WIPO - CARICOM
Meeting of Experts on the Creative Industries and Intellectual Property

February 8 and 9, 2006
Georgetown, Guyana
How is Intellectual Property (IP) relevant to the Creative Industries?

What are the Creative Industries?

Why are the Creative Industries important?

1. The Industrial and Information Ages
2. Intellectual Property System
3. Cultural Industries
4. Creative Industries
The Industrial and Information Ages

Roman jurist Gaius (130-180 AD) - category of “things which cannot be the object of exchange or of any legal commercial transaction” included things of divine dominion which can be compared to the concept of cultural property

From a world of artisanal ‘manufacturing’ (hand-made) to a factory system to a revolution in communication ‘industry’

The source of wealth/capital: From ownership of land to tangible assets to ownership over intangible assets

The Influence of Technology throughout the Ages

The Analog - Digital Watershed

Intellectual Property Treaties:
- 1883 Paris Convention
- 1886 Bern Convention

The Digital Revolution

1710 The Statute of Anne (Britain)
**Milestones**

- *Paris Convention: Industrial Property (Patents, TMs, …)* 1883
- *1886*
- *1891*
- *1893*
- *1925*
- *1960*
- *1967*
- *1970*
- *1989*
- *2002*
- *2003*

- *Berne Convention: Copyright*
- *Madrid Agreement: Trademarks*
- *BIRPI*
- *Hague Agreement: Industrial Design*
- *BIRPI moves to Geneva*
- *WIPO Convention*
- *WIPO established & PCT*

**Internet Treaties**

**Digital Era …**

- *WIPO: Copyright-based Industries*
- *(GATTs 1947) WTO - TRIPS - 1995*

**Creation of UNESCO - 1945**

- *“Creative Industries” - UK IP Task Force - 1997*
- *(GATTs 1947) WTO - TRIPS - 1995*

**“Cultural Industry” - T. Adorno - 1947**

**Inventions: 1895: Motion picture 1899: Recording on magnetic tape**

**The Statute of Anne: British Copyright Law**

**Venetian Statute: Italy - Patents**

- *1452: “Invention” of the ‘Guttenberg’ Printing press*
2. Intellectual Property System

Industrial property
- **patents**: inventions
- **trademarks**: symbols, names, images
- **industrial designs**: designs used in commerce
- **geographic indications** of source
- **unfair competition**
- **confidential information** (“Trade secrets”)

Copyright
- **literary and artistic works** (i.e. books, music, works of art, architecture; dramatic and musico-dramatic works; audiovisual works, etc.)

Rights related to copyright
- **rights of performers**
- **producers of sound recordings**
- **broadcasting organizations**
The premise underlying IP has always been the recognition that ownership of inventions and creative works stimulates their creation and, with such creation, also stimulates economic development.

The continuum from problem to knowledge to imagination to innovation to intellectual property and finally to the solution in the form of products, continues to be a powerful driving force for economic development.
WIPO’s Strategic Goals

1. Promotion of an Intellectual Property (IP) culture
   - build a foundation for a more solid & extensive IP culture;
   - facilitate a better understanding & use of IP system;
   - build greater respect for IP rights.

2. IP policies as part of National Development Strategies

3. Development of balanced IP laws responsive to emerging needs

4. Delivery of quality global IP protection systems

5. Enhanced Access to IP System
   - practical solutions to empower all stakeholders to develop, protect, enforce, manage and commercially exploit IPRs for development
3. The Cultural Industries

**Origins of the term ‘Cultural Industries’**

1947: Theodor Adorno and Max Horkheimer coined the terms (in singular) “cultural industry” and “culture consumption” to describe the production of mass culture and power relations between capitalist producers and mass consumers.

- 19th and 20th century ‘culture’ = art, with special, exceptional forms of human creativity

**Mass culture = Culture Industry → Cultural Industries (has a dual nature)**

- Culture and Industry were supposed to be opposites but in modern capitalist democracies, the two had collapsed

**Hence, we have ...**

The industrialization of culture - the commodification of culture

(A critique to the industrial mass production of culture)
The Cultural Industries

From the singular … to … the plural

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tr>
<td>1960s - 1970s</td>
<td>Cultural policy research exercises, i.e. developing and harmonizing indicators for the collection and evaluation of cultural statistics (Council of Europe - introduced a discussion paper for “National Cultural Accounting”)</td>
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<td>1980s</td>
<td>UNESCO’s programme on the Cultural Industries</td>
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<td>1982</td>
<td>Proposal for a very ‘modern’ approach to the topic of cultural creativity by emphasizing the development of cultural industries (See Girard, A. &amp; Gentil, G., <em>Development Culturelle: A challenge for the Future of Culture</em> (UNESCO, 1982) )</td>
</tr>
<tr>
<td>1988</td>
<td>Enshrined for first time in a text of international (trade) law: The Canada - US Free Trade Agreement (CUSFTA)</td>
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<td>1989</td>
<td>Cultural industries sociologists (i.e. Bernard Miège) reject Adorno’s and Horkheimer approach: argued that the introduction of industrialization and new technologies into cultural production did indeed lead to commodification, but also to new and exciting directions and innovations</td>
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* The role of the consumer in interpreting and/or constructing meaning with regard to the products of the “cultural industries”
The Cultural Industries

According to UNESCO, the Cultural Industries ...

“... applies to those industries that combine the creation, production and commercialisation of contents which are intangible and cultural in nature. These contents are typically protected by copyright and they can take the form of goods or services.”

The Cultural Industries

North American Free Trade Agreement (NAFTA)

Article 2107: Definitions

Cultural industries means persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

The Cultural Industries

The industrial context of digital content production

Source: A consultancy to examine and advance the understanding of the production of digital content.

Adapted from Queensland Government, 2002.
WIPO’s Work on Traditional Cultural Expressions

The IGC: suggested conceptual framework

- preservation of cultural heritage
- promotion of cultural diversity
- protection of cultural rights
- respect for indigenous peoples’ interests and rights
- stimulation of economic activity
- promotion and protection of creativity, as ingredients of sustainable development
Intellectual Property and Expressions of Folklore/Traditional Cultural Expressions.

Remaining subject matter

- Contemporary adaptations of folklore, through copyright and designs
- Unpublished and anonymous works, through copyright
- Performances of expressions of folklore, through related rights
- Traditional words, names and other signs, through trademarks, GIs

Shaded areas ( ) show folkloric / tradition-based cultural materials already receiving positive IP protection under current national IP laws and international treaties.
“Creativity” is not necessarily linked only to the Cultural Industries
4. The Creative Industries

Policy issues

The ‘formal’ origins of the ‘Creative Industries’ terminology are in the UK Government’s establishment of a Creative Industries Task Force in 1997.

**Definition**: creative industries as ‘… those activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through the generation and exploitation of intellectual property’.

Other countries’ ‘definitions’

**New Zealand**
Has largely adopted the UK definition of creative industries and approach to policy deliberation.

**Hong Kong**
Generally adopts the British definition of creative industry categories, however difficulties with data collection prompted a revision into eleven categories.
Other countries’ ‘definitions’

Australia  
The Australian government's approach to creative industries is to emphasize more on content (digital) and clustering than specific industries.

- Queensland "Driven by individuals with creative skills and business goals and served by technology. Creative industries' outputs are marketable products and services whose economic value lies in their intellectual property, leading to job and wealth creation.'

Singapore  
The creative cluster can be defined as “those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property”. (Borrowed from UK)

Austria  
Creative Industries ‘refer to all industries along the value added chain related to cultural and artistic products and services as well as the public cultural sector and the respective intermediate/Non-Profit sector’
### What are the Creative Industries?

<table>
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<tr>
<th>Creative Industries</th>
<th>Copyright Industries</th>
<th>Content Industries</th>
<th>Cultural Industries</th>
<th>Digital content</th>
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<tbody>
<tr>
<td>-- largely characterised by nature of labour inputs: “creative individuals”</td>
<td>-- defined by nature of asset and industry output</td>
<td>-- defined by industry production</td>
<td>-- defined by public policy function and funding</td>
<td>-- defined by combination of technology and focus of industry production</td>
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#### Examples...

**Creative Industries**
- Advertising
- Architecture
- Design
- Interactive Software
- Film and TV
- Music
- Publishing
- Performing arts

**Copyright Industries**
- Pre-recorded music
- Music retailing
- Broadcasting & Film
- Software
- Multimedia services

**Content Industries**
- Museums & galleries
- Visual arts & crafts
- Arts education
- Broadcasting & film
- Music
- Performing arts
- Literature
- Libraries

**Digital content**
- Commercial art
- Film & video
- Photography
- Electronic games
- Recorded media
- Sound recording
- Information storage & retrieval

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*Source: Cutler & Co/CIRAC, 2003, (see papers by Stuart Cunningham) -- [www.creativeindustries.qut.com](http://www.creativeindustries.qut.com)*
What are the Creative Industries?

Existing working definitions of CIs identify the following CI ‘sub-sectors’

- The Recording industry
- Music
- Performing arts
- Film and Video
- Publishing
- Software and computer services
- Photography
- Art and [antiquities market]
- Radio
- Television and cable broadcasting industries
- Advertising
- Crafts
- Architecture
- Design designer fashion
- Interactive leisure software
- [Cultural heritage (tangible and intangible)]
- [Tourism]

Creative Industries are simultaneously art, science, and business

List of core-copyright sectors

- Press and Literature
- Music, theatrical productions, Operas
- Motion Picture and Video
- Radio and Television
- Photography
- Software and Database
- Visual and Graphics Arts
- Advertising services
- Copyright Collecting Societies
The Creative Industries

Source:
A CONSULTANCY TO EXAMINE AND ADVANCE THE UNDERSTANDING OF THE PRODUCTION OF DIGITAL CONTENT

Adapted from Queensland Government, 2002

An abridged version of the September 2002 report for the Department of Communications, Information Technology and the Arts

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Is it a question of ‘Product Differentiation’?

Multilateral Agencies: Approaches

**UNCTAD**: ‘International Centre on Creative Industries’ Initiative

**UNESCO**: Cultural Industries Program

**ITC**: Creative Industries

**WCO**: Classification of hand-made/artisanal products in statistical nomenclatures

**World Bank**: Sector-specific projects, i.e. The Africa Music Project (Senegal)

**ILO**: Cultural Industries Programme
The Economics of Culture

Economic Impact of the Creative and Cultural Activities

- The application of economic theory and research methods to the arts, heritage, and cultural industries
  - studies the interaction of cultural and economic value and its effect on the creative industries
  - deals with cultural products: both goods and services; subsidized and non-subsidized works;
  - looks at the cost benefit expressions of the underlying opposing interests in copyright;

- Copyright is the relevant IP right in which the rewards for creative cultural labour are determined;

- Copyright underpins the ownership of cultural and creative commodities

- Copyright provides and incentive for authors and creators to create

Recommended literature: The Society for Economic Research on Copyright Issues - The Association for Cultural Economics International SERCI – ACEI

Academics: William Baumol (economics of culture); Kenneth Boulding (cultural economics)
Richard Caves

*Creative Industries: Contracts between Art and Commerce*

The organization of creative industries:

1. **Nature of the product** = “experience goods” : whose value cannot be calculated in the same way as other commercial products.

2. **Nature of the production process** = expensive front-end development process to arrive at a master copy of an *intellectual property*, then subsequently a low-cost reproduction process.
   -- The master copy always remains, a sunk cost whether or not anyone ever buys the copies. Once invested, the maker loses the investment unless he or she can sell enough copies.

3. **Nature of consumption** = the product itself, or the master copy, is never consumed, and that no matter how many copies are sold, the master remains.
   -- Consumers value the product for the experience it conveys, not for its material form.

4. **Nobody knows** in advance which ones will succeed and sell, and market research is notoriously ineffective in predicting which ones will, or not.

5. Each cultural product is unique, and irreplaceable; they do not compete like brands of soap, but only for the consumer’s time. Therefore, there is *no substitution*. 
**Academic Approaches**

**Examples**

**Richard Florida:**  “The Creative Class” concept: Key driving force for economic development of post-industrial cities in the USA

**David Hesmondhalgh:**  “The Cultural Industries”: Why do the matter? “Because they have the power to influence people; and because of their role in bringing about general industrial, social and cultural change.”

**Harold L. Vogel:**  “Entertainment Industry Economics”: What is entertainment? “Anything that stimulates, encourages, or otherwise generates a condition of pleasurable diversion could be called entertainment” - Highly tied to leisure time.
Why are the Creative Industries Important?

Cultural and social force for society
- empowers people
- values individual creativity and diversity
- many products have public-goods characteristics

Economic multipliers ‘ripple-effect’
- supports urban regeneration
- creates employment
- new approaches to businesses

Fuels creative capital and creative workers
- changing role of the author, creator, artist

Industry cluster is economically significant
- new high-growth sector (accounts for large share of a nation’s GDP)
- entry to global markets
The ‘Organisation’ of Creative Expressions

Traditional “factory” supply chain, i.e. Ford motors

Supply chain
Origination: creation of cultural and creative ‘ideas’
Production: making commercially viable products
Distribution: circulation via broadcast, records, film, etc.
Consumption: ‘experience’ by the end user
The three parts of the value chain of creative industries are now depicted in the following categories, and the following diagram makes a graphic presentation of the chain.

- Reproduction, service provision & distribution
- Content Origination & Creation
- Manufacturing input / infrastructure

Three parts of Creative Industries Production System

Industrial chains that create value to the next chain, or that provide production input / infrastructural supports for other chains
Characteristics of CIs

- "Raw material": Local talent, skills and knowledge;
- Creative workforce: Freelancers; self-employed or SMEs;
  - Diversity in skills, usually specialized;
- Network grows organically (a tendency to form clusters);
- **Offer a unique product or service based on intellectual property**
- Business models: Usually collaborative works; open; fragmented; work in CIs is heavily project-oriented and in some sense “temporary”;
  - But wide range of business models operating in different sub-sectors of the CIs makes it difficult to suggest universal benchmarks across the CIs as a whole
- Great risks due to initial high production costs; by extremely low reproduction and even lower distribution costs (risk = the risk on the unknown consumer demand and potential of huge sums in revenues
- Extremely competitive
- Rely to some extent on support services from industry Trade Associations and Unions;
- Transmitters of cultural values in the form of symbols and may have considerable impact on individual and collective human behaviour
- **Every region has a distinct creative economy**, and a definition used in Country A will not necessarily be relevant to Country B
Challenges for Developing Countries

Long-term success and sustainability for Creative Industries firms depends on balancing the creative-, commercial- and social-capital building urges of the key individuals involved.

The Challenges

• **Intellectual Property Rights**
  - Regulatory environment
  - Public-private sector partnership
  - Access to business development services
    - Access to finance
    - Access to technology
  - Information and communications technologies and electronic commerce
    - Entrepreneurship
      - Networking
  - Concentration of media ownership
CONCLUSIONS

1. While there is no clarity on the concept, definition or criteria of the ‘Creative Industries’ (CIs) at the international level, at the national level most countries recognize the importance and value of the IP system.

2. CIs must be understood and interpreted in their specific local, regional and national context.

3. Much debate remains about where the boundaries of the CIs might cross with other sectors: Is it a question of convergence?

4. CIs draw from the creative expressions of individuals as well as from communities and these expressions are protectable through the use of the IP system.

5. CIs use their creativity for commercial outcomes through the leveraging of their IP assets.

6. CIs are a source of social, cultural and economic value for a nation.
Thank You

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