

# Arts Management Newsletter

Bi-monthly Magazine for the global Perspective in Arts and Business



Dirk Heinze,  
Editor-in-Chief

## Table of Content

### CONFERENCES

- Conference Calendar  
Page 2

### DEVELOPMENTS

- Moral rights and  
Benthamism  
Page 6
- Arts Programs in  
Cities win Support  
Page 16

## Editorial

Dear readers,

at the beginning of a year, where again thousands of arts managers plan to attend conferences and conventions, it might be helpful to provide an overview. Perhaps you will discover some new opportunities to meet colleagues and find up the latest trends in management or marketing. In order to complete this list, we would be happy to receive your information about other conferences in the global arts business. The result you will find in our online conference calendar at <http://conference.artsmanagement.net>

Furthermore, this newsletter comprise an article by Harry Hillman Chartrand about copyright - indeed an important issue today for all creative people. For those of you, who are interested in arts programs for marketing and reinventing the city, will find innovative benchmarks on page 16.

We are looking forward to your feedback or content contributions. For news updates please check our web site, visit our fan page at *Facebook* ([www.facebook.com/pages/ArtsManagementNet/105358656198329](http://www.facebook.com/pages/ArtsManagementNet/105358656198329)), and follow us on *Twitter*: <http://twitter.com/amnweimar>

Yours,

Dirk Heinze & Dirk Schütz

## Arts Management Network - The global Resource

**Latest Articles:** <http://artsmanagement.net/index.php?module=News>

**Book Directory:** <http://artsmanagement.net/index.php?module=Books>

**Conference Calendar:**  
<http://artsmanagement.net/index.php?module=PostCalendar>

**Course Directory:**  
<http://artsmanagement.net/index.php?module=Education>



Conferences 2011

# Conference Calendar 2011

23-25 February, Brisbane, Australia

## **2011 NARPACA Ticketing Professionals Conference**

*The 2011 NARPACA Ticketing Professionals Conference and Trade Show will continue to build on the success of six other previous events with the theme "BUILDING A TEAM". Over three busy days you will hear from national and international experts and network with your peers from around Australia. As part of the conference, the trade show offers system vendors and you the opportunity to share, discuss and demonstrate recent advances in ticketing systems and services.*

Details: [www.ticketingprofessionals.com.au](http://www.ticketingprofessionals.com.au)

\*\*\*

March 28, Manchester, United Kingdom

## **Adapting to Survive Conference**

*The Adapting to Survive Conference is a timely chance for the arts, culture and heritage sector to get together. Be a part of it. Exchange ideas and get involved in the debate, enjoy some peer support and revive your hopes for the future.*

Details: [www.allaboutaudiences.com](http://www.allaboutaudiences.com)

\*\*\*

April 4-5, Washington, DC, USA

## **Arts Advocacy Day**

*The 24th annual Arts Advocacy Day is the only national event that brings together a broad cross section of America's cultural and civic organizations, along with hundreds of grassroots advocates from across the country, to underscore the importance of developing strong public policies and appropriating increased public funding for the arts.*

Details: <http://artsusa.org/events/2011/aad/default.asp>

\*\*\*

April 7-9, Boston MA, USA

## **AAAE 2011 Annual Conference EDUCATE | INNOVATE | ACTIVATE**

*Join your colleagues this spring for our annual conference as we explore new ways to educate our students, innovate our teaching, and activate the communities in which we live and work.*

Details: [www.artsadministration.org](http://www.artsadministration.org)

\*\*\*



### Conferences 2011

April 14-16, London UK

#### **21st IAMA International Conference**

**EMERGING STRONGER – INSPIRING ARTISTIC LEADERSHIP IN A CHANGING WORLD**

*At its 21st Conference the International Artist Managers' Association (IAMA) examine, through the eyes of major industry figures, how that artistic imperative can be preserved, renewed and developed.*

Details: [www.iamaworld.com/179](http://www.iamaworld.com/179)

\*\*\*

1-7 May, Epidvros, Greece

#### **2nd Kufstein Summer School „Creativing Cultural Leadership“**

*New Strategies for Cultural Projects in Global Cities and Regions*

Details: [www.fh-kufstein.ac.at](http://www.fh-kufstein.ac.at)

\*\*\*

10-12 May, London, ON, Canada

#### **2011 Creative City Summit**

*The New Old: Culture as a Revitalizing Tool in your Community*

Details: [www.creativecity.ca](http://www.creativecity.ca)

\*\*\*

20-24 May, Leirring, Austria

#### **Performing Arts Training Today**

*Professional conference open to performers, performing arts educators and teachers from all over the world interested in the research of topical questions and processes in contemporary performing arts education and training.*

Details: [www.iugte.com/projects/ArtConference.php](http://www.iugte.com/projects/ArtConference.php)

\*\*\*

26-27 May, Edinburgh

#### **Museum Next**

*MuseumNext looks at how museums and galleries can benefit from new technology and the latest web trends. This two day conference will highlight best practice and act as a platform to ask 'what next?'*

Details: [www.museumnext.org](http://www.museumnext.org)



### Conferences 2011

June 16–18, San Diego, CA, USA

#### **2011 Annual Convention of Americans for the Arts**

*The 2011 Americans for the Arts Annual Convention is the one meeting where you will gain the professional development you need in local arts development, advancement, and policy and also connect with colleagues from across the country including local, state, regional, and national arts leaders.*

Details: <http://convention.artsusa.org>

\*\*\*

27 – 29 June, Tshwane/Pretoria, South Africa

#### **Conference on Arts, Society and Sustainable Development**

*The aim of the conference is to assemble art practitioners (visual and performing), professionals, designers, academics, researchers, government officials, cultural workers, and industry partners to share creativity, knowledge, and understanding across boundaries; and to offer a platform for the interrogation of the relationship between the arts and community development.*

Details: [www.csiricc.co.za](http://www.csiricc.co.za)

\*\*\*

3-6 July, Antwerp, Belgium

#### **11th Intern. Conference on Arts and Cultural Management (AIMAC 2011)**

*The conference will be organized by the master Cultural Management of the University of Antwerp, in collaboration with the Antwerp Management School. AIMAC 2011 aims to provide a space for management of the Arts and the creative industries.*

Details: [www.aimac2011.org](http://www.aimac2011.org)

\*\*\*

16 July - 6 August, Kumasi, Ghana

#### **2nd Kumasi Biennial Symposium: Community Arts in Focus**

*The 3-week event will focus on community arts practice, as a response to the growing problem of widening gap between contemporary African artist and the rural community.*

Details: [www.nkafoundation.org](http://www.nkafoundation.org)

\*\*\*



### Conferences 2011

7-10 September, Geneva, Switzerland

#### **European Sociological Association conference**

*The European Sociological Association invites scholars from around the globe to come together in Geneva to debate the theme 'social relations in turbulent times', a theme that obviously includes the most pressing sociological questions of the day.*

Details: [www.esa10thconference.com](http://www.esa10thconference.com)

\*\*\*

3-6 October, Melbourne, Australia

#### **5th World Summit on Arts and Culture**

*The Summit will bring together government and cultural leaders from over 80 countries to explore how artists can give voice to diverse communities and concerns through collaborations with experts in health and well-being, the environment, education, business, new technologies, cultural identity and more.*

Details: [www.artsummit.org](http://www.artsummit.org)

\*\*\*

1-3 November, Dublin Ireland

#### **AuditoriumsMeet 2011**

*Auditoriums Meet is a conference, workshop and networking event which explores the essential business trends and market dynamics of live entertainment venues. Bringing together executives from the world's concert halls, arenas, theatres, festivals and performance spaces. Auditoriums Meet 2011 is the essential industry meeting for venue owners, operators and developers.*

Details: [www.auditoriumsmeet.com](http://www.auditoriumsmeet.com)

\*\*\*

17-21 December, Leirring, Austria

#### **Performing Arts Training Today**

*A professional conference open to performers, performing arts educators and teachers from all over the world interested in the research of topical questions and processes in contemporary performing arts education and training.*

Details: [www.iugte.com/projects/Conference.php](http://www.iugte.com/projects/Conference.php)



# Tilting at Windmills

## *Moral Rights & Benthamism*

An article by Harry Hillman Chartrand, PhD, Cultural Economist & Publisher  
Compiler Press, Canada

I have, until now, concluded that Anglosphere resistance to imprescriptible moral rights for artists/authors/creators (the norm in Civil Code countries) was, as demonstrated below, the result of precedent and path dependency of the Common Law, i.e., the inherent conservatism of the Law. I now know better.

My recent research on the relationship between education and copyright reveals that the ideology of Jeremy Bentham played and continues to play a major role in this resistance. By ideology I mean a systematized explanation of the way the world works without god. Thus Common Law and Benthamism together inhibit implementation of moral rights in the Anglosphere with significant implications for income distribution in the emerging global knowledge-based economy.

### **Common Law Precedent & Path Dependency**

Until the 1710 Statute of Queen Anne the author had no claim on a work other than a one-time honorarium paid at the discretion of the printer/bookseller/publisher or as then known 'Stationer'. Often in fact the author had to pay for the printing. Thus what today is copyright began as a printer's right. This right or 'privilege' to print a work, a.k.a., copy, was perpetual - granted and maintained at the pleasure of the Crown. Enforcement of printer's or Stationers' copyright rested, however, on the Licensing Act which required pre-publication censorship. This practice beginning by statute in 1401 (2 Henry IV c.15 or De Heretico Comburendo) predates Caxton's printing press in 1476.

With the 1710 Statute the author was identified for the first time as the original copyright owner. Copyright to a work, however, was fully assignable to a 'proprietor', i.e., a printer/bookseller/publisher. Rights were exclusively economic - the right to print or re-print.

The Act in fact was intended to regulate the book trade in a new United Kingdom of Great Britain (1707). In addition to recognizing the author, the Act broke the copyright monopoly of the Stationers' Company of London and ended Scottish book piracy. Such piracy began when the English Licensing Act lapsed in 1695. This marked birth of a 'free press' in the Anglosphere, i.e., one not subject to pre-publication censorship by the State. In turn, this followed the Glorious Revolution of 1689 and birth of constitutional monarchy.

In 1710, by statute, a book became at one and the same time: (i) a commodity; (ii) an income-earning but intangible property like 'goodwill'; and, (iii) the



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

first intellectual property right – the right to copy – recognized under Common Law. Until 1710 copyright cases were heard before the royal Court of the Star Chamber. Patents – the right to invention – had to wait until 1852 for Common Law courts to gain jurisdiction in the U.K. By contrast in 1790 the U.S. Congress enacted a Patent Act subject to Common Law.

After 1710 all books were to be bought and sold in the United Kingdom of Great Britain – England, Wales, Scotland & Ireland – under the same law. Thus:

*... the Author of any Book or Books already printed who hath not transferred to any other the Copy or Copies of such Book or Books Share or Shares thereof or the Bookseller or Booksellers Printer or Printers or other Person or Persons who hath or have purchased or acquired the Copy or Copies of any Book or Books in order to print or reprint the same shall have the sole Right and Liberty of printing such Book and Books... Statute of Queen Anne, 8 Anne c.21 Royal Assent 1709; in force April 10, 1710.*

Statutory copyright, however, unlike Stationer's copyright, was time limited – initially 14 years for a new work. The Act was intended “for the Encouragement of learned Men to compose and write useful Books”. Furthermore the title “An Act for the encouragement of learning” established the statutory basis for all subsequent legislation in the Anglosphere. It was also the opening title of the first U.S. Copyright Act in 1790. Other than assigning first ownership to the author, no moral or prescriptive rights of authors as distinct from proprietors were recognized. It should be noted that the first reported use of the word ‘copyright’ occurs in 1735 during debate in the House of Lords.

With the Statute of Queen Anne the Battle of the Booksellers began. Court cases were launched by proprietors to re-establish perpetual copyright. This time it was not a royal ‘privilege’ but rather a natural right fully assignable by starving authors to proprietors. The starving artist was and indeed remains a central character in a campaign of strategic litigation waged by copyright proprietors. It was and is based on a false confabulation of the interests of author and proprietor – additional rights granted authors are assignable to proprietors. Whether additional income or other benefits flow to the artist/author/creator due to enhanced legislative rights, on average, depends on private contract, on average, between a starving artist and a corporate proprietor.

Sir William Blackstone contributed to the plaintiffs' cause. He published his influential Commentaries on the Laws of England in 1767. In it he interpreted copyright for the first time as a legal concept making only the second recorded use of the word ‘copyright’. Applying John Locke's theory of natural law, Blackstone described copyright as a kind of personal property because any published work is based on the author's brainwork. This is ‘the sweat of the brow’ theory of copyright. Locke, however, in his Memorandum of 1694 argued for freedom of the press and an end to the Licensing Act but against



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

both Stationers' copyright and perpetual copyright for the author contra Blackstone. In his defence Blackstone may not have been aware of the memo.

The initial strategic campaign of litigation in the lower courts came to a penultimate decision with the 1769 case of *Millar v. Taylor*. Chief Justice Mansfield held for the majority that a natural right to perpetual copyright existed. In response to this and other decisions by Mansfield, Thomas Jefferson in 1788 exclaimed:

*I hold it essential in America to forbid that any English decision which has happened since the accession of Lord Mansfield to the bench, should ever be cited in a court; because, though there have come many good ones from him, yet there is so much sly poison instilled into a great part of them, that it is better to proscribe the whole."* (Commons 1924, 276)

Justice Yates, for the minority in *Millar v. Taylor*, argued that copyright as a natural right exists only until published. Yates used the analogy of ideas as wild animals which so long as penned up in one's head belong to you in perpetuity but once let loose belong to everyone and no one at the same time, i.e., a public good or bad. Thus with publication – dedication to the public – any natural right for perpetual copyright lapses and time limited statutory copyright begins. In *Millar v. Taylor*, again, no recognition was given to moral rights of the author distinct from economic rights assignable to a proprietor. It should be noted that there simply was no Common Law copyright before the Statute of Queen Anne because the Court of the Star Chamber ruled, i.e., the royal prerogative not Common Law governed copyright.

The ultimate judicial decision in the initial campaign of strategic litigation was reached in 1774 with *Donaldson v. Beckett* decided by the Law Lords – the House of Lords as the highest court of appeal. Quite simply Justice Yates' minority opinion in *Millar v. Taylor* won the day. With publication – dedication to the public – the natural right to perpetual copyright lapses and time limited statutory copyright begins. Again, no recognition was given to moral rights of the author; all rights remained assignable to a proprietor. Nor was there any recognition of 'the public domain' or any natural rights associated with it. A similar decision was reached by the U.S. Supreme Court in 1834 in the case of *Wheaton v. Peters* (33 U.S. 591).

In fact it was not until 1886 through translation of the Berne Convention that moral rights and the public domain entered the English legal lexicon. The Convention for the Protection of Literary and Artistic Works, however, reflects the French rather than Anglosphere experience of copyright or rather author's rights. Elsewhere I have described the French experience which follows Immanuel Kant seeing a work as a projection of human personality and subject to imprescriptible human rights as Natural Law including a distinction between economic and moral rights to a work.

In conclusion, there is no Anglosphere precedent for imprescriptible moral rights of the artist/author/creator under Common Law. In fact, the opposite





## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

is true. The precedent is that all natural rights are extinguished on publication.

Three other developments in Anglosphere legal evolution further prejudice the case for imprescriptible moral rights. First, in 1873 Common Law and Equity were consolidated in the U.K. by the Judicature Act (at different dates elsewhere in the Anglosphere). Courts of Equity predate Common Law courts as I have described elsewhere. Equity does not deal with guilt or innocence, right or wrong. Rather it deals with fairness. And Equity brought with it a tool previously denied Common Law courts – the injunction.

Common Law assumes one is innocent until proven guilty. In effect penalty is *ex poste* imposed after the facts are proved. Equity, on the other hand, requires fairness and if cause is shown - but not necessarily proven - a temporary injunction may be granted by a court to stop actions of a party likely to harm another. In this sense an injunction is *ex ante*, i.e., before the facts are proved. Since 1873 the temporary injunction has become a favoured legal tool of copyright proprietors. More importantly without a dedicated Court of Equity the fairness of imprescriptible moral rights fails to rise above the din of Common Law precedent, practice and mindscape.

Second, a legal fiction also developed under Common Law granting legal persons or bodies corporate the same rights as natural persons. This is not the case in Civil Code countries. Thus in the infamous 1886 U.S. case of the Santa Clara railroad (118 U.S. 394), corporations were deemed entitled to the same “equal protection” as natural persons against discrimination under the Fourteenth Amendment of the Constitution intended to protect black voters after the Civil War. Equal protection of natural and legal persons makes assignment of copyright – moral and economic rights - to a proprietor or employer appear natural, normal and fair. It also renders negotiations between the starving artist and corporate proprietor, on average, profoundly unbalanced. Again it is neither natural nor normal in Civil Code countries. There even employees retain moral rights to their work. Contract negotiations are also better balanced but more complicated and costly to proprietors.

Third, the Battle of the Booksellers beginning with the 1710 Statute of Queen Anne was but the opening volley of a three hundred year campaign of strategic litigation by copyright proprietors in the Anglosphere. Skirmishes generally begin in the lower courts. A precedent is sought that will, in turn, be used to influence higher courts. Then, having established precedent, legislation is lobbied to aid proprietors usually in the name of the starving artist.

The campaign so far has succeeded in extending copyright from an initial 14 to more than 100 years – life of the artist plus 70 years in the U.S. It may not be perpetual copyright but is the next best thing. This in an age of instant communication and rapid technological change! In the process the public domain has been starved of content. In the case of patents the initial 14 years



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

grew to but 20 arguably because inventors do not enjoy a single industrial focus as with authors: the publishing industry and its self-interested trans-global descendants.

In the Anglosphere at least this result was achieved through the combined combat operations of artists/authors/creators acting as agents of proprietors who by contract then usurp the equity of their agents. In addition it has been achieved because there is no tradition of the public domain or of its effective representation in the Anglosphere. As for 'learning' - the stated objective of the 1710 Statute of Queen Anne and the 1790 U.S. Copyright Act - it has become an industry in and of itself and a major client/supplier to copyright proprietors, i.e., printers/booksellers/publishers, a.k.a., trans-global media conglomerates.

Copyright has not only returned to near perpetuity in the 300 years since the Statute of Queen Anne but the Licensing Act has arguably been resurrected. As described elsewhere, the Digital Millennium Copyright Act in the U.S. and the proposed Copyright Modernization Act in Canada substitutes post-modern economic censorship for the religious and political censorship of the Licensing Act of 1662. In this legal environment proprietors have a vested interest in not recognizing imprescriptible moral rights of creators. This is a far cry from the eloquent but confabulated words of Zechariah Chafee

*... intellectual property is, after all, the only absolute possession in the world... The man who brings out of nothingness some child of his thought has rights therein which cannot belong to any other sort of property. (Chaffe 1945)*

### Benthamism

In introduction I defined ideology as a systematized explanation of the way the world works without god. The philosophy of Jeremy Bentham (1748-1832) fits the bill. The human world works by each person maximizing pleasure and minimizing pain - the two sovereign rulers of the State. Applying 'felicitous calculus' - the calculus of human happiness - Bentham believed it possible to calculate the greatest good for the greatest number for any public policy question. This was to be done by counting units of pleasure/pain called 'utils', hence Utilitarianism. His was, according to Joseph Schumpeter, the last 'great' and most dismal philosophy of the European Enlightenment. Life was nothing but calculatory rationalism by our very selfish selves.

Radical egalitarianism is the 'moral' of Benthamism. Each person and their happiness and pain is as important as that of any other. No classes, no hierarchies, all equal. Born tabula rasa - a blank slate - differences in education and upbringing create differences in society. Standardize education and upbringing and all will become equal again. Put another way, if the Industrial Revolution meant mass production of standardized goods and services then Benthamism meant mass production of standardized people - their customs, tastes and traditions.



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

The impact of Benthamism in the Anglosphere cannot be underestimated. It reformed the Elizabethan Poor Laws into an industrial system of public welfare characterized by the workhouse and poor house chillingly described by Charles Dickens. It shaped criminal law and even penitentiaries, i.e., Bentham's Panopticon design of a central tower from which guards on each floor could view all cell doors arrayed in diagonal wings around the tower. Compulsory mass education introduced in 1870 is also a by-product of Benthamism.

Also in the 1870s Bentham's felicitous calculus was married to Newton's calculus of motion in the 'Marginalist Revolution' of Economics. This spawned, in turn, consumer theory, then theory of the firm and finally the perfect competition model of market economics. The revolution shifted the focus from distribution of national income among classes – labour, landowners, capitalists, etc. – to the efficiency of the individual or atomized consumer and producer. This revolution rests on the assumption that the price a consumer is willing to pay is the measure of its utility, i.e., the number of utilities received. It involves reification (making concrete something that is abstract) of happiness into dollars and cents. Thus modern market economics is rooted in Benthamism.

For our purposes, however, Bentham's concept of and impact on Anglosphere Law is at issue. In his anonymous 1776 *Fragments on Government* Bentham criticized Blackstone's concept of Law rejecting Natural Law as 'an abuse of language'. This was, of course, the same year that Adam Smith published the *Wealth of Nations* and the American Revolution began. Then in 1791 in his *Anarchical Fallacies*, a commentary on the French Revolution's Declaration of the Rights of Man, he noted "Natural rights is simple nonsense; natural and imprescriptible rights, nonsense upon stilts..." And in the Constitutional Code of 1830 he rejected the Bills of Rights as useful only as a check on non-democratic governments. He rejected it as limiting "legislative omniscience... in contradiction to the greatest happiness principle."

Benthamism had a somewhat different impact in the U.K. and the U.S. In both, however, it was extremely influential in juristic studies downgrading Natural Law. And in both Bentham's demand for an efficient and highly centralized public administration laid the foundation for the modern service state.

In the U.K., however, Benthamism also provided a distinct English road to democracy. Given the Napoleonic Wars no doctrine tainted with Jacobinism could win public acceptance. The path to reform could not include discussion of a social contract, natural rights, rights of man or liberty, fraternity, and equality. Benthamism satisfied this requirement.

In the U.S., by contrast, the Declaration of Independence and the subsequent Constitution were both rooted in Natural Law – life, liberty and the pursuit of



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

happiness. Perversely, at the constitutional level Benthamism was used in America to justify slavery, the fate of which was, of course, determined by the Civil War.

In both, however, Bentham's rejection of Natural Law and Natural Rights tainted and continues to taint Anglosphere Common Law. This makes recognition and implementation of imprescriptible moral rights for artists/authors/creators a much rougher road to hoe.

### Conclusion

Thus Common Law with its precedent and path dependency together with Bentham's rejection of Natural Law and Natural Rights inhibit implementation of imprescriptible moral rights for artists/authors/creators in the Anglosphere. This has significant implications for income distribution in the emerging global knowledge-based economy. Such an economy is based on production of intellectual property including copyright. It is also characterized by increasing contract and self-employment. In selling product the knowledge worker through a blanket or 'all rights' license currently assigns, gives up and/or waives all future claims to a work including the moral right to claim paternity. Employees, of course, have no economic or moral rights at all, unlike in Civil Code countries. Copyright proprietors, on the other hand, take onto themselves, through a confabulation of interests, all additional rights granted by the State to the 'starving artist'. Put another way, the emerging income distribution in the knowledge based economy will be determined by the contract bargaining power of the average knowledge worker, a.k.a., the starving artist, who has none.

I must conclude therefore that my effort to rehabilitate and implement imprescriptible moral rights for artists/authors/creators in the Anglosphere amounts to tilting at windmills. Nonetheless, continuing to joust with such giants is necessary and important.

### Sources

The 2010 Copyright Modernization Act and the Licensing Act of 1662 - Final Version, Canadian Copyright Reform Policy Research Note #3, Compiler Press, August 31, 2010.

A Unified Theory of Canadian Copyright: Canadian Copyright Reform Policy Research Note #2, Compiler Press, March 31, 2010.

The Global Context: Canadian Copyright Reform Policy Research Note #1, Compiler Press, July 31, 2009.

Preface: Cultural & Intellectual Property - Cult of the Genius to The Compleat Multilateral Cultural Property & Related 1874-2008 Agreements, Charters, Conventions, Covenants and Treaties, Compiler Press, February 2009, ISBN 978-0-9689523-8-2.



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

The Multilateral Intellectual & Cultural Property Rights Regime, Conference on International Economics & Economic Research, University of Saskatchewan, Oct. 18, 2008.

Software: Copyright, Patent or Something Else?, Compiler Press, April 23, 2008.

Equity & Aboriginal Title, Compiler Press, January 31, 2008.

Introduction: to The Canadian Copyright Act 1921-2006: Historical, Cultural, Economic, Legal & Political Significance, Compiler Press, September 2006.

### By other Authors

Birn, R., "The Profits of Ideas: Privilèges en librairie in Eighteenth-Century France", *Eighteenth-Century Studies*, 4 (2), Winter, 1970-1971, 131-168.

Chaffe, Z., Jr., "Reflections on the Law of Copyright: I & II", *Columbia Law Review*, 45 (4/5), July and September 1945, in Berrings, R.C. (ed), *Great American Law Reviews*, Legal Classics Library, Birmingham, 1984.

Commons, J. R., *The Legal Foundations of Capitalism*, MacMillan, NYC, [1924], 1939 - Ch. VII: The Price Bargain

Ginsburg, J.C., "A Tale of Two Copyrights: Literary Property in Revolutionary France and America", *Tulane Law Review*, 64 (5), May 1990, 991-1031.

Harvey, D., "Law and the Regulation of Communications Technologies: The Printing Press and the Law 1475 - 1641", *Australian and New Zealand Law & History Society E Journal*, 2005. 160- 211.

Hesse, C., "Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777-1793", *Representations*, 30, Spring 1990, 109-137.

Nace, T., *The Gangs of America*, Berrett-Koehler, 2005: Ch. 14: Judicial Yoga, 161-177. Palmer, P.A., "Benthamism in England and America", *American Political Science Review*, 35

(5), October, 1941. Patterson, L. Ray, "The DMCA: A Modern Version of the Licensing Act of 1662", *Journal of*

*Intellectual Property Law* 10, 2002-3, 33-58. Schumpeter, J.A., *History of Economic Analysis* [1954], Oxford University Press, New York,

1968. West, E.G., "The Benthamites as Educational Engineers: The Reputation and the Record",

*Carleton Economic Papers* 92-05 April, 1992.

### Précis: Policy Research Notes #1, 2 & 3

This is the fourth in a series of Canadian copyright reform policy research notes (PRN) published by Compiler Press. They are intended to inform the



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

process of reform. This intent extends beyond changes and amendments to the Act to include the more general question of copyright in the emerging global knowledge-based economy.

The first note published July 31, 2009 dealt with the Global Context of the reform process. It highlighted the initial global split in the multilateral copyright regime between the European-backed author-based Berne Convention of 1886 and what became the mercantilist-based Pan American Copyright Convention of 1947 backed by the United States. Then, at the height of its post-Cold War power, the United States acted as midwife to the World Trade Organization (WTO 1995) and its TRIPS or Trade- Related Intellectual Property & Services Agreement. It was then instrumental in promoting the World Intellectual Property Organization or WIPO's World Copyright Treaty (WCT) and World Performance & Phonogram Treaty (WPPT) - both signed by Canada in 1996. The Canadian reform process of 2010 in fact centres on Canada's ratification - or not - of these two treaties.

The first note also pointed out that Canada together with France and Sweden, among others, succeeded in establishing the right of Nation-States to subsidize and otherwise support their domestic cultural industries - free of free trade restrictions. This was achieved through the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions that came into force in 2008. At the conference, one hundred and forty-eight countries approved; the United States and Israel voted against; and, four abstained.

The second note in the series published March 31, 2010 dealt with a Unified Theory of Canadian Copyright. Drawing on the work of the late L. Ray Patterson (Patterson & Birch 2009) it highlighted differences and similarities between U.S. and Canadian copyright traditions. Following Patterson it also proposed a unified or easement theory of copyright, i.e., copyright is neither a plenary property right nor a statutory one but rather a balancing of rights and obligations between creators (generally Natural Persons), proprietors (generally Legal Persons), users (Natural and Legal Persons including libraries) and the State responsible for fostering the public domain, a.k.a., learning.

A never ending campaign of strategic litigation in lower courts across the Anglosphere (most recently in the U.S.) has, according to Patterson, returned to copyright proprietors powers last enjoyed by the Stationer's Company of London prior to the Statute of Queen Anne in 1710 - the first modern copyright act to recognize any author's rights. This has allowed proprietors to usurp equity from creators, use private law to control access and thereby create an existential threat to freedom of speech, or rather 'freedom to hear', a.k.a., access, by, among other things, privatizing much of the public domain, e.g., Google's booking scanning scheme.



## Developments

### ... Tilting at Windmills: Moral Rights & Benthamism

The third policy research note published August 31, 2010 concerned Government justification for the Canadian Copyright Modernization Act (CMA) being that “in the current digital era copyright protection is enhanced when countries adopt coordinated approaches based on internationally recognized norms”. The Act focuses on commercial norms specifically efforts to prevent “circumvention of effective technological measures” intended to protect copyrighted works. This norm, however, is deeply rooted in American mercantilist legal precedent specifically the Digital Millennium Copyright Act which in turn bears an uncanny resemblance to the English Licensing Act of 1662 with its search and seizure provisions concerning illegal printing presses and their manufacture.

Not only are there no ‘effective technological measures’ (all have been hacked) but the Act fails to address three cultural norms of copyright inherent in the Berne Convention. These include: moral rights of the artist/author/creator as imprescriptible human rights; national treatment requiring a Member State to treat foreign creators the same as nationals but allowing for different rights in different countries; and, grow the public domain into which all copyrighted works eventually fall and that is the root of national patrimony. In summary, the CMA would increase revenues for copyright proprietors, invade the digital privacy of all citizens, significantly reduce the public domain and not materially reward the ‘average’ creator, a.k.a., the starving artist. ¶

### SIDE STEP

[www.compilerpress.ca](http://www.compilerpress.ca)

# Arts Programs in Cities win Support

From the September/October 2010 Issue of Arts Management

City interest and involvement in the arts, spurred by new funding and marketing concepts, outside support, and the efforts of local arts councils, continues to grow.

Two current funding programs of the *John S. and James L. Knight Foundation* are giving a big boost to innovative arts programs in American cities. This year the foundation introduced its "Random Acts of Culture" program which is awarding arts groups in eight cities \$30,000 grants to bring arts performances out of their normal venues and into the streets and other well-populated but unexpected sites. Cities involved in the program are: Akron, Charlotte, Detroit, Macon, Miami, Philadelphia, San Jose and St. Paul.

One of the grant winners, the *Charlotte Arts & Science Council*, held its first random act this August when artists from *Opera Carolina* performed arias for unsuspecting but delighted shoppers at the busy *Atherton Mills Market*. Working with such other local organizations as the *Charlotte Symphony* and the *North Carolina Dance Theatre*, the arts council is planning some 30 other random performances at bus stations, street corners and shopping sites.

Another Knight Foundation program, the Arts Challenge grant, which began in the foundation's home city, Miami, in 2008, and which awards grants for innovative projects that enrich a city, has announced its second award to arts groups and artists in Philadelphia. Open to any applicant, the three-year \$9-million Arts Challenge Philadelphia program seeks applications that can respond best to three concerns: that the concept is about the arts; that the project takes place in or benefits Philadelphia; and that grant recipients find matching funding. Applications are being accepted from October 5 to October 31, with the winners to be announced in 2011.

As in the Miami program, a five-year, \$20-million initiative, which will announce its third year recipients on November 29, grants probably will range anywhere from \$15,000 to \$1-million. Miami thus far has had some imaginative local programs, including Free Gospel Sundays, pairing Grammy Award-winning singers with home-grown talent and a celebration of Hispanic theater at a festival and conference featuring works from around the Americas.

Meanwhile, Philadelphia's Office of Arts, Culture and the Creative Economy and Design Philadelphia 2010, are collaborating with the *Virtual Public Art Project (VPAP)* and other groups to bring the first virtual public art exhibit to the city this fall. VPAP Philadelphia, in addition to a multimedia exhibit at Breardboard's *Esther Klein Gallery*, also will present eight unique virtual artworks by



### ... Arts Programs in Cities win Support

local artists at different locations, viewable through smart phone cameras equipped with free downloaded VPAP application software.

Providence, RI, which terms itself "The Creative Capital" in its literature and web site, is entering the third year of its city-wide arts advocacy program, promoted through buttons that read, "I Buy Art." About 13,000 buttons, designed to thank shoppers who buy works of art and help promote Providence-based artists and arts merchants, were given away last year. In addition to the purchase of art, studio classes, museum memberships and performance tickets are included in the program.

The city's Department of Art, Culture + Tourism, holds an annual contest for resident or studio-based Providence artists to have their art used in the button campaign. This year four winning artists received \$500 stipends. "We're trying to widely promote the purchase of art," Margie Butler, the program's founder told AM. "The buttons are an advocacy tool that's fun."

Pittsfield, MA, which lost more than 10,000 *General Electric* jobs but reinvented itself through the arts, has, under the leadership of the city's Office of Cultural Development, developed an ongoing program of cultural activities that has revitalized the city. Included in the mix are frequent festivals, the reincarnation of empty storefronts as artist studios, 3rd Thursday downtown arts programs from May through October and special events that bring together a number of groups in cooperative efforts. This fall, for example, the Housatanic Paper Trail, a multi-site celebration of the history of the area's paper industry, included several different events. Included were a group show at the Lichtenstein Center for the Arts, a site-specific installation by regional artists working with or on paper, "Paper and Light," at the Berkshire Museum, and a photo exhibit of local paper mill workers at the Storefront Art Project. A paper airplane contest with a champion paper airplane maker added a spark to the project.

To promote its culture, along with its cuisine and quality of life, the New Orleans Convention & Visitors Bureau launched a "Lets Do Shots! New Orleans Photo Contest" this summer while San Francisco celebrated its long-standing ties to its sister city, Shanghai, in a year-long program involving more than 30 local cultural groups and civic institutions.

Cultural neighborhoods are being developed in cities, including Detroit's Midtown and North Little Rock's Argenta Arts District. In Boise, the city adopted an unlikely arts group, the Trey McIntyre Project dance company and named it its first cultural ambassador, a designation worth \$25,000 to the dance troupe.

Late this summer New Haven launched "Project Storefronts," a program designed to enliven the city's commercial districts through the involvement of artists and "creative entrepreneurs" by providing access to empty retail spaces. The effort, headed by the city's Department of Cultural Affairs, is in

### ... Arts Programs in Cities win Support

partnership with the city's Office of Economic Development, which gave \$30,000 to the project. It includes help to artist entrepreneurs who want to develop business plans for projects. Early projects include a curated bookstore offering printed matter from artists and writers and a "pop up" gallery and performance space.

Istanbul, Turkey, entering the last months of its designation as "European Capital of Culture," has launched the final stage of its themed "City of Four Elements," with "Fire," through December 31, using contemporary art to show how the cultural torch passes from generation to generation. Among the final phase projects are Design 2010, the Architectural Biennial and "Lives and Works in Istanbul," in which ten noted international artists are working with ten top Turkish artists and 100 young artists to create art inspired by the city.

### SIDE STEPS

[www.artsadministration.org/artsmanagement/267.php](http://www.artsadministration.org/artsmanagement/267.php)

### Arts Management Bookstore

Arts Management Network provides the world's largest database for arts management publications. Nearly 450 books in English and even in Chinese, Italian, Russian or French language are introduced with extended descriptions, cover images and information about the authors and publishers. Easy to order via our partner, Amazon.com or its sister online stores in Canada, Great Britain, Germany, and France. If you purchase items (not only books) at Amazon through our bookstore in general, you can easily support the further growing of our information network.

More: <http://books.artsmanagement.net>

# Imprint

## ARTS MANAGEMENT NETWORK

Kulturmanagement Network Dirk Schütz & Dirk Heinze GbR

Post Box PF 1198 · D-99409 Weimar

Amalienstr. 15 · D-99423 Weimar

Phone +49 (0) 3643.494.869

Fax +49 (0) 3643.801.765

[office@artsmanagement.net](mailto:office@artsmanagement.net)

[www.artsmanagement.net](http://www.artsmanagement.net)

Skype: kulturmanagement

Twitter: [www.twitter.com/amnweimar](http://www.twitter.com/amnweimar)

Editor-in-Chief: Dirk Heinze

Subscribers: 7.312