FUTURE DIRECTIONS IN INTERNATIONAL COPYRIGHT

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I. INTRODUCTION

Originally this talk was to be entitled, "The Future of International Copyright." Because that title sounded overly portentous, and seemed to demand a dramatic black or white conclusion (with the subtitle "obsolescence or apotheosis?"), I abandoned it in favor of one suggesting the more modest goal of identifying some paths where copyright is likely to meander in the coming years.

The future is becoming more and more difficult to fix clearly in our sights, as technologies of creation, dissemination, and use of copyrighted works evolve at an exponentially increasing pace. When the Copyright Office recently commissioned a study of the directions of new technology from Professor I. Trotter Hardy,[1] we envisioned a long-term view. After extensive discussions with Professor Hardy, we narrowed it down to a bare five years in the future—the furthest he believed it was possible to project. We have learned to speak not of the long term, but of the relatively longer term.

Despite this unavoidable myopia, it seems both possible and worthwhile to take a step back from the maelstrom of current issues, in all their intensity and urgency, to gain some perspective on where we are today on the international stage, and where we are going. My talk will be divided into three parts, roughly comparable to today, tomorrow, and the day after. First, an overview of international copyright today; second, a description of the issues just around the corner; and finally, some modest predictions—an assessment of where the focus of attention and activity is likely to turn in the longer run.

II. INTERNATIONAL COPYRIGHT TODAY

Let me start by setting the framework. What is international copyright law? It is a basic axiom that copyrights are territorial—in

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other words, that they are granted, delineated, and enforced in any given country by the operation of that country's laws. As a result, the concept of international copyright must begin with the basic foundation of the national copyright laws. Links are forged between those laws by international relationships, including formal treaties, regional commitments, and the ongoing give and take of trade interactions.

The foundation of national laws, along with their various links, makes up the international legal structure. The other key component, built on top of the legal foundation, is the private side: how works are actually exploited on an international scale. While such exploitation includes both commercial and noncommercial uses, I will refer to it generally as the "market." The market establishes its own structure that allows works to be licensed and sold around the world—a structure that evolves rapidly in response to changing economic, social, and technological conditions. Just as in the domestic arena, the relationship between the global market and international law is a symbiotic one, with each being shaped by changes in the other.

A. *National Laws*

One distinct trend in the foundation of national laws is a broadening in global coverage. Most nations today do protect copyrights—including developing countries and former socialist economies. And the ranks of those that do not are rapidly dwindling, as more and more countries become convinced of the benefits that copyright can bring and choose to join the international community.

In addition to becoming broader, the foundation is becoming more uniform. There is considerably less divergence among national laws today than in the past. While one can still see distinctive individual approaches to various issues, a tremendous amount of harmonization has taken place on the core concepts of copyright. In particular, the subject matter of copyright, its duration, and the basic rights granted are relatively consistent from one country to another. The reasons for this harmonization may be complex, but the result is plain. More variety exists in delineating the precise scope of rights through exceptions and limitations, although certain general categories are common.

Coexisting with the core areas of agreement are various recurring points of contention. They include issues of new subject matter, parallel importation, national treatment, retroactive

protection, and enforcement. As to new subject matter, issues about coverage of computer programs and original databases have been essentially resolved in the past few years in the course of treaty negotiations; the current iteration involves non-original databases and multimedia works. The issue of whether copyright owners should be able to control parallel imports—i.e., the importation into one country of copies sold lawfully in another—is one that deeply divides the world today.

Similar controversy attends the question of national treatment: whether foreign authors should be given the same rights as domestic authors, or only those rights that the foreign country gives to authors under its own system. There are divergent perspectives on national treatment, including whether it should be the generally applicable approach to intellectual property, or whether countries should be free to condition on reciprocity the grant of new rights to foreigners, in order to pressure other countries to implement the new rights. This has become particularly contentious in the area of levy systems for private copying, where countries establish pools of money for distribution to copyright owners to compensate them for private copying, and may not allow participation by nationals of countries that do not provide similar schemes, despite the fact that their works represent a significant proportion of all works copied in that country.

Retroactivity is the label used to describe the principle of a law protecting not just subsequently-created works, but works already in existence at the time the law is enacted. The use of this term is unfortunate, since it sounds like something extraordinary and perhaps even dangerous—like radioactivity. It is also a misnomer, since it refers to *prospective* protection for pre-existing works, and will not impose liability for past acts. The principle is of particular importance in the international context, because when a country joins a copyright treaty, it takes on obligations to protect works from other countries that are party to the treaty. At that point, of course, many valuable works already exist in those other countries, and those countries therefore have a strong interest in ensuring that the works are protected abroad for the remainder of the copyright term. The terms and conditions upon which such retroactive protection is provided vary from country to country, and have been the subject of dispute.

Additional harmonization has also been accomplished on a regional level. The major initiatives to date have taken place within the common market of the European Union ("E.U."). The E.U. has engaged in a process of harmonizing the copyright laws of the

member states in areas that affect their common market, by issuing several directives requiring them to implement detailed provisions relating to specific rights or subject matter. While there have been some difficulties with adequate and timely implementation, the eventual result will be greater homogeneity within the E.U., beyond the level of harmonization that has been achieved elsewhere. As other countries line up for membership in the E.U., they are increasingly implementing existing directives in preparation. At the same time, by conditioning rights for non-Europeans on reciprocity, these directives apply real economic pressure on other countries to harmonize their systems to the same extent.

B. *Copyright Treaties*

One major set of links among national systems is supplied by international treaties on the subject of copyright and neighboring rights. Chief among these treaties is the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention").[2] Dating back to 1886, the Berne Convention today enjoys a membership of more than 120 countries. Its key characteristics are the following:

- A set of minimum rights that must be provided to authors. Generally speaking, these are the rights of reproduction and adaptation, and moral rights, as well as various forms of communication to the public, including live performance and broadcasting.[3]
- Restrictions on the scope of permissible limitations and exceptions.[4]
- A minimum term of protection of the life of the author plus fifty years.[5]
- National treatment.[6]
- A prohibition on formalities as a condition for enjoying rights.[7]
- Retroactive protection for existing works in which copyright has not expired.[8]

It is equally important to note what is *not* covered: Berne does not contain any specific requirements as to mechanisms for right-

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[2] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, *as last amended* Oct. 2, 1979, 828 U.N.T.S. 221 [hereinafter Berne Convention].

[3] Berne Convention, *supra* note 2, arts. 6*bis*, 11, 11*bis*, 11*ter*, 12 & 14. 828 U.N.T.S. at 227-31, 241-45.

[4] *Id.* arts. 9(2), 10(1), 11*bis*(2) & 13(1), 828 U.N.T.S. at 239-45.

[5] *Id.* art. 7(1), 828 U.N.T.S. at 235.

[6] *Id.* art. 5, 828 U.N.T.S. at 231-33.

[7] *Id.* art. 5(2), 828 U.N.T.S. at 233.

[8] *Id.* art. 18, 828 U.N.T.S. at 250.

holders to enforce rights, or provide penalties for member states that do not live up to their obligations.

Another multilateral treaty, the Universal Copyright Convention ("UCC"), which came into being in the 1950s, also has a substantial number of adherents. In the past decade, however, since the United States joined the Berne Convention, the UCC has been eclipsed in importance, due to Berne's more extensive protection and wider membership.

There is one major gap in the coverage of both Conventions: They do not protect performers or producers of sound recordings. In many other countries of the world, the contributions of performers and producers are not considered to be copyrightable subject matter, but are protected instead by what are called "neighboring rights." The preeminent treaty dealing with neighboring rights is the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations ("Rome Convention").[9] The Rome Convention operates on similar principles to Berne, setting out minimum rights and requiring national treatment (albeit in a more limited form).[10] Its influence has been less pervasive, however, both because it permits countries to pick and choose among rights, and because it has a narrower membership, not including the United States.[11]

Bilateral agreements have also played a major role in international copyright. Beginning in the nineteenth century, many countries took their first steps toward protecting foreign works on a country-by-country basis. Today, bilateral treaties are of primary importance in dealing with countries that are not yet subject to the obligations set forth in the major multilateral conventions, or obtaining commitments in areas not covered by those conventions.

C. *Trade Agreements*

Another set of international links is created by trade agreements. In recent years, intellectual property has been recognized as an important component of trade between countries, and copyright provisions have been included in a number of their agreements on trade issues.

For the United States, the inclusion of intellectual property on the trade agenda led to copyright provisions in the North Ameri-

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[9] International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Rome, Oct. 26, 1961, 496 U.N.T.S. 43 [hereinafter Rome Convention].

[10] *Id.* arts. 1, 2, 4 & 5, 496 U.N.T.S. at 44-46.

[11] *Id.* arts. 15-16, 496 U.N.T.S. at 54-55.

can Free Trade Agreement ("NAFTA"),[12] which entered into force in 1994. NAFTA was shortly followed by the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"),[13] which was concluded in the Uruguay Round of negotiations leading to the creation of the World Trade Organization ("WTO"), and entered into force in 1995. The NAFTA intellectual property provisions were negotiated based on an early draft of the TRIPS Agreement, so the two agreements bear a striking resemblance to each other. Although all three NAFTA signatories are WTO members subject to the TRIPS Agreement, the NAFTA intellectual property provisions remain relevant for several reasons. NAFTA exceeds the protection required by the TRIPS Agreement in important respects: NAFTA has a stronger national treatment obligation in the area of copyrights, for example;[14] NAFTA contains shorter transition periods;[15] and it establishes its own distinct dispute settlement mechanism.[16]

As a broad-based multilateral agreement on intellectual property rights, the TRIPS Agreement was ground breaking in many respects. In the copyright area, it covers both literary and artistic works and neighboring rights, with the following key characteristics:

- It incorporates the substantive norms of the Berne and Rome Conventions.[17]
- It adds to the scope of the Berne and Rome rights, primarily in the area of rental rights.[18]
- It requires retroactive protection for all subject matter, including both copyright and neighboring rights.
- It requires not only national treatment as outlined in Berne and Rome, but also most favored nation ("MFN") treatment, ruling out the possibility of giving special treatment to only certain WTO members through new bilateral agreements entered into after the WTO came into being on January 1, 1995.[19]
- It promotes "transparency," a catch-word for open and accessible information, by imposing obligations to "notify" virtually every aspect of a country's relevant laws and regulations, and institution-

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12 North American Free Trade Agreement, Dec. 8, 1992, Can.-Mex.-U.S., 32 I.L.M. 605, 670 (1993) [hereinafter NAFTA].

13 Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 331 I.L.M. 1125, 1197 [hereinafter TRIPS].

14 NAFTA, *supra* note 12, art. 1703, 32 I.L.M. at 671.

15 *Id.* art. 1716, 32 I.L.M. at 677-78.

16 *Id.* art. 1715, 32 I.L.M. at 677.

17 TRIPS, *supra* note 13, arts. 9(1), 10(1), 14(3) & (6), 331 I.L.M. at 1201-02.

18 *Id.* arts. 11 & 14(4), 331 I.L.M. at 1201-02.

19 TRIPS, *supra* note 13, art. 4, 331 I.L.M. at 1200.

alizing a formal process to exchange questions and answers on those laws and regulations.[20]

The most important aspect of TRIPS, however, is that it supplies the elements lacking in Berne. The Agreement sets out a long list of detailed enforcement mechanisms that countries must make available to right holders.[21] And last but surely not least, it utilizes the WTO dispute resolution system, giving teeth to the treaty's requirements.[22] A WTO member alleging that another member has not fully implemented TRIPS can request the formation of a panel to settle the matter, and the panel's decision can be appealed to an appellate body.[23] If a member is found to be not in compliance with one of its obligations, it must either implement the obligation, provide equivalent trade concessions, or face equivalent trade sanctions from the complaining party.[24] Grace periods are provided for developing and least developed countries, which are not obligated fully to implement the copyright provisions of TRIPS until the years 2000 and 2006, respectively.[25]

Fully in force for developed countries only since January 1996, the TRIPS Agreement has already proved quite effective. The United States has filed a number of disputes against other countries, one in the copyright field (dealing with Japan's failure to provide a full fifty year term of retroactive protection for sound recordings). After consultations, Japan agreed to change its law, and the dispute was resolved before proceeding to a panel. Additional cases dealing with the implementation of the copyright provisions, or with the required enforcement mechanisms, may be instituted shortly.

D. *Bilateral Trade Relations*

A critical element in the pattern of international copyright is the interaction between individual countries relating to trade. In the context of such interactions, including the establishment of watch lists under U.S. trade laws,[26] the United States has convinced other countries to adopt treaty norms and generally increase their

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20 *Id.* art. 63, 331 I.L.M. at 1221.

21 TRIPS, *supra* note 13, art. 41-61, 331 I.L.M. at 1213-20.

22 *Id.* art. 64, 331 I.L.M. at 1221.

23 WTO. Understanding on Rules and Procedures Governing the Settlement of Disputes (1994) [hereinafter DSU] arts. 17-19, Annex 2, 331 I.L.M. at 1236-37.

24 DSU, *supra* note 23, art. 22, 331 I.L.M. at 1241-42.

25 TRIPS, *supra* note 13, arts. 65-66, 331 I.L.M. at 1222.

26 The Omnibus Trade and Competitiveness Act of 1988, Pub.L. No. 100-418, 102 Stat. 1107, which amended section 182 of the Omnibus Trade Act of 1974, requires the U.S. Trade Representative to identify countries that do not adequately and effectively protect intellectual property rights, or deny fair market access to United States persons that rely on

levels of protection and enforcement in several ongoing initiatives. The United States and other countries are working on the regional level to develop additional norms for intellectual property rights protection. The most notable of these are the negotiations leading to the Free Trade Agreement of the Americas ("FTAA") and discussions in the Asia Pacific Economic Cooperation ("APEC") forum.

III. AROUND THE CORNER

Given this extensive existing structure, what can be expected for international copyright in the short range? A number of issues are on the horizon, with work either completed or scheduled for the near future.

A. *Digital Issues*

Public attention has been devoted lately to the issue of adapting copyright to digital technologies. Individual countries and regions have begun to study this issue over the past few years. So far, the conclusion has been that existing copyright laws are generally adequate to the task, and need minor revisions rather than major overhauls.

On the international level, discussion has centered on the need to update the major international treaties. The current texts of Berne and Rome date back to more than a quarter century ago. The culmination of these discussions was the conclusion of two new World Intellectual Property Organization ("WIPO") treaties in Geneva in December 1996, dealing with copyright and neighboring rights. Among other things, these treaties and their interpretive statements require that right holders enjoy exclusive control over on-demand electronic dissemination of their works, and confirm that the reproduction right is fully applicable in the digital environment. They also require member countries to provide legal protection for technologies used to prevent infringement, and for the rights management information that right-holders may choose to provide in digital form.

Perhaps equally notable is one subject the treaties do not address: the question of on-line service provider liability. Traditionally, the question of which parties in a chain of distribution of an infringing work are liable for the infringement has been left to the national laws of individual countries. Since the new treaties are

intellectual property protection, and certain foreign countries determined to be "priority" foreign countries. 19 U.S.C. § 2242 (1994).

silent on this question, for now national legislatures remain free to grapple with shaping the answer in the Internet context. As answers begin to emerge, there may be renewed calls for international harmonization.

The treaties are not yet in effect; they require ratification by thirty countries, which will not happen overnight. Once the treaties come into force, it is possible that they will be incorporated into the TRIPS Agreement.

B. *Future WIPO Work Schedule*

Four other copyright-related issues are currently on the WIPO agenda: (1) protection for audiovisual performers; (2) *sui generis* protection for databases; (3) protection for expressions of folklore; and (4) the rights and liabilities of broadcasters. The first two issues are holdovers from the December 1996 Diplomatic Conference. Negotiators were unable to agree on an appropriate form of protection for audiovisual performers, and agreed to continue discussions with an eye toward a possible protocol to the neighboring rights treaty. A draft treaty on *sui generis* protection for databases was never reached at the Conference. In September 1997, both topics were discussed at WIPO meetings in Geneva, and work on the issues will continue through 1998.

Folklore and broadcasters' rights were the subjects of conferences held by WIPO in 1997, in Thailand and the Philippines, respectively. Future meetings may be scheduled on these topics as well.

C. *Multilateral Agreement on Investment*

Copyright is also becoming important in agreements dealing with the protection of investment. The United States is currently a party to a number of Bilateral Investment Treaties ("BITS") that define intellectual property as a form of investment, subject to significant national and MFN treatment obligations, requiring foreign investors to be treated as well as domestic investors. In the Organization for Economic Cooperation and Development ("OECD"), negotiations have been underway for some time on a Multilateral Agreement on Investment ("MAI"), which would extend this concept to a multilateral agreement among the world's most developed countries. The critical issue for copyright has been the relationship to the existing intellectual property treaties, and the application of national treatment and MFN obligations to both present and future rights.

IV. LONGER TERM

What is the outlook for the longer term? I will now venture to make a few predictions.

A. *Increased Level of Satisfactory Laws*

First, the trend toward satisfactory protection will continue. In the not-so-distant future, more and more countries will accept the emerging international consensus on basic copyright principles, with modern and balanced copyright laws becoming standard around the world.

This trend is rooted in a rational self-interest. Within their borders, countries may be persuaded that copyright protection will lead to more creation overall, and encourage foreign investment and technology transfer, advancing the domestic culture and economy. In the international arena, countries see the benefits they can obtain for their citizens by joining treaties on copyright and trade. Once they reach the stage of development where they perceive themselves as exporters of copyrighted works, not primarily users of works imported from abroad, the value of membership in a copyright treaty becomes clear. Even before that point, the trade-related benefits that may be obtained from joining a club like the WTO can outweigh any perceived drawbacks of adopting a new copyright law. Outside the parameters of the WTO, other countries like the United States may condition special trade treatment for developing countries on satisfactory protection of copyrighted works.

Major changes in copyright seem unlikely, however. The international norms embodied in legal systems around the world now reflect an accepted balance, ensuring that copyright owners can control economically significant uses of their works while allowing room for appropriate uses outside that control. The structure of the multilateral treaties permits and encourages this balance, by setting out only minimum rights and leaving considerable flexibility to national legislatures to determine what limitations on those rights are appropriate to their own conditions. This framework has stood the test of time and technological change; there is no reason why it should not continue to do so.

I do not believe that the list of copyright rights and subject matter will grow significantly. The future is likely to bring consolidation rather than expansion, with standards established on national levels being exported to more countries and eventually percolating upward into treaties. And of course, periodic adjust-

ments will be required to adapt existing rights to new types of works and new forms of exploitation.

Now I will go out on a limb and make one truly long-term prediction. At some point, the pace of the adjustments required by the development of technologies may outstrip the ability of the law to keep up. After all, even today the state of the art in digital technology looks completely different every year, while the process of amending legal systems is slow and ungainly. Eventually a greater simplification of the system of rights may become desirable. Instead of specifically delineated rights tailored to particular techniques of exploitation, it might be preferable to provide authors with a general right to exploit the work in any manner, with an appropriate balance provided through exceptions relating to the purpose and economic effect of a use.

Some steps in this direction can already be seen in certain countries' laws that provide to copyright owners a general right to exploit a work or make it available. Similarly, the new WIPO Copyright Treaty pulls together a number of detailed and specific rights from the Berne Convention into a broad and general right of communication to the public.

B. *Issues of the Future*

Accordingly, the focal point of international copyright is likely to shift. Rather than conceptual questions of subject matter and scope of rights, more practical issues will take center stage. These issues are not new, but are already the subject of considerable discussion today. They arise from the nature of a global, digital marketplace, and relate to enforcement, the operation of the market, and choice of law. I will outline a series of questions:

1. Enforcement

• How can rights be effectively enforced when works are made available electronically across national boundaries?

Customs authorities will no longer be able to assist in enforcement by seizing physical copies at borders. As in the analogue world, law enforcement agencies will need to work together to develop cooperative approaches in order to deal with pirates operating in more than one jurisdiction. Copyright owners must be able to take action against these pirates without the impossible burden of suing in every country. In this context, the issue of who is legally responsible in the chain of an unauthorized dissemination of a copyrighted work may take on heightened significance.

2. The Market

• How can a market for the licensing and sale of copyrighted works operate safely and efficiently over the Internet?

The solution will involve a combination of many elements, including protection of the integrity of the information used to make the market function, as required by the new WIPO treaties; protection of the authenticity of the works communicated; adequate and internationally compatible information systems; and the technology to allow permissions to be given and payments to be made electronically.

One topic related to both enforcement and the operation of the market is the future role of collecting societies. On the one hand, the new technologies could increase the need for copyright owners to rely on collecting societies; on the other hand, they could make it easier for copyright owners to administer and enforce rights individually.

3. Choice of Law

• Which country's law applies when a work is made available by a distributor in one country to users in several other countries simultaneously?

While it is often noted that the Internet creates tensions for the traditional territorial basis for copyright protection, I believe it is premature to predict its demise. The principle of territoriality is too deeply embedded in the copyright system, as part of the basic foundation. As long as copyright protection remains a function of each country's own law, it will be necessary to devise rules for choosing applicable laws in different settings. This problem has become a fashionable topic for examination at conferences, and a number of scholars have begun to develop possible solutions.[27]

At the same time, the trend toward greater harmonization means that choice of law is less critical in determining outcome. Professor Jane Ginsburg, the leading U.S. commentator on this issue, has suggested an approach requiring courts to presume that a particular country's laws reflect the international consensus, placing the burden on the parties to prove otherwise. The international consensus could be established by the obligations of existing

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[27] *See, e.g.*, Jane C. Ginsberg, *Copyright Without Borders? Choice of Forum and Choice of Law for Copyright Infringement in Cyberspace*, 15 CARDOZO ARTS & ENT. L. J. 153 (1997); Paul Edward Geller, *Conflicts of Laws in Cyberspace: Rethinking International Copyright in a Digitally Networked World*, 20 COLUM.-VLA J.L. & ARTS 571 (1996); Jane C. Ginsburg, *Global Use/Territorial Rights: Private International Law Questions of the Global Information Infrastructure*, 42 J. COPYRIGHT SOC'Y U.S.A. 318 (1995).

multilateral treaties, plus the contents of negotiated treaties reflecting widespread agreement, even if not yet in force. For example, the provisions of the two new WIPO treaties were adopted by consensus by the more than 100 countries participating in the 1996 Diplomatic Conference, and therefore can be seen as representing standards generally accepted as appropriate.

C. *Process and Players*

It is not only the substantive issues, but the process and the participants that are evolving.

One such direction is the intertwining of domestic and international concerns. In today's global market, it is no longer possible to evaluate changes to national law without considering the international implications. In weighing proposed legislation, Congress regularly considers questions of consistency with treaty obligations and the likely impact on other countries.

This is not simply an abstract exercise; questions posed to the United States at meetings of the TRIPS Council have made clear that every copyright bill introduced in Congress is under scrutiny by our trading partners. Nor is our interest purely defensive. U.S. legislation is inevitably part of an ongoing international mutual education process, and can serve as a starting point for discussion or a model for change. As countries grapple with issues posed for copyright by new technologies, they look to proposals developed elsewhere, particularly in the United States, for possible solutions. This is not a one-way street; debate on such issues at the Diplomatic Conference in Geneva was a valuable process, shedding further light on the problems and on the scope of evolving consensus.

Another path characterizing the process is the intertwining of intellectual property with other issues on the international agenda. For copyright, these include trade, protection of investment, and access to government data.

It has become increasingly clear in the past two years that the participants in the process have also changed. The days are over when international copyright was the province of a small club of copyright experts operating with a high degree of common language and mutual understanding. New players are involved in both the domestic and international debates, primarily as a result of the famed convergence in communications technologies in the digital age. Most notable is the involvement of the telecommunications industry, and providers of Internet services generally. At a relatively late date in the development of the WIPO treaties, these

interests became quite active in the discussions, and were extensively represented at the Diplomatic Conference in Geneva.

Although these players are here to stay, their identities and interests, like those of the copyright industries, are metamorphosing over time. Their businesses are highly dynamic, marked by shifts in the nature of their activities and increasing consolidation. The lines between industries, and between content and service providers, may become increasingly blurred. The impact on copyright is hard to predict.

One final significant change is the role of the developing countries. The division between the developed and developing worlds is no longer as distinct as it once was. A number of shifts in attitudes and alignments have taken place since the 1960s and 1970s. I believe these shifts can be attributed in substantial part to the impact of technology. Even though most developing countries may not yet be fully adapted to the latest digital technology, they see the future rapidly approaching. These technologies promise to level the playing field by making it possible to create and disseminate works around the world with a minimum of investment. All that is needed is creative minds with a basic level of training—not an expensive infrastructure of factories or physical distribution facilities.

Other influences include the increased and unavoidable globalization of markets, and the related rise of international conglomerates doing business around the world. Every country today is subject to both the lure and the pressure of potential investment from these businesses. The lobbying in Geneva was by no means limited to delegations from the developed world.

Finally, it is no longer possible to characterize developed countries as favoring a high level of rights across the board, with developing countries favoring a lower level. Positions today are more complex among particular regions of the developing world, which in WIPO has been organized into an Asian group, a Latin American and Caribbean group, and an African group. Even within those regions, there is little unanimity. It is clear, however, that in some areas, developing countries are seeking stronger rights than certain countries in the developed world, including the United States. This is particularly true in the areas of moral rights, protection for performers, and protection of folklore.