



GLOSSARY¹

ABAIEM (Asociación Boliviana de Artistas, Intérpretes y Ejecutantes de Música) Bolivian Association of Music Artists, Interpreters and Performers. A royalty collection society that manages neighboring rights (i.e. those of performers, producers, and distributors) for public performances by Bolivian artists.

ADPIC. (Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio). Spanish language equivalent to TRIPS (The Agreement on Trade-Related Aspects of Intellectual Property Rights), that was adopted in 1994. Compliance with this treaty is a requirement of all applicant countries wishing to belong to the World Trade Organization (WTO), which administers the agreement and regulates forms of intellectual property rights. Bolivia became a signatory state in 1995. It covers intellectual property as it is impacted by Free Trade Agreements. However, drawing on the defense of food sovereignty in the New Political Constitution (2009), Evo Morales' government has expressed opposition to a TRIPS article that permits biological materials to be managed under the rubric of intellectual property (e.g. genetically modified seeds).

ALBA (Alianza Bolivariana para los Pueblos de Nuestra América) Bolivarian Alliance for the Peoples of Our Americas. A Latin American organization of cooperation, founded in 2004 by Venezuela and Cuba, that proposes increased integration through mutual aid and social wellbeing. The alliance is viewed as an alternative to US-promoted treaties on free trade and other proposals such as the Free Trade Area of the Americas, FTAA (Spanish equivalent: ALCA). Bolivia is an active participant.

¹ This glossary is designed to work in conjunction with the Coroico 2012 documents produced by the Bolivian working group, Alta-PI (Alternativas a la Propiedad Intelectual). For complete documents, please refer to the website: <https://www.royalholloway.ac.uk/boliviamicip/home.aspx>





ALCA (Área de Libre Comercio de las Américas) Free Trade Area of the Americas, (FTAA) The FTAA is a free trade agreement proposed by the United States that sought to expand the North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States to the rest of the countries in the Americas, with the exception of Cuba. Opposing the proposal were Cuba, Venezuela, Bolivia, Ecuador, Dominica, and Nicaragua, which all entered instead the Bolivarian Alternative for the Americas. The FTAA has not been adopted to date.

ASA The Bolivian umbrella organization (combining ABAIEM / SOBODAYCOM / ASBOPROFON) responsible for collecting copyright royalties and representing performers, composers, and phonographic producers. Its operation was initially regulated under Bill 23907 of Law 1322, related to Author's Rights and Intellectual Property. However, ASA was dissolved in 2011, and its powers to collect royalties were transferred to SOBODAYCOM.

Author. The person who creates a work or object, or the employer of a person who creates a work as part of the duties of their employment. According to copyright law, the term “author” not only refers to the creators of novels and dramatic works, but also to those who elaborate computer programs, arrange data in phone books, choreograph dance, take photographs, sculpt stone, paint murals, write songs, record sounds, and translate books from one language to another. The question “who is an author?” is central to a critical perspective on intellectual property.

Benefit sharing. This emerges from the Convention on Biological Diversity (Nagoya Protocol), which proposes that local and indigenous communities should receive fair and equitable benefits when genetic resources about which they have traditional knowledge are extracted and exploited elsewhere. According to the Convention, agreements should be developed between local communities, nation states, and the relevant international institutions.

Berne Convention. A multilateral copyright treaty signed in Switzerland in 1886, which by 2012 included approximately 165 member nations. The treaty establishes a minimum term for copyright protection, but establishes no maximum. It does not take





into consideration structural inequalities between countries of the global north and south, which can over-determine who has access to knowledge. Nor does it take into account users' rights, an important aspect of other configurations of intellectual property.

Commercial trademarks and service marks. Sometimes known as “brands,” these are words, symbols, logos, sounds, and pictures that serve to identify the source of goods or services, and to establish differences between those that are produced under a registered trademark and those that are not. Trademarks attempt to symbolize the quality of the goods and services they represent, serving to distinguish some products from others and to define their legal status. Unlike other intellectual property rubrics, brands do not have a fixed duration of protection; instead, exclusive rights can be maintained indefinitely, as long as the trademarked brand continues to be used and defended. Some people have suggested that using the registered trademark system could serve as a way to protect the symbols of indigenous groups, although this also has certain disadvantages (See Brown 2003).

Convention on Biological Diversity. This convention emerged from the UN Earth Summit in Río in 1992. Its authors went beyond the usual logic of intellectual property by focusing on the concept of shared resources and by viewing life forms as part of the public domain. This convention emphasizes community rights, national sovereignty, and agreements that establish arrangements for shared benefits. It departs from TRIPS (ADPIC, in Spanish) in key aspects. For example, TRIPS does not take collectivities into account; nor does it consider mechanisms that aim to achieve greater equality between the world's nations that might benefit from the products of intellectual property. By contrast, this Convention seeks more equitable shared benefits arrangements.

Copyleft. A form of licensing that counters the principles of “copyright.” This license permits works to be reproduced, modified, and distributed on the condition that these new products remain open for others to use in a similar fashion. Where “copyright” prohibits, “copyleft” allows. The word “left,” in English, signals an opposite direction but it can also mean “authorize, offer, allow.” Richard Stallman, who is associated with “free software”, wrote the first license of this kind: “*GNU General Public License.*”





Copyright. The exclusive right that a government bestows on a creator of a work to exclude other people from reproducing, adapting, or from publicly distributing, performing or exhibiting such work. Copyright does not protect an abstract idea: it only protects a concrete expression of an idea. In order to qualify for copyright protection, the work must possess a certain degree of originality and creativity. Historically, copyright could encompass *economic rights* and *moral rights* (for example, the latter refers to the right of attribution and rights over a work's integrity). However, moral rights no longer form a core aspect of the Anglo-American legal system for intellectual property. In fact, within this system, moral rights can be seen to limit the doctrine of fair use, as well as the rights of free speech that are central to Anglo American law. In the United States, the duration of basic copyright is calculated as the life of the author plus an additional 70 years.

Copyrights and indigenous groups. The usage of a copyright system to protect the cultural expressions of indigenous groups poses a number of difficulties: 1) It requires expressions to be presented in tangible form; in other words, an idea cannot be copyrighted, only its expression. This disadvantages oral traditions. 2) It does not adapt well to a collective logic because it is framed around the individual genius or author. 3) Within the copyright system of the United States, the possibility for what is termed "fair use" of a creation is permitted, where, for example, a fragment might be used in the creation of something new, which works well as long as everyone agrees with the creative mixing of cultures. However, the doctrine of fair use has nothing to say regarding respect for the cultural expressions of indigenous groups or the dignity of these groups in cases of cultural borrowing. 4) Copyright protection is subject to a time limit after which works become part of the public domain, enabling them to be used by other creators. However, some indigenous groups do not wish their expressions to circulate freely in the public domain. This is particularly the case for sacred or secret forms of knowledge.

Creative Commons. Founded in the year 2001 in the United States, Creative Commons, a non-profit organization, provides legal and technological tools that enable creators to control the degree of freedom users have over their work. They offer an alternative form of license to that of copyright. Creative Commons initiatives also exist in various countries of Latin America.





Dichotomy between idea and expression. A fundamental rule of most legal regimes is that copyright does not protect an idea; it only protects specific expressions of an idea. This becomes a key issue when considering the control of local, indigenous, and traditional knowledge, where contradictions often emerge between knowledge that exists in an oral form within a community and the requirement for such knowledge to take a specific form of expression. Besides the issue of orality, communities may not permit certain forms of knowledge to circulate openly, even within the community itself.

Fair use. The concept of “fair use” applies to US legal systems, and similar systems of “fair dealing” exist in the United Kingdom and other Commonwealth nations. Fair use refers to the users’ right to use, in the following ways, works that are protected under intellectual property: to report a news story, to make a parody, to make a copy for educational purposes, to quote in academic works, and to critique works. However, these uses alone do not determine whether or not an expression falls under the doctrine of fair use. Four factors, often considered in relation to one another, complicate fair use in US legal proceedings (the purpose of the use, the nature of the copyrighted work, the amount and significance of the part used in relation to the copyrighted work, and the effect that such use may have on the market or value of the copyrighted work). In practice, fair use is quite ambiguous, because relatively little US case law exists in relation to fair use claims. To avoid costly legal proceedings, many people opt not to push fair use, and choose instead to pay licensing fees in advance, including these as part of production costs. However, choosing this option closes down the creative possibilities that exist under the doctrine of fair use.

Intellectual property. In its European and North American origins, intellectual property was intended to serve the public function of promoting creativity through achieving a *balance* between the rights and responsibilities of *creators* and *users*. This is why, generally speaking, creations are not protected in perpetuity. At some stage they pass into collective usage or what is sometimes referred to as the *public domain*, where other creators and users may use them. In this respect *intellectual property* differs from *property*. However, certain international regulations that extend the duration of





intellectual property protections are making it look very much like property, where goods remain permanently in a person's possession. These extensions on intellectual property protections put at risk the promotion of creativity as a public good.

License. A permit to use an item of intellectual property within a determined period of time, context, marketing line, or territory.

Moral rights. A specific form of author's rights, supplementary to economic rights, found in the copyright law of certain (but not all) countries. They can include the following: the right of the author to receive credit as the creator of a work, in order to avoid others falsely claiming authorship and to prevent the use of the author's name on work s/he didn't produce; the right of the author to prevent the mutilation of their work; and the right of an author to remove a work from circulation if it no longer reflects their point of view.

Musical work. A work that expresses itself through the aesthetic ordering of a variety of different sounds. It may be represented in many different forms, such as through musical notation or a recording. The composition of a given composer can be protected under copyright law for that particular musical work, but a recording of the song may be protected through another copyright of the recording itself.

National treatment. This legal doctrine, established by the Berne Convention, decrees that national and non-national (foreign) authors of signatory countries are treated equally and without discrimination in copyright protections under local domestic law. However, certain analysts have emphasised that this, so-called, "egalitarian" treatment fails to take into account the structured inequalities between the Global North and Global South.

Patent. A contract between society as a whole and one or various individual inventors. Over a fixed period, this contract grants the inventor the exclusive right to prevent others from making, using, or selling the invention, in exchange for making public its details. When the patent protection has expired, the public is free to use the invention as it sees fit.



Protocols. Protocols may serve as an option when a group's interests are not served by intellectual property or cultural heritage frameworks, which—for better or for worse—also involve the state. Protocols prescribe modes of conduct that emphasise or normalize particular forms of cultural encounter. People follow protocols because of social pressure, not because this is demanded by law. Accordingly, protocols emerge from community norms and must be designed, articulated, and understood within a specific context. No standard model or prototype exists for protocols, and those used in one context are not necessarily useful in another. They are not bound up in formal law or state regulations, and instead rely on conversations that do not require lawyers, whose services are, relatively costly for David and cheap for Goliath. Not only indigenous groups use protocols; the Internet, for example, operates on the basis of protocols.

Public domain. The legal status of an invention, creative work, commercial symbol, or any other form of creation that is not protected by some form of intellectual property. If a work is determined to exist in the public domain, it may be copied and used by anyone. The copying of these materials is not only tolerated, but promoted as a part of the competitive process. In its original forms, the copyright system proposed short periods of protection, after which the materials entered the public domain. Recently, the durations of copyright protection have extended; many now fear that the public domain will continue to diminish and, with it, future opportunities for creativity. It is often assumed that the public domain is structured so that everyone has equal access to its contents, but in practice this is not true. In a much diminished public domain, Indigenous expressions and knowledge—because they often do not fit the logic of intellectual property—end up being exploited as the creative resources of everyone else. So, for some analysts, the urgent agenda involves strengthening the public domain in the interest of users and future creativity. Yet, for others, like indigenous groups, the public domain is a problem rather than a solution to their concerns-- as, for example, when a given group wishes to restrict the circulation of secret and sacred knowledge.

Royalties. The sums of money that are processed for payment to copyright holders after the collection and management of works registered with royalty collection societies.





SENAPI (Servicio Nacional de Propiedad Intelectual), National Intellectual Property Service. The intellectual property service of the Bolivian government, which forms part of the Ministry of Productive Development and Plural Economy. SENAPI manages all aspects of Bolivia's intellectual property system, including the regulation of its royalty collection societies.

SOBODAYCOM (Sociedad Boliviana de Autores y Compositores de Música, Bolivian Society of Lyricists and Music Composers). The Bolivian royalty collection society that represents the works of lyricists and composers. It manages the copyright of national and foreign music, and collects, manages, and distributes royalties. According to its webpage, SOBODAYCOM's mission involves "The effective defense of the moral and proprietary rights of lyricists and composers in Bolivia through efficient collection mechanisms, management, and distribution of the royalties generated from all uses of a musical work." SOBODAYCOM has received criticism because it has broadened its purview in royalty collections. For example, people have questioned its attempt to charge royalties for the music used during the popular festival of "El Señor del Gran Poder."

UNESCO (The United Nations Educational, Scientific, and Cultural Organization)

UNESCO Intangible Cultural Heritage. Nation-States nominate intangible cultural expressions (music, song, drama, cuisine, annual festivals, crafts, and other parts of culture that can be recorded but are not material) within their territories for inclusion in this list. UNESCO operates through its member nation-states, and therefore faces on-going problems, because many cultural expressions suitable for entry on this list exist at sub- and/or transnational levels.

World Intellectual Property Organization, WIPO. (Organización Mundial de la Propiedad Intelectual, OMPI). Headquartered in Geneva (Switzerland) and created in 1967, this is one of the 16 specialized agencies within the United Nations system. It is responsible for promoting and protecting intellectual property around the world. It promotes cooperation between nations, manages different institutions and organizations through multilateral treaties, and creates model laws to be adopted in low-income





nations. It promotes the idea that a country can become “developed” through the organization and expansion of intellectual property in almost every area of life.

Bibliographic references:

Anderson, Jane and Gregory Younging. 2010. “Discussion Paper on Protocols.” *Canadian Public Art Funders Professional Development Meeting on Aboriginal Arts*.

Aoki, Keith, James Boyle, and Jennifer Jenkins. 2006. *Tales from the Public Domain: Bound By Law*. Duke Center for the Study of the Public Domain.
<http://www.law.duke.edu/cspd/comics/>

Bowrey, Kathy. 2006. “Alternative Intellectual Property?: Indigenous Protocols, Copyleft and New Juridifications of Customary Practices.” *Macquarie Law Journal* 6: 65-95.

Brown, Michael F. 2003. *Who Owns Native Culture?* Cambridge, MA: Harvard University Press.

Demers, Joanna. 2006. *Steal This Music: How Intellectual Property Law Affects Musical Creativity*. (Forward, Rosemary Coombe). Athens and London: University of Georgia Press.

Hayden, Cori. 2005. “Benefit Sharing: Experiments in Governance.” In *CODE: Collaborative Ownership and the Digital Economy*. Ed. Rishah Aiyer Ghosh. Cambridge, MA: MIT Press. pp. 113-126.

Oelsner, Benjamin. 2004. *Introducción a los Derechos de la Propiedad Intelectual. Glosario de términos referentes a la propiedad intelectual*. Departamento de Estado de los Estados Unidos.

Story, Alan. 2003. “Burn Berne: Why the Leading International Copyright Convention Must Be Repealed,” *Houston Law Review* 40 (3): 763-803.

