



# Copyright, Trade and Heritage

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# IP moves to the House of Trade

- 1886: Berne Convention multilateralizes national treatment
- 1896-1971: Convention is updated to add new rights.
  - Inconsistent use of exceptions, mostly freedom of press
  - No real heritage-related exception
- 1986: Launch of GATT Uruguay Round
- 1994: TRIPS Agreement includes Berne minus moral rights
  - Adds three-step test, enforcement and dispute-settlement
- 1995: WTO is established, administers TRIPS
- 2000: TRIPS in force everywhere except least-developed countries

# What this means for IP

- IP is on par with other trade-related rights
- Trade-related rights spar with other rights
  - Human rights
  - Cultural Rights
  - Biodiversity (CBD) etc.
- Recognized by WTO Appellate Body:
  - WTO rules cannot be applied in ‘clinical isolation » from other international norms:
    - possibility of conflict
    - But also cross-fertilization
    - And “Forum-shifting” strategies

# What this means for Copyright

- The three-step test imposed as new overarching filter for all exceptions
  - Art. 13 of TRIPS
- Exceptions must be
  - “Special” (limited in scope)
  - Not conflict with NORMAL COMMERCIAL EXPLOITATION
  - Compensation must be provided if prejudice to rightsholders deemed “unreasonable”

# Normal Commercial Exploitation

- The question is no longer whether a copy is made, but whether a dollar was lost
- Translated, this means for rightsholders the question is no longer how you minimize unauthorized uses but how you maximize authorized uses
- The notion is dynamic and evolves with market
  - Internet commerce

# What this means for Heritage issues and preservation

- Non commercial preservation efforts may be covered by a broad exception
- Exception may be interpreted more favorably in light of heritage-related instruments (UNESCO)
- Access to those copies may have to be limited if interfere with normal commercial exploitation
- If exception causes unreasonable measurable harm to rightsholders, an exception is possible but with compensation



Thank you

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