Johnson, *supra* note 17, at 137.

n33 RICKETSON, *supra* note 6, at 607.

n34 *Id.* at 608.

n35 See Berne Convention, *supra* note 3.

n36 Dorothy M. Schrader, *Analysis of the Protocol Regarding Developing Countries*, 17 BULL. COPYRIGHT SOC'Y U.S. 166, 18283 (1969-70).

n37 See RICKETSON, *supra* note 6, at 611-13.

n38 See *id.* at 621.

n39 See *id.*

n40 See Schrader, *supra* note 36, at 187.

n41 See *id.* at 177-78.

n42 See *id.* at 232.

n43 Howard D. Sacks, *Crisis in International Copyright, The Protocol Regarding Developing Countries*, J. BUS. L., Jan.-Apr. 1969, at 26, 26.

n44 See RICKETSON, *supra* note 6, at 622.

n45 See Abraham L. Kaminstein, *Statement by the Register for the United States Delegation at Geneva*, 15 BULL. COPYRIGHT SOC'Y U.S. 157, 159 (1967-68).

n46 See *id.*

n47 The three meetings took place in December 1967, February 1969 and June 1969.

n48 See RICKETSON, *supra* note 6, at 630.

n49 See *id.* at 622.

n50 See *id.* at 610.

n51 See SACKS, *supra* note 43, at 129 (reproducing a report from *The Times*, July 20, 1969, about Britain's fear that India and Pakistan would withdraw from Berne).

n52 See Eugen Ulmer, *International Copyright After the Paris Revisions*, 19 BULL. COPYRIGHT SOC'Y U.S. 263, 263-64 (1971-72).

n53 See Johnson, *supra* note 17, at 142.

n54 N'Dene N'Diaye, *L'influence du droit d'auteur sur le developpement de la culture dans les pays en voie de developpement*, 86 RIDA 59, 70 (1975).

n55 BIRPI, *General Report of the Swedish/BIRPI Study Group*, 1 July 1964; see RICKETSON, *supra* note 6, at 599.

n56 See N.Diaye, *supra* note 54, at 76.

n57 Ringer, *supra* note 10, at 1050.

n58 See Berne Convention, *supra* note 3, at app. art. I.

n59 *Id.*

n60 See O.Hara, *supra* note 14, at 96.

n61 See *Records of the Diplomatic Conference for the Revision of the Berne Convention, Paris 1971*, at 146 (World Intellectual Property Organization Pub. No. 315(E) 1974) [hereinafter RPC].

n62 See O.Hara, *supra* note 14, at 85.

n63 *Id.*

n64 See RPC, *supra* note 61, at 97.

n65 *Id.*

n66 *Id.* at 99.

n67 See *id.*

n68 See O.Hara, *supra* note 14, at 86.

n69 See *id.* at 87-90.

n70 TRIPs Agreement, *supra* note 2.

n71 Berne Convention, *supra* note 3.

n72 See IPA Annual Book Title Production (visited Apr. 6, 2000)
<<http://www.ipaui.org/statistics/annualbookprod.html>>.

n73 See Berne Convention, *supra* note 3, at app. art. II.

n74 See *id.* at app. art. I(1).

n75 See *id.* at app. art. II(2).

n76 *Id.* at app. art. II(2)(a).

n77 See Schrader, *supra* note 36, at 177.

n78 See Berne Convention, *supra* note 3, at app. art II.

n79 *Id.* at app. art II(2)(a).

n80 See *id.*, as revised in Stockholm, Jul. 14, 1967, Protocol art. 1(b)(ii).

n81 Berne Convention, *supra* note 3, at app. art. II(3)(b).

n82 See *id.*

n83 See RICKETSON, *supra* note 6, at 639-640.

n84 See Berne Convention, *supra* note 3, at app. art. II(4)(a) (emphasis added).

n85 RPC, *supra* note 61, at 148.

n86 *Id.*

n87 See *id.* at 170.

n88 See Berne Convention, *supra* note 3, at app. art. II(4)(b).

n89 See RICKETSON, *supra* note 6, at 637.

n90 RPC, *supra* note 61, at 170.

n91 Colonization as a background will be discussed more extensively later in this article. See discussion *infra* Part III.C.

n92 RPC, *supra* note 61, at 100.

n93 See Berne Convention, *supra* note 3, at app. art. II(5).

n94 See *supra* Parts II.A.2 (Stockholm), II.A.4 (Paris); see also RPC, *supra* note 61, at 95-100 (Comments of International NonGovernmental Organizations on Proposals for a Revision of the Berne Convention); RICKETSON, *supra* note 6, at 622.

n95 See RPC, *supra* note 61, at 105.

n96 See *id.*

n97 See *id.* at 148.

n98 There are exceptions to this perception, for example, in France the Minister of Culture and Communication declared that culture is an exception among all goods, contrary to what is within the frame of the WTO's view. "The cultural goods are not goods like others, said Catherine Trautmann, in 'L'exception culturelle n'est pas negociable', LE MONDE (October 11, 1999) available in <<http://archives.lemonde.fr/lemonde/cgibin/LMondeII.cgi?Appli=WARCHILMII&Session=024334961060931X0002&Action=11lmartcde&Pag=artcde.htm&PagSty=artcde.sty&NoArt=668348&NoItem=1&NoBase=3>>.

n99 See Berne Convention, *supra* note 3, at app. art. II(2)(a), (4)(b), (6) and (8).

n100 See *id.* at app. art. II(2)(a).

n101 *Id.* at app. art. II(8).

n102 This is the logical consequence of the power extent that rights owners are vested of in the existing international copyright laws. It is part of an owner's freedom to dispose of ownership anyway the owner wishes. This is a position that has been criticized by the Indian delegation in Stockholm which argues that the rights of authors should not be absolute. See RICKETSON, *supra* note 6, at 607.

n103 See Berne Convention, *supra* note 3, at app. art. IV.

n104 See *id.* at app. art. II(2)(a), (4)(b), (6) & (8).

n105 See *id.* at app. art. II(4)(a).

n106 See Johnson, *supra* note 17, at 107-08.

n107 RICKETSON, *supra* note 6, at 655.

n108 See Berne Convention, *supra* note 3, at app. art. IV(1).

n109 See *id.* at app. art. IV(2).

n110 See *id.* at app. art. IV(3).

n111 RPC, *supra* note 61, at 98.

n112 *Id.* at 105.

n113 See, e.g., *17 U.S.C. § 503* (1994) (authorizing the impounding and destruction of any copyright infringing articles); *17 U.S.C. § 602* (1994) (prohibiting importation of copies or phonorecords that infringe a copyright); *19 U.S.C. § 1526* (1994) (prohibiting importation of foreign-manufactured merchandise bearing American trademarks).

n114 RICKETSON, supra note 6, at 656.

n115 See RPC, supra note 61, at 151-52.

n116 See RICKETSON, supra note 6, at 656.

n117 See RPC, supra note 61, at 172-73.

n118 See id.

n119 See id.

n120 See RICKETSON, supra note 6, at 657.

n121 Philip G. Altbach & S. Gopinathan, Textbooks in the Third World: Challenge and Response, in PUBLISHING IN THE THIRD WORLD, KNOWLEDGE AND DEVELOPMENT 13, 15 (Philip G. Altbach et al. eds., 1985).

n122 See Berne Convention, supra note 3, at app. art. IV(6)(a)(ii).

n123 Id.

n124 See id. at app. art II.

n125 See generally Krishnamurti, supra note 30; RICKETSON, supra note 6, at 608; Sacks, supra note 43, at 26.

n126 See RPC, supra note 61, at 131-162 (Summary Minutes).

n127 Attention should be drawn to consumers as another party of the copyright scheme. The time of ignoring the consumer's capacity for critical judgement is over. The consumer is also a person with moral exigencies, cultural representations and spiritual needs. Copyright should also protect these interests and not only take advantage of the consumer's buying power.

n128 "Derivative works" are defined as: "A work which is based on a preexisting work and which the preexisting work is enlarged, condensed, or embellished in some way." J. THOMAS MCCARTHY, MCCARTHY'S DESK ENCYCLOPEDIA OF INTELLECTUAL PROPERTY (2d ed. 1995).

n129 See M. M. BOGUSLAVSKY, COPYRIGHT IN INTERNATIONAL RELATIONS: INTERNATIONAL PROTECTION OF LITERARY AND SCIENTIFIC WORKS (David Catterns ed. & N. Poulet trans., 1979). According to the translator, "droit d'auteur" translates literally to the "right of copying." See id. at 194.

n130 See RPC, supra note 61.

n131 See id., at 88-100.

n132 Consider the roman principle of property which not only gives the right to use one's own property but also dispose of it, misuse it at will (jus disponendi de re sua). See Immanuel Kant, The Science of Right (W. Hastie trans., 1790) available at <<http://eserver.org/philosophy/kant/science-of-right.txt>>. This goes "under the concept of full private ownership, or absolutum et directum dominium... (exclusive right of use and disposal)." See <www.snowcrest.net/siskfarm/R3allos.html>. A question is then to be asked here -- what are the moral limitations of such a power of disposal?

n133 Gilbert Larochelle, From Kant to Foucault: What Remains of the Author in Postmodernism, in PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD, 121-130 (Lise Buranen & Alice Roy eds., 1999).

n134 Unfortunately, the Appendix of the Berne Convention does not reflect such a trend toward the users.

n135 See RICKETSON, supra note 6, at 607.

n136 See RPC, supra note 61.

n137 PETER DRAHOS, Justifying Intellectual Property: Back to the Beginning, in A PHILOSOPHY OF INTELLECTUAL PROPERTY 15 (1996).

n138 See Berne Convention, supra note 3, at app. art. IV(3).

n139 For convenience purposes, the publisher of the "original" work in the developed countries will be referred to as the "senior publisher," and the publisher of the "derivative" work in the developing countries will be referred to as the "junior publisher."

n140 Philip G. Altbach et al., Publishing in the Third World: Some Reflections, in PUBLISHING IN THE THIRD WORLD, KNOWLEDGE AND DEVELOPMENT 1, 2 (Philip G. Altbach et al. eds., 1985).

n141 Id. at 6.

n142 Id.

n143 See Berne Convention, supra note 3, at app. art. IV.

n144 Altbach, supra note 121, at 17.

n145 Altbach, supra note 140, at 8.

n146 See NANCY SNOW, PROPOGANDA, INC.: SELLING AMERICA'S CULTURE TO THE WORLD, 11 (1998). "Cultural imperialism" is defined as "the systematic penetration and dominance of other nations" communication and informational systems, educational institutions, arts, religious organizations, labor unions, elections, consumer habits, and lifestyles." Id.

n147 Edward W. Ploman, Copyright: Where Do We Go from Here?, in PUBLISHING IN THE THIRD WORLD, KNOWLEDGE AND DEVELOPMENT 25, 26 (Philip G. Altbach et al. eds., 1985).

n148 See UNESCO, Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators, sec. III.7.a (Nairobi 1976) available at <<http://www.unesco.org>>.

n149 See Susan Bassnet & Harish Trivedi, Of Colonies, Cannibals and Vernaculars, in POST-COLONIAL TRANSLATION: THEORY AND PRACTICE 1, 6 (Susan Bassnett & Harish Trivedi eds., 1999). According to the authors,

the act of translation always involves much more than language. Translations are always embedded in cultural and political systems, and in history. For too long

translation was seen as purely an aesthetic act, and ideological problems were disregarded. Yet the strategies employed by translations reflect the context in which texts are produced.

Id.

n150 UNESCO , supra note 148 ("Translator has a duty to provide a translation of high quality from both the linguistic and stylistic points of view and to guarantee that the translation will be a faithful rendering of the origin").

n151 LAWRENCE VENUTI, *THE SCANDALS OF TRANSLATION: TOWARDS AN ETHIC OF DIFFERENCE*, 52-53 (1998).

n152 Coming from translation practice background, Prof. Lawrence Venuti teaches comparative literature at Temple University, in Philadelphia, P.A. Interestingly, translation studies in the United States do not have autonomous status in the academic frame, but rather emerge in departments such as comparative literature or cultural studies.

n153 VENUTI, supra note 151, at 50.

n154 Id.

n155 Bassnett & Trivedi, supra note 149, at 2.

n156 In fact, contrary to what happens in patent law where the invention has to be always examined with scrutiny before a patent can be delivered, the work of authorship is not to be registered, and thus the latter is given by principle the benefice of the originality.

n157 See Bassnett & Trivedi, supra note 149, at 2. According to the author, "Increasingly, assumptions about the powerful original are being questioned, and a major source of that challenge comes from . . . outside the safety of the hedges and neat brick walls of Europe."

Id.

n158 Id. at 3.

n159 DOUGLAS ROBINSON, *TRANSLATION AND EMPIRE, POSTCOLONIAL THEORIES EXPLAINED* 4 (1997).

n160 The author wishes to thank Prof. Thomas Field of the Franklin Pierce Law Center. Prof. Field selflessly and generously made himself available for numerous conversations that eventually became the thrust of this article.

n161 See *17 U.S.C. § 121* (1994 & Supp. 1998).

n162 See id.

n163 Section 121 provides:

(a) Notwithstanding the provisions of sections 106 and 710, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords

of a previously published, non-dramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

(b) (1) Copies or phonorecords to which this section applies shall -

(A) not be reproduced or distributed in a format other than a specialized format exclusively for use by blind or other persons with disabilities;

(B) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) For purposes of this section, the term -

(1) "authorized entity" means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(2) "'blind or other persons with disabilities" means individuals who are eligible or who may qualify in accordance with the Act entitled "'An Act to provide books for the adult blind", approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats; and

(3) "'specialized formats" means Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities.

Id.

n164 Id.

n165 Daniel Ebenstein & Marya Lenn Yee, Copyright Infringement: Litigation and Fair Use, in HOW TO HANDLE BASIC COPYRIGHT AND TRADEMARK PROBLEMS 261, 274 (PLI Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series No. 274, 1989).

n166 See discussion supra Part II.B.

n167 See UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, THE LEAST DEVELOPING COUNTRIES 1991 REPORT (United Nations Pub. No. E.92.II.D.1) (1992). This criteria has been chosen since Stockholm and no better or consensual substitute has yet to be found.

n168 UNESCO (The United Nations Educational, Scientific, and Cultural Organization) contributes to world peace and security by promoting educational, scientific, and cultural collaboration. This collaboration fosters universal respect for justice, the rule of law, and human rights.

n169 See Berne Convention, *supra* note 3. "Indeed, only a handful of developing countries have so far availed themselves of [the Appendix] provisions." RICKETSON, *supra* note 6, at 663. Surprisingly, scholars have not expressed their opinions nor attempted to explain this phenomenon, though this is a task that should undoubtedly be undertaken in order to understand the real value, efficiency, and maybe fairness of the Appendix provisions. The aforementioned is probably a sign of the necessity to review the Appendix, but on the condition that concrete data are evidenced to support the need to give more concessions, or on the contrary, to suppress the whole Appendix.

n170 See, e.g., *17 U.S.C. § 503* (1994) (authorizing the impounding and destruction of any copyright infringing articles); *17 U.S.C. § 602* (1994) (prohibiting importation of copies or phonorecords that infringe a copyright); *19 U.S.C. § 1526* (1994) (prohibiting importation of foreign-manufactured merchandise bearing American trademarks).

n171 See H.R. REP. 105-551, pt. 1 (1997).

As the public becomes comfortable with the means to exploit the potentially limitless abundance of the Internet, publishers are working to adapt their traditional products and business models to new technologies and a rapidly evolving universe of consumer tastes and needs. But the task is costly and complicated, especially when the marketplace expects that many publishing products will continue to be produced in traditional hard-copy formats to afford consumers choice and serve those who cannot or will not utilize the new media. In a period of uncertain transitions, publishers must take into account the extent to which the old and new media formats will coexist in the marketplace.

Id.

n172 See *17 U.S.C. § 121* (1994 & Supp. 1998).

n173 Prof. Ricketson notes the Berne Appendix is regrettably "extremely detailed" and lengthy. RICKETSON, *supra* note 6, at 662-63.

n174 See Amadio A. Arboleda, *Distribution: The Neglected Link in the Publishing Chain*, in *PUBLISHING IN THE THIRD WORLD* 42, 50-51 (Philip G. Altbach et al. eds., 1985).

n175 See, e.g., Ruth Gana, *Has Creativity Died in the Third World? Some Implications of the Internationalization of Intellectual Property*, *24 DENV. J. INT'L L. & POLY* 109, 115-16 (1995).

The modern debate over intellectual property protection in developing countries has failed to account of cultural differences which affect the understanding of what constitutes property or what may rightfully be the subject of private ownership. . . . It is important for the modern debate to link intellectual property laws to the social realities of societies in developing countries. Not only may this yield more effective approaches to securing enforcement of intellectual property rights in developing countries, it also presents the possibility that western based intellectual property laws may have some real

impact on industrial innovative activity in these countries, thus contributing to the economic welfare of the Third World.

Id.

n176 UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, THE CULTURAL DIMENSION OF DEVELOPMENT: TOWARDS A PRACTICAL APPROACH 22 (1995).

n177 "Culture is 'the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs.'" Id. at 22 (quoting UNESCO, Mexico City Declaration on Cultural Policies, Preamble (final report of Mondiacult: World Conference on Cultural Policies, Mexico City, Jul. 26-Aug. 6, 1982) (UNESCO doc. CLT/MD/1) (1982)).

n178 Id. at 21.

n179 Id.

n180 Id. at 23 (quoting UNESCO, Mexico City Declaration on Cultural Policies, Preamble and Articles 10 to 16 (final report of Mondiacult: World Conference on Cultural Policies, Mexico City, Jul. 26-Aug. 6, 1982) (UNESCO doc. CLT/MD/1) (1982)).

n181 See Gana, supra note 175, at 112. "All forms of creative expression -- mechanical, literary, or artistic -- are value driven. . . . The laws which protect these inventions . . . reflect the underlying values of a society." Id.

n182 The quotation marks signify the "artificial nature" of such a denomination. See UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, THE CULTURAL DIMENSION OF DEVELOPMENT: TOWARDS A PRACTICAL APPROACH 17 (1995). In a fair world, the so-called "developed" and "developer" should rather be partners.

Id.

n183 Id. at 27.

n184 "In fact, only a broad, anthropological conception of culture can provide the necessary basis for its description and its correlation with development." Id. at 23.

n185 Gana, supra note 175, at 131 (footnotes omitted).

n186 See id. at 128 ("The individualism on which property rights are based and the nature of commodification which is central to liberal market economies are reflected clearly in modern intellectual property laws.").

n187 UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, THE CULTURAL DIMENSION OF DEVELOPMENT: TOWARDS A PRACTICAL APPROACH 22 (1995).

n188 See WORLD INTELLECTUAL PROPERTY ORGANIZATION, RECORDS OF THE DIPLOMATIC CONFERENCE FOR THE REVISION OF THE BERNE CONVENTION (WIPO Pub. No. 315(E) 1974).

n189 Id. at 105 (emphasis added). The conference documents tell us that the State of Ceylon changed its name to Sri Lanka at the time of publication. See id.

n190 Id.

n191 See WORLD INTELLECTUAL PROPERTY ORGANIZATION, BACKGROUND READING MATERIAL ON INTELLECTUAL PROPERTY 40-41 (WIPO Pub. No. 659(E) 1988).

n192 See ROBERT M. SHERWOOD, INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT 69-70 (1990); see also R.F. WHALE, PROTOCOL REGARDING THE DEVELOPING COUNTRIES 8 (1968).

n193 See SHERWOOD, *supra* note 192, at 69-70.

n194 See Anne Barron, No Other Law? Author-ity, Property, and Aboriginal Art, in PERSPECTIVES ON INTELLECTUAL PROPERTY 37, 48-51 (Lional Bently and Spyros Maniatis eds., 1998).

n195 See Gana, *supra* note 175, 115-16.

n196 M.M. BOGUSLAVSKY, COPYRIGHT IN INTERNATIONAL RELATIONS: INTERNATIONAL PROTECTION OF LITERARY AND SCIENTIFIC WORKS 101-02 (N. Poulet trans., David Catterns ed., 1979).

n197 See PHILIP G. ALTBACH et al., PUBLISHING IN THE THIRD WORLD 5-6 (1985).

n198 UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, THE CULTURAL DIMENSION OF DEVELOPMENT: TOWARDS A PRACTICAL APPROACH 96 (1995).

n199 Ruth L. Gana, Prospects for Developing Countries Under the TRIPs Agreement, 29 *VAND. J. TRANSNAT.L L.* 735 (1996).

n200 Gana, *supra* note 175, at 120.

n201 Id. at 121.

n202 Id.

n203 Gana, *supra* note 199, at 759.

n204 Id. at 740 (footnotes omitted).

n205 Id. at 743.

n206 See Gana, *supra* note 175, at 120.

n207 See id.

n208 See id. at 141.

n209 Id. at 113.

n210 See id. at 141-44.

n211 See id.

n212 See id. at 129-37 (discussing various cultural differences and approaches to intellectual property).

n213 See id. at 117-24.

n214 Id. at 138-39 (footnotes omitted).

n215 See id. at 132-37.

n216 See Gana, *supra* note 199, at 771.

n217 See id. at 773; see also TRIPs Agreement, *supra* note 2, Part V.

n218 See La conference de Seattle se termine par un echec, LE MONDE (Dec. 4, 1999) available at <[wysiwyg://40/http://www.lemonde.fr/article/0,2320,seq-2037-33423QUO,00.html](http://www.lemonde.fr/article/0,2320,seq-2037-33423QUO,00.html)>; Quarante-huit heures de tension et de confusion, LE MONDE (Dec. 5, 1999) available at <[wysiwyg://53/http://www.lemonde.fr/article/0,2320,seq-2037-33487QUO,00.html](http://www.lemonde.fr/article/0,2320,seq-2037-33487QUO,00.html)>; Le but de l'OMC est de conforter la suprematie des pays riches (entretien avec Malloch Brown, Administrateur du PNUD), LIBERATION (Dec. 3, 1999) available at <[wysiwyg://78/http://www.liberation.com/omc/actu/991203b.html](http://www.liberation.com/omc/actu/991203b.html)>; LE MONDE DIPLOMATIQUE (January 2000) available at <<http://www.lemonade-diplomatique.fr/en/2000/01/07george>> & <<http://www.lemonade-diplomatique.fr/en/2000/01/14queau>>.

n219 Ph. R., A Global Public Good, LE MONDE DIPLOMATIQUE (Barbara Wilson trans., Jan. 2000) available at <www.mondediplomatique.fr/en/2000/01/120>.

n220 See SUSAN GEORGE AND FABRIZIO SABELLI, FAITH AND CREDIT: THE WORLD BANK'S SECULAR EMPIRE 21-22 (1994).

n221 Philippe Queau, Who Owns Knowledge?, LE MONDE DIPLOMATIQUE (Malcolm Greenwood trans., Jan. 2000) available at <www.monde-diplomatique.fr/en/2000/01/14queau>.

n222 Serge Marty & Babette Stern, The "New Economy" in Question at the Davos Forum, LE MONDE (Jan. 30, 2000) (quoting Sayyed Hossein Nasr) available at <www.lemonde.fr/article/0,2320,40507.00.html>.

n223 Susan George, Fixing or Nixing the WTO, LE MONDE DIPLOMATIQUE (Barbara Wilson trans., Jan. 2000) available at <monde-diplomatique.fr/en/2000/01/07george>; see Kevin Watkins, Education Now: Break the Cycle of Poverty -- The Report (1999) available at <www.caa.org.au/oxfam/advocacy/education/report/index.html>.